NO. 46445-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN EFFINGER,

Appellant.

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

The Honorable Anne Hirsch, Judge

BRIEF OF APPELLANT

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RULES, STATUTES AND OTHER AUTHORITIES

A. ASSIGNMENTS OF ERROR

1. Improper witness opinion testimony deprived appellant of his right to a fair trial.

2. Defense counsel was ineffective for failing to object to improper witness opinion testimony.

3. The trial court erred when it found appellant had the current or future ability to pay legal financial obligations (LFOs). CP 77 (financial obligation finding 2.5).[1]

4. The trial court erred by imposing discretionary LFOs without first making an individualized determination appellant has the ability, or likely future ability, to pay LFOs.

5. The trial court's conclusion appellant has the ability to pay LFOs is unsupported by the record.

6. Defense counsel was ineffective for failing to object to the trial court's imposition of discretionary LFOs.

Issues Pertaining to Assignments of Error

1. Appellant was charged with 11 felonies, including eight counts of felony violation of a no contact order. Appellant was convicted of five counts of felony violation of a no contact order and acquitted of the

[1] The Judgment and Sentence is attached as an appendix.

remaining charges. A police officer testified that he believed appellant's telephone calls were violations of the no contact orders. Is reversal required where the officer's testimony was an explicit opinion on appellant's guilt?

2. Counsel is ineffective when there is deficient performance and a reasonable probability the error affected the outcome. Was defense counsel ineffective for failing to object to the officer's improper opinion testimony?

3. The trial court ordered appellant to pay $900 in legal financial obligations, including $100 for domestic violence assessment fees. The trial court included generic, pre-formatted language in the Judgment and Sentence that concluded appellant had the ability or likely future ability to pay this amount. Nothing in the record, however, indicates the trial court made an individualized determination appellant has the ability, or likely future ability, to pay LFOs. Did the trial court fail to comply with RCW 10.01.160(3) when it imposed a discretionary domestic violence LFO as part of appellant's sentence, thus, making the LFO order erroneous and challengeable for the first time on appeal?

4. Was appellant's trial attorney ineffective for failing to object to the trial court's imposition of discretionary legal financial obligations?

B. STATEMENT OF THE CASE

1. Procedural History

The Thurston County prosecutor charged appellant Ryan Effinger with 11 felony counts, including one count each of first degree burglary, felony harassment, and fourth degree assault and eight counts of felony violation of a no contact order. CP 9-12.

A jury found Effinger guilty of five counts of felony violation of a no contact order. 1RP[2] 403-05; CP 55, 57, 59, 61, 63. The jury also returned a special verdict for each count, finding Effinger and the complaining witness were members of the same household. CP 56, 58, 60, 62, 64. The jury acquitted Effinger of the remaining six charges. 1RP 403, 405-06; CP 49, 51, 53, 65, 67, 69.

Effinger was sentenced to concurrent sentences of 60 months on each conviction. 2RP 21; CP 74-85. Effinger timely appeals. CP 86-88.

2. Trial Testimony

Effinger is married to Jennifer Giovani. Ex. 14. On November 1, 2013 Giovani called 911, alleging Effinger had stayed at her house the previous night in violation of a no contact order. 1RP 91-97. Giovani told Effinger she wanted to end their relationship. Giovani said that Effinger

[2] This brief refers to the verbatim report of proceedings as follows: 1RP – May 19, 20, and 21, 2014; 2RP – June 5, 2014.

then punched her in the mouth and threatened to kill anyone she dated. Giovani took a knife from the kitchen for protection. Effinger then left the house on a bicycle. 1RP 91-97; Ex 5.

Giovani told police the same story when they arrived at her house about 30 minutes later. 1RP 97, 100-03, 110-12. Police saw no marks on Giovani's face or arm "indicating that she had been punched." 1RP 103, 111, 118. Giovani declined medical attention. 1RP 92.

Giovani's 16-year-old daughter, S.V., disputed the story Giovani told police. 1RP 282-83. S.V. explained only her and Giovani were home on October 31, 2013. S.V. went to bed. 1RP 285. When S.V. woke up the next morning, she heard Giovani banging things around the kitchen. Giovani was drinking vodka. 1RP 286, 289. S.V. explained that Giovani was upset that she could not spend her birthday with Effinger because of the no contact order. 1RP 287-89, 295. S.V. saw nothing indicating Effinger had slept at the house the night before. 1RP 286-87.

S.V. left the house a short time later to get breakfast with her friends at Walmart. S.V. saw Effinger sleeping in his truck in the Walmart parking lot. 1RP 292.

Around Thanksgiving 2013, Giovani asked her friend Cheryl Adams if she could use Adams' address to correspond with Effinger. 1RP 132. Adams agreed. 1RP 133. About five letters addressed to a Liz

Adams were mailed to Adams' house. 1RP 133-35, 139. Adams did not know who Liz Adams was. 1RP 144. The letters were signed by Effinger. 1RP 134-35, 139-40. Adams told Giovani about the letters. Adams later felt uneasy about the arraignment and destroyed the letters. 1RP 134-35.

A short time later, police received an anonymous complaint that Effinger was violating the no contact order with Giovani. 1RP 166, 199, 212. As a result, police began investigating the letters sent to Adams' house. 1RP 239. Adams' initially told police she was not acquainted with Giovani. 1RP 245-48. Adams later told deputy sheriff George Oplinger that Giovani made up the name Liz Adams to receive letters from Effinger. 1RP 238, 247-48. Giovani's middle name was Elizabeth. 1RP 267.

Oplinger confiscated three envelopes between Liz Adams and Effinger that were postmarked February 2014. 1RP 249-51; Ex 15. Oplinger acknowledged he was not qualified in handwriting analysis. Oplinger did not consult with a handwriting expert. 1RP 263. The letters were not tested for fingerprints. 1RP 265.

Police also investigated Effinger's telephone calls from jail. 1RP 259. Thurston County Sheriff's Lieutenant Debra Thompson, listened to several telephone calls made from the jail. 1RP 167-68. Thompson could

not say how many calls she listened to. 1RP 207, 212. A call on November 11, 2013 was placed using Effinger's jail pin number. 1RP 173-75; Ex. 9. Another call on November 15, 2013 was placed using the jail pin number of someone named Daren Evans. 1RP 175-95; Ex. 9. The women who received the calls both identified themselves as "Tracy." 1RP 174, 176, 211; Ex. 9.

Thompson acknowledged she could not say for certain who Effinger was speaking with in the telephone calls. 1RP 213. Thompson did not know who the number Effinger called belonged to. 1RP 213-14.

Thompson nonetheless opined that two calls, placed on November 11 and 15, 2013, violated the no contact order. 1RP 169, 213. Thompson explained that in one of the calls Effinger asked the woman not to leave him, referred to her as his wife, and called her Jen. 1RP 169-70. Thompson described Effinger's voice as "nasally," and having a lisp. 1RP 170. Thompson acknowledged she was not qualified in assessing voice recognition and did not compare all of the voices on the jail telephone calls. 1RP 200, 207-08. Giovani did not testify at trial. 1RP 269, 271-73, 277.

C. ARGUMENT

1. IMPROPER OPINION TESTIMONY DEPRIVED EFFINGER OF A FAIR TRIAL

Expressions of personal belief as to guilt are "clearly inappropriate" testimony in criminal trials. State v. Montgomery, 163 Wn.2d 577, 591, 183 P.3d 267 (2008). Opinion testimony intrudes on the jury's role as factfinder, which is to be held inviolate under Washington's constitution. Wash. Const. art. I, §§ 21, 22; Montgomery, 163 Wn.2d at 590; Sofie v. Fibreboard Corp., 112 Wn.2d 636, 656, 771 P.2d 711 (1989).

To determine whether an opinion is improper, courts consider (1) the type of witness involved, (2) the specific nature of the testimony, (3) the nature of the charges, (4) the type of defense, and (5) the other evidence before the trier of fact. State v. Johnson, 152 Wn. App. 924, 931, 219 P.3d 958 (2009) (citing State v. Hudson, 150 Wn. App. 646, 653, 208 P.3d 1236 (2009)). An explicit or nearly explicit opinion on credibility or guilt is manifest constitutional error that may be raised for the first time on appeal. Montgomery, 163 Wn.2d at 595; State v. Kirkman, 159 Wn.2d 918, 934-35, 155 P.3d 125 (2007); State v. Barr, 123 Wn. App. 373, 381-84, 98 P.3d 518 (2004), rev. denied, 154 Wn.2d 1009 (2005).

a. Officer Thompson's Was Improper Opinion Testimony.

Here, Effinger's right to a fair trial was compromised beyond repair when the jury heard testimony from Officer Thompson that she believed Effinger's telephone calls violated the no contact order. On direct examination, the following exchange occurred between the prosecutor and Officer Thompson:

> Q: Did you believe that these calls were violations of the No Contact Order?
>
> A: Yes, I did.
>
> Q: What about the calls made you believe that?
>
> A: Well, there were several things. When I looked at the police report, the victim indicated that she was in the process of leaving Mr. Effinger. And in a recorded call – in on of the recorded calls, if not both – I can't remember – he basically begs her not to leave him. He indicates – about a minute into one of the calls, he calls her 'Jen.' You can barely hear it, but he says 'Jen,' and that's her first name, Jen or Jennifer. He also refers to her as his wife once during the phone call. And he talks about kissing his ring on his finger. And they also discuss something about a pysch eval during both phone calls.

1RP 169-70.

Thompson's testimony that she believed Effinger violated the no contact order was an explicit opinion on Effinger's guilt. State v. Barr[3] and State v. Jones[4] are instructive.

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[3] 123 Wn. App. at 373.

Barr was charged with rape, unlawful imprisonment, and vehicle prowl. Barr, 123 Wn. App. at 378. At trial, a police officer explained that a particular type of investigative technique trained him to look for verbal and nonverbal clues that someone was being deceptive. The officer testified that using this technique he was able to determine that Barr's posture, breathing, voice inflection, and mentions of prison indicated that Barr was being deceptive. Barr, 123 Wn. App. at 378-79.

Barr argued for the first time on appeal that the officer's testimony was an impermissible opinion on Barr's guilt. Barr, 123 Wn. App. at 380-81. The Court of Appeals agreed, finding the testimony embodied the officer's opinion that Barr committed the offence and that his training in evaluating Barr's statements and body language proved this opinion was true. The Court explained, "In other words, the officer was testifying, as an expert, as to his opinion regarding manifestations of Mr. Barr's guilt." Barr, 123 Wn. App. at 382.

The Court rejected the State's argument that the testimony was not improper because the officer did not testify that Barr was being deceptive, but rather, only that Barr's behavior showed signs of deception. The Court noted, the officer's testimony was "clearly designed" to give the officer's opinion as to Barr's guilt. Barr, 123 Wn. App. at 382.

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[4] 117 Wn. App. 89, 68 P.3d 1154 (2003).

In Jones, the officer who conducted an interrogation of Jones testified that when Jones discussed the incident under investigation, "I just didn't believe him." Jones, 117 Wn. App. at 91. On appeal, the State argued the officer's testimony was not an improper opinion, but instead, a discussion of interrogation techniques. Jones, 117 Wn. App. at 91. This Court disagreed. The Court noted that the officer's testimony told the jury that the officer did not believe Jones' claims. The Court further explained that, "clothing the opinion in the garb of an interviewing technique does not help." Jones, 117 Wn. App. at 92. Thus, this Court found the officer's testimony was inadmissible opinion evidence. Jones, 117 Wn. App. at 92-93.

Like Barr and Jones, here Thompson impermissibly gave opinion testimony as to Effinger's guilt. That Thompson's opinion was given in the context of his testimony explaining his investigation into the telephone calls makes no difference. Thompson's testimony was "clearly designed" to give an opinion as to Effinger's guilt. Barr, 123 Wn. App. at 382.

b. Thompson's Opinion on Guilt Was Manifest Constitutional Error that Prejudiced Effinger's Case.

An explicit or almost explicit expert opinion on the defendant's guilt can constitute reversible error, reviewable even though raised for the first time on appeal. Montgomery, 163 Wn.2d at 595; Kirkman, 159

Wn.2d at 934-35; Barr, 123 Wn. App. at 381-84. Improper opinion testimony is constitutional error because it violates the right to trial by a fair and impartial jury. Id. Constitutional error is manifest when it causes actual prejudice or has practical and identifiable consequences. Montgomery, 163 Wn.2d at 595; see also State v. King, 167 Wn.2d 324, 330, 219 P.3d 642 (2009) (opinion testimony regarding a defendant's guilt is reversible error if the testimony violates the defendant's constitutional right to a jury trial, which includes the independent determination of the facts by the jury).

This Court will find "a constitutional error harmless only if convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error," and "where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt." State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996). The State bears the burden of proving it was harmless. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986); State v. Pruitt, 145 Wn. App. 784, 798-99, 187 P.2d 326 (2008). The opinion testimony in this caused such prejudice and affected the jury because the instructions were insufficient to correct the error, the verdict rested largely on credibility, and Officer Thompson's opinion was inherently likely to affect the jury regardless of instruction.

In Montgomery, the court concluded there was no manifest constitutional error in large part because the jury was properly instructed, including an instruction that the jury was not bound by expert opinion. 163 Wn.2d at 595-96. Here, the jury was properly instructed that it is the sole judge of witness credibility. CP 16 (instruction 1). But it was also instructed to consider all the admitted evidence, including testimony. CP 15-17 (instruction 1); CP 21 (instruction 5). Nothing in the instructions told the jury it could not consider Thompson's opinion as evidence of guilt.

Even if it had been instructed to do so, it is unlikely the jury would be able to follow that instruction. When a police officer gives opinion testimony, "the jury is especially likely to be influenced by that testimony," because such testimony often "carries a special aurora of reliability." Kirkman, 159 Wn.2d at 928 (citing State v. Demery, 144 Wn.2d 753, 765, 30 P.3d 1278 (2001)). Thompson's opinion carried extra weight and unduly influenced the jury. Barr, 123 Wn. App. at 384.

Moreover, this was not a case like Montgomery where there was substantial physical evidence indicating guilt. 163 Wn.2d at 586-87. In Montgomery, the only disputed issue was whether Montgomery possessed the pseudoephedrine with intent to manufacture methamphetamine. 163 Wn.2d at 594. The court concluded there was sufficient circumstantial

evidence of intent in that he also purchased, on the same day, two other distinctive ingredients of methamphetamine. Montgomery, 163 Wn.2d at 586-87.

Here, no voice analysis confirmed the voices heard on the telephone calls were those of Effinger and Giovani. 1RP 200, 207-08. Neither of the women on the telephone calls identified themselves as Giovani. 1RP 171, 200, 213. One of the calls was not placed using Effinger's jail pin number. 1RP 169-70. Absent the telephone calls, the no contact order cases hinged on the credibility of the police officers and Cheryl Adams. The jury questioned the credibility of the State's witnesses as evidenced by its not guilty verdict on six of the charged offenses, including three other alleged violations of the no contact orders. 1RP 403, 405-06. Thompson's opinion on Effinger's guilt impermissibly bolstered the State's case.

The Montgomery court declared, "[I]f there were evidence that these improper opinions influenced the jury's verdict, we would not hesitate to find actual prejudice and manifest constitutional error regardless of the failure to object or the likelihood that an objection would have been sustained." 163 Wn.2d at 596 n.9. In contrast, in Barr, the Court of Appeals concluded the manifest constitutional error was not harmless and reversed Barr's convictions. 123 Wn. App. at 384. The Court noted the "ultimate issue" revolved an assessment of the credibility

of Barr and the complaining witness. Barr, 123 Wn. App. at 384. Recognizing the opinion of the police officer was likely to influence the jury, the Court found the untainted evidence was not so overwhelming that admission of the improper opinion evidence was harmless beyond a reasonable doubt. Barr, 123 Wn. App. at 384.

Like Barr, here, the integrity and authority of the Thurston County Sheriff's Department buttressed Thompson's opinion that Effinger was guilty. Given the special aura of reliability Thompson's opinion carried, the lack of instruction regarding opinion testimony, and the centrality of credibility in this case, this Court should conclude this error affected the jury's verdict, find manifest constitutional error, and reverse.

2. COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO THIS HIGHLY PREJUDICIAL OPINION TESTIMONY.

Alternatively, if this Court concludes this issue was not preserved, Effinger was denied his right to effective assistance of counsel.

The federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. 6; Const. art. 1, § 22 (amend. 10); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). Ineffective assistance of counsel is established if: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Thomas, 109 Wn.2d at 225-26 (adopting two-prong test from Strickland v.

Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Deficient performance occurs when counsel's conduct falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). Prejudice occurs when, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceeding would have differed. In re Personal Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

The failure to object to this clearly improper and highly prejudicial opinion on guilt was unreasonably deficient. Legitimate trial strategy or tactics may constitute reasonable performance. State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999). But there is no possible strategic reason for permitting clearly improper opinion testimony that Thompson believed Effinger had violated the no contact order. This opinion testimony went directly to an ultimate issue the jury had to decide. An objection to this improper opinion testimony would likely have been sustained. Indeed, case law in existence well before Effinger's trial clearly warned against the type of improper witness opinion evidence at issue here.

Moreover, Effinger has shown prejudice. As discussed in argument one, infra, there is a reasonable probability that introduction of Thompson's opinion evidence affected the jury's verdict. There is a reasonable probability this testimony tipped the scale in the State's favor

and that, had counsel objected, the result of the jury's verdict would have been different. Effinger's convictions should be reversed because counsel's failure to object was objectively unreasonable and undermines confidence in the outcome of the trial. See Strickland, 466 U.S. at 669.

3. THE TRIAL COURT FAILED TO MAKE AN INDIVIDUALIZED INQUIRY INTO EFFINGER'S CURRENT AND FUTURE ABILITY TO PAY BEFORE IMPOSING A DOMESTIC VIOLENCE ASSESSMENT FEE

RCW 9.94A.760 permits the court to impose costs "authorized by law" when sentencing an offender for a felony. RCW 10.01.160(3) permits the sentencing court to order an offender to pay LFOs, but only if the trial court has first considered his individual financial circumstances and concluded he has the ability, or likely future ability, to pay. The record here does not show the trial court in fact considered Effinger's ability or future ability before it imposed LFOs. Because such consideration is statutorily required, the trial court's imposition of LFOs was erroneous and the validity of the order may be challenged for the first time on appeal.

a. Because The Sentencing Court Did Not Comply With RCW 10.01.160(3), Effinger May Challenge the LFO Order For The First Time on Appeal.

RCW 10.01.160(3) provides:

> [t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3) (emphasis added). The word "shall" means the requirement is mandatory.[5] State v. Blazina, __ Wn.2d __, __ P.3d __, 2015 WL 1086552 at *5. Hence, the trial court was without authority to impose LFOs as a condition of Effinger's sentence if it did not first take into account his financial resources and the individual burdens of payment.

While formal findings supporting the trial court's decision to impose LFOs under RCW 10.01.160 (3) are not required, the record must minimally establish the sentencing judge did in fact consider the defendant's individual financial circumstances and made an individualized determination he has the ability, or likely future ability, to pay. Blazina, 2015 WL 1086552 at *5-6. If the record does not show this occurred, the trial court's LFO order is not in compliance with RCW 10.01.160 (3) and,

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[5] Comparatively, RCW 9.94A.753 (a statute which addresses restitution) merely provides:

> The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(emphasis added).

thus, exceeds the trial court's authority. Blazina, 2015 WL 1086552 at *5-6.

The record does not establish the trial court actually took into account Effinger's financial resources and the nature of the payment burden or made an individualized determination regarding his ability to pay. The State did not provide evidence establishing Effinger's ability to pay or ask it to make a determination under RCW 10.01.160 when it asked that LFOs be imposed.[6] The trial court made no inquiry into Effinger's financial resources, debts, or employability.

The only part of the record that even remotely suggests the trial court complied with RCW 10.01.160 (3) is the boilerplate finding in the Judgment and Sentence. CP 77 (financial obligation finding 2.5). However, this finding does not establish compliance with RCW 10.01.160(3)'s requirements. Blazina, 2015 WL 1086552 at *5-6.

In sum, the record fails to establish the trial court actually took into account Effinger's individual financial circumstances before imposing LFOs. As such, it did not comply with the authorizing statute. Consequently, this Court should permit Effinger to challenge the legal

[6] It is the State's burden to prove the defendant's ability or likely ability to pay. State v. Lundy, 176 Wn. App. 96, 105, 308 P.3d 755 (2013).

validity of the LFO order for first time on appeal, and it should vacate the order. See Blazina, 2015 WL 1086552 at *5-6.

b. Domestic Violence Assessment Fees are Discretionary.

Under RCW 10.99.080(1) a trial court "*may* impose a penalty assessment not to exceed one hundred dollars on any person convicted of a crime involving domestic violence." (emphasis added). In Blazina, the Supreme Court recognized the distinction between the statutory uses of the words "may" and "shall," with the latter creating a duty rather than conferring discretion. 2015 WL 1086552 at *5.

Because RCW 10.99.080(1) uses the word "may" rather than "shall" it necessarily follows that the legislature intended for domestic violence assessment fees to be discretionary rather than mandatory. Compare RCW 43.43.7541 (every sentence imposed must include a DNA fee of one hundred dollars); RCW 7.68.035(1)(a) (a five hundred dollar penalty assessment fee shall be imposed for each felony conviction).

Because domestic violence assessment fees are discretionary under RCW 10.99.080(1), the trial court was required to make an individualized inquiry into Effinger's current and future ability to pay the fee before imposing them. Blazina, 2015 WL 1086552 at *5-6.

c. Remand is Necessary.

Where the sentencing court fails to comply with a sentencing statute when imposing a sentencing condition, remand is the remedy unless the record clearly indicates the court would have imposed the same condition anyway. Blazina, 2015 WL 1086552 at *6; State v. Chambers, 176 Wn.2d 573, 293 P.3d 1185 (2013) (citing State v. Parker, 132 Wn.2d 182, 937 P.2d 575 (1997)).

The record does not expressly demonstrate the trial court would have found the evidence sufficiently established Effinger's ability to pay the LFOs. There was no evidence establishing Effinger's future employment prospects. Indeed, the record suggests Effinger was not presently employed and had no significant assets. Moreover, the trial court was aware that Effinger's wife had paid his trial counsel's legal fees. 1RP 306. Effinger's motion for order of indigency indicates he owns no real estate, owns no stocks or bonds, is not the beneficiary of any trust, and has no savings or substantial income of any kind. Supp. CP ___ (Motion and Declaration for Order of Indigency, dated 1/30/14, at 1-4).

Based on the foregoing, it cannot be said this record expressly demonstrates the sentencing court would have imposed the same LFOs if it had actually taken into account Effinger's individualized financial

circumstances. As such, the remedy is remand for resentencing. Blazina, 2015 WL 1086552 at *6; Parker, 132 Wn.2d at 192-93.

4. EFFINGER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HER TRIAL FAILED TO OBJECT TO THE IMPOSITION OF LFOs.

Alternatively, if this Court concludes this issue was not preserved, Effinger was denied his right to effective assistance of counsel. Counsel is ineffective when counsel's performance was deficient and there is a reasonable probability the error affected the outcome. Strickland, 466 U.S. at 685-87; Thomas, 109 Wn.2d at 226.

Effinger's counsel was ineffective for failing to object to the imposition of discretionary LFOs. Reversal is required because failure to object to the LFOs prejudiced Effinger. See State v. Duncan, 180 Wn. App. 245, 255, 327 P.3d 699 (2014) (recognizing ineffective assistance of counsel is "an available course for redress" when defense counsel fails to address a defendant's inability to pay LFOs).

As discussed in argument three, infra, RCW 10.01.160(3) permits the sentencing court to order a defendant to pay LFOs, but only if the trial court has first considered her individual financial circumstances and concluded she has the ability, or likely future ability, to pay. Here, the discretionary LFO costs imposed included $100 in domestic violence assessment fees. RCW 10.99.080(1); Blazina, 2015 WL 1086552 at * 5.

Counsel's failure to object to this discretionary LFO cost fell below the standard expected for effective representation. There was no reasonable trial strategy for not requesting the trial court to comply with the requirements RCW 10.01.160(3). Counsel simply neglected to object to the trial court's failure to comply with the statutory requirements as required by existing case law. See State v. Kyllo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (counsel has a duty to know the relevant law); State v. Carter, 56 Wn. App. 217, 224, 783 P.2d 589 (1989) (counsel is presumed to know court rules). Such neglect indicates deficient performance. See State v. Tilton, 149 Wn.2d 775, 784, 72 P.3d 735 (2003) (finding failure to present available defense unreasonable).

Counsel's failure to object to imposition of discretionary LFO's was also prejudicial. As discussed in Blazina, the hardships that can result from the erroneous imposition of LFOs are numerous. Blazina, 2015 WL 1086552 at *3-5. In a remission hearing to set aside the LFOs, Effinger is not only saddled with a burden of proof he would not otherwise have to bear, but he will also have to do so with out appointed legal representation. Blazina, 2015 WL 1086552 at *3-5; See also State v. Mahone, 98 Wn. App. 342, 346, 989 P.2d 583 (1999) (recognizing an offender is not entitled to publicly funded counsel to file a motion for remission).

There is a reasonable probability the outcome would be different but for defense counsel's conduct. Effinger's constitutional right to effective assistance counsel was violated.

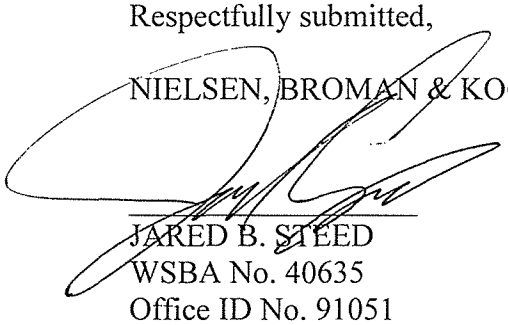
D. CONCLUSION

For the reasons set forth, this court should reverse Effinger's convictions and remand for new a new trial. In the alternative, this court should remand the case to the trial court for a new sentencing hearing.

DATED this 30th day of March, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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APPENDIX

12

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 JUN -5 AM 9:07

BETTY J. GOULD, CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,	
vs.	No. 13-1-01630-7
RYAN DANIEL EFFINGER, Defendant.	FELONY JUDGMENT AND SENTENCE (FJS)
SID: WA20079751 If no SID, use DOB: 08/27/1981 PCN: 767156995 BOOKING NO. C0181952	Prison (non-sex offense)

I. HEARING

1.1 A sentencing hearing was held on JUNE 5, 2014 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MAY 21, 2014 by [ ] plea [x] jury-verdict [ ] bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
IV	FELONY VIOLATION OF POST CONVICTION NO CONTACT ORDER/DOMESTIC VIOLENCE	26.50.110(5), 10.99.020, 10.99.050	NOVEMBER 11, 2013
V	FELONY VIOLATION OF POST CONVICTION NO CONTACT ORDER/DOMESTIC VIOLENCE	26.50.110(5), 10.99.020, 10.99.050	NOVEMBER 15, 2013
VI	FELONY VIOLATION OF PRETRIAL NO CONTACT ORDER/DOMESTIC VIOLENCE	26.50.110(5), 10.99.020, 10.99.040	ON, ABOUT OR BETWEEN NOVEMBER 5, 2013 AND FEBRUARY 24, 2014
VII	FELONY VIOLATION OF PRETRIAL NO CONTACT ORDER/DOMESTIC VIOLENCE	26.50.110(5), 10.99.020, 10.99.040	ON, ABOUT OR BETWEEN NOVEMBER 5, 2013 AND FEBRUARY 24, 2014
VIII	FELONY VIOLATION OF PRETRIAL NO CONTACT ORDER/DOMESTIC VIOLENCE	26.50.110(5), 10.99.020, 10.99.040	ON, ABOUT OR BETWEEN NOVEMBER 5, 2013 AND FEBRUARY 24, 2014

as charged in the SECOND AMENDED information.

[ ] Additional current offenses are attached in Appendix 2.1.

[ ] The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

[ ] A special verdict/finding for use of firearm was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.

[ ] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____ _____. RCW 9.94A.602, 9.94A.533.

[ ] A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] A special verdict/finding that 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 was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

[ ] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

[ ] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.

[X] For the crime(s) charged in Count IV – VIII, domestic violence was pled and proved. RCW 10.99.020.

[X] The crime charged in Count(s) IV – VIII involve(s) domestic violence.

[ ] 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)	DV* YES

* DV: Domestic Violence was pled and proved

None of the current offenses constitute same criminal conduct except: _____

CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	SENTENCE DATE	SENTENCING COURT	CRIME DATE	ADULT/ JUV	CRIME TYPE
Protection Order Violation-DV	4/9/10	Thurston County Superior Court	1/28/10	A	F
Sex Offender-Failure to Register		Cowlitz County Superior Court	9/15/06	A	F
Sex Offender-Failure to Register		Cowlitz County Superior Court	4/16/06	A	F
VUCSA- possession without a prescription	5/3/04	Grays Harbor Superior Court	10/12/03	A	F
Attempt to Elude	6/25/03	Cowlitz County Superior Court	5/22/03	A	F
Rape Third Degree-DV	12/18/01	Cowlitz County Superior Court	7/28/00	A	F
Taking Vehicle w/o Permission		Cowlitz County Superior Court	8/24/96	J	F

Robbery Second Degree		Cowlitz County Superior Court	10/31/95	J	F
Burglary Second Degree Theft 3 x 2 Taking Vehicle w/o Permission		Thurston County Superior Court	8/22/94 7/24 & 29/94 8/15/94	J J J	F GM F
Burglary Second Degree Theft 3 x 2			8/22/94 7/24 & 29/94	J J	F GM
Taking Vehicle w/o Permission			8/15/94	J	F
Related Misdemeanors					
Assault-DV	8/24/09	Olympia Municipal Court	8/18/09	A	GM
Assault 4-DV amended to Disorderly Conduct	6/1/06	Cowlitz District Court	2/14/04	A	M
Protection Order Violation	6/1/06	Cowlitz District Court	8/4/03	A	GM
Protection Order Violation-DV	6/1/06	Cowlitz District Court	7/18/03	A	GM
Asault 4-DV Possession of Drug Paraphernalia	6/1/06	Cowlitz District Court	4/7/03	A	GM
Assault 4-DV amended to Disorderly Conduct	9/16/00	Cowlitz District Court	6/11/03	A	M
Assault 4		Cowlitz District Court	2/22/00	A	GM

2.2 * DV: Domestic Violence was pled and proved

[ ] Additional criminal history is attached in Appendix 2.2.
[x] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:
None of the prior convictions constitutes same criminal conduct except _____

2.3 SENTENCING DATA:

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
IV	18	V	60 - 60 months	N/A	60 months	60 months
V	18	V	60 - 60 months	N/A	60 months	60 months
VI	18	V	60 - 60 months	N/A	60 months	60 months
VII	18	V	60 - 60 months	N/A	60 months	60 months
VIII	18	V	60 - 60 months	N/A	60 months	60 months

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. [ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
[ ] within [ ] below the standard range for Count(s) _____.
[ ] above the standard range for Count(s) _____.
[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.
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):

_____.

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

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 __[X] **The defendant is found NOT GUILTY of Counts I, II, III, IX, X, and XI.**

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

$ RESERVED Restitution to: _____

RTN/RJN

$_____ Restitution to: _____

$_____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV $ 500.00 Victim assessment RCW 7.68.035

$ 100 Domestic Violence assessment RCW 10.99.080

CRC $ 200.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

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

		Extradition costs $_____ EXT	
		Other $_____	
PUB	$_____	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 NTF/SAD/SDI	$_____	Drug enforcement fund of Thurston County	RCW 9.94A.760
	$_____	Thurston County Drug Court Fee	
CLF	$_____	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
	$ 100.00	Felony DNA collection fee [ ] not imposed due to hardship	RCW 43.43.7541
RTN/RJN	$_____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1000 maximum)	RCW 38.52.430
	$_____	Other costs for:_____	
	$ 900	TOTAL	RCW 9.94A.760

The above total may 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 may be set by the prosecutor or is scheduled for _____.

[ ] 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 as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

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.

[ ] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of $50.00 per day, unless another rate is specified here: (*JLR*) RCW 9.94A.760.

4.2 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.

4.3 The defendant shall not have contact with Jennifer Elizabeth Giovani DOB 11/1/1976 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

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

4.4 OTHER: no further criminal law violations

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

60 months on Count IV	60 months on Count VII
60 months on Count V	60 months on Count VIII
60 months on Count VI	_____ months on Count _____

Actual number of months of total confinement ordered is: 60 months.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

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

NON-FELONY COUNTS:

Sentence on counts _____ is/are suspended for _____ months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

_____ days of jail are suspended on Count _____
_____ days of jail are suspended on Count _____

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon 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:_____

_____.

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 time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____.

4.6 [ ] COMMUNITY CUSTODY is ordered as follows:

Count_____ for a range from _____ to _____months;
Count_____ for a range from _____ to _____months;
Count_____ for a range from _____ to _____months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 commited before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses commited on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.] STATUTORY LIMIT ON SENTENCE. Notwithstanding the length of confinement plus any community custody imposed on any individual charge, in no event will the combined confinement and community custody exceed the statutory maximum for that charge. Those maximums are: Class A felony--life in prison; Class B felony--ten (10) years in prison; Class C felony--5 (5) years in prison.

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant commited a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or 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) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations

Report as directed to a community corrections officer

Notify the community corrections officer in advance of any change in defendant's address or employment

Remain within prescribed geographical boundaries to be set by CCO

[ ] The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition.

[X] Defendant shall have no contact with: Jennifer Elizabeth Giovani DOB 11/1/76.

[ ] The defendant shall undergo evaluation and fully comply with all recommended treatment for the following:

[ ] Substance Abuse [ ] Mental Health

[ ] Sexual Deviancy [ ] Anger Management

[ ] Other: _____

[ ] DV Treatment Review Hearing is set for _____ at _____.

[ ] The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows:

_____

[ ] The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition.

[ ] The defendant shall comply with the following additional crime-related prohibitions: _____

_____

_____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

_____

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here:_____

4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. 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 total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 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. Any petition or motion 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, must be filed 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. For an offense committed prior to July 1, 2000, the defendant 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her 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 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 RESTITUTION HEARING.
[ ] Defendant waives any right to be present at any restitution hearing (sign initials):_____.

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

5.6 FIREARMS. **You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (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.

5.7 [ ] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.9 OTHER: Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

DONE in Open Court and in the presence of the defendant this date: 6/4/2014

Judge/Print name: ANNE HIRSCH

Deputy Prosecuting Attorney
WSBA No. 41755
Print name: BRANDI L. ARCHER

Attorney for Defendant
WSBA No. 20035
Print name: KIMBERLY ALMA ANN RENDISH

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: 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 92A.84.660.

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:_____

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

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

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

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

STATE OF WASHINGTON	)	
Appellant,	)	
v.	)	COA NO. 46445-4-II
RYAN EFFINGER,	)	
Respondent.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF MARCH 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RYAN EFFINGER
DOC NO. 829370
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF MARCH 2015.

X Patrick Mayovsky

NIELSEN, BROMAN & KOCH, PLLC

March 30, 2015 - 2:36 PM

Transmittal Letter

Document Uploaded: 3-464454-Appellant's Brief.pdf

Case Name: Ryan Effinger
Court of Appeals Case Number: 46445-4

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

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Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant'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: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

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