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Washington State
Supreme Court

Cause No. 96243-0

WASHINGTON STATE SUPREME COURT

ADRIAN CONTRERAS-REBOLLAR,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

PETITION FOR REVIEW

Adrian Contreras-Rebollar
(Print Your Name)
Petitioner, *Pro se*.
DOC# 819639, Unit D
Monroe Correctional Complex
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STATE OF WASHINGTON,

Respondent.

No. ________

PETITION FOR REVIEW

I. IDENTITY OF PETITIONER

Mr. Contreras-Rebollar asks this Court to accept review of the decision designated in Part II of this motion.

II. DECISION

Mr. Contreras-Rebollar asks this Court to accept review of the following decision or parts of the decision filed on 7-3-18 ____, 20___. The decision (Did what): Concerning Issue #1: it is presented pursuant to RAP 13.4(b)(3), and RAP 13.4(b)(1), Issue #2 is presented pursuant to RAP 13.4(b)(4).

A copy of the decision is attached as Attachment A.

III. ISSUES PRESENTED FOR REVIEW

1.) The COA, Div. 2, did not adequately address the Blakely violations addressed in his "SAG" & in his subsequently filed 'Motion to Reconsider'. Petitioner is pro se, but is adequately versed in the law to present to this Honorable Court, that he is in fact incurring 3 Blakely violations: 1.) are pertinent to the case in hand; 2.) are in direct violation of the rendering decision(s) held in Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), by the U.S. Supreme Court.

2.) Is the COA, Div. 2 decision to allow the State Pros. Attorney's Office (throughout the State) to essentially: 1.) Create their own errors, 2.) then wait to see if defendant/offender cites said errors on subsequent review within the COA, 3.) If so, fix their own errors created, 4.) make the COA job easier as they will (upon the correction of said errors) agree with the fixed outcome, 5.) then charge the defendant the "Cost Bill" on/of appeal (due to subsequent dismissal of PRP of the State's self-created errors?

This is very much exactly what occurred in petitioner's case, and, it is (as has been) breeding a, "Wild Wild West" environment within the trial courts system (throughout the State,) to inflict errors upon defendant's...and, wait to see, if said defendants (later) spot & cite those errors...which they could easily & simply fix at a later time. And, actually charge the defendant the 'Cost Bill' of appeal as (in my case,) which I had to bring to the COA attention via PRP,) upon the dismissal

by the COA, they could simply seek the defendant to burden the 'Cost of/on Appeal' as, having fixed said errors, the COA then simply 'dismiss' as in my case, 'dismissed' said PRP?

IV. STATEMENT OF THE CASE

Petitioner, hereby, defers to p. 2-6 of his 'SAG', as the statement of the case, which Copy is hereby attached for the Court as (AP-B) Appendix-B.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court should grant review of petitioner's case because:

A. Appellant is challenging the unconstitutionality of WA. State's laws & application thereof (pertaining to Blakely violations), pertaining to the application of his 2004 conviction of Asslt. 3, which applied a Community Custody range outside of the parameters set forth by the Blakely Court & standard, which the trial court used to add an additional point on the sentencing grid for sentencing purposes on his current conviction, and last resentencing hearing held on 4-21-16.

The unconstitutionality of a law is not ripe for review unless the person seeking review is harmed by the part of the law that is alleged to be unconstitutional. State v. Ziegenfuss, 118 Wn.App. 110, 113, 74 P.3d 1205 (2003). The same was found to be pertinent in State v. Nguyen, 138 Wn.App. 1042 (2007). In Nguyen, the concern was about multiple 60 day periods of incarceration for community custody (Comm. custody) violations to be premature, (for unconstitutionality challenges) as, he had not begun to serve his term of Comm. custody, let alone violate any of his conditions.

Petitioner feels that the COA decision to deny his 'Motion For Reconsideration' properly filed with said Court is due to the severity & the **U.S. 6th Amend. CONST.** magnitude of the claims presented. And thus, only the WA. Supreme Court can better decide petitioner's premises due to the "law of the case doctrine" precluding the COA of review of "his" or petitioner's claims in this appeal. This was squarely mentioned in the COA decision p.15. (AP-A)

However, they left the "door open" concerning **RAP** 2.5(c)(2), which does allow the appellate Courts, upon request of appellant, to revisit their prior Opinion under **RAP** 2.5(c)(2). Which is what petitioner asks this Court to do, concerning the unconstitutional challenges he presents.

Revisitation per **RAP** 2.5(c)(2), is what petitioner's 'Motion For Reconsideration' specifically asked the COA, Div. 2 to do, however, said motion was denied. Hence, this appeal follows/ Petition For Disc. Review due to: the law of the case doctrine (essentially) precluding the COA to act on the Issues presented.

Hence, for lack of additional time in which to file this petition, petitioner will reiterate his Claims to this Court for their proper review.

Concerning his 1st Claim, he respectfully must ask this Hon. Court [for lack of additional time,] to defer to p.g.s 17-25 of his 'SAG' in (AP-B) for & as to, his argument/[further] analysis. This Hon. Court should further, adequately review (AP-C) which is petitioner's "Motion To Reconsider" which holds further argumentation purpose(s) for his 1st Claim.

His 1st Claim, is brought: Due to WA. State's continuous resort, in trying to dodge the rendering decisions & avoid the sentencing application(s) of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)., and, pertaining to its use of further punishment in adding an additional point to its "standard range" sentencing grid--which specifically pertains to previous convictions only [which is allowed by Blakely]--this should be surmised by the WA. Courts as: for Blakely purposes [other than the fact] of a prior conviction **any** other fact thereof, pertaining to punishment, must be found by a jury so as not to implicate the 6th Amend. CONST. violation.

For its decision(s), the Blakely Court relied heavily on its rendering decisions held on Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 235 (2000)., to both further elaborate & support its contentions.

> "The U.S. Supreme Court has found that "other than the fact of a prior conviction, **any fact** that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis added) Apprendi, 530 U.S. at 490; Cited in Blakely, 124 S.Ct. at 2537.

The procedural history of Mr. Contreras-Rebollar's case concerning both the determination, validity, & application of **RCW** 9.94A.525(19), on his original 2-21-07 conviction has been a hotly contested debate between the parties involved (RP 5 at 22; RP6 at 1, both 4-14-16 RPs; RP 4-15-16 at 22) the WA. DOC has issued "discrepencies" concerning the matter of days appellant actually served while on Comm. Custody. (RP 4-21-16 43 at 16-25)(AP-D).

The tribunal itself has had difficulty in properly assessing its calculation(s) and, as appellant has presented, said determination is unconstitutional pursuant to both Apprendi and Blakely.

Where the trial court denied Mr. Contreras-Rebollar his constitutional right to jury trial to determine whether he was on Comm. Custody at the relevant time, the trial court simultaneously denied him the requirement of proof beyond a reasonable doubt for U.S. CONST. 6th Amend. purposes.

As was held by the State COA Div. 2, Where the issue of the timing of Comm. custody could not be determined from the fact of the judgment & sentence alone, the trial court erred when it failed to convene a jury to determine this issue. State v. Hochhalter, 131 Wn.App. 506, at 521, 128 P.3d 104 (2006).

At his Orig. sentencing, not only did the trial court fail to convene a jury/convene a jury thereon, the trial court also failed to advise Mr. Contreras that he had this right to a jury, when it simply [and at the last minute] decide to ascertain for itself that Mr. Contreras was on Comm. Custody. The trial court thus failed to obtain any waiver of the right to jury trial from Mr. Contreras.

In summary, the court & the prosecutor denied Mr. Contreras-Rebollar, his CONST. right to have a jury determine whether he was on Comm. Custody at the relevant time. A fact found outside of the Jury Ambit which was later used to additionally punish the defendant. Where the issue of Comm. Custody was resolved [which is used to increase a defendant's punishment under the

SRA] without the quantum of evidence that would be required for a jury verdict, the trial court denied appellant his right to trial by jury.

This Court is under the authority to fix these alleged errors concerning his 2004 J&S which is a sentence: "Invalid on its face" for purposes of **RCW** 10.73.090(1)., which means that the judgement's infirmities are evident without further elaboration. It is clear by viewing (AP-E) appellant's 2004 J&S, [which is being used to increase the punishment of his current conviction,] that he was sentenced to the "statutory maximum" allowed by Blakely, to wit 9 months, and, was further sentenced to a 12 month Comm. Custody period which he could not legally agree to as, it exceeded the maximum punishment allowed by Blakely, and **RCW** 9.94A.505(5) which was also pertinent at the time.

RCW 9.94A.505(5), restricts a trial court from imposing a combined term of confinement & Comm. Custody that exceeds the statutory maximum. Which per Blakely, has been found to be the 'Standard Range' to wit **RCW** 9.94A.510., which both Blakely & Apprendi have ruled is to be determined per **RCW** 9.94A.525, "solely".

The premise of this being a **RAP** 13.4(b)(1), If the decision of the COA is in conflict with a decision of the Supreme Ct., is because there is a vast array of cases that fall squarely on thus: Also "We hold that when a defendant is sentenced to a term of confinement & Comm. custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to amend the sentence." Conclusion of In re Pers. Restraint of Brooks, 166 Wn.2d 664, 675, 211 P.3d 1023 (2009).

Another strong case on this inconsistency between the WA. Supreme Court & the State's CT. of Appeals is the Hochhalter case in: State v. Hochhalter, 131 Wn.App. 506, 518-24, 128 P.3d 104 (2006)., by the State Ct. of Appeals, Div. 2 which

held: Other than the fact of a previous criminal conviction, any [other] fact which increases the punishment for a defendant outside of the "standard range" and pertaining to a defendant's previous criminal convictions, to include whether he was on Comm. Custody at the time of [current] offense must be submitted to the jury. Hochhalter, 131 Wn.App. at 522-24.

Which is precisely what the Blakely Court said. However, because WA. State's laws prefer for the defendant to be aggrieved by the law he cites as 'unconstitutional' as opposed to beforehand or, as a preventative measure--petitioner is now left to cite 3 individual premises by which he intends to have the Court decide upon.

(1) I challenge WA. State's interpretation of **RCW** 9A.20.021, found in & referred to in the implementation(s) of former **RCW** 9.94A.505 & former **RCW** 9.94A.505(5), the fact that these laws refer to **RCW** 9A.20.021, as the "statutory maximum" are inherently unconstitutional per the Blakely standards.

This 1st challenge is pertinent as Mr. Contreras has been harmed, it did harm, & continues to harm petitioner to date. This is evident when looking at his (2004) conviction, his 1st adult conviction which was an Assault 3 found in (AP-E), he was sentenced to the "statutory maximum" as the most he could've been sentenced to with 0 (zero) felony points was 0-3 months which he was sentenced to 3, & the mandatory 6 months for the (knife) or 'deadly weapon enhancement'. That was the 'Standard Range' 0-3 months for the crime & the mandatory enhancer to

wit--9 months. However, he was further handed down a 12 month Comm. Custody sentence, which fell squarely outside the standard range proscribed & detailed in Blakely, 542 U.S. at 299:

"In Washington, 2nd degree kidnapping is a Class B felony... state law provides that 'no person convicted of a Class B felony shall be punished by confinement...exceeding...a term of 10 years." **§ 9A.20** "other provisions of state law, however, further limit the range of sentences a judge may impose. Washinton's **SRA** specifies, for petitioner's offense of 2nd degree kidnapping with a firearm, a "standard range" of 49-53 months..." Blakely, 542 U.S. at 303.

'In other words, the relevant "statutory maximum" is not the maximum sentence [to wit **RCW 9A.20**] a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. Blakely, 542 U.S. at 304.

In which case, pursuant to Blakely, in WA. State the statutory maximum is meant pursuant to the "standard range" sentence in **RCW 9.94A.510** and not, **RCW** 9A.20.021.

Hence, the unconstitutional language, for Blakely purposes, found in **RCW** 9.94A.505(5), to consider the "statutory maximum" to be **RCW** 9A.20.021, has been held to be 'unconstitutional' for Blakely purposes. And, it was the unconstitutional premise by which petitioner was sentenced to in (2004) which by definition was outside the "standard range" of **RCW** 9.94A.510 proscribed in Blakely.

Hence, because petitioner was sentenced in (2004) to the standard range maximum for the actual punishment phase of the crime, that court lacked the authority to further sentence him to a 12 month Comm. Custody term as, it exceeded the maximum allowed per Blakely, which in WA. State has been found & determined to be **RCW 9.94A.510** (Table 1).

And not, **RCW** 9A.20.021.

Thus, for his 1st challenge, I challenge the unconstitutionality of former **RCW** 9.94A.505 & **RCW** 9.94A.505(5), as, pursuant to Blakely & Apprendi, (both which were pertinent at the time), pertaining to petitioner's application of a 12 months Comm. Custody phase to his (2004) conviction of Asslt. 3rd degree, which is now, being used to further, punish petitioner on his current offenses.

In 2004, petitioner entered a plea of guilty at the age of 18 & as his 1st adult felony conviction.

However, in WA. State it has been said, "a plea bargaining agreement cannot exceed the statutory authority given to the courts." In re Pers. Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980).

And, "When the combined total of the defendant's Comm. custody term and standard range exceed the statutory maximum term, Div. 3 vacated the sentence & remanded for resentencing." State v. Zavala-Reynoso, 127 Wn.App. 119, 124, 110 P.3d 827 (2005).

This, unconstitutional challenge, (concerning petitioner's (2004) conviction,) is further brought under **RCW** 10.73.090(1), concerning the 'invalidity on its face' doctrine & **RCW** 10.73.100 (5)-Collateral attack-When 1 year limit not applicable; (5) The sentence imposed was in excess of the court's jurisdiction. Both laws depict the exception(s) given not only how one can challenge an infirmity in several instances years after they have been found--but also, the nature of a legal system which does not allow for one to bring up the unconstitutionality of a specific law claimed--but, until after he/she has been aggrieved by the laws he/she is challenging. Ziegenfuss, 118 Wn.App. 110, 113 (2003).

Hence, if this Court agrees with petitioner's

unconstitutionality concerning his 1st challenge to prior **RCW** 9.94A.505(5), concerning his 2004 conviction, and, if those infirmities are evident without further elaboration, then this Court is in legal authority to fix those errors.

Blakely has been extremely clear on what the "standard range" is: "In other words, the relevant "statutory maximum" is not the maximum sentence [to wit **RCW** 9A.20] a judge may impose after additional facts, but the maximum he may impose without any additional findings." Blakely, 542 U.S. at 304.

Viewing (AP-E) the 2004 J&S, the "Total Standard Range" listed for petitioner's crimes were 7-9 months, he received 9 months the high end of that range. And thus, any punishment thereafter [to wit the 12 month Comm. Custody term] is a sentence which is outside the standard range. Hence, can be brought under **RCW** 10.73.190(1), & **RCW** 10.73.100(5).

Petitioner hence, asks this Court to rule the language of former **RCW** 9.94A.505(5) and its end reference to **RCW** 9A.20.021, as being the 'statutory maximum' as opposed to **RCW** 9.94A.510 (Table 1), to be inherently unconstitutional per the Blakely decision & standard. Further, because it was used to punish petitioner in excess of the proscribed 'standard range', & it is still being used today to further punish petitioner.

Petitioner respectfully asks this Court to find the 2004 conviction to be "invalid on its face", and strike the 12 month term of Comm. Custody which was in excess of his 7-9 months standard range.

The aforementioned, is precisely what the COA did in State

v. Gamet, 2014 Wash.App. LEXIS 2590, at 37 (2014): "because the defendant had already been sentenced to the maximum term of incarceration, the trial court could not impose additional time to/of community custody as it exceeded the "statutory maximum" sentence for the offense."

In Gamet, the COA decided to remand in order to have the trial court strike the Comm. custody time rendered.

Blakely was pertinent to appellant's 7-16-04, J&S, as the rendering decision(s) found in Blakely was handed down on 6-24-04.

A.2. Petitioner next challenges the unconstitutionality of RCW 9.94A.505(5) pertaining to his current conviction.

Under the same legal premises as the previous Claim concerning his 2004 conviction, petitioner next challenges **RCW** 9.94A. 505(5), which, restricts a trial court from imposing a combined term of confinement & Comm. Custody that exceeds the statutory maximum. Petitioner's challenge of unconstitutionality is pertaining to **RCW** 9.94A.505(5), end reference to **RCW** 9A.20.021 as the "statutory maximum".

Which, concerning WA. State, per Blakely, 541 U.S. at 304, has been found to be the Standard Range to wit **RCW** 9.94A.510.

As has been properly determined by the U.S. Supreme Court in Blakely, concerning **RCW** 9A.20.021: that is the punishment phase which a judge can render to a defendant only upon egregious circumstances have been found, (or pursuant to RCW 9.94A.535(2)-Aggravating Circumstances) which Blakely further addressed needed to be found by a jury or admitted by the defendant himself.

Both in his 2004 and 2006 convictions, neither could be said to be true. Petitioner was not/neither sentenced to "Aggravating Circumstances" found by a jury or admitted by defendant [concerning any of the points stated in **RCW9.94A.535** (2)-Aggravating Circumstances] nor, did either of the 2 trial courts intend or ever intended to sentence petitioner under such laws. Hence, in both cases, petitioner has been sentenced to terms outside of the "Total Standard Ranges" as proscribed forth in Blakely, by which the trial courts were in fact allowed to sentence petitioner in both the instant case & petitioner's 2004 conviction as well.

Thus, because of the end reference found in former **RCW** 9. 94A.505(5), to **RCW** 9A.20.021, as being the statutory maximum which the courts were allowed to sentence petitioner to, this final & end reference to **RCW** 9A.20.021, are unconstitutional for, as per, Blakely, 541 U.S. at 304, purposes.

This has created an essential "Wild Wild West" environment within the WA. State trial courts to sentence petitioner to an endless amount of Comm. Custody, which is a form of Custody nonetheless, which is unconstitutional per Blakely, as the Blakely Court determined, under the **SRA** in WA., there are other proscribed "standard ranges" which trial courts have to adhere to, said Court specifically cited **RCW** 9.94A.510(Table 1), as the proscribed "statutory maximum" which a judge in WA. State can sentence a criminal defendant to.

To not do so, is to violate the principles found in Blakely, and thus, both implicate & should be found to be in violation of the U.S. CONST. **6th** Amend.

To not do so, would be to give WA. State courts a free range of latitude, by which to sentence defendants to terms of **RCW** 9. 94A.535(2)-Aggravating Circumstances. Which, per Blakely, most definitely implicate the **6th** Amend.

A.3. Petitioner, next challenges the unconstitutionality of RCW 9.94A.525(19), pertaining to the aggregation of punishment if petitioner was on so called Community Placement.

Finally, appellant challenges the unconstitutionality of the application of **RCW** 9.94A.525(19), which is the 'Offender Score' a judge may sentence a defendant to, specifically pertaining to wit-whether the defendant was on Comm. Custody at the time of the current offense, and if so, increasing the quantum of punishment which one can be sentenced to wit-the 'standard range' of **RCW** 9.94A.510.

The U.S. Supreme Court has found that, "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis added) Apprendi, 530 U.S. at 490.

In Blakely, the U.S. Supreme Court, further elaborated and held pertinent here: (1) "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury"; and (2) for purposes of the **6th Amend.**, the "prescribed statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 542 U.S. at 303-04.

In sum then, the Court held that an accused has a **6th Amendment** right to have the jury find each fact needed to support his or her sentence, except, at least for now, the fact of a prior conviction. Hochhalter, 131 Wn.App. 520-22.

Thus, the COA, properly concluded that, "whether one convicted of a crime is on community placement at the time of the [current] offense is a factual determination subject to the 6th Amend., requirement that a jury make the determination beyond a reasonable doubt." Or, using the, 'beyond a reasonable doubt standard.' Hochhalter, 131 Wn.App. at 521.

And why is that? If Juries in WA. State matter, why shouldn't their proving of every point used to punish a defendant matter? Why should, their proper duty be curtailed, and, more importantly, why does that matter?

Well, concerning the violation of an accused's right to a jury trial under the Federal Constitution's 6th Amend., because:

"(3) The right to a jury trial was no mere procedural formality, but a fundamental reservation of power in the nation's constitutional structure, for:

(a) Just as suffrage insured the people's ultimate control in the legislative and executive branches, jury trial was meant to insure their control in the judiciary.

(b) The U.S. Supreme Court's holding in Apprendi v. New Jersey (2000) 530 U.S. 466, 147 L.Ed.2d 435, 120 S.Ct. 2348--that other than the fact of a prior conviction, any fact that increased the penalty for a crime beyond the prescribed statutory maximum had to be submitted to a jury, and proved beyond a reasonable doubt-carried out this design by insuring that a judge's authority to sentence derived wholly from a jury's verdict.

(c) Without that restriction, the jury would not exercise the control that the Constitution's framers intended, as the framers had put a jury-trial guarantee in the Constitution because they were unwilling to trust government to mark out the role of the jury." Blakely, 159 L.Ed.2d at 405.

It is further made clear in Blakely, 159 L.Ed.2d at 406:

Constitutional Law-due process-jury-sentence. For purposes of a holding by the U.S. Supreme Court in Apprendi v. New Jersey (2000) 530 U.S. 466, 147 L.Ed.2d 435-that other than the fact of a prior conviction, any fact that increased the penalty for a crime beyond the prescribed "statutory maximum" had to be submitted to a jury, and proved beyond a reasonable doubt--the statutory maximum was **(1)** the maximum sentence a judge could impose solely on the basis of the facts **(a)** reflected in the jury verdict, or **(b)** admitted by the defendant; and **(2)** in other words, **(a)** not the maximum sentence a judge could impose after finding additional facts, but **(b)** the maximum the judge could impose without any additional findings. When the judge inflicted punishment that the jury's verdict alone did not allow, **(1)** the jury had not found all the facts that the law made essential to the punishment; and **(2)** the judge exceeded the judge's proper authority."

Which speaks volumes concerning the additional point added towards appellant's "Total Standard Range" sentence & sentencing grid per **RCW** 9.94A.510, which in fact, aggregated additional punishment-which per Blakely was not & is not reflected in the jury's verdict. It was an additional fact found solely by the trial judge alone, which did, and does, inflict & inflicted further punishment upon Mr. Contreras, was not found by the jury and, was not admitted by him/the defendant.

As Mr. Contreras-Rebollar's 'Procedural History' of his case shows, it is not an, easily determined or determinable fact which can be shown by the J&S paperwork alone.

Thus, the jury had not found all the facts that the law made essential to the punishment; and (2) the judge exceeded the

judge's proper authority. Blakely, 159 L.Ed.2d 403, at 406. Which speaks squarely to, as towards petitioner's case. And, in fact is squarely what Blakely prohibited.

The procedural history of Mr. Contreras-Rebollar's case concerning both the determination, validity, and application of **RCW** 9.94A.525(19), on his 2-21-07 conviction has been a hotly contested debate between the parties involved (both RP 4-14-16; RP 4-15-16 p.17-38) the WA. DOC has issued "discrepancies" concerning the matter of days appellant actually served while on Comm. Custody. (RP 4-21-16 p.43 at 16-25) The State itself has agreed & found 'discrepancies' provided by the WA. DOC's calculations of the 'counted' days petitioner did serve while he was on Comm. Custody. (RP 4-21-16 p.49 at 24-p.50) (AP-D)

The tribunal itself has had difficulty in properly assessing its calculation and, as appellant has presented, said determination is unconstitutional pursuant to both Apprendi and Blakely.

Where the trial court denied Mr. Contreras-Rebollar his constitutional right to jury trial to determine whether he was on Comm. Custody at the relevant time, the trial court simultaneously denied him the requirement of proof beyond a reasonable doubt for U.S. Const. 6th Amend. purposes.

Where the issue of the timing of Comm. Custody could not be determined from the fact of the judgment & sentence, the trial court erred when it failed to convene a jury to determine this issue. Hochhalter, 131 Wn.App. at 521 (citing State v. Jones, 126 Wn.App. 136, 144, 107 P.3d 755 (2005)).

Not only did the trial court fail to convene a jury, or convene a jury thereon, the trial court also failed to advise Mr. Contreras that he had this right to a jury, when it simply [and at the last minute] decide to ascertain for itself that Mr. Contreras was on Comm. Custody. The trial court thus failed to obtain any waiver of the right to jury trial from Mr. Contreras.

In summary, the court & the prosecution denied Mr. Contreras, his CONST. right to have a jury determine whether he was on Comm. Custody at the relevant time. Where the issue of Comm. Custody was resolved [which is used to (further) increase a defendant's punishment under the SRA] without the quantum of evidence that would be required for a jury verdict, the trial court denied appellant his right to trial by jury.

Finally, concerning 2 of petitioner's previous J&S both in 2013 & more importantly, the most recent resentencing hearing of 2016, the State's [to include <u>both</u> the prosecution & the sentencing trial court's signatures,] the "Offender Score" concerning Count I in the case lists petitioner as having 3.5, yet, petitioner is being sentenced under 4.5 The promotion of justice, under these circumstances, is quite questionable. (The J&S both 2013 & 2016 are attached in AP-E)

As, the State signs of to one thing, yet, sentences under another. Precisely, what <u>Blakely</u> prohibited.

Finally, petitioner cites both **RAP** 2.5(c)(1), & **RAP** 2.5(c)(2), as proper avenues by which this Court may reach petitioner's

Claims on the merits. But, further cites, **RAP** 13.4(b)(1), & **RAP** 13.4(b)(3), as described earlier, in this brief: **RAP** 13.4 (b)(1) of this Claim is due to the various COA decisions concerning the same relevant issue(s) of all, **A.1**, **A.2.**, & **A.3**, Claims and how the various legal cases cited, (mostly COA Decisions) are in conflict with State v. Jones, 159 Wn.2d 231, 149 P.3d 636 (2006).

However, more importantly, just as importantly, Claims **A.1**, **A.2**, & **A.3**, are more strongly presented under **RAP** 13.4(b)(3).

B. Petitioner asks this Court to review the COA decision I, on p.4 of its decision concerning RAP 7.2 & PRPs.

On p.4, the COA said "In a colloquial sense of the word, an appellate court considering a PRP may be said to "review" a trial court's decision. However, RAP 7.2 is clear that it is confined to situations where review has been "accepted" by the appellate court."

Petitioner believes, if **RAP** 7.2, pertains to direct review, [although the COA itself cites **RAP** 6.3 as the direct review's mechanism], then why shouldn't **RAP** 7.2 apply to "collateral review" which has/was properly "accepted" by the COA?

The repercussions of this Claim are various. And thus, is presented to this Court under **RAP** 13.4(b)(4).

Principally, the COA decision on this matter, would allow the State [trial courts] to create their own fallacious errors, wait to see if those error(s) are spotted on appeal, if so, fix these errors themselve via their own "Scheduling Orders", and then, ask the "reviewing" court to dismiss the Claim(s) being "reviewed", due to their now being 'fixed', & then actually charging the appellant to foot the 'Cost Bill' of the appeal?

This is precisely what happened to petitioner. (Petitioner, hereby attaches AP-F for the Documents pertaining to this Claim)

C. Petitioner asks this Court to review the COA decision on p.8, concerning the imposition of fines/LFOs.

Pursuant to State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), of the WA. State Supreme Court's position of, the so called "mandatory" imposition of LFOs, petitioner respectfully asks this Court to review the COA decision(s) of the various LFOs imposed upon petitioner post-Blazina.

VI. CONCLUSION

Based on the foregoing facts and arguments, this Court should accept review.

Dated this 22 day of August, 2018.

(Print) Adrian Contreras-Rebollar
Petitioner, *Pro se.*
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Monroe Correctional Complex
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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

July 3, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ADRIAN CONTRERAS-REBOLLAR, Appellant.	No. 48923-6-II PART PUBLISHED OPINION

BJORGEN, J. — Adrian Contreras-Rebollar appeals from the sentence imposed following his resentencing hearing, asserting that the sentencing court erred by imposing a $200 criminal filing fee as a mandatory legal financial obligation (LFO). In his statement of additional grounds for review (SAG), Contreras-Rebollar also contends that (1) the sentencing court lacked authority to resentence him under RAP 7.2(e), (2) the judge presiding over his resentencing hearing violated Code of Judicial Conduct(3)(D)(1) (CJC) and the appearance of fairness doctrine by denying his recusal motion, (3) the community custody provisions of RCW 9.94A.701 as applied to his sentence violate the constitutional prohibition on ex post facto laws, and (4) the sentencing court's finding that he was on community custody during his offense violated his jury trial right.

In the published portion of this opinion, we hold that the sentencing court had the authority to resentence Contreras-Rebollar under RAP 7.2(e), but that it violated the constitutional prohibition against ex post facto laws by imposing a fixed 36-month community custody term under RCW 9.94A.701. In the unpublished portion we hold against Contreras-Rebollar's other challenges to his sentence.

Therefore, we vacate the community custody portion of Contreras-Rebollar's sentence and remand for imposition of a community custody term consistent with the law in effect when he committed his offenses. We affirm the remainder of his sentence.

FACTS

In February 2007, Contreras-Rebollar was convicted of two counts of first degree assault and one count of second degree unlawful possession of a firearm. In Contreras-Rebollar's first appeal of his 2007 convictions and sentence, we held in an unpublished opinion that the State failed to present sufficient evidence at sentencing supporting its allegations of Contreras-Rebollar's criminal history and community custody status at the time of his offenses. *State v. Contreras-Rebollar*, noted at 149 Wn. App. 1001 (2009). Accordingly, we reversed Contreras-Rebollar's sentence and remanded for resentencing.

Following his 2010 resentencing, Contreras-Rebollar again appealed his sentence and also filed a personal restraint petition (PRP). *State v. Contreras-Rebollar*, noted at 169 Wn. App. 1001 (2012). In our unpublished opinion addressing both the direct appeal and PRP, we rejected Contreras-Rebollar's claim that the resentencing court's community custody finding violated his Sixth Amendment jury trial right. *Contreras-Rebollar*, noted at 169 Wn. App. 1001. However, we also held that

> the record suggests that the resentencing court may not have taken into account any good time credit to which Contreras-Rebollar may have been entitled and that might have affected its determination of whether he had been on community custody at the time he committed the charged crimes.

Contreras-Rebollar, noted at 169 Wn. App. 1001, 2012 WL 2499369, at *8. We therefore again remanded for resentencing, directing the State to "put on the record all facts pertinent to Contreras-Rebollar's community custody status at the time he committed the charged crimes,

including any good time credit calculation to which he may have been entitled." *Contreras-Rebollar*, 2012 WL 2499369, at *8.

Contreras-Rebollar was again resentenced on March 1, 2013. However, the sentencing court did not have authority to resentence Contreras-Rebollar on that date because we had not yet issued the mandate from our 2012 opinion. We issued our mandate from the 2012 opinion on August 15, 2013. Contreras-Rebollar filed a supplemental PRP, which we denied in an unpublished opinion in 2014. *State v. Contreras-Rebollar*, No. 41672-7-II, slip op at 182 Wn. App. 1046 (Wash. Ct. App. Aug. 5, 2014). We issued the mandate from our 2014 unpublished opinion on January 9, 2015.

The sentencing court again resentenced Contreras-Rebollar in April 2016, which resentencing is the subject of his current appeal. Following the 2016 resentencing hearing, the sentencing court found that Contreras-Rebollar was on community custody at the time that he committed his offenses. The sentencing court stated that it would impose as LFOs a $500 crime victim penalty assessment, a $100 DNA (deoxyribonucleic acid) testing fee, and a $200 criminal filing fee. Defense counsel requested the sentencing court to waive the $200 criminal filing fee based on Contreras-Rebollar's inability to pay the fee, asserting that it was within the sentencing court's discretion to do so. The sentencing court rejected defense counsel's request and thereafter imposed the above LFOs and the same 380-month incarceration term as it had imposed in 2007. The court also imposed a fixed community custody term of 36 months. Contreras-Rebollar appeals from his sentence.

ANALYSIS

I. RAP 7.2 AND PRPS

Contreras-Rebollar argues that the sentencing court lacked authority to resentence him under RAP 7.2 because he had a PRP pending with our court on the date of his resentencing. Because the filing of a PRP does not divest the superior court of its authority to act in a case under RAP 7.2, we disagree.

RAP 7.2 provides in relevant part:

> *After review is accepted* by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.
>
> . . . .
>
> . . . . The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision *then being reviewed* by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion.

(Emphasis added.)

In a colloquial sense of the word, an appellate court considering a PRP may be said to "review" a trial court's decision. However, RAP 7.2 is clear that it is confined to situations where review has been "accepted" by the appellate court. Title 6 of the RAPs provides three methods through which our court "accepts review" of a trial court's or administrative agency's decision. RAP 6.1 states that "[t]he appellate court 'accepts review' of a trial court decision upon the timely filing in the trial court of a notice of appeal from a decision which is reviewable as a matter of right." RAP 6.2 also allows appellate court review of a trial court decision in some

circumstances by granting a motion for discretionary review. Finally, RAP 6.3 provides that "[t]he appellate court accepts direct review of a final decision of an administrative agency in an adjudicative proceeding . . . by entering an order or ruling accepting review." None of these provisions speak to the acceptance of review of a PRP.

A PRP, in contrast, constitutes an original action in the appellate court. RAP 16.1. Although an appellate court conducts a "preliminary review" on receipt of a PRP and may dismiss a PRP in some circumstances, there is no threshold requirement that the appellate court accept review in order to proceed. RAP 16.8.1.

Read together, RAP Titles 6 and 16 leave no room for quibble: a PRP proceeds without the need for acceptance of review by the appellate court. With that, the filing of a PRP does not divest the trial court of authority to act in a case under RAP 7.2. Contreras-Rebollar's argument to the contrary fails.

II. RCW 9.94A.701 AND EX POST FACTO LEGISLATION

Next, Contreras-Rebollar argues that the sentencing court's application of RCW 9.94A.701 to impose a fixed 36-month community custody term violated the constitutional prohibition on ex post facto laws. The State concedes that remand for a correction of Contreras-Rebollar's sentence is required if we concur with the opinion of Division Three of our court in *State v. Coombes*, 191 Wn. App. 241, 361 P.3d 270 (2015), *review denied*, 185 Wn.2d 1020 (2016). We agree with the reasoning in *Coombes* and accept the State's concession.

We review de novo whether the sentencing court had statutory authority to impose community custody conditions. *Coombes*, 191 Wn. App. at 249. We also review alleged

violations of the constitutional prohibition on ex post facto laws de novo. *Coombes*, 191 Wn. App. at 250-51.

The United States Constitution and the Washington State Constitution prohibit ex post facto laws. U.S. CONST. art. I, § 10; WASH. CONST. art. I, § 23. "A law that imposes punishment for an act that was not punishable when committed or increases the quantum of punishment violates the ex post facto prohibition." *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 861, 100 P.3d 801 (2004). To succeed in his claim of an ex post facto violation, Contreras-Rebollar must show that RCW 9.94A.701(1) operates retroactively and (2) increases the level of punishment from that which he was subject to on the date he committed his offenses. *Coombes*, 191 Wn. App. at 251. We hold that Contreras-Rebollar has made both showings.

Coombes addressed a similar ex post facto challenge to RCW 9.94A.701. 191 Wn. App. at 249-53. On the retroactive prong of the ex post facto violation test, *Coombes* noted that the legislature had explicitly stated its intent that the statute

> "applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after the effective date of this section."

191 Wn. App. at 251 (quoting LAWS OF 2009, ch. 375, § 20). As with the defendant in *Coombes*, RCW 9.94A.701 applies retroactively to Contreras-Rebollar because he committed his offenses before the legislature amended the statute.

In addressing the punishment prong of the ex post facto violation test, the *Coombes* court noted that "the applicable quantum of punishment increases when a statute makes a formerly discretionary punishment mandatory." 191 Wn. App. at 251-52 (citing *Lindsey v. Washington*, 301 U.S. 397, 401-02, 57 S. Ct. 797, 81 L. Ed. 1182 (1937)). The *Coombes* court held that RCW

9.94A.701 increased the defendant's punishment because it provided for a fixed 36-month community custody term while the statute in effect when the defendant committed his crime provided for a discretionary range of 24 to 48 months of community custody. 191 Wn. App. at 252-53.

As in *Coombes*, the law in effect when Contreras-Rebollar committed his offenses provided for a discretionary 24 to 48 months' community custody term. Former RCW 9.94A.715(1) (2006) stated that a sentencing court shall "sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer." In addition, former RCW 9.94A.030(41)(a)(v) (2006) classified first degree assault as a serious violent offense, and former WAC 437-20-010 (2000) established a 24 to 48 month community custody range for serious violent offenses. In 2009, the legislature replaced this variable term of community custody with a fixed term of 36, 18, or 12 months, depending on the type of offense. *See Coombes*, 191 Wn. App. at 252. Contreras-Rebollar was sentenced under the current statute to a fixed 36-month term of community custody for his first degree assault convictions.

As in *Coombes*, the fixed term of community custody under the current form of RCW 9.94A.701 increased Contreras-Rebollar's punishment "because it changed a previously discretionary term to a mandatory term." 191 Wn. App. at 253. Accordingly, we hold that the community custody provision of RCW 9.94A.701 violated the constitutional prohibition against ex post facto laws as applied to Contreras-Rebollar's sentence. We therefore vacate the community custody portion of Contreras-Rebollar's sentence and remand for imposition of a community custody term consistent with the law in effect when he committed his offenses.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

III. IMPOSITION OF CRIMINAL FILING FEE

Contreras-Rebollar contends that the trial court exceeded its statutory authority by imposing a $200 criminal filing fee as an LFO without first conducting an adequate inquiry of his current or likely future ability to pay. He claims that, contrary to our decision in *State v. Lundy*, 176 Wn. App. 96, 308 P.3d 755 (2013), the criminal filing fee is discretionary rather than mandatory. Contreras-Rebollar does not argue that imposition of the criminal filing fee deprives him of substantive due process.

We recently addressed and rejected this same claim in *State v. Gonzales*, 198 Wn. App. 151, 392 P.3d 1158, *review denied*, 188 Wn.2d 1022 (2017). There, as here, the appellant argued that "the filing fee is not mandatory because the language in RCW 36.18.020(2)(h) is ambiguous and differs from that of other mandatory LFO statutes." *Gonzales*, 198 Wn. App. at 153. In rejecting the claim that RCW 36.18.020(2)(h) merely confers discretion to impose the criminal filing fee, the *Gonzales* court stated:

> RCW 36.18.020(2)(h) requires that the defendant "*shall* be liable," which clarifies that there is not merely a risk of liability because "[t]he word 'shall' in a statute . . . imposes a mandatory requirement unless a contrary legislative intent is apparent." *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (quoting *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993)). There is no such contrary intent apparent in the statute.

198 Wn. App. at 155.

We adhere to our decisions in *Gonzales* and *Lundy* and hold that because the fee is mandatory, the trial court properly imposed the $200 criminal filing fee absent an inquiry into Contreras-Rebollar's ability to pay the fee.

IV. Recusal Motion

A. CJC 2.9, 2.11, and the Appearance of Fairness Doctrine

Next, Contreras-Rebollar argues in his SAG that the sentencing court judge abused his discretion by denying his recusal motion. On the record before us, we disagree.

Before the start of his resentencing hearing, Contreras-Rebollar filed a motion for the sentencing court judge to recuse himself from the matter. The motion alleged that the sentencing court judge had had ex parte communications with the prosecutor that "concern[ed] the very issues the court must decide before sentencing Mr. Contreras-Rebollar, thus violating defendant's constitutional due process guaranty of a fair sentencing by a fair and impartial judge." Clerk's Papers (CP) at 98.

From the record before us, we can glean the following regarding the sentencing court judge's ex parte communication with the prosecutor. On April 14, 2016, the sentencing court judge directed prosecutors and defense counsel to provide a copy of our court's most recent decision regarding a PRP filed by Contreras-Rebollar. One of the prosecutors went to the courthouse to submit copies of our court's opinions. The prosecutor saw the sentencing court judge and "asked which opinion the Court wanted and attempted to explain that there was no actual opinion issued by the Court of Appeals regarding this PRP because it was pending." Report of Proceedings (RP) at 10. The prosecutor then provided the court with copies of the two other Court of Appeals opinions that had been previously filed and a copy of Contreras-

Rebollar's opening brief in his PRP. The sentencing court judge also recalled the prosecutor mentioning something about her son during the ex parte communication. Following the ex parte communication, the prosecutor e-mailed defense counsel to inform her of the contact.

At the start of the April 15 resentencing hearing, defense counsel informed the court that she had filed a recusal motion based on the ex parte communication between the sentencing court judge and the prosecutor that had taken place the previous day. Defense counsel stated she had received the prosecutor's e-mail disclosing the ex parte communication on the afternoon of April 14. The sentencing judge then explained that he had e-mailed all the parties on April 14 to request a copy of our court's most recent opinion on Contreras-Rebollar's PRP to prepare for the April 15 resentencing hearing. During the course of the hearing on defense counsel's recusal motion, the court and the prosecutor disclosed the nature of the ex parte communication as described above. Following argument by the parties, the sentencing court denied the recusal motion.

We review a court's decision on a recusal motion for an abuse of discretion. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995). Due process, the appearance of fairness, and CJC Canon 2, Rule 2.11 require disqualification of a judge if he or she is biased against a party or his or her impartiality may be reasonably questioned. *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonable person would conclude that the parties obtained a fair, impartial, and neutral hearing. *Bilal*, 77 Wn. App. at 722. "The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial." *State v. Madry*, 8 Wn. App. 61, 70,

504 P.2d 1156 (1972). Ex parte communications may implicate the appearance of fairness doctrine. *State v. Romano*, 34 Wn. App. 567, 569, 662 P.2d 406 (1983).

Contreras-Rebollar bases his recusal argument on the appearance of fairness doctrine and on former CJC Canon 3(D)(1). This prior provision, however, has been effectively replaced by current CJC 2.9 and CJC 2.11. In order to fairly evaluate his arguments, we will deem them to rest on the appearance of fairness doctrine and on CJC 2.9 and 2.11.

CJC Rule 2.9(A) concerns ex parte communications and provides in relevant part:

> A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, before that judge's court except as follows:
>
> (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters . . . is permitted, provided:
>
>> (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
>>
>> (b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

The CJC does not define the term "administrative." *Black's Law Dictionary* 53 (10th ed. 2014) defines "administrative" as "[o]f, relating to, or involving the work of managing a company or organization; executive." Of the definitions of the term in *Webster's Third New International Dictionary* 28 (1969), the most apt is "performance of executive duties: Management, Direction Superintendence." The meaning of "administrative" is also illuminated obliquely in *Randy Reynolds & Associates, Inc. v. Harmon*, 1 Wn. App. 2d 239, 249, 404 P.3d

602 (2017), *review granted*, 418 P.3d 802 (2018), holding that the ex parte hearing of a motion to stay execution of a writ of restitution was not administrative under CJC 2.9(A)(1).

Under this authority, the prosecutor's ex parte communication with the sentencing court judge concerned only the administrative matter of providing the sentencing court with its requested documents and, thus, did not violate CJC Rule 2.9. As set out above, the sentencing judge requested the parties to provide him with a copy of our most recent opinion on Contreras-Rebollar's PRP. The prosecutor saw the judge, explained that no opinion had been issued by our court on this PRP because it was still pending, and provided the judge with copies of the two other Court of Appeals opinions that had been previously filed.

Contrary to Contreras-Rebollar's recusal motion, the ex parte communications did not concern substantive matters at issue in his resentencing; specifically, whether Contreras-Rebollar was in community custody status during the commission of his offenses. Instead, the communication concerned the delivery of requested material to the judge. This conduct without substantive import falls squarely within the scope of "administrative" actions as used in CJC 2.9(A)(1).

This, though, does not conclude the inquiry into CJC 2.9, because ex parte communications are only saved as administrative matters if the requirements of CJC 2.9 (A)(1)(a) and (b) are met. Of those, the only one in need of examination is subsection (b), which states, "(b) [T]he judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond."

The record does not show that the judge made any provision to notify other parties of the communication. The record does show that on April 14 the judge asked counsel for the parties to

give him certain appellate court opinions; the prosecutor did so later that afternoon; by the start of the resentencing hearing the next day, the defendant had filed a motion to recuse; and during the hearing on April 15 on the recusal motion, the court and the prosecutor disclosed the nature of the ex parte communication as described above. These events apparently occurred in a period of less than 24 hours. Against that backdrop, we cannot say that the judge's failure to notify defense counsel on the day of the communication violated his duty to "promptly" make provision to notify other parties. For these reasons, the ex parte communication did not violate CJC 2.9.

Turning to CJC 2.11, subsection (A) states in pertinent part:

> A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances.

In the present circumstances, the sentencing judge's request to both parties to provide prior appellate court opinions and the ex parte acceptance of those opinions is not a reasonable basis for questioning the judge's impartiality. Thus, the judge's actions did not violate CJC 2.11.

For similar reasons, on this record no reasonable person would conclude that the sentencing judge's impartiality may be reasonably questioned or that Contreras-Rebollar did not receive a fair resentencing hearing under the appearance of fairness doctrine because of the prosecutor's ex parte communication with the sentencing judge.

Contreras-Rebollar argues, though, that his multiple resentencings, added to the ex parte communication, would reasonably suggest that the judge was not impartial. The resentencings, however, were simply examples of the sometimes iterative way the judicial system attempts to achieve fair resolutions of various issues. If anything, that process should increase confidence in the system. Accordingly, the sentencing court did not violate the appearance of fairness doctrine

through its ex parte communications with the prosecutor and did not abuse its discretion by denying Contreras-Rebollar's motion to recuse.

B . Public Trial Right

Contreras-Rebollar also asserts that the ex parte communication constituted a courtroom closure but does not explicitly raise a public trial violation claim. To the extent that Contreras-Rebollar challenges the ex parte communication as violating his public trial right, his contention fails.

When evaluating a public trial right violation claim, we must first determine whether the public trial right was implicated in the challenged proceeding. *State v. Smith*, 181 Wn.2d 508, 513, 334 P.3d 1049 (2014). If the public trial right was implicated, we must then determine whether there was a closure and, if so, whether the closure was justified. *Smith*, 181 Wn.2d at 513. We apply a two-prong "experience and logic" test to determine whether the right to a public trial attaches to a particular proceeding. *State v. Sublett*, 176 Wn.2d 58, 72-73, 292 P.3d 715 (2012). Under that test, the defendant must show both that the "'place and process have historically been open to the press and general public'" and that "'public access plays a significant positive role in the functioning of the particular process in question.'" *Sublett*, 176 Wn.2d at 73 (quoting *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 8-10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986)). Contreras-Rebollar fails to make either showing.

Contreras-Rebollar has not identified, and we have not located, any case supporting the proposition that an attorney's act of filing of documents requested by the court has historically been open to the press and general public. Additionally, because presumably any future reliance by the sentencing court on such documents would be placed on the record in open court, logic

dictates that public access to the filing of documents would not play a significant positive role in the process. Accordingly, Contreras-Rebollar cannot demonstrate that the public trial right was implicated.

V. Jury Trial Right

Finally, Contreras-Rebollar argues in his SAG that the sentencing court's finding that he was on community custody during the commission of his offenses violated his jury trial right under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). He additionally argues that the sentencing court's finding that he was on community custody violated the requirement of proof beyond a reasonable doubt.

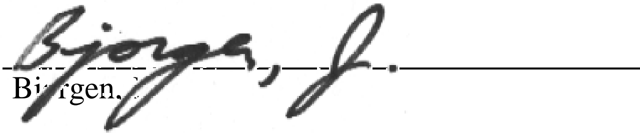
Contreras-Rebollar raised these same claims in his previous appeal. *Contreras-Rebollar*, 2012 WL 2499369, at *1. In addressing these claims, we noted that our Supreme Court's opinion in *State v. Jones*, 159 Wn.2d 231, 149 P.3d 636 (2006), squarely addressed and rejected these same arguments. We therefore held that, under *Jones*, the sentencing court did not violate Contreras-Rebollar's jury trial right by finding that he was on community custody during the commission of his offenses. Because this appeal represents a subsequent stage of the same litigation, and because Contreras-Rebollar has not requested us to revisit our prior opinion under RAP 2.5(c)(2), the law of the case doctrine precludes our review of his claims in this appeal. *State v. Merrill*, 183 Wn. App. 749, 757, 335 P.3d 444 (2014) (citing *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005)). Accordingly, we do not further address this issue.

VI. APPELLATE FEES

Contreras-Rebollar also requests that we exercise our discretion to waive appellate fees in this matter. Because Contreras-Rebollar has succeeded in his claim that the community custody portion of his sentence violated the constitutional prohibition against ex post facto laws, the State has not substantially prevailed in this appeal. Accordingly, the State is not entitled to costs, and we need not address Contreras-Rebollar's request for the waiver of appellate fees.

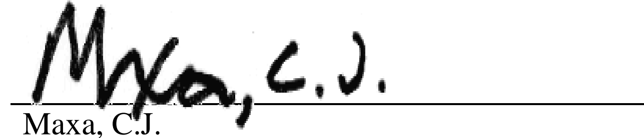
CONCLUSION

We vacate the sentencing court's imposition of a fixed 36-month community custody term and remand for imposition of a community custody term consistent with the law in effect when Contreras-Rebollar committed his offenses. We affirm the remainder of his sentence.

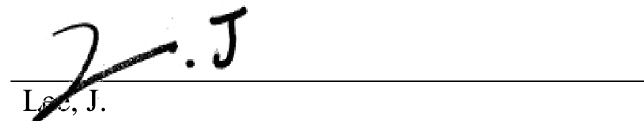


Bjorgen, J.

We concur:



Maxa, C.J.



Lee, J.

APPENDIX B

Cause No. 48923-6-II

WASHINGTON STATE COURT OF APPEALS

DIVISION II

ADRIAN CONTRERAS-REBOLLAR,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

STATEMENT OF ADDITIONAL GROUNDS

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I. ISSUES RAISED

A. Issues Pertaining to Assignments of Error

1. When the State's Prosecuting Attny. Office is allowed to fix its own errors via a "Scheduling Order" of claims currently on review by the COA, and, against RAP 7.2(e), are those fixed errors done in lack of jurisdiction?

2. Did the trial court abuse its discretion when it failed to accept the premises of CJC Cannon 3(D)(1)(a) when it failed to recuse itself concerning ex parte communications with the prosecution?

3. Was appellant sentenced to the Constitutional prohibition against ex post facto laws?

4. Are the laws appellant challenges unconstitutional pursuant to the arguments raised herein?

II. ARGUMENT & AUTHORITIES

A. The trial court again lacked jurisdiction to resentence appellant on 4-21-16, as it lacked the authority per RAP 7.2, and did not get permission from the COA, when it chose to correct its own mistakes and carry out that resentence on its own.

On Dec., 7, 2015, appellant filed his originating PRP concerning this matter. On 4-21-16 he was resentenced. In its response filed 5-2-16, the state argued:

1. The State agrees that petitioner's J&S was entered without jurisdiction and has corrected the issue. (p.3 of State's Response to PRP)

2. Must petition be dismissed where State agrees that petitioner's 2013 J&S was entered without jurisdiction and has corrected the issue, thus resolving the issue in petitioner's first claim? (p.1 of State's Response to PRP)

3. Must the petition be dismissed where petitioner's 2nd and 3rd claims are moot in light of resentencing & entry of new J&S? (p.1 of State's Response to PRP)

On p.5 of State's Response to PRP (AP-A), the State clearly acknowledges its limited capacity per the Rules of Appellate Procedure **(RAP 7.2)** to fix its own errors & to the limited authority of a trial court once review in the State COA has been timely initiated. However, the Pierce County Prosecutor's Office feels they are above the law and still chooses & chose to overlook said parameters.

On 5-4-16, the COA agreed with the Pirce Co. Prosecutor's Attny. Office & simply dismissed appellant's PRP. As the State (via the Prosecutor's Office) fixed its own errors the COA decided to terminate review. In which thereafter, the prosecuting office sought to collect a "Cost Bill" from appellant due to the COA termination of review. Even though this was a State created error which the trial court committed, and the State thereafter agreed thereto.

On p.2 of this, "Order Dismissing Petition" the COA indicated only: "The State scheduled another resentencing hearing for 4-21-16." There was no new mandate issued & the COA simply, & essentially, allowed the Pierce Co. Prosecutor's Office to get away with correcting its own mistakes &, thereafter agreed with the same to dismiss petitioner's PRP.

It did not specify in what manner the "state" was allowed to reschedule the 4-21-16 resentencing hearing and, thereby appellant can only assume it was through the same Pierce Co. Attny. Office tactics which were used on/concerning the 3-13-13 resentencing hearing in question.

And not, per **RAP 7.2(e)(2)** proscribed/proper manner, in which the trial court is said to follow concerning the trial court's need of asking permission from/of the reviewing/"appellate" Court when trying to correct an error currently & actively being reviewed by the Appellate Court.

The reason why appellant uses this term, "tactics" is because essentially, that's what they are. In the past, appellant has had problems with said action as it deprives him

of his typewriter & other legal property/documents, which he is (and may be) using to timely & properly pursue other rights and/ or avenues to the appeal process. In the past (AP-B) appellant was actively seeking to file his "Petition for Disc. Review" with the WA. Supreme Court, when he was sent back (with no forewarning) to the trial court for his restitution hearing. The process itself from DOC-to County-and back, within itself takes 2 months. Mainly done while awaiting at the "Transport" facility in Shelton WA., awaiting to be sent back to his main institution from where he came, while DOC confirms all court matters are done. Which is 2 months he is without any of his belongings, which are stored back at his main facility's Property Room. Which of course do him no good while he's in County, and awaiting transfer back-to. None, of these considerations are taken by the Pierce Co. Pros. Office when they are given the free discretion to simply re-schedule a Sentencing Order, which a trial ct. simply signs, then transfer said document to WA. DOC HQ. in Olympia asking for "OT" Offender To Court order, which of course DOC (also) simply signs.

Appellant asserts that what the Pierce Co. Pros. Office has been getting away with doing, has been doing, & is doing is a "tactic" performed outside of the proscribed parameters to wit--RAP 7.2; **CrR 7.8**--to deprive appellant of his legal property and instruments to curtail his ability--with no forewarning--to curtail his other avenues of appeal, as to the appeal process.

At the present (resentence), as well as during his last resentence (scheduled by the Pros. Attny. Office & not via

a COA mandate) appellant has an active U.S. District Court appeal pending. Which, when the state is simply allowed to schedule their own Scheduling order/"TO/Transport Order" for an appellant currently on appeal to be pulled out of DOC to simply correct their own mistake(s) currently on review--it is a "tactic" which is outside of the proscribed parameters set by both **CrR 7.8; RAP 7.2**, and deprives appellant of most if not all of his legal pleadings. To wit--WA. DOC Policy (statewide) only allows legal documents "pertaining to" the current matter for transport back to County Jail be allowed to the offender. Which is rigorously enforced as appellant was once unallowed to take diplomas of completed classes (even though he was going back to Court for a resentence) while in DOC as they (the diplomas) were deemed "unofficial" legal documents. Even though he was going back to court for a resentencing hearing.

This is problematic to appellant, though clearly not to the state & Pros. Attny. Office.

These (aforementioned) meassures are implemented so that there is a check-and-balance system so that trial courts cannot simply correct an error that they (themselves may have created) created, on their own terms, and, to instead, allow the wheels of proper justice to turn.

Because the Pierce Co. Pros. Attny. Office feels they are above the law, and thus, proscribed methods of the Rules of Appellate Procedure/RAP. They feel they are entitled to simply create these errors & fix them at their own random will.

Which is not, according to **CrR 7.8; RAP 7.2(e)**; State v.

Friedlund, 182 Wn.2d 388, 396, 341 P.3d 280 (2015), how things work. This is not the 1st, but 2nd time, in which these inadequate, unforseen, & untimely rescheduling orders made by the Pierce Co. Pros. Attny. Office has costed appellant to go over his Court appointed deadlines, with the WA. Supreme Court concerning, otherwise, timely review of mistakes being created & perpetuated by the Pierce Co. trial court.

Both, during appellant's 1st resentence, as well as during his 4th resentence of, 3-1-13, which he argued was entered without jurisdiction, which the state agreed, he was deprived of all of his legal property, when he was transported back on a chain-bus back to County Jail, with no forewarning whatsoever, as no ruling, or "Clerk Action" order was issued by the Appellate Court, from the WA. DOC facility, back into the much more restrictive setting of a county jail. This has costed the defendant, 2 timely WA. Supreme Court deadlines in the past. Not to mention, he now has a WA. District Court appeal pending as well. Due to the filing of this SAG, who knows? Maybe, this time it may cost him to go over his Western District Court (federal appeal) deadline? Per the current tempo, appellant's case has been having--ONLY the Pierce Co. Prosecutor's Office knows.

This is not correct, nor is it, the proscribed proper manner by which RAP 7.2(e) proscribes the state & therefore, the various Prosecuting Attny. Offices and/or the trial courts, in the state, to correct certain errors being actively reviewed by and in, the Appellate Court.

This Pierce Co. process, and quite possibly, the process in/by which various Superior County Courts have been allowed to simply--by way of scheduling orders, correct their own, self-created mistakes, which are currently & actively being reviewed in the Appellate Courts, not to mention, by simply sidestepping the proscribed method of doing so--to wit **RAP 7.2(e)**--creates a 'wild-wild-west' situation, of 1.) no proscribed law; 2.) a correction of errors at random will process; 3.) not only has the potential, but does have a method of derailing & curtailing other law mandated, and proscribed methods for/of proper appellate review.

If the state would only follow the proscribed procedure, not only as a reference point, but mandated, by as per **RAP 7.2 (e)**--upon the filing of those/these proper motions by the state, at the very least, it will offer appellant(s), the proper time, (in which, in case of other active appeals; petitions; and/or motions pertaining to the state appeal procedure may be pending) at least following the proscribed method, the appellant will have enough time to file a 'Motion for Extension' to said/those appellate courts that--especially a pro se petitioner/appellant--will need more than the normally necessary time/extension as he may well be headed back to County Jail (not to mention transporting facility to-and-from) for whatever scheduling order/hearing the state is requesting.

Without, that method, the pro se appellant is simply & in the middle of the pursuit of his appellate Justice--told on any given day by DOC officers to: "Pack your stuff up (in boxes) you

new Comm. custody law increased the punishment because it changed a previously discretionary term to a mandatory term. As in State v. Coombes, 191 Wn.App at 241, 252-53, this Court should find that Mr. Contreras has satisfied both prongs for establishing an unconstitutional ex post facto law, and vacate the Comm. custody portion of Mr. Contreras' sentence and remand for imposition of a term consistent with the law in effect in 2006.

D. Appellant challenges the unconstitutionality of WA. State's laws & language pertaining to the application of his 2004 conviction of Asslt. 3rd degree, which the trial court used to add an additional point on the sentencing grid for sentencing purposes on his current conviction, and last resentencing hearing held on 4-21-16.

The unconstitutionality of a law is not ripe for review unless the person seeking review is harmed by the part of the law that is alleged to be unconstitutional. State v. Ziegenfuss, 118 Wn.App. 110, 113, 74 P.3d 1205(2003). The same was found to be pertinent in State v. Nguyen, 138 Wn.App. 1042 (2007). In Nguyen, the concern was about multiple 60 day periods of incarceration for community custody (Comm. custody) violations to be premature, (for unconstitutionality challenges) as he had not begun to serve his term of Comm. custody, let alone violate any of his conditions.

Due to WA. State's continuous resort, in trying to dodge and avoid the application of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)., pertaining to its use of further punishment in adding an additional point to its "standard range" sentencing grid--which mainly pertains to previous convictions [which is allowed by Blakely]--when a

defendant has been found to be in Comm. Custody at the time of a current offense, appellant is forced to challenge 3 individual premises which he intends to have the Court decide upon best for argument. All 3 challenges rely on the same legal premises however.

(1) I challenge WA. State's interpretation of RCW 9A.20.021 in its implementations of RCW 9.94A.701, (2) I further challenge the unconstitutionality of former RCW 9.94A.505 pertaining to appellant's application of Comm. Custody pertaining to his 2004 conviction of Asslt. 3rd degree, (3) lastly, I challenge the unconstitutionality of the trial court's additional point to his sentencing grid at his last resentencing hearing held on 4-21-16 due to its findings that appellant was on Comm. Custody at the time he committed the offense for which he is being punished.

Pusuant to Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 235 (2000)., "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury..." In the Blakely Court, it was further explained specifically to this state & defined for this state: (2) "for purposes of the **Sixth Amend.**, the 'prescribed statutory maximum' is 'the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 124 S.Ct. at 2537.

The Blakely Court also reasoned, "In Washington, 2nd degree kidnapping is a Class B felony...state law provides that 'no person convicted of a Class B felony shall be punished by

confinement...exceeding...a term of 10 years." § 9A.20 "other provisions of state law, however, further limit the range of sentences a judge may impose. Washington's SRA specifies, for petitioner's offense of 2nd degree kidnapping with a firearm, a "standard range" of 49-53 months..." Blakely, 542 U.S. at 299.

> Our precedents make clear, however, that the '"statutory maximum'" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 542 U.S. at 303.
>
> 'In other words, the relevant "statutory maximum" is not the maximum sentence [to wit RCW 9A.20] a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. Blakely, 542 U.S. at 304.

In which case, per Blakely, in WA. state the statutary maximum is meant pursuant to the "standard range" sentence in RCW 9.94A.510 and not, RCW 9A.20.021. In other words, as this Court properly found in State v. Hochhalter, 131 Wn.App. 506, 518-24, 128 P.3d 104 (2006)., other than the fact of a previous criminal conviction, any [other] fact which increases the punishment for a defendant outside of the "standard range" and pertaining to a defendant's previous criminal convictions, to include whether he was on Comm. Custody at the time of offense must be submitted to the jury. Hochhalter, 131 Wn.App. at 522-24.

Appellant therefore urges this Court to uphold its decisions in Hochhalter, 131 Wn.App. 506, 518-24, (2006).

At appellant's 2004 conviction for Asslt. 3rd degree, which was pre Blakely but not pre Apprendi, the trial court sentenced appellant to the highest allowed per the "standard range" sentencing grid concerning his lack of Cri. history to wit--0 for sentencing purposes. His standard range was (0-3

months) for the crime itself, which was the Asslt. 3rd, and 6 months due to a deadly weapon enhancement. Thus, the maximum allowed per WA. State's standard range sentence was 9 months 6+3=9, which is what that court sentenced him to. (AP-E) However, he was further sentenced to a 12 month sentence of Comm. Custody term. Which, according to Hochhalter, and Blakely, went outside the proscribed "statutory maximum" allowed, and therefore, said sentence is invalid on its face, and therefore, appellant can challenge at any time after the sentence has been rendered and the infirmity on its face has been found. Hochhalter, 131 Wn. App. at 520-25.

Appellant hereby asks the COA to adhere to the holdings in the following cases, along with Hochhalter, concerning his 2004 conviction, which is currently being used to increase the quantum of punishment on his current convictions. And, should be found to be invalid, due to that court having exceed the proscribed "statutory maximum" to wit--the "standard range" per the holdings rendered in Blakely.

"When the combined total of the defendant's Comm. custody term and standard range exceed the statutory maximum term, Div. 3 vacated the sentence & remanded for resentencing. State v. Zavala-Reynoso, 127 Wn.App. 119, 124, 110 P.3d 827 (2005).

RCW 9.94A.505(5), restricts a trial court from imposing a combined term of confinement & Comm. custody that exceeds the statutory maximum. Which per Blakely, has been found to be the standard range to wit **RCW** 9.94A.510., which both Blakely and Apprendi have ruled is to be determined per **RCW** 9.94A.525., "solely". [pertaining to Prev. Crim. convictions only]

Also, "We hold that when a defendant is sentenced to a term of confinement and Comm. custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to ammend the sentence." Conclusion of In re Pers. Restraint of Brooks, 166 Wn.2d 664, 675, 211 P.3d 1023 (2009).

Further, concerning the challenge to appelant's 2004 conviction, "Invalid on its face" for purposes of RCW 10.73.090(1)., means that the judgement's infirmities are evident without further elaboration. It is clear by viewing (AP-E) appellant's 2004 J&S, that he was sentenced to the statutory maximum allowed by Blakely, to wit 9 months, and was further sentenced to a 12 month Comm. custody period which exceeded the maximum punishment allowed by both Blakely, and RCW 9.94A.505(5) which was also pertinent at the time. Which is now being used to further punish appellant. As this Court found in Hochhalter, no further elaboration is needed for RCW 10.73.090(1) purposes. Hochhalter, 131 Wn.App. at 506.

Lastly, "because the defendant had already been sentenced to the maximum term of incarceration, the trial court could not impose additional time to/of community custody as it exceeded the "statutory maximum" sentence for the offense." State v. Gamet, 2014 Wash.App. LEXIS 2590, at 37 (2014).

And, in Gamet, the COA decided to remand in order to have the trial court strike the Comm. custody time rendered. Appellant urges the Court to do the same concerning his 2004 conviction.

Blakely was pertinent to appellant's 7-16-04, J&S, as the rendering decision(s) found in Blakely was handed down on 6-24-04.

Pursuant to RCW 10.73.190.(1), this Court's rendering decisions in Hochhalter, as well as the Blakely Court, appellant urges the Court to find his 2004 J&S "Invalid on its face" and

remand to the trial court to strike the 12 month portion of that sentence concerning his community custody.

Appellant next challenges the unconstitutionality of RCW 9.94A.505(5), in its application of RCW 9.94A.701, in its usage of RCW 9A.20.021 as being the statutory maximum a judge is allowed to sentence a criminal defendant.

It is clear, that pursuant to Blakely,: "In other words, the relevant "statutory maximum" is not the maximum sentence [to wit RCW 9A.20] a judge may impose after additional facts, but the maximum he may impose without any additional findings." Blakely, 542 U.S. at 304.

It is clear, that the terms of confinement pertaining to RCW 9A.20.021 et seq., largely pertain to when exigent circumstances has been found concerning the crime, in other words when 'aggravating' factors and/or an exceptional sentence has been rendered by the trial court. And, which Blakely would then come into effect. Blakely, 542 U.S. at 304.

Hence, appellant challenges WA. State's current interpretation of RCW 9.94A.505(5), as unconstitutional pursuant to Blakely as the final refference to RCW 9A.20.021 was found to be an unconstitutional language concerning the "statutory maximum" term allowed in WA. State pursuant to Blakely, 542 U.S. at 304.

Appellant argues he can challenge the unconstitutionality of this law due to the continuous and current harm being inflicted upon appellant due to that part of the laws which he has aforementionaly challenged. Ziegenfuss, 118 Wn.App. 110, 113. to wit--the final reference found in RCW 9.94A.505(5) concerning the statutory maximum [a judge may sentence without additional findings] referencing to RCW 9A.20.021.

Finally, appellant challenges the unconstitutionality of the application of RCW 9.94A.525(19) which is the Offender Score a judge may sentence an offender to, specifically pertaining to wit--whether the offender was on Comm. custody at the time of the current offense and if so, increasing the quantum of punishment which one can be sentenced to wit--the "standard range" of RCW 9.94A.510.

The U.S. Supreme Court has found that "other than the fact of a prior conviction, <u>any</u> <u>fact</u> that increases the penalty for a crime beyond the prescribed statutory maximum <u>must</u> be submitted to a jury, and proved beyond a reasonable doubt." (emphasis ad added) <u>Apprendi</u>, 530 U.S. at 490.

In <u>Blakely</u>, the U.S. Supreme Court, further elaborated and held pertinent here: (1) "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury"; and (2) for purposes of the Sixth Amendment, the "prescribed statutory maximum" is "the maximum sentence a judge may impose <u>solely</u> on the basis of the facts reflected in the jury verdict or admitted by the defendant." <u>Blakely</u>, 542 U.S. at 303-04.

In sum then, the Court held that an accused has a Sixth Amendment right to have the jury find each fact needed to support his or her sentence, except, at least for now, the fact of a prior conviction. <u>Hochhalter</u>, 131 Wn.App.520-22.

Thus, the Court concluded that "whether one convicted of a crime is on community placement at the time of the [current] offense is a factual determination subject to the 6th Amend. requirement that a jury make the determination beyond a reasonable doubt." <u>Hochhalter</u>, 131 Wn.App. at 521 (citing <u>State v. Jones</u>, 126 Wn.App 136, 144, 107 P.3d 755 (2005).

The procedural history of Mr. Contreras-Rebollar's case concerning both the determination, validity, and application of RCW 9.94A.525(19), on his 2-21-07 conviction has been a hotly contested debate between the parties involved (RP 5 at 22; RP 6 at 1; both 4-14-16 RP; RP 4-15-16 22 at 17) the WA. DOC has issued "discrepencies" concerning the matter of days appellant actually served while on Comm. custody. (RP 4-21-16 43 at 16-25)

The tribunal itself has had difficulty in properly assesing assessing its calculation and, as appellant has presented, said determination is unconstitutional pursuant to both Apprendi and Blakely.

Where the trial court denied Mr. Contreras-Rebollar his constitutional right to jury trial to determine whether he was on Comm. custody at the relevant time, the trial court simultaneously denied him the requirement of proof beyond a reasonable doubt for U.S. Const. 6th Amend. purposes.

Where the issue of the timing of Comm. custody could not be determined from the fact of the judgment & sentence, the trial court erred when it failed to convene a jury to determine this issue. Hochhalter, 131 Wn.App at 521 (citing Jones, 126 Wn.App. 136, 144, 107 P.3d 755 (2005)

Not only did the trial court fail to convene a jury, or convene a jury thereon, the trial court also failed to advise Mr. Contreras-Rebollar that he had this right to a jury, when it simply [and at the last minute] decide to ascertain for itself that Mr. Contreras-Rebollar was on Comm. custody. The trial court thus failed to obtain any waiver of the right to

jury trial from Mr. Contreras-Rebollar.

In summary, the court & the prosecutor denied Mr. Contreras-Rebollar, his Const. right to have a jury determine whether he was on Comm. custody at the relevant time. Where the issue of Comm. custody was resolved [which is used to increase a defendant's punishment under the SRA] without the quantum of evidence that would be required for a jury verdict, the trial court denied appellant his right to trial by jury.

CONCLUSION

Appellant, respectfully asks this Court to review & rule upon each one of appellant's arguments raised herein, as a way to ascertain to the Pierce Co. Pros. Attny. Office the limitation of its authority pursuant to RAP 7.2(e)(2) concerning "Scheduling Orders" to fix errors currently being reviewed by the COA. And, respectfully, asks the COA to rule on each one of his arguments meticulously raised herein.

DATED: July 1, 2017.

ADRIAN CONTRERAS-REBOLLAR
Pro Se

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THE STATE OF WASHINGTON, *Respondent*, v. DANIEL JOHN HOCHHALTER, *Appellant*.

Headnotes/Syllabus

Summary

Nature of Action: Prosecution for felonious violation of a domestic violence no-contact order, second degree assault, and second degree unlawful possession of a firearm.

Superior Court: The Superior Court for Clark County, No. 04-1-00677-5, Barbara D. Johnson, J., on August 5, 2004, entered a judgment on a verdict finding the defendant guilty of all three charges. The trial court found that the defendant was on community placement at the time of committing the offenses, adding one point to his offender score, thereby increasing the standard ranges for the offenses. The court sentenced the defendant at the top end of the standard range for each offense.

Court of Appeals: Holding that hearsay testimony was erroneously admitted as an excited utterance, that the error was not harmless as to the felony violation of a domestic violence no-contact order charge but was harmless as to the other charges, and that the trial court's finding that the defendant was on community placement at the time of committing the offenses violated the defendant's Sixth Amendment right to a jury trial, the court *reverses* the conviction of felony violation of a domestic violence no-contact order, *vacates* the sentences for the remaining convictions, and *remands* the case for resentencing.

P25 Citing *Blakely v. Washington,* 35 Hochhalter contends that the trial court violated his Sixth Amendment right to jury trial when it found without a jury that he was on community placement on March 29, 2004, and then used that fact to increase his sentence. We agree.

P26 In *Blakely,* the jury found facts that supported, under state law, a "standard range" sentence of 49 to 53 months. Sitting without a jury, the trial judge found an additional fact ("deliberate cruelty") that supported, again under state law, an "exceptional" sentence of not more than 120 months. Based in part on the additional fact that he alone had found, the trial judge then imposed an "exceptional" sentence of 90 months. On appeal, Blakely argued that the 90-month sentence violated his Sixth Amendment right to jury trial because the additional fact was essential to support the sentence but had not been found by the jury.

P27 The United States Supreme Court agreed, stating two propositions pertinent here: (1) "'Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury' "; 36 and (2) for purposes of the Sixth Amendment, the "prescribed statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." 37 If the Court had substituted the second proposition into the first, it would have stated: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond [the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant] must be submitted to a jury." In sum then, the Court held that an accused has a Sixth Amendment right to have the jury find each fact needed to support his or her sentence, 38 except, at least for now, 39 the fact of a prior conviction.

28 A three-step analysis will disclose whether *Blakely*'s holding impacts a given sentence. The first step is to identify the sentence that the trial judge actually imposed. The second step is to ascertain the maximum sentence that the trial judge could have imposed based solely on the jury's findings and any scorable prior convictions (the maximum permissible sentence). The third step is to compare the results of the first two. If the actual sentence exceeds the maximum permissible sentence, it violates the Sixth Amendment. If the actual sentence equals or is less than the maximum permissible sentence, it does not violate the Sixth Amendment. Given the constitutional nature of *Blakely* 's holding, the analysis is not subject to or affected by statutory state-law labels such as "standard range sentence" and "exceptional sentence." 40

P29 In this case, the trial court actually imposed 60 months on Count I, 57 months on Count II, and 43 months on Count III. Unless *Blakely*'s exception for prior convictions applies, the most that the trial court could have imposed, based solely on the jury's findings and Hochhalter's countable prior convictions, was 54 months on Count I, 43 months on Count II, and 29 months on Count III. Unless *Blakely*'s exception for prior convictions applies, the trial court abridged Hochhalter's Sixth Amendment right to trial by jury.

P30 The State claims that *Blakely*'s exception applies. It argues "[t]here is no meaningful distinction between the fact of a prior conviction and the fact that the defendant was on community placement as a result of such prior conviction." 41

P31 In *State v. Jones,* 42 Division One rejected this argument. It reasoned (1) that *Blakely*'s exception does not encompass facts not apparent from the face of the prior conviction itself, and (2) that because of "variables" such as pre-conviction credit for time served, preconviction good time, and postconviction earned early release time, "whether one convicted of an offense is on community placement or community custody at the time of the current offense cannot be determined from the fact of a prior conviction." 43 Thus, the court concluded that "whether one convicted of a crime is on community placement at the time of the [current] offense is a factual determination subject to the Sixth Amendment requirement that a jury make the determination beyond a reasonable doubt." 44

P32 In *State v. Hunt,* 45 Division Three rejected *Jones* with one judge dissenting. The *Hunt* court seems to have reasoned in part 46 (1) that *Blakely* affects "exceptional sentences" but not "standard range sentences" and (2) that *Blakely*'s exception for prior convictions encompasses whether an accused is on community custody at a later time. We disagree with the first proposition because *Blakely*'s holding is constitutional in nature and hence, as noted

earlier, is not affected by statutory state-law labels such as "standard range sentence" and "exceptional sentence." We disagree with the second proposition because *Blakely*'s exception for prior convictions should be limited to facts that appear in the prior conviction itself, and, as Jones correctly held, such facts do *not* include whether the offender was still on supervision at the time of his current crime. Concluding that *Jones* is persuasive and that *Hunt* is not, we hold that *Blakely*'s exception for prior convictions does not encompass facts not on the face of the conviction; that one such fact is whether the defendant was on community placement at the time of his current offense; and that Hochhalter, like Jones, had a Sixth Amendment right to have a jury decide whether he was on community placement at the time of his current crimes.

P33 The State suggests **47** that Hochhalter lost his Sixth Amendment right to jury trial because he did not raise it before the trial court. The issue is of constitutional magnitude, however, so it may be raised for the first time on appeal. **48**

P34 The State suggests and the dissent asserts that Hochhalter lost his right to jury trial because, in a signed declaration dated July 14, 2004, he acknowledged that he was on community placement at the time of his current offenses. They both focus, apparently, on the *Blakely* Court's statement that the maximum sentence a judge may constitutionally impose is the maximum sentence that he or she "may impose solely on the basis of the facts reflected in the jury verdict *or admitted by the defendant.*" **49** When the *Blakely* Court said that, however, it was referring to the admissions that a defendant makes in conjunction with a waiver of his or her right to trial by jury. Referring to *Blakely*'s precursor, *Apprendi v. New Jersey,* **50** the *Blakely* Court explained elsewhere in its opinion:

> [N]othing prevents a defendant from waiving his *Apprendi* rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding. *See Apprendi*, 530 U.S., at 488 ; *Duncan v. Louisiana*, 391 U.S. 145, 158, [88 S. Ct. 1444, 20 L. Ed. 2d 491] (1968). If appropriate waivers are procured, States may continue to offer judicial factfinding as a matter of course to all defendants who plead guilty. Even a defendant who stands trial may consent to judicial factfinding as to sentence enhancements, which may well be in his interest if relevant evidence would prejudice him at trial. [**51**]

Hence, the question here is not simply whether Hochhalter "admitted" or "acknowledged" that he was on community placement at the time of his current crimes; it is whether he did that *and* knowingly, voluntarily, and intelligently waived his Sixth Amendment right to jury trial.

P35 As noted earlier, the record here does not show that Hochhalter was informed of, much less intended to relinquish, his right to have a jury decide whether he was on community placement on March 29, 2004. **52** On the contrary, it shows only that his counsel did not disagree with the State's assertion that he was on community placement at that time. Accordingly, the remarks we recently made in *State v. Borboa* **53** are equally apropos here:

> Although a defendant can waive his Sixth Amendment right to jury trial, he or she must do so knowingly, voluntarily, and intelligently. . . . [Borboa] did not know of or agree to forgo his right to have a jury find the facts needed to support a sentence above the standard range. Thus, he did not knowingly, voluntarily, or intelligently waive his Sixth Amendment right to have a jury find such facts. **54**

P36 Finally, the State contends that any violation of Hochhalter's right to a jury was harmless beyond a reasonable doubt. In *State v. Hughes,* **55** however, the Washington Supreme Court held that "[h]armless error analysis cannot be conducted on *Blakely* Sixth Amendment violations." **56** Accordingly, we conclude that Hochhalter is entitled to be resentenced.

P37 The conviction on Count I is reversed. Although the convictions on Counts II and III are affirmed, the sentences on those counts are vacated, and the case is remanded to the superior court.

HOUGHTON, J., concurs.

Dissent by: QUINN-BRINTNALL

Dissent

P38 QUINN-BRINTNALL, C.J. (dissenting) -- I concur with the majority that D.D.'s statements were improperly admitted under the excited utterances exception to the rule excluding hearsay evidence and that without them the evidence was insufficient to support a jury verdict finding Daniel Hochhalter guilty of violating a no-contact order as alleged in Count I. I also agree that the improper admission of D.D.'s statements did not affect the jury's verdicts on Counts II and III. Thus, I concur in the majority opinion reversing Count I and affirming Counts II and III.

P39 But I dissent from the majority as to whether the sentencing court violated *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), when it included one point in Hochhalter's offender score for being on community placement at the time he committed the offense as required by RCW 9.94A.525(17). In his signed Declaration of Criminal History dated July 14, 2004, 20 days after the Supreme Court issued its decision in *Blakely*, Hochhalter acknowledged that he was on community placement at the time of the offense. Thus, the trial court relied only on matters decided by the jury (the date of the current offense) and admitted by the defendant (that he was on community placement) when it calculated Hochhalter's offender score. Because the sentencing court determined Hochhalter's offender score from his criminal conviction history and facts admitted by the defendant or found by the jury only, it did not violate Hochhalter's Sixth Amendment right to a jury trial. *Blakely*, 542 U.S. at 303.

P40 I concur in the result but dissent from the majority's holding that on remand *Blakely* prohibits the sentencing court from adding one point to Hochhalter's offender score as required by this record and RCW 9.94A.525(17).

Footnotes

[*] Judge J. DEAN MORGAN heard oral argument in this case while serving as a member of this court. Since retired, he is now serving as Judge Pro Tempore.

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[1] Report of Proceedings (RP) at 62-63.

[2] RP at 66.

[3] RP at 68.

4 RP at 69.

5 RP at 147. The Safeway was near I-5 and 134th Street, while the friend's house was near Mill Plain Boulevard and 164th Avenue.

6 RP at 76.

7 RP at 72. Johnson testified to both periods of time.

8 RP at 83.

9 RP at 181.

10 RP at 162.

11 Clerk's Papers (CP) at 7.

12 RP at 88.90.

13 CP at 29.

14 CP at 30.

15

See RCW 9.94A.525(17) (If the present conviction is for an offense committed while the offender was under community placement, add one point."); LAWS OF 2001, ch. 10, § 6 (recodifying RCW 9.94A.360 as RCW 9.94A.525).

16

Br. of Appellant at 21 (emphasis omitted).

17

ER 802,ER 801(c).

18

56 F.R.D. 183, Advisory Committee's Note at 304 (1975). *Accord, State v. Brown*, 127 Wn.2d 749, 758, 903 P.2d 459 (1995) (""[U]nder certain external circumstances of physical shock, a stress of nervous excitement may be produced which stills the reflective faculties and removes their control." The utterance of a person in such a state is believed to be "a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock," rather than an expression based on reflection or self-interest.'") (quoting *State v. Chapin*, 118 Wn.2d 681, 686, 826 P.2d 194 (1992) (quoting 6 JOHN HENRY WIGMORE, EVIDENCE $ 1747, at 195 (1976))).

19

Brown, 127 Wn.2d at 758 (alteration in original) (emphasis added) (internal quotations omitted) (quoting *State v. Strauss*, 119 Wn.2d 401, 416, 832 P.2d 78 (1992)).

20

127 Wn.2d 749, 903 P.2d 459 (1995).

21

Brown, 127 Wn.2d at 753.

22

The facts and quotation in this sentence are not in the Supreme Court's opinion, but they appear in the Court of Appeals' opinion that the Supreme Court was reviewing. *State v. Brown,* noted at 75 Wn. App. 1025 slip op. at 2 (1994) (*Brown* I). The amount of time that elapsed between the alleged rape and the 911 call is not clear. T.G called 911 at 5:08 A.M. and said she had been raped "about 10 minutes earlier." *Brown I*, slip

op. at 1. A few minutes after speaking with 911, however, she told an officer that she had been raped at about 2:30 A.M. *Brown I*, slip op. at 2.

23
Brown, 127 Wn.2d at 759.

24
Brown, 127 Wn.2d at 759.

25
Br. of Resp't at 14.

26
See State v. Freigang, 115 Wn. App. 496, 508-11, 61 P.3d 343 (2002) (MORGAN, J., concurring), *review denied,* 149 Wn.2d 1028 (2003).

27
CP at 7.

28
In light of this conclusion, we need not address the confrontation portion of Hochhalter's first assignment of error or his second assignment of error.

29
141 Wn.2d 357, 5 P.3d 1247 (2000).

30
Anderson, 141 Wn.2d at 359.

31
150 Wn.2d 821, 845, 83 P.3d 970 (2004).

32
147 Wn.2d 330, 339-40, 58 P.3d 889 (2002).

33

527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999).

34

The trial in this case took place almost four years after *Anderson* was decided.

35

542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

36

Blakely, 542 U.S. at 301 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)).

37

Blakely, 542 U.S. at 303 (emphasis omitted).

38

Blakely, 542 U.S. at 313 ("every defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment").

39

In his concurring opinion in *Shepard v. United States*, 544 U.S. 13, 26, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005), Justice CLARENCE THOMAS asserts that a majority of the Justices then on the Court disfavor this exception.

40

State v. Jones, 126 Wn. App. 136, 139-40, 107 P.3d 755 (2005) ("While standard range sentences, not exceptional sentences, are at issue in these appeals, the principle of *Blakely* nonetheless applies to the findings at issue here."), *review granted,* 124 P.3d 659, 2005 Wash. LEXIS 908 (2005). *But see State v. Hunt*, 128 Wn. App. 535, 541-42, 116 P.3d 450 (2005), discussed *infra,* and *State v. Brown*, 128 Wn. App. 307, 116 P.3d 400 (2005). *Hunt* and *Brown* are essentially the same on the issue involved here, so hereafter we refer only to *Hunt.*

41

Br. of Resp't at 33.

42

126 Wn. App. 136, 107 P.3d 755.

43

Jones, 126 Wn. App. at 143.

44

Jones, 126 Wn. App. at 144. At least two out-of-state courts concur. *See State v. Benenati*, 203 Ariz. 235, 52 P.3d 804, 810 (Ct. App. 2002); *State v. Perez*, 196 Or. App. 364, 102 P.3d 705, 709 (2004), *review granted,* 338 Ore. 488, 113 P.3d 434 (2005); *State v. Wissink*, 172 N.C. App. 829, 617 S.E.2d 319, 324-5 (N.C. Ct. App. 2005). At least one does not. *People v. Scott*, 2005 Colo. App. LEXIS 1758. Other courts have decided cases in which, under the relevant statutory scheme, a defendant's having been on probation or parole at the time of the current crime operates not to increase the otherwise available maximum, but only as a factor to consider when deciding whether to impose the otherwise available maximum. *See, e.g., People v. Black*, 35 Cal. 4th 1238, 113 P.3d 534, 545-46, 29 Cal. Rptr. 3d 740 (2005); *State v. Maugaotega*, 107 Haw. 399, 114 P.3d 905, 915-16 (2005); *Ryle v. State*, 842 N.E.2d 320 (Ind. 2005); *State v. Lett*, 161 Ohio App. 3d 274, 2005 Ohio 2665, 829 N.E.2d 1281, 1287 (2005), *review granted,* 107 Ohio St. 3d 1406, 2005 Ohio 5859, 836 N.E.2d 1227; *State v. Gomez*, 163 S.W.3d 632, 661 (Tenn. 2005). However, such cases are not on point here.

45

128 Wn. App. 535, 116 P.3d 450 (2005). *See also State v. Brown*, 128 Wn. App. 307, 116 P.3d 400; note 40.

46

The *Hunt* court also may have reasoned that Hunt was sentenced on or before May 27, 2004; that *Blakely* was not decided until June 24, 2004; and hence that *Blakely* did not apply. *See Hunt*, 128 Wn. App. at 542 (*Blakely* does "not implicate earlier decisions upholding judicial fact-finding" and "the evidence sufficiently supports" the trial judge's finding that Hunt was under supervision on the date of his current crime). We do not consider the propriety of such reasoning here, because Hochhalter's sentencing took place on July 14, 2004, about three weeks after *Blakely* came down.

47

Br. of Resp't at 22-23.

48

RAP 2.5(a)(3); *State v. Walsh*, 143 Wn.2d 1, 7, 17 P.3d 591 (2001).

49

Blakely, 542 U.S. at 303 (some emphasis omitted).

50

530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

51

542 U.S. at 310.

52

Here lies the key difference between this opinion and the dissent. The dissent does not disagree with our analysis of *Blakely.* It reasons, however, that Hochhalter waived his Sixth Amendment right to jury, even though nothing in the record shows that he knew of that right or voluntarily and intelligently chose to relinquish it. In our view, such reasoning is contrary to the federal constitution as interpreted by the United States Supreme Court. *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970) (waiver of right to jury trial is valid only if defendant had "sufficient awareness of the relevant circumstances and likely consequences"); *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) (United States Supreme Court will not "presume a waiver" of the Sixth Amendment right to a jury trial "from a silent record"); *State v. Stegall*, 124 Wn.2d 719, 731, 881 P.2d 979 (1994) (court may not infer waiver "[I]n the absence of either a personal expression from the defendant waiving a 12-person jury, or an indication that either counsel or the judge discussed this right with the defendant"). *See also State v. Wissink*, 172 N.C. App. 829, 617 S.E.2d 319, 324-5 (N.C. Ct. App. 2005) (defendant's stipulation not a valid waiver because he did not know he had a constitutional right to have a jury decide whether he committed the offense while on probation); *State v. Ross*, 196 Or. App. 420, 423, 102 P.3d 755 (2004) ("Nothing in the record indicates that defendant knew that he had a right to a jury trial on the asserted aggravating factors or that he intended his plea to serve as a waiver of that right. We conclude that defendant did not validly waive the right to a jury trial with respect to the aggravating factors.").

53

124 Wn. App. 779, 102 P.3d 183 (2004), *review granted,* 154 Wn.2d 1020, 116 P.3d 398 (2005).

54

Borboa, 124 Wn. App. at 792 .

55

154 Wn.2d 118, 110 P.3d 192 (2005).

56

Hughes, 154 Wn.2d at 148; *see also State v. Thomas*, 150 Wn.2d 821, 849, 83 P.3d 970 (2004).

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APPENDIX C

NO. 48923-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 2

ADRIAN CONTRERAS-REBOLLAR,	)	MOTION TO RECONSIDER
Appellant,	)	
	)	
v.	)	
	)	
STATE OF WASHINGTON,	)	
	)	
Respondant.	)	
	)	

I. IDENTITY OF MOVING PARTY

Mr. Contreras-Rebollar, the Appellant, *pro se*, asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Reconsider the Court's Decision dated July 3, 2018

The decision (*Did what*): Did not properly address (relying on

"the law of the case doctrine") whether appellant's jury trial right was violated under Blakely v. Washington, 542 U.S. 296, 124 S.Ct 2531, 159 L.Ed.2d 403 (2004), a law in effect at the time of his sentencing.

This Court should (*State what you think the Court should do*):

This Court should revisit their prior opinion under RAP 2.5(c)(2), concerning p.15 of this Court's Opinion concerning the Blakely challenge as to whether or not Appellant has an invested right to have a jury find whether or not he was on Comm. Custody as it in fact implicates an aggregate time towards his overall sentence/his sentencing standard range.

The Decision is attached as Attachment Appendix-A.

III. FACTS RELEVANT TO MOTION

The facts relevant to this motion are as follows (Briefly set forth the facts relevant to the matter you are seeking to get modified (Attach additional pages if necessary)):

1. Does the U.S. Supreme Court's Law of the Land apply to Washington State?

2.

3. ____________________

____

____

____

4. ____________________

____

____

____

IV. GROUNDS FOR RELIEF AND ARGUMENT

Mr. Contreras-Rebollar requests this Court to reconsider the attached decision based on the following grounds and argument (Set forth the reasons why you think the Court should modify the ruling): On p.15 of this Court's Opinion, the Court itself stated "because Contreras-Rebollar has not requested us to revisit our prior opinion under RAP 2.5(c)(2), the law of the case doctrine precludes our review of his claims in appeal." However, Mr.Contreras-Rebollar/Appellant, does now hereby asks this Court to revisit its prior opinion per RAP 2.5(c)(2), and under the premises layed out in Blakely v. Washington, 542 U.S. 296, 124 S.Ct 2531, 159 L.Ed.2d 403 (2004).

In Blakely, 159 l.Ed.2d at 405, (which was very much pertinent at the time of appellant's sentencing) 6 key points were stated

concerning the violation of an accused's rights to a jury trial under the Federal Constitution's 6th Amend., because:

"(3) The right to a jury trial was no mere procedural formality, but a fundamental reservation of power in the nation's constitutional structure, for:

(a) Just as suffrage insured the people's ultimate control in the legislative and executive branches, jury trial was meant to insure their control in the judiciary.

(b) The U.S. Supreme Court's holding in Apprendi v. New Jersey (2000) 530 U.S. 466, 147 L.Ed.2d 435, 120 S.Ct. 2348-that other than the fact of a prior conviction, any fact that increased the penalty for a crime beyond the prescribed statutory maximum had to be submitted to a jury, and proved beyond a reasonable doubt-carried out this design by insuring that a judge's authority to sentence derived wholly from a jury's verdict.

(c) Without that restriction, the jury would not exercise the control that the Constitution's framers intended, as the framers had put a jury-trial guarantee in the Constitution because they were unwilling to trust government to mark out the role of the jury."

Blakely, 159 L.Ed.2d at 405.

It is further made clear in Blakely 159 L.Ed.2d at 406:

Constitutional Law-due process-jury-sentence. For purposes of a holding by the U.S. Supreme Court in Apprendi v. New Jersey (2000) 530 U.S. 466, 147 L.Ed.2d 435-that other than the fact of a prior conviction, any fact that increased the penalty for a crime beyond the prescribed "statutory maximum" had to be submitted to a jury, and proved beyond a reasonable doubt--the statutory maximum was (1) the maximum sentence a judge could impose solely on the basis of the facts (a) reflected in the jury verdict, or (b) admitted by the defendant; and (2) in other words, (a) not the maximum sentence a judge could impose after finding additional facts, but (b) the maximum the judge could impose without any additional findings. When the judge inflicted punishment that the jury's verdict alone did not allow, (1) the jury had not found all the facts that the law made essential to the punishment; and (2) the judge exceeded the judge's proper authority."

Which speaks volumes concerning the additional point added towards appellant's standard grid per **RCW 9.94A.510**, which in fact aggregated additional punishment--which per Blakely was not & is not reflected in the jury's verdict. It was an additional fact found solely by the judge alone which inflicted further punishment upon Mr. Contreras-Rebollar, was not found by the jury and, was not admitted by him/the defendant.

Thus, the jury had not found all the facts that the law made essential to the punishment; and (2) the judge exceeded the judge's proper authority. Blakely, 159 L.Ed.2d 403, at 406. Which speaks squarely to as towards appellant's case. And, in fact is squarely what Blakely prohibited. Further, both of these rendering cases Apprendi & Blakely, were in effect not only since (2000) but (2004) 3 years before appellant's original sentencing date. Which is, further the basis of this appeal.

RAP 2.5(c)(2) states: "The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review."

Which in fact, is what appellant now asks this Court of Appeals to do under the basis & premises layed out on p. 17-18, (Claim D; AP-B) of his SAG. As, pursuant to **RAP 2.5(c)(2)** and the essential Blakely violation which appellant may be incurring.

Hence, per **RAP 2.5(c)(2)**, in the furtherance of justice, where justice would best be served, this Court should reconsider its Opinion as to the Blakely violation.

V. CONCLUSION

Based on the facts and arguments set forth herein, Mr. Contreras-Rebollar requests the Court to reconsider the attached decision.

DATED this 16th day of July, 2018.

(Print) Adrian Contreras-Rebollar, *Pro se.*
DOC# 819639, Unit D
Monroe Correctional Complex
(Street address) ______
P.O. Box 888
Monroe, WA 98272

Filed
Washington State
Court of Appeals
Division Two

August 9, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

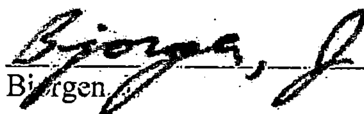
STATE OF WASHINGTON, Respondent, v. ADRIAN CONTRERAS-REBOLLAR, Appellant.	No. 48923-6-II ORDER DENYING MOTION FOR RECONSIDERATION

The appellant filed a motion for reconsideration of the opinion filed on July 3, 2018. After review, it is hereby

ORDERED that the motion for reconsideration is denied.

Jjs.: Bjorgen, Lee, Maxa

FOR THE COURT:



Bjorgen, J.

APPENDIX D

1 THE COURT: How is your son doing?
2 MS. DENNIS: My son struggles every day.
3 It's very difficult even to take him out just to go out
4 to dinner. Everything is a chore. It is twice as
5 hard. It is twice as hard for the family. It's twice
6 as hard for him, probably even more so for him. We've
7 tried to do everything that we've been trained to by
8 medical professionals, but we can't do everything that
9 we would have normally done before. We always have to
10 make a special exception for everything for Nick.
11 THE COURT: Anything else, Ms. Dennis?
12 MS. DENNIS: No.
13 THE COURT: Thank you.
14 MR. GREER: Your Honor, before I give the
15 State's recommendations, the range now -- and I talked
16 to the Court and defense counsel off the record
17 earlier, and I made one mistake. His Count I, offender
18 score is 4.5 and the range is 129 to 171. And I get
19 there by two adult prior felonies: Assault in the
20 third from 2004 and possession of a firearm in the
21 second degree from 2005, so that's two points, and a
22 juvenile conviction for possession with intent to
23 deliver a controlled substance from 2003.
24 And I learned just a few minutes ago through the
25 defendant's community corrections officer from his

1 assault three conviction that he was on community
2 custody at the time of the offense, so that gives him
3 another point on Count I and Count III.
4 Count II, because of the nature of the sentencing
5 guidelines and the fact that Counts I and II need to
6 run consecutive to each other under the law, the
7 offender score is zero and his range is 93 to 121
8 months. Both Count I --
9 THE COURT: I'm sorry; 93 to what?
10 MR. GREER: 123 months. Counts I and II also
11 carry 60-month firearm sentencing enhancements to run
12 consecutive to each other and to the underlying
13 sentence that the Court imposes.
14 Count III, the offender score should be 5.5,
15 again, incorporating the prior criminal history I just
16 mentioned, as well as the community custody point and
17 one other -- pardon me -- two other points for the
18 other current charges, so 17 to 22 months is the range
19 on that count.
20 THE COURT: And Counts I and II are required
21 to be consecutive to each other and the two 60-month
22 firearm sentencing enhancements also consecutive?
23 MR. GREER: Correct. And the State's
24 recommendation is actually for a total of 369 months,
25 and that is just over 30 years, almost 31 years, and I

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS-REBOLLAR, Defendant.	Superior Court No. 06-1-01643-4 Court of Appeals No. 48923-6-II

VERBATIM TRANSCRIPT OF PROCEEDINGS
RESENTENCING

APRIL 14, 2016
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE RONALD E. CULPEPPER

Carol Frederick, CCR, 2406
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 18
Tacoma, Washington 98402

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STATE OF WASHINGTON

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 GREGORY L. GREER
Deputy Prosecuting Attorney

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7 FOR THE DEFENDANT:

8 MARY K. HIGH
Department of Assigned Counsel

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1 BE IT REMEMBERED that on the 14th of April, 2016, the
2 following proceedings were held before the **HONORABLE RONALD**
3 **E. CULPEPPER**, Judge of the Superior Court in and for the
4 County of Pierce, State of Washington, sitting in CDPJ.
5 WHEREUPON the following proceedings were had, to wit:
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7 * * * *
8 THE COURT: The first matter we're going to address
9 today is State vs. Adrian Contreras-Rebollar, 06-1-01643-4.
10 This is a conviction from trial some time ago. It's been
11 back and forth with the Court of Appeals, and there's been
12 kind of some procedural problems.
13 As I understand it, we are here for a resentencing.
14 MR. GREER: Your Honor, my quick understanding
15 procedurally is that when the Court resentenced the
16 Defendant in 2013 based on, I guess, a preliminary
17 understanding that that was what was supposed to happen
18 from the Court of Appeals, the Defendant had appealed to
19 the Supreme Court the denial of his PRP to the Court of
20 Appeals. And because of that appeal to the Supreme Court,
21 no mandate had issued.
22 The Court sentenced the Defendant in 2013, and so it
23 was too soon. And then the Supreme Court denied his PRP,
24 and so now we're back again for resentencing.
25 THE COURT: Well, there had been a mandate, I think,

1 from the direct appeal from August of 2013. And then we
2 have another mandate from April of 2015 consolidating the
3 appeal with the PRP.
4 MS. HIGH: Right. And then there was a PRP after the
5 last sentencing here finding that the Court lacked
6 jurisdiction, so that PRP was found to have merit.
7 THE COURT: So what are we here for today, Ms. High?
8 MS. HIGH: Well, I guess as an initial matter -- I need
9 to get this out. And I'm hoping that it won't prejudice
10 the Court.
11 But I know Mr. Contreras has indicated to me that he
12 has filed a judicial conduct complaint on the five or six
13 times he's been back for sentencing and that the concern is
14 that the Court just continues to rubber stamp -- and I'm
15 sorry to use those terms -- you know, what's been asked by
16 the State without giving due consideration to his position.
17 And I realize it's been filed. You probably don't even
18 have notice of it.
19 THE COURT: It's the first I've heard of it.
20 MS. HIGH: Okay. So I wanted to see if the Court would
21 agree to recuse itself based on his filing of that
22 complaint.
23 THE COURT: Well, you said rubber stamp. I thought the
24 word might be reimpose. Wasn't the sentence that was
25 imposed in 2007 simply reimposed?

1 MS. HIGH: You may have reimposed it, but without
2 consideration of the claim. In the last PRP, it included
3 the claim based under Mulholland. The Court does have
4 discretion to concurrently reserve filing and as well the
5 continuing argument about whether or not there was
6 community custody, a point that was appropriately imposed
7 for his offender score.
8 THE COURT: What was the Court of Appeals' decision on
9 that?
10 MS. HIGH: That's what they remanded for.
11 THE COURT: What was their decision on that?
12 MS. HIGH: To what?
13 THE COURT: After the remand, what was their decision?
14 Didn't he appeal that?
15 MS. HIGH: They said that the Court needs to make a
16 finding based on sufficient facts whether or not he was on
17 community custody. And my argument was you can't
18 simultaneously say it was tolled and on community custody.
19 I mean that's kind of been their argument, while it had
20 tolled, you know, he was not participating, he absconded,
21 and in their mind. So you can't have both.
22 So that was my thing, that the community custody point
23 has not been proven other than it looked like, you know,
24 there had been some saying: "Hey, well, he was sentenced
25 at this date. He had three months left. Therefore, we had

1 a point," but without sufficient evidence from the
2 probation officer, whoever it might be.
3 THE COURT: Well, we entered findings on that some time
4 ago. We had a hearing apparently in 2010. I don't know if
5 you were involved then.
6 MS. HIGH: No, I wasn't. But I did read, you know, the
7 reason it was back then again in 2012, I believe with
8 Mr. Whitehead, was for the Court to determine if the State
9 produced sufficient evidence that he was on community
10 custody.
11 THE COURT: So my recollection is I did determine that
12 the State did produce sufficient evidence of that. And I
13 would today too.
14 MS. HIGH: Based on?
15 THE COURT: Based on the evidence I had at the time.
16 This has been some years. I don't recall all of the
17 details, very frankly. I didn't know that was an issue
18 today.
19 MS. HIGH: Well, it is because it takes us back to, you
20 know, why we're here. And his last PRP -- that was found
21 to be meritorious, which is why we're back was, one, the
22 Court didn't have any jurisdiction last time we were here
23 about a year ago and --
24 THE COURT: Do you have a copy of that PRP? I don't
25 have that.

1 MS. HIGH: I don't. He filed it himself. The State
2 apparently conceded that it was meritorious.
3 THE COURT: Do you have a copy of the opinion? Do you,
4 Mr. Greer? Do you have a copy?
5 MR. GREER: No, sir. I've never had a copy.
6 MS. HIGH: I got a phone call actually from the Pierce
7 County Prosecutor's Office saying he was coming back
8 because they were conceding that the PRP was meritorious
9 and the Court didn't have jurisdiction last time. That's
10 from Chelsey -- I've forgotten Chelsey's last name.
11 MR. GREER: Miller. That's a different issue, though.
12 THE COURT: What's that issue?
13 MR. GREER: So this is not that complicated. And I've
14 got a third document to pass to the Court.
15 So the Defendant was originally sentenced in 2007. And
16 then he came back in 2010, and Findings of Facts and
17 Conclusions of Law were entered regarding the issue of the
18 community custody point.
19 THE COURT: Yes, in 2010.
20 MR. GREER: So reimposition of the original sentence
21 occurred. A second appeal was filed. The Defendant filed
22 a PRP and a supplemental PRP. The Court of Appeals denied
23 the PRPs and remanded the case for resentencing again on
24 the issue of whether the Defendant was on community
25 custody. And how that was missed, who knows?

1 The Defendant then petitioned the Supreme Court to
2 review the denial of the PRPs. That was pending -- and
3 we've already discussed this -- so no mandate had issued.
4 But in March of 2013, again you found on the community
5 custody point that he was on community custody. So that
6 point counted, and he was resentenced. Then his PRPs have
7 now run. We've got the recent mandate saying that. And so
8 now we're back.
9 On the issue of the jurisdiction, Defense is correct,
10 that that's the reason we're back is only because the Court
11 sentenced him while a PRP was still pending.
12 MS. HIGH: Right. And a PRP was filed after our last
13 sentencing. I was contacted by the Prosecuting Attorney's
14 Office saying that the Court had lacked jurisdiction, that
15 his claim --
16 THE COURT: So what would you like to do today,
17 Ms. High?
18 MS. HIGH: Well, Your Honor, I think this should
19 probably be set over to tease out exactly where we stand on
20 this, because my communications with the Court of Appeals
21 through the Prosecuting Attorney's Office seems to be at
22 odds with Mr. Greer. I was assured that they would have a
23 communication with him.
24 If this is going to go forward today, then I would like
25 to -- I mean I think you said that you found a community

1 custody. But the last remand was to determine whether or
2 not that was actually established. And again I'm going to
3 ask --
4 THE COURT: Well, if I recall -- and this is from
5 memory -- one of the decisions that the Court of Appeals
6 affirmed was a finding that he was on a community custody.
7 I think that was from maybe 2013.
8 I didn't know this was an issue. I didn't go through
9 everything in the file today. And I don't have the PRP
10 file.
11 MS. HIGH: Right. And I don't believe they confirmed
12 it. I thought it was back on that very issue. And that's
13 what I argued last time.
14 THE COURT: Well, if you want to set this over until
15 tomorrow, I suppose we can do that. Will that be enough
16 time to get this figured out?
17 MR. GREER: I thought we had it figured out. I'm still
18 unclear as to what Ms. High is saying. Let me read
19 verbatim what Ms. Miller says. Maybe I'm the one that's
20 missing it here.
21 "Technically the Court did not have jurisdiction to
22 enter the judgment and sentence in 2013. No one noticed
23 this until January of 2015 when the issues involving
24 Defendant's PRPs were resolved and the Court of Appeals
25 issued a mandate. Defendant noted a hearing in February of

1 2015 to properly enter the judgment and sentence.
2 Mary K. High explained the procedural history to the Court,
3 and Ray O'Dell represented the State at the hearing. The
4 Court did not agree the Defendant needed to be represented
5 because he believed the March 2013 J&S was proper." It
6 should say resentenced. "But he did make a ruling
7 reiterating his previous finding that the Defendant was on
8 community custody. The Defendant now has filed a PRP
9 alleging that the trial court lacked jurisdiction to enter
10 the March 2013 J&S. He is correct. There are a host of
11 procedural and substantive issues that I've talked with Tom
12 in our office and Michelle in our office about ad nauseam.
13 We believe the most efficient thing to do in this case is
14 to hold another resentencing where the Court makes a clean
15 ruling reiterating its reasons for finding the Defendant
16 was on community custody at the time of the offenses. It
17 should be noted, though, and made very clear to the Court
18 that this is essentially perfecting the original remand
19 from the Court of Appeals on the issue of community
20 custody, not an open door to any other claims. This means
21 we need to contact DAC, set a new sentencing hearing,
22 transport the Defendant back, enter a new J&S."
23 MS. HIGH: Right. And, Your Honor, on page 14 --
24 THE COURT: Of what?
25 MS. HIGH: Of the Court of Appeals' remand. I think

1 the Court is relying on that. It came down -- it looks
2 like mine is dated June 26th, 2012. It said, "The
3 record --"
4 THE COURT: I don't have that in front of me.
5 MS. HIGH: Okay. And it talks about,
6 "Contreras-Rebollar asserts that's he's not on community
7 custody as of April 12, 2006."
8 And what they say is, "The record before us shows only
9 that Contreras-Rebollar had previously been sentenced for
10 his unlawful firearm possession conviction to three months
11 of incarceration with credit," blah, blah, blah.
12 And it goes on, "Nothing in the record before us refers
13 to any good time credit." And essentially it says here,
14 "The record does not show that the resentencing Court
15 actually miscalculated his community custody tolling, but
16 we reiterate that we're remanding so that the Court can
17 produce evidence of the community custody status."
18 So the Court says that, "We remand again for
19 resentencing at which the State should put on the record
20 all facts pertinent to his community custody status at the
21 time he committed the charge, including any good time
22 credit calculations, and the Court then is going to need to
23 make that determination."
24 THE COURT: And wasn't that done in 2013?
25 MR. GREER: And 12 and 10 and --

1 THE COURT: After this. I think we did that in 2013.
2 Well, are you two available tomorrow?
3 MR. GREER: Tomorrow morning, yes, sir. I'm not
4 available in the afternoon.
5 MS. HIGH: I am.
6 THE COURT: Can somebody else cover this for you
7 tomorrow afternoon?
8 MR. GREER: Probably, if I can find somebody and bring
9 them up to speed.
10 THE COURT: Well, tomorrow morning I have a fairly busy
11 civil docket. And squeezing this in between just wouldn't
12 work. I can do it tomorrow afternoon.
13 MR. GREER: This is frustrating. I'm not sure if
14 anybody has ever put this on the record. In the meantime,
15 Nick Solas has died down in California.
16 THE COURT: Yes, I'm aware of that.
17 MR. GREER: And the State potentially can file a murder
18 charge against the Defendant. There's no statute of
19 limitations. We're back here how many times to discuss
20 something the Court has clearly ruled on how many times?
21 I'm not sure what is going on and what is in Defense's
22 mind as to what the ultimate goal of this is. Why can't we
23 just resolve this right now, sentence him? The Court has
24 made its findings three or four times on the only issue
25 before the Court.

1 THE COURT: Well, I'm going to set this over until
2 tomorrow. Ms. High, I don't have copies of the Personal
3 Restraint Petition order for some reason. I have checked
4 for it. My JA didn't have it. We have, of course, the
5 Court file on the direct appeal. That's not a problem.
6 I've got all of that stuff. I don't have the opinions or
7 the PRPs. I don't know why not.
8 MS. HIGH: I will need to get those from the
9 Prosecuting Attorney's Office because I didn't do the PRPs
10 either, so they're going to be the ones that responded to
11 those.
12 THE COURT: Is it possible for me to get a copy of that
13 today so I can review that before the hearing?
14 MR. GREER: So you want PRPs that are pending?
15 THE COURT: Any opinions you have. I don't have a PRP
16 file or access to it. That's in the Court of Appeals.
17 That's part of the confusion. We've had these appeals,
18 which I think are all resolved. But he's got these PRPs
19 kind of as an overlap.
20 MR. GREER: So tomorrow afternoon, Your Honor, if
21 someone else steps in, that will be okay with the Court?
22 THE COURT: That's fine with me. And I'm sorry, but I
23 want to look at this stuff. I'm not quite understanding
24 what the issues are. I think the opinions all say what I
25 think they say. Ms. High seems to think differently.

1 We'll see you at 1:30 tomorrow.
2 MR. GREER: Thank you.
3 MS. HIGH: Thank you.
4 (Proceeding concluded.)
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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

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4 STATE OF WASHINGTON,	)	
5 Plaintiff,	)	COA NO. 48923-6-II
6 vs.	)	P/C NO. 06-1-01643-3
7 ADRIAN CONTRERAS-REBOLLAR,	)	RESENTENCING
8 Defendant.	)	

9

10 REPORT OF PROCEEDINGS

11

12 FRIDAY, APRIL 15, 2016

13 THURSDAY, APRIL 21, 2016

14

15 Pierce County Courthouse

16 Tacoma, Washington

17

18 Before the

19 HONORABLE RONALD E. CULPEPPER

20 Department No. 17

21

22 [Appearances on next page]

23

24

25 Reported by: Karla A. Johnson, RPR
Official Court Reporter, #82191

FILED
COURT OF APPEALS
DIVISION II
2016 SEP 14 PM 1:04
STATE OF WASHINGTON

ORIGINAL

1 APPEARANCES:

2

For the Plaintiff: Chelsey Miller
3 Gregory L. Greer
Deputy Prosecuting Attorneys
4 Pierce County

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For the Defendant: Mary Kay High
6 Department of Assigned Counsel
Pierce County
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1 FRIDAY, APRIL 15, 2016; AFTERNOON SESSION
2 (All parties present.)
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4 --oOo--
5
6 THE COURT: This is our Case 06-1-01643-4,
7 here for resentencing, and Ms. High indicated she
8 believes there's a question about community custody.
9 We had a hearing previously sometime ago and the prior
10 convictions were proven by the State, so an issue about
11 community custody. Is that correct?
12 MS. HIGH: Well, and then a slight wrinkle,
13 Your Honor. I filed a motion. I thought I dropped off
14 a bench copy. Maybe I have not.
15 THE COURT: Recently?
16 MS. HIGH: I thought I handed it up to you
17 when I came in. I'm sorry. I know I handed it to
18 somebody yesterday. So I think before we get there
19 it's just whether or not the Court can hear this matter
20 or whether the Court should recuse itself from hearing
21 the matter based on some ex parte contacts, and then we
22 can go into the merits if the Court declines to recuse
23 himself.
24 THE COURT: I am just reading this for the
25 first time.

1 MS. HIGH: I'm very, very sorry, Your Honor.
2 I just got the email yesterday afternoon and then I was
3 in witness interviews.
4 (Pause in the proceedings.)
5 THE COURT: Yesterday I had Angie email to --
6 and I can't remember if it was to Ms. Miller or
7 Mr. Greer.
8 MS. MILLER: It was to all three of us,
9 Your Honor.
10 THE COURT: A request to get a copy of any
11 opinion from the Court of Appeals on the most recent
12 personal restraint petition. I thought there was an
13 opinion I was lacking. Ms. Miller brought down some
14 stuff and we made copies of it. Most of it was stuff I
15 had already. I think the one thing that I may have
16 gotten from her that I didn't have previously was a
17 copy of the most recent PRP petition itself. I think
18 that's all that I didn't have. So I was trying to get
19 the entire file on this so I would know what I was
20 doing today.
21 So your motion, Ms. High?
22 MS. HIGH: Well, based on the email I had
23 from Ms. Miller that came in yesterday afternoon, I'll
24 just let the Court know that what I read was -- I had
25 an email saying I just want to let you I went down to

1 the court just right now and explained there's no Court
2 of Appeals opinion yet; the PRP is still technically
3 pending. And she's right. I pulled up the case
4 events. He filed a personal restraint petition on
5 December 17th, 2015, regarding our last appearance here
6 where the Court found that its March 2013 J and S was
7 valid and stood.
8 The State's response is due, it looks like May
9 2nd. They've gotten a couple of continuances. They
10 did a motion to extend time in March, on March 1st and
11 again on March 31st, and have an extension of time to
12 May 2nd on that matter, and that PRP had to do with the
13 issue that you've heard from me about when we were here
14 in 2015. I said the Court didn't have jurisdiction
15 when it did its 2013 sentencing. The Court didn't take
16 that position.
17 And so, anyway, it looks like from what we have
18 here. Anyway, she came down. I don't know what
19 actually the nature of the conversations were. I do,
20 you know, appreciate providing decisions, those kinds
21 of things, as in, say, bench copies. I don't know what
22 the nature of your conversations were because I wasn't
23 present, and I think that that is the concern here, is
24 that -- kind of the procedural posture of this case, I
25 swear, is nine-tenths of what it is we're battling to

1 try and get through.
2 And then, of course, I do want to address some of
3 the substantive issues. But, clearly, at least in the
4 conversations and the argument before the Court with --
5 not with Ms. Miller, but first with Mr. O'Dell and then
6 with Mr. Greer, I think have had a lot of influence on
7 where this Court has gone and what the Court's view of
8 the case --
9 THE COURT: I don't understand what you mean
10 by that. I've listened to arguments.
11 MS. HIGH: That's what I mean. You followed
12 the argument that they made. I believe their argument
13 was wrong.
14 THE COURT: Which argument?
15 MS. HIGH: Well, first, Mr. O'Dell was
16 clearly wrong when he argued to the Court your 2013
17 sentencing was valid when I argued it was not. The
18 Court lacked jurisdiction at that time. It clearly
19 wasn't valid.
20 Mr. Greer was in and saying you entered Findings
21 of Fact and Conclusions of Law already establishing the
22 community custody back in 2010. Well, we know in 2012
23 the Court came back and said it was not sufficient;
24 they had not sufficiently proved that. So I'm just
25 saying that the communications may be going on with

1 Ms. Miller and I'm concerned.
2 THE COURT: Were you at the hearing in 2013?
3 I don't think you were.
4 MS. HIGH: No. It was Mr. Whitehead.
5 THE COURT: Well, it's actually a fairly
6 simple matter of arithmetic. You start with 365 and
7 substract and if you have 100 left, he's still on
8 community custody. It wasn't the persuasiveness of
9 Mr. O'Dell or Mr. Greer; it was simple math.
10 MS. HIGH: All right. But there was also
11 ESSB 5891, which is now codified at 9.94A.171(3)(a),
12 which says that you do not toll when an individual is
13 in custody on a DOC violation; otherwise there's
14 tolling. And, actually, the simple math that I had
15 actually for Mr. Whitehead here would show that, in
16 fact, his community custody was up on April 2nd, 2016.
17 This event, I think, was April 12th because he was in
18 for 83 days, from 1-10-95 through 4-10-06.
19 And so, you know, I mean, we talk about simple
20 math. I think what the Court of Appeals said was we
21 need something that actually establishes that, not just
22 it seems like it's close; three months, you know, we're
23 kind of close here, give or take a few days, found that
24 that wasn't enough, that it wasn't proven. That's why
25 it had come back.

1 affect the standard sentencing range?
2 MS. MILLER: There's the one point, I
3 believe.
4 THE COURT: On what's the effect?
5 MS. MILLER: Right.
6 MS. HIGH: I do have that, Your Honor.
7 THE COURT: Well, we can take it up if it
8 becomes an issue.
9 MS. HIGH: In your 2007 J and S you had
10 calculated him without the community custody point and
11 so the standard ranges were on there for Count I of 120
12 to 160 months. At some point during, obviously, the
13 sentencing hearing a point was added that it raised it
14 from 129 to 171, so we're talking a high end of 160
15 months versus 171 months.
16 THE COURT: On that count.
17 MS. HIGH: Right. That's the highest count.
18 Because Count II is a serious violent, it zeroed out
19 under the SRA, and that is 93 to 123, so that doesn't
20 change, and then the last count which I think was an
21 Unlawful Possession of a Firearm, it went from 12 plus
22 to 16 months.
23 THE COURT: That one ran concurrent with the
24 other one.
25 MS. HIGH: Right, to 17 to 22 months. And

1 or held on a DOC warrant. So if you're on a DOC hold
2 or sanction, that time will reduce your community
3 custody that's owed. So, when I see those sanctions, I
4 believe that those then get deducted.
5 THE COURT: Ms. Miller, does the State have
6 any objection to setting this over one week? I'm gone
7 Monday, Tuesday, and Wednesday next week. We'll be
8 good next Friday afternoon.
9 MS. MILLER: I have no objection to that.
10 THE COURT: Will this be you or will this be
11 Mr. Greer?
12 MS. MILLER: Well, I'm out of town next week,
13 so I anticipate this issue will be Mr. Greer handling
14 this.
15 THE COURT: I wonder if that makes things
16 better or worse or maybe has no effect whatsoever.
17 MS. MILLER: Well, I think at this point the
18 Court's scope is limited, and Ms. High and I both agree
19 on this is an evidentiary hearing about whether the
20 State needs to prove by a preponderance of the evidence
21 that the defendant was in community custody at the time
22 of the violation, so I think any of the jurisdictional
23 issues we've already addressed today and I think
24 Mr. Greer is now --
25 THE COURT: If he were not, how does that

1 THURSDAY, APRIL 21, 2016; MORNING SESSION
2 (All parties present.)
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4 --oOo--
5
6 THE COURT: We are here again on State vs.
7 Contreras-Rebollar, our Case No. 06-1-01643-4. We've
8 got a guy working in chambers, so that's the noise you
9 hear.
10 And we're here on the issue about community
11 custody computation and whether Mr. Contreras-Rebollar
12 was on community custody in April of 2006, when he was
13 arrested for assault, unlawful possession of a firearm
14 charges.
15 At a hearing last Thursday, I believe it was, I
16 was given this. I'm not sure what to call this, this
17 printout of some sort from DOC Offender Management
18 Network Information. Do we have a clean copy of this
19 that we can make an exhibit?
20 MR. GREER: I have a clean copy.
21 THE COURT: We also have a letter from
22 Ms. Wilson that was used back in 2013, I think it was,
23 that is an exhibit from a prior hearing. Maybe we
24 should make that --
25 MR. GREER: You're talking about this thick

1 one, right?

2 THE COURT: The one I've got is -- there's a

3 couple of them.

4 MS. HIGH: October 3rd.

5 MS. MILLER: There were two documents we

6 handed forward.

7 THE COURT: There's one that's two pages and

8 then there's one that's maybe ten pages.

9 MR. GREER: Here's the two-page one, I think.

10 THE COURT: What are we calling this just so

11 we know what we're talking about? Offender Management

12 Network Information Sheet.

13 MS. MILLER: "Chronos" is what it's referred

14 to. Chronos is the 45-page document.

15 THE COURT: You said 45-page document?

16 MS. MILLER: Right.

17 THE COURT: I have a two-page document here.

18 MS. MILLER: And then we gave Ms. Edwards --

19 THE COURT: Okay. That's Exhibit?

20 JUDICIAL ASSISTANT: One.

21 MS. MILLER: And then, Ms. Edwards, remember

22 we gave you the 45-page document and pulled out the

23 section that's relevant?

24 THE COURT: I have this.

25 MS. MILLER: Right, which is the 45-page

1 document.

2 THE COURT: That's not 45 pages.

3 MR. GREER: It also goes through his prison

4 history, so we just pulled out the part up to the point

5 where he's there.

6 THE COURT: So let's call that Exhibit 2.

7 JUDICIAL ASSISTANT: Just this portion?

8 MS. MILLER: I would like to include the

9 whole thing.

10 MR. GREER: Can that be his bench copy?

11 MS. MILLER: Sure.

12 THE COURT: And Ms. High's position, as I

13 understand it, is that Mr. Contreras-Rebollar was not

14 on community custody at the time of the offenses here

15 April 6th, I believe it was, in 2006.

16 MS. HIGH: That's correct.

17 THE COURT: Because of 9.94A.171(3)(a), which

18 apparently was enacted in 2011.

19 MR. GREER: Your Honor, did you get a copy of

20 the brief that I submitted yesterday?

21 THE COURT: I got a copy of Findings and

22 Conclusions.

23 MR. GREER: Yes. And there's also a --

24 MS. MILLER: Your Honor, I'll give a bench

25 copy.

1 MR. GREER: I actually gave a bench copy
2 yesterday.
3 MS. MILLER: Of the grid, the community
4 custody grid?
5 THE COURT: I don't have that.
6 MR. GREER: That was on the back of the
7 Findings of Fact.
8 MS. HIGH: That is really helpful.
9 THE COURT: I do have it; I'm sorry.
10 MS. MILLER: Can we make this Exhibit 3,
11 which will be the community custody grid?
12 MS. HIGH: And I probably should have this
13 made Exhibit 4, a DOC decision on sanctions.
14 THE COURT: So apparently Ms. High is going
15 to project something on the projector. This is Exhibit
16 4 for today's hearing?
17 MS. HIGH: Right. I don't know if the State
18 had any more information they want to the present,
19 otherwise I wanted to address why I think he's not on
20 community custody.
21 MR. GREER: May I see the printout or
22 whatever this is that you're showing?
23 MS. HIGH: Sure.
24 Your Honor, I think to start with, the community
25 custody grid, which I believe is Exhibit 3, I think is

1 actually pretty helpful.
2 THE COURT: Can I ask who prepared this?
3 MS. MILLER: Your Honor, I prepared it. And
4 just for the record, when it says the column indicating
5 "reference" and it says PCJ and DOC, I got the dates
6 from the LINX Pierce County Jail, the dates and times
7 he was released from custody, and DOC refers to the DOC
8 notes, but if there was any question in the DOC notes
9 about when he was released, I always referenced back to
10 the Pierce County Jail.
11 THE COURT: The DOC notes meaning what's been
12 marked as Exhibit --
13 MS. MILLER: Two, I believe.
14 THE COURT: Okay. So you've got the grid up
15 on the screen.
16 MS. HIGH: Right. So I guess, first and
17 foremost, the letter that we received from Ms. Wilson
18 dated October 3rd, 2012, is not accurate as we
19 cross-reference it to LINX, and so that's why we had
20 the discrepancy of, say, two days on the very first
21 line when he was released from jail versus the Chronos
22 of the 12th, seven days where he had a delay in
23 release. So there were some discrepancies.
24 Then, as you go through the Chronos, you can see
25 some different things that come up with times that, in

1 fact, where he failed to report or where he was
2 arrested or he did get sanctions. Now, in the Chronos
3 they do reflect, at least up until what the State
4 included here, sanctions of 41 days for several days
5 when he was being held in custody.
6 And I don't know if the Court had an opportunity
7 to take a look at the statute, but I'll put it up here
8 for you and then I'll move on to my next -- I don't
9 know; you probably can't read that. Let me see if I
10 can increase the zoom on it. All right. So this says
11 sanctions imposed for violations for community custody
12 don't toll. So if you get some sanctions for your
13 violations, that counts against your community custody
14 time. It ticks it down. So I think that that's
15 important, so even with the State's calculation on
16 their grid, he would have 334 days.
17 THE COURT: Does the State agree with that?
18 MR. GREER: No, sir.
19 MS. HIGH: And then I think what's also
20 important, and this is Exhibit 4 -- sorry; I just
21 received this from the client; I didn't have this --
22 but it shows that in 2006, in fact, DOC imposed 165
23 days of sanctions for, I guess it says failing to
24 report and some different things from 2-21 until
25 April 12th. Again, these are sanctions. They would

1 not toll his community custody. His community custody
2 was thus complete.
3 THE COURT: Well, June 7th they imposed
4 sanctions. He was arrested April 12th.
5 MS. HIGH: Right. And when you look at it,
6 it goes back because this was an appeal. It says on
7 May 15th they did the hearing. We imposed the
8 sanctions going back to, you know, your failure to do
9 what you needed to do back on 2-21-06; we're going to
10 impose 165 days and give you some credit for time
11 served for May 1. So we have that. I mean, there are
12 two things that are happening here.
13 THE COURT: I have never seen this before and
14 I'm having some difficulty reading it from here. It's
15 being projected on a screen as I look at it.
16 MS. HIGH: Correct. And, I'm sorry; I just
17 received it at 8:45 this morning from the client.
18 THE COURT: It says "since" -- I can't tell
19 the date.
20 MS. HIGH: It says found you guilty of
21 failing to report to Department of Corrections since
22 2-21-06 and then possessing a firearm on 4-12 and
23 failing to do a urinalysis 2-21, failing to pay since
24 2-13, and failing to report a change of address on
25 April 1. In summary, found guilty of committing one or

1 more violations of the conditions of your supervision.
2 The hearing officer issued a hearing and decision
3 summary on May 15th, 2006, and imposed the following
4 sanctions: 165 days of confinement with credit for
5 time served since May 1; report to community
6 corrections officer.
7 So they imposed those sanctions, which would count
8 against the community supervision.
9 THE COURT: So after these sanctions he's no
10 longer on community supervision.
11 MS. HIGH: I would say not for these.
12 THE COURT: Well, that's after this, after
13 May 1st or May 15th.
14 MS. HIGH: Well, that's when they imposed the
15 sanctions, but, as you can see, they found the
16 violations go back to 2-21. I mean, there are two
17 things happening here. We can't have it both ways.
18 They imposed the sanctions. That tolls out his
19 community custody. Or they're saying you were in
20 violation, and I think the State's going to argue it
21 tolled.
22 Well, you can't be on community custody if it's
23 being tolled. You can't have two things happening here
24 at once. But I think this is really clear that, in
25 fact, they imposed sanctions which would have totaled

1 out his community custody.
2 THE COURT: Totaled it out when?
3 MS. HIGH: Well, I would say going back to
4 2-21, which is when they said, look, we think you're in
5 violation; we had a violation hearing.
6 THE COURT: Don't they say in their decision
7 credit for time served since May 1?
8 MS. HIGH: Right, since May 1 they're giving
9 him credit for time served, but they're saying that he
10 was not in compliance going back to February. And you
11 know what? Even if you say, okay, this 165 doesn't
12 count, which I think it does, then the other thing is,
13 it was tolled and he was not on active community
14 custody on May 12th because they're saying he wasn't
15 doing what he was supposed to do.
16 So, I mean, you can't have it both ways. I mean,
17 you can't say, hey, it tolled and he was on community
18 custody, because they're saying no, you weren't doing
19 it; you weren't on community custody; that's why we're
20 not counting that time. Or, in fact, when they imposed
21 these sanctions, they're saying we're imposing
22 sanctions for your failures through here and you're not
23 on community custody.
24 And, you know, it's up to the State to prove it.
25 I would say that the Department of Corrections records,

1 which are being relied on, we know are not reliable
2 just from doing a simple cross-check with LINX. We
3 know that they're calculations are not reliable just
4 doing the simple calculations as you go through the
5 Chronos. And then I don't know -- again, we have these
6 impositions of sanctions here, too. And then one last
7 thing --
8 THE COURT: Well, is it the same thing to say
9 you're not on community custody and to say you are not
10 complying with the terms of community custody? Do
11 those mean the same thing?
12 MS. HIGH: Well, if the State wants to argue
13 it tolled community custody, if you're saying it
14 tolled, that would mean you were not on it; otherwise
15 it would count. And here they impose sanctions.
16 Now, it would seem to me if they're saying, hey,
17 we're imposing these sanctions; that's why we have the
18 statute that says when sanctions are imposed; we can't
19 count them toward the calculation of community custody
20 time.
21 THE COURT: That statute was enacted in 2011.
22 MS. HIGH: Correct. And what the legislature
23 said there was these laws have retroactive application
24 pursuant to the express language of ESSB 5891. This
25 was provided to you. That was Section 42(1). This was

1 a brief provided to you by Mr. Whitehead back on
2 October 5th, 2012. And so, again, they found that
3 these provisions are retroactive. So it was enacted in
4 2011. The calculation of what tolls and what doesn't
5 toll is retroactive. I'm asking the Court to find he
6 was not on community custody and then we'll go to a
7 resentencing based on a correct offender score.
8 THE COURT: .171 refers to -- it says "see
9 reviser's note under 9.94A.501." There's a note about
10 application saying before, on, or after June 15, 2011.
11 I guess that covers all the possibilities, before, on,
12 or after. But on June 15th Mr. Contreras-Rebollar was
13 no longer on community custody. It had been terminated
14 by this, apparently. So does this really apply to him?
15 His community custody was done some years earlier. If
16 he was still on community custody, it would have
17 applied.
18 MS. HIGH: Right. And I guess my thing is,
19 I'm saying he was done on community custody, but the
20 State's argument is he was still on community custody.
21 THE COURT: Well, the State's argument is he
22 was on it April 12th of 2006, not in 2011.
23 MS. HIGH: Right. But if you take a look at
24 the brief Mr. Whitehead provided to you, Section 42(1),
25 it says specifically that --

1 THE COURT: I don't have that in front of me.
2 Section 42 of what?
3 MS. HIGH: Of the bill that I just cited,
4 ESSB 5891.
5 THE COURT: The 2011 one?
6 MS. HIGH: Right. He provided you with a
7 brief, and it said there that provisions of this act
8 apply to persons convicted before, on, or after the
9 effective date of this section. That's why I said it's
10 retroactive.
11 THE COURT: Would that bill affect somebody
12 who wasn't on community custody at the time of the
13 bill?
14 MS. HIGH: It says "before, on, or after."
15 THE COURT: The conviction date, yes, I got
16 that. There are people who were convicted before that
17 date who were never on community custody, so they're
18 unaffected by that. There are people who are convicted
19 afterwards who aren't on community custody. That
20 doesn't affect them. If your community custody
21 terminated in 2006, does that bill really apply to you?
22 MS. HIGH: Well, the provisions of that
23 apply. I mean, if he's already done, there would be
24 nothing to apply it to, right? But if you're saying
25 he's still on community custody, this tells you how we

1 determine that.

2 THE COURT: In 2011 he's not on community

3 custody. The question is, was he on community custody

4 in April of 2006.

5 MS. HIGH: Exactly, and this gives you the

6 road map on how to calculate it.

7 THE COURT: The 2011 statute tells you how

8 the calculation is done in 2007?

9 MS. HIGH: Absolutely, because it says

10 "before, on, or after," so before -- because I want to

11 make it really clear --

12 THE COURT: All convictions; got that.

13 MS. HIGH: Sanctions imposed for violations

14 of sentence of conditions, blah-blah-blah, in which

15 case the period of community custody shall not toll.

16 They're making it very clear; if you're imposed a

17 sanction, we're going to deduct that from your

18 community custody time.

19 THE COURT: Okay. So anything else?

20 MS. HIGH: I guess, then, the very last thing

21 was, I think there was actually even a stipulation that

22 was entered in March of 2013 prepared by the State that

23 -- it was statement of prior record and offender score

24 that calculated his offender score would have been the

25 3. It says 3.5. Perhaps that was an error, but that

1 was certainly one of the documents that the Court had
2 in 2013.
3 THE COURT: I'm sorry; I'm not following.
4 MS. HIGH: Okay. Well, the State wants to
5 say he's a 4 for purposes of sentencing.
6 THE COURT: And they said he was 3.5 in March
7 of 2013.
8 MS. HIGH: Correct.
9 THE COURT: So your position is in April 6 of
10 2006 Mr. Contreras-Rebollar was no longer on community
11 custody for the 2004 case?
12 MS. HIGH: Correct. And I want to hand back
13 up Exhibit 4.
14 THE COURT: This is the letter, opinion, or
15 whatever we call it.
16 MS. HIGH: Yes.
17 THE COURT: So I've got various exhibits.
18 I've got the statute, Exhibit 1, which is the two-page
19 part of the larger exhibit, Exhibit 2. Exhibit 3 is
20 the grid. Exhibit 4 is the appeals panel decision from
21 June of 2006. So anything else, Ms. High?
22 MS. HIGH: Well, once you make that decision,
23 then I wanted to argue what I believe would be an
24 appropriate sentence.
25 THE COURT: So Mr. Greer or Ms. Miller,

1 community custody, April 6, 2006, is the current issue.
2 MR. GREER: I would ask the Court to look at
3 the document that Ms. High just provided the Court. I
4 think it was the same one that was on the screen.
5 THE COURT: Exhibit 4, the appeals panel
6 decision.
7 MR. GREER: And inquire for how the defendant
8 could have been sanctioned for an event occurring per
9 that document, I believe April, the same day as our
10 offense, Unlawful Possession of a Firearm, April 2006.
11 Doesn't it say that?
12 THE COURT: It says, line 2: Found you
13 guilty of failing to report to Department of
14 Corrections since 2-21-06, comma, possessing a firearm
15 on or about 4-12-06, comma, failing to be available for
16 urinalysis testing, comma, failing to pay toward legal
17 financial obligations, and failing to report a change
18 of address since April 1st of 2006.
19 MR. GREER: And what is our date of offense?
20 THE COURT: Our date of offense is April 6th,
21 2006.
22 MR. GREER: So April the 12th of 2006 would
23 be after that.
24 MS. HIGH: Would be after that, yes.
25 MR. GREER: He's on community custody status

1 because he's being sanctioned for an offense on
2 April 12th, 2006, correct?
3 THE COURT: You're asking me to say is this
4 correct.
5 MR. GREER: That's what that says.
6 THE COURT: Well, it says he's sanctioned
7 partly -- one of the sanctions is for possessing a
8 firearm April 12th, 2006.
9 MR. GREER: Which our offense occurred on?
10 THE COURT: April 6th.
11 MR. GREER: Doesn't that prove in and of
12 itself that he's on community custody? How can they
13 sanction him if he's not?
14 THE COURT: Well, Ms. High, any response to
15 that?
16 MS. HIGH: Absolutely. I mean, that's why we
17 have the you don't toll when you get sanctioned.
18 They're saying he's not reporting, so if he were never
19 sanctioned for this time period, they would have said,
20 hey, community custody tolled; we're going to tack this
21 time -- he's not doing what he's supposed to do -- on
22 the back end or count it. Here they're saying: You
23 know what? This guy is supposed to have been doing
24 these things; he didn't; we imposed the sanction. Then
25 the statute says we subtract it from his community

1 custody time. That's what the statute tells us to do.
2 I mean, you can't have it both ways. You can't
3 say, okay, it's tolling, which means he's not on
4 community custody, not doing what he's supposed to do
5 and therefore we're going to keep tacking it on, or,
6 you know, here, like I said, they imposed the
7 sanctions. The statute is really clear; you subtract
8 that off of the time and so you're not on community
9 custody. When we subtract that out, you'll see that
10 he's done. It backs it up. Even by their own
11 calculations he would have had only 27 days or
12 something like that.
13 THE COURT: You're saying that the penalty
14 imposed in June erases him being on community custody
15 April 6th.
16 MS. HIGH: Correct.
17 THE COURT: He's no longer on after this
18 penality. They used up all their time.
19 MS. HIGH: Right, they used up all their
20 time. He only had 27 days left. They imposed 165.
21 THE COURT: You said he had 27 days left.
22 Twenty-seven days of what left?
23 MS. HIGH: Well, if you even take the State's
24 own calculations of the community custody from all
25 those Chronos, from 2004 he basically served, I want to

1 say 334 days of it. Maybe it's best if I put something
2 up here because I want you to understand this, because
3 the State and the Court seem to think that if, say,
4 while you're supposedly on community custody, I'm just
5 going to say day one --
6 THE COURT: Can you turn that just a little
7 bit?
8 MS. HIGH: I sure can. Say you're given --
9 I'm going to make it really simple -- let's say 30 days
10 just because that's kind of simple, so you're given 30
11 days of community custody. Say day one through day
12 seven you're great; you report; you show up; you do
13 everything you're supposed to do.
14 THE COURT: Twenty-three left.
15 MS. HIGH: Twenty-three left. Okay. You
16 don't do anything for the next 23. You're AWOL. So
17 what they say --
18 THE COURT: Twenty-three left.
19 MS. HIGH: Right; you're AWOL. And they're
20 saying if you -- say you commit a crime here on day 29
21 from whatever this first day was, so what they're
22 saying is this tolls. They're saying your community
23 custody is tolled, your community custody; you're not
24 doing what you're supposed to do; it is tolled. What
25 does "toll" mean? Toll means you're not on community

1 custody. If you're on community custody, you would be
2 getting time for each and every one of these days.
3 You're not. Instead they say it's tolled.
4 So you can't say he's on community custody but
5 it's tolled because he's not doing what he's supposed
6 to do. So, I mean, either way; it's either they're
7 saying he wasn't doing what he's supposed to do and
8 therefore it tolled and that's why it kept dragging
9 along behind him, and I'd say no, if something is
10 tolled, that means you're not on community custody;
11 you're not doing what you need to do. Community
12 custody may pop up down the road, but while this event
13 is going on, if you want to call it tolled, it can't
14 mean that you're simultaneously on it and yet it's
15 being tolled. If it's tolled, you're not doing it.
16 But here as well what we have is the finding that
17 -- I think we can make a finding that the documents
18 provided by Department of Corrections is the State's
19 burden. None of them match up with anything. As you
20 can see, each time you get a document, it's
21 inconsistent with the document before. That doesn't
22 match the Chronos. The Chronos doesn't match LINX.
23 Their obligation is to prove it by a preponderance of
24 the evidence. We know that those documents are not
25 accurate, and I don't think you can make a finding that

1 he's on community custody.
2 I mean, one of the things that just seems to be
3 the block is a person is on community custody even if
4 the court is saying their time has -- you know, even if
5 you say the Chronos show, I think we're tolling it at
6 this time.
7 THE COURT: Well, when you toll, you aren't
8 really on it. You're supposed to be on it, but you
9 have absconded or failed to do something you're
10 required to, so you're not really on it although you're
11 supposed to be. That's why they add the additional
12 time. You don't get a benefit for not following
13 through.
14 MS. HIGH: Right.
15 THE COURT: I was going to ask Ms. Miller, as
16 the author of the most recent chart.
17 MR. GREER: Judge, can I quickly address
18 this?
19 THE COURT: You can, yes.
20 MR. GREER: And Ms. Miller is going to
21 address that. So you asked earlier if we agreed with
22 the defense, and we don't. The Chronos are something
23 different than what is the accurate calculation of the
24 defendant's community custody time period and the
25 tolling. The Findings of Fact that I submitted are the

1 accurate calculation, and that's based on that letter
2 that was sent to you long ago.
3 THE COURT: Ms. Wilson's.
4 MR. GREER: Correct. That's an accurate
5 letter. The Chrono bears that out. The Chrono is a
6 document which Ms. Miller will address, which takes
7 into account every argument, inaccurate argument, that
8 Ms. High makes. Just to illustrate that, even
9 accepting her inaccurate arguments, he still has time
10 left. But if you look at the simple, is what was
11 presented to the Court, this diagram or this sketch, it
12 is very simple. The defendant has a period of time
13 that he's supposed to be on community custody pursuant
14 to a criminal conviction. It starts at a specific
15 date.
16 When he is not in compliance with his conditions
17 of community custody, failing to report, et cetera,
18 time tolls, meaning it's not counted against that 365
19 days. Additionally, when he's in custody on non-DOC
20 matters, that also tolls the time period. That was all
21 calculated by the Department of Corrections person in
22 that letter.
23 This extra two days and things like that that
24 Ms. High is pointing out because he was released from
25 custody on X day and there's two extra days that aren't

1 accounted for, that's when he next reports, is two days
2 after he gets out of custody. So that takes into
3 account his failing -- and I'm sure the Court follows
4 this -- failing to appear as required for a CCO.
5 That's where the tolling starts.
6 While he's in that time period of not being in
7 compliance, he commits a crime. Then he's in custody.
8 Then DOC catches up with him because he's in custody,
9 and then when he's released from custody after serving
10 a sentence that the Court gives him on the Unlawful
11 Possession of a Firearm charge, two days after that
12 he's back in compliance because he shows up again at
13 his DOC office. So that's the entire period. That's
14 calculated, and it all matches up with the Chrono.
15 What Ms. Miller did was, again, take Ms. High's
16 inaccurate argument and say give her everything that
17 she says that's inaccurate and he's still on it.
18 That's what that is, misrepresented. Dealing with the
19 statute that she keeps arguing, that statute was not
20 the statute that was applicable to the defendant's
21 situation. I don't have the actual statute. I'm
22 confident, based on our past hearings, that everything
23 we've done and calculated is correct. But there's a
24 triggering event for application of statutes that come
25 into play during the time period where a person might

1 the 12th; he possessed it on the 6th. So they said:
2 You violated all this; guess what? We're going to give
3 you credit for time served and we're going to wipe out
4 the remainder of your time, but you are on community
5 custody, of course. Otherwise they wouldn't have the
6 power to do that. That makes no sense.
7 Nothing that Ms. High has presented to this court
8 has changed one single thing from the calculation that
9 the Court first made when it first made it, and that
10 was, I believe, in 2006. And I believe Ms. Miller has
11 something.
12 THE COURT: We have one of the exhibits that
13 we'll have available for the next review of this, is
14 Exhibit No. 3. This is kind of the grid. My
15 understanding is Ms. Miller is the author of this.
16 MS. MILLER: Yes, Your Honor.
17 THE COURT: Ms. Miller, I think, got involved
18 in this on Mr. Contreras-Rebollar's most recent PRP,
19 personal restraint petition, which was filed directly
20 in the Court of Appeals, as I understand it.
21 Maybe you can just run through this so we can make
22 a record of this for the next review, how this was
23 composed and go through your calculations.
24 MS. MILLER: So, Your Honor, originally the
25 State had provided the Court a letter in the motion and

1 the briefing that we filed in 2013. That was a letter
2 from the DOC records custodian who detailed the
3 defendant's time in community custody. Ms. High, when
4 we came back on Friday, there was some discrepancies in
5 the dates that were there and I was a little concerned,
6 obviously, because it said the defendant was released
7 on 1-10 and in the letter it says that he starts
8 community custody on -- or that he was released on
9 1-12. So when we looked at everything, we pulled the
10 Chronos, which is Exhibit 2, all the notes. And the
11 reason the letter states 1-12 is because that's the
12 date that the defendant reports to the community
13 custody officer.
14 So none of the dates are conflicting. It's just
15 that LINX releases him on 1-10; he reports to the
16 community custody officer on 1-12, and so the release
17 isn't -- the time periods, I guess that's the
18 discrepancy, in the time periods. It's not that
19 they're conflicting; it's just that they're noting two
20 different situations. So what I did was I went through
21 all the LINX dates and that Department of Corrections
22 Chronos.
23 THE COURT: I'm sorry to interrupt. We have
24 a printout from LINX. I think we were all looking at
25 it last Friday. Why don't we make that an exhibit? It

1 doing what he needed to do, and I think that that's one
2 of the things we need to --
3 THE COURT: My understanding is DOC offices
4 generally are not open Saturday and Sunday.
5 MS. HIGH: Correct. So it wasn't like
6 somehow you get dinged on all of these days when the
7 office is closed. I mean, clearly he was entitled to
8 those two days. We have a couple of NCFs here that the
9 State wants to toll, so you're the person that is
10 targeted by officers, arrested, taken in and NCF'd. I
11 believe those dates shouldn't toll it.
12 But the other point was, for Mr. Greer saying,
13 look, we've done everything right every time, well, we
14 know that the Court of Appeals hasn't agreed with that.
15 They've had questions about the community custody and
16 what proof is sufficient here. We have something
17 called "the rule of lenity." I think the State is
18 trying to say that there is one statute that says, you
19 know, if you're being held on other charges and you're
20 getting credit for that time served, you shouldn't also
21 get the benefit of the sanctions don't toll. The
22 statute is really clear: If you're getting sanctioned,
23 we subtract that from your community custody, and if
24 there's a rule of lenity --
25 THE COURT: The statute that you're referring

1 to, 9.94A.170, was enacted in 2011?
2 MS. HIGH: Right, with the retroactive
3 application.
4 THE COURT: It certainly would apply to
5 anyone on community custody whenever they were
6 convicted at the time the statute was enacted. Would
7 that statute apply to somebody who was not on community
8 custody?
9 MS. HIGH: It says "before."
10 THE COURT: Convictions.
11 MS. HIGH: Convictions before. 2006 would be
12 a conviction before.
13 THE COURT: Was Mr. Contreras-Rebollar on
14 community custody in 2011?
15 MS. HIGH: Well, it says "before." I mean,
16 I'm hoping he wasn't in 2011.
17 THE COURT: Yes, I got that. 2006 is before
18 2011. I have no hesitance in stating that.
19 MS. HIGH: I mean, I'm thinking that if the
20 State wants to argue you don't deduct those, those
21 sanctions, that runs afoul of what the statute says
22 here on how we deduct and how we calculate the
23 sanctions. And then my other point is, they're saying,
24 hey, well, you're not on community custody. She's
25 saying, well, you're not in compliance but you're not

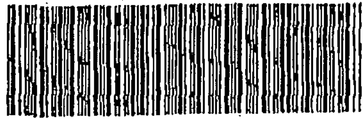
1 off; well, if it's tolled, you're not on community
2 custody.
3 I'm going to ask the Court to find that he was not
4 on community custody and we go forward with a
5 resentencing, which is what the Court requested that we
6 do with an offender score on Count I of III, which is
7 really the count that matters. It's the count that
8 really carries all of the -- I mean, carries probably
9 most of the weight in this because Count II is zeroed
10 out. So I'm going to ask that this Court find that he
11 was a three at the time and that we go forward with the
12 sentencing with him with an offender score of a three
13 and we go forward with the resentencing as required by
14 the Court of Appeals, which remanded for resentencing.
15 THE COURT: If he's on community custody,
16 what is his offender score?
17 MS. HIGH: Four.
18 THE COURT: Give me about five minutes
19 because I want to put my thoughts in order and try to
20 make some sense. I apparently have had great
21 difficulty doing that for the Court of Appeals. So
22 we're going to take like five minutes or so.
23 (Recess.)
24 THE COURT: Good morning. You can all be
25 seated again. We're back on the case of

1 Contreras-Rebollar.
2 I want to make a brief review of the things I had
3 looked at here. We have Exhibit 1, which I just want
4 to review the exhibits so we have a record of
5 everything I was reviewing. There are a number of
6 exhibits. Exhibit 1 is the two or so page section from
7 the Chronos. We have Exhibit 2, which is apparently
8 the tolled DOC history of Mr. Contreras-Rebollar;
9 someone said 40 some pages all together.
10 Exhibit 3 is the grid prepared by Ms. Miller,
11 which takes information from Exhibit 2 and Exhibit 5.
12 Exhibit 4 is the panel decision letter, which this is
13 the first time I've seen it, which is dated June 7,
14 2006. Exhibit 5 was, I believe, the letter from -- I'm
15 sorry; Exhibit 5 is what we were calling the LINX
16 printout, which has a picture of Contreras-Rebollar and
17 the various dates he was in the Pierce County Jail, so
18 that's a Pierce County record. We also had the letter
19 from Ms. Wilson from 2012, I guess it was.
20 So I reviewed the exhibits. I didn't see Exhibit
21 4 before today. I had the other exhibits either last
22 week or Exhibit 3 I got yesterday. When I came in, I
23 got Mr. Greer's findings and conclusions.
24 And it appears to me that Exhibit 3 is, in effect,
25 a construction that Ms. Miller did, and kind of in a

1 light most favorable to Mr. Contreras-Rebollar, it
2 comes out with numbers quite a bit less than the Wilson
3 letter. The Wilson letter, I think, said about 112
4 days was remaining. Ms. Miller said 27 or so is the
5 amount remaining in April of 2006, so it does reduce
6 the potential from being on community custody.
7 And, of course, he was a number of times not in
8 compliance, had sanctions imposed, including the one
9 from April 12th. And I looked again at 9.94A.171(3).
10 This is a statute that was enacted in 2011. It applies
11 to any conviction on any date, no question about that,
12 but I conclude it doesn't really have any application
13 in this case to Mr. Contreras-Rebollar.
14 He was not on community custody when the statute
15 went into effect. Community custody was terminated in
16 2006. That's kind of the effect of this letter. DOC
17 is saying he's no longer on community custody from the
18 2004 conviction after this letter June of 2006. They
19 imposed sanctions for his violations, including a
20 sanction for possessing a firearm they say 4-12.
21 That's probably a typo. It's probably 4-6, the date he
22 was charged here. But this appears for them to say he
23 was on confinement. In effect, they were closing out
24 that case, their community custody on it.
25 And, again, I reviewed Exhibit 3, which I think is

APPENDIX E

22445 3/4/2013 00163
Case Number: 06-1-01643-4 Date: May 2, 2016
SerialID: 0C9AE09A-58BA-4C0E-89CCE4E01B02053E
Certified By: Kevin Stock Pierce County Clerk, Washington



MAR 04 2013

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff,	CAUSE NO. 06-1-01643-4
vs.	
ADRIAN CONTRERAS REBOLLAR, Defendant.	WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody).

Office of Prosecuting Attorney
930 Tacoma Avenue S Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Case Number: 06-1-01643-4 Date: May 2, 2016
SerialID: 0C9AE09A-58BA-4C0E-89CCE4E01B02053E
Certified By: Kevin Stock Pierce County Clerk, Washington

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 3/1/13

By direction of the Honorable

JUDGE

KEVIN STOCK RONALD E. CULPEPPER

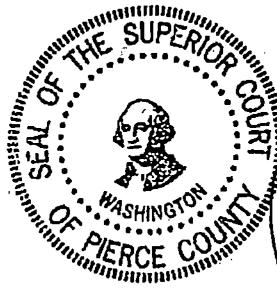
CLERK

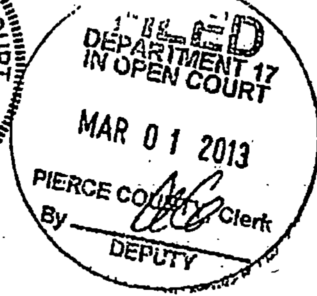
By. Magdalena [signature]

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

MAR 04 2013
Date By [signature] Deputy





STATE OF WASHINGTON
ss:
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this ______ day of ____________, ________.

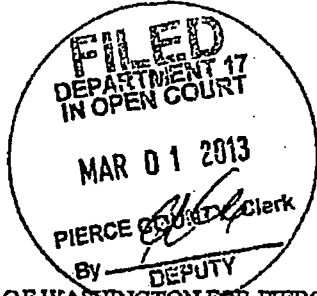
KEVIN STOCK, Clerk
By:____________________Deputy

d

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Case Number: 06-1-01643-4 Date: May 2, 2016
SerialID: 0C9AE09A-58BA-4C0E-89CCE4E01B02053E
Certified By: Kevin Stock Pierce County Clerk, Washington

06-1-01643-4



MAR 04 2013

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs

ADRIAN CONTRERAS REBOLLAR
Defendant.

SID. WA20977722
DOB: 03/11/1985

CAUSE NO. 06-1-01643-4

JUDGMENT AND SENTENCE (FJS)
[X] Prison
[ ] RCW 9.94A.712\9.94A.507 Prison Confinement
[ ] Jail One Year or Less
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[ ] Alternative to Confinement (ATC)
[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
[ ] Juvenile Decline [ ] Mandatory [ ] Discretionary

I. HEARING

1.1 A sentencing hearing was held 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 February 1st, 2007 by [ ] plea [XX] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
III	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)	9.41.010(12) 9.41.040(2)(a)(i)	NONE	04/12/06	061200028

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

[X] A special verdict/finding for use of firearm was returned on Count(s) I, II RCW 9.94A.602, 9.94A.533.
[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPIMCSWID	03/11/03		02/05/03	J	NV
2	ASLT 3	07/15/04	PIERCE, WA	04/15/04	A	NV
3	UPOF 2	08/29/05	PIERCE, WA	07/21/05	A	NV
4	ASLT 1	CURRENT	PIERCE, WA	04/12/06	A	V
5	UPOF 2	CURRENT	PIERCE, WA	04/12/06	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525).

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	3.5	XII	129-171 MONTHS	60 MONTHS	189-231 MONTHS	LIFE
II	0	XII	93-123 MONTHS	60 MONTHS	153-183 MONTHS	LIFE
III	4.5	III	17-22 MONTHS	NONE	17-22 MONTHS	5YRS

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) ________.

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[ ] 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):

____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

____

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

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 [ ] The court DISMISSES Counts __________ [ ] The defendant is found NOT GUILTY of Counts

____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE		
RTN/RJN	$ LOC	Restitution to: __________
	$ ______	Restitution to: __________
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	$ 500.00	Crime Victim assessment
DNA	$ 100.00	DNA Database Fee
PUB	$ 1500.00	Court-Appointed Attorney Fees and Defense Costs
FRC	$ 200.00	Criminal Filing Fee
FCM	$ ______	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$______ Other Costs for: __________

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$________ Other Costs for: ______________________________

$ 2300.00 TOTAL

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

[X] shall be set by the prosecutor.

[ ] is scheduled for ______________________________.

[ ] RESTITUTION. Order Attached

[ ] 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).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $________ per month commencing ________. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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)

[ ] COSTS OF INCARCERATION In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse ________ (name of electronic monitoring agency) at ________, for the cost of pretrial electronic monitoring in the amount of $________.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with [illegible] Anna Keller (8-30-87) (Keller) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

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4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law

4.4a [ ] All property is hereby forfeited

[ ] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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):

150 months on Count I ______ months on Count ______

110 months on Count II ______ months on Count ______

20 months on Count III ______ months on Count ______

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I ______ months on Count No ______

60 months on Count No II ______ months on Count No ______

______ months on Count No ______ ______ months on Count No ______

Sentence enhancements in Counts I & II shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts II & I shall be served
[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 380 Months Total

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(Add mandatory firearm, deadly weapons, and sexual motivation 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 ____________

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: ____________

Confinement shall commence immediately unless otherwise set forth here: ____________

(c) 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: ~~[illegible]~~ 2514

4.6 [ ] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count ________ for ______ months;

Count ________ for ______ months;

Count ________ for ______ months;

[X] **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 & II ~~36~~ months for Serious Violent Offenses (~~24-48~~ 36 months)

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)

Count III — Ø

(B) 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) 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 in 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, (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit

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to electronic monitoring if imposed by DOC. The defendant's 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.

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

[X] consume no alcohol

[X] have no contact with: See Paragraph 4.3

[X] remain [X] within [ ] outside of a specified geographical boundary, to wit: per CCO

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

[X] participate in the following crime-related treatment or counseling services: per CCO

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

[X] comply with the following crime-related prohibitions: See Appendix F

[ ] Other conditions:

[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense.

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:

Office of Prosecuting Attorney
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Tacoma, Washington 98402-2171
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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. 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 may be taken without further notice. 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): X ________.

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. 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 court clerk 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 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [ ] 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.

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5.9 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.

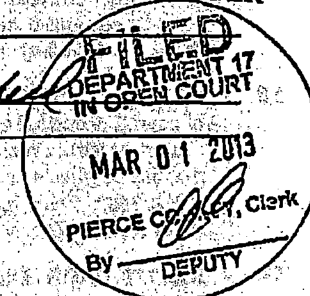
5.10 OTHER: ______

DONE in Open Court and in the presence of the defendant this date: 3/1/13

JUDGE
Print name RONALD E. CULPEPPER

Deputy Prosecuting Attorney
Print name: R. Olek
WSB # 32181

Attorney for Defendant
Print name: [illegible]
WSB # 7896



Defendant
Print name: Defendant declines to sign copy will be given to Δ by KRU

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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: Δ declines to sign. copy will be given to Δ by KRU

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

22445 3/4/2013 00174
Case Number: 06-1-01643-4 Date: November 25, 2013
SerialID: 90321957-F20F-6452-DF7E5E3518364E8A
Certified By: Kevin Stock Pierce County Clerk, Washington

1
2
CERTIFICATE OF CLERK
3
CAUSE NUMBER of this case: 06-1-01643-4
4
I, KEVIN STOCK 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.
5
6
WITNESS my hand and seal of the said Superior Court affixed this date: ________________.
7
Clerk of said County and State, by: ________________________, Deputy Clerk
8
9
IDENTIFICATION OF COURT REPORTER
10
Paula Johnson
11
Court Reporter
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Office of Prosecuting Attorney
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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- _____ sex offense
- __✓__ serious violent offense
- _____ assault in the second degree
- _____ any crime where the defendant or an accomplice was armed with a deadly weapon
- _____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

__X__ (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO

__✓__ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: See paragraph 4.3

__X__ (III) The offender shall participate in crime-related treatment or counseling services;

__X__ (IV) The offender shall not consume alcohol; [illegible] [illegible]

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

__X__ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other: _______________

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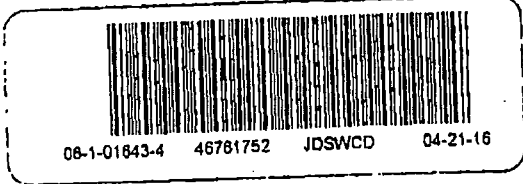
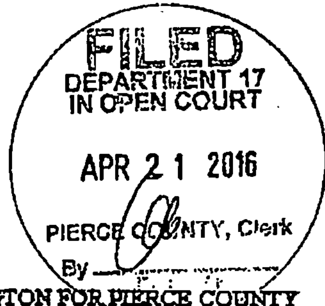
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS REBOLLAR, Defendant.	CAUSE NO: 06-1-01643-4 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody).

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[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

April 21, 2016

Dated: ~~4-14-16~~

By direction of the Honorable

JUDGE
RONALD E. CULPEPPER

KEVIN STOCK
CLERK

By: ______
DEPUTY CLERK

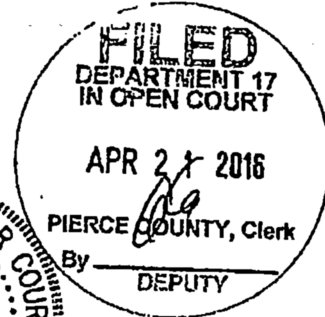
CERTIFIED COPY DELIVERED TO SHERIFF
APR 2 1 2016 By ______ Deputy

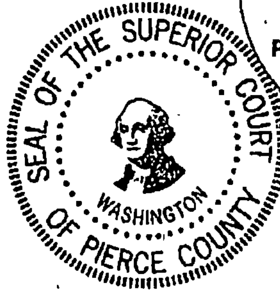
STATE OF WASHINGTON
ss:
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this ______ day of ______, ______.

KEVIN STOCK, Clerk
By: ______ Deputy

ajm





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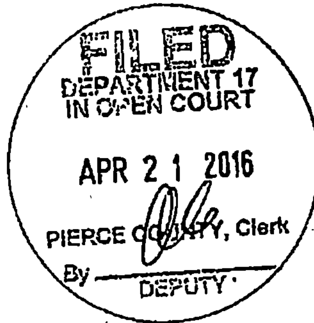

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ADRIAN CONTRERAS REBOLLAR

Defendant.

SID: WA20977722
DOB: 03/11/1985

CAUSE NO. 06-1-01643-4

JUDGMENT AND SENTENCE (FJS)
[X] Prison
[ ] RCW 9.94A.712/9.94A.507 Prison Confinement
[ ] Jail One Year or Less
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[ ] Alternative to Confinement (ATC)
[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
[ ]Juvenile Decline [ ]Mandatory [ ]Discretionary

I. HEARING

1.1 A sentencing hearing was held 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 2-1-07
by [ ] plea [XX] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028

079-02173-7

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
III	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)	9.41.010(12) 9.41.040(2)(a)(i)	NONE	04/12/06	061200028

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

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

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPIMCSWID	03/11/03		02/05/03	J	NV
2	ASLT 3	07/15/04	PIERCE, WA	04/15/04	A	NV
3	UPOF 2	08/29/05	PIERCE, WA	07/21/05	A	NV
4	ASLT 1	CURRENT	PIERCE, WA	04/12/06	A	V
5	UPOF 2	CURRENT	PIERCE, WA	04/12/06	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

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	3.5	XII	129-171 MONTHS	60 MONTHS	189-231 MONTHS	LIFE
II	0	XII	93-123 MONTHS	60 MONTHS	153-183 MONTHS	LIFE
III	4.5	III	17-22 MONTHS	NONE	17-22 MONTHS	5YRS

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) ____________.

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[ ] 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):

____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

____

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

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts __________ [ ] The defendant is found NOT GUILTY of Counts

____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE		
RTN/RJN	$ *	Restitution to: * order setting restitution + disbursement filed on 7-28-09 is incorporated with this J&S
	$	Restitution to:
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	$ 500.00	Crime Victim assessment
DNA	$ 100.00	DNA Database Fee
PUB	$ 1,500	Court-Appointed Attorney Fees and Defense Costs
FRC	$ 200.00	Criminal Filing Fee
FCM	$	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$__________ Other Costs for: ______________________________

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$________ Other Costs for:________________________

$ 800 TOTAL

[ ] The above total does not include all restitution 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.

[ ] is scheduled for________________________

[X] RESTITUTION. ~~Order Attached~~ The order setting restitution + disbursement filed on July 28, 2009 is hereby incorporated with this J+S.

[ ] 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).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $____________ per month commencing . ____________. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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)

[ ] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse ____________ (name of electronic monitoring agency) at ________________________, for the cost of pretrial electronic monitoring in the amount of $____________.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with Ahcin Kelly (8-30-87) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life ~~years~~ (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

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4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4a [ ] All property is hereby forfeited

[ ] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

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):

150 months on Count I ______ months on Count ______
110 months on Count II ______ months on Count ______
20 months on Count III ______ months on Count ______

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I ______ months on Count No ______
60 months on Count No II ______ months on Count No ______
______ months on Count No ______ ______ months on Count No ______

Sentence enhancements in Counts I + II shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts _ shall be served
[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 380 months total

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(Add mandatory firearm, deadly weapons, and sexual motivation 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 ___________.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: ____________________

Confinement shall commence immediately unless otherwise set forth here: ____________________

(c) 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: 3,663 days.

4.6 [ ] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count __________ for ________ months;

Count __________ for ________ months;

Count __________ for ________ months;

[X] **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 + II 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 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) 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 in 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; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit

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to electronic monitoring if imposed by DOC. The defendant's 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.

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

[X] ~~consume no alcohol.~~

[X] have no contact with: See paragraph 4.3

[X] remain [X] within [ ] outside of a specified geographical boundary, to wit: per CCO

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

[X] participate in the following crime-related treatment or counseling services: per CCO

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

[X] comply with the following crime-related prohibitions: See Appendix F

[ ] Other conditions:
CCO to determine appropriate alcohol/drug restrictions, if any deemed necessary

[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

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: ____________

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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. 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 may be taken without further notice. 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 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. 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 court clerk 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 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [ ] 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.

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5.9 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.

5.10 OTHER: ______________________

DONE in Open Court and in the presence of the defendant this date: April 21, 2016

JUDGE ______________________
Print name RONALD E. CULPEPPER

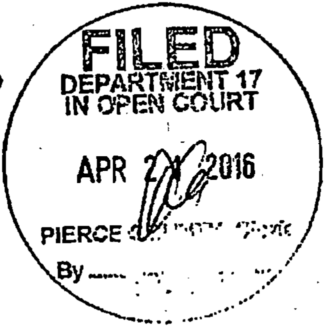
____
Deputy Prosecuting Attorney
Print name: GREG GREER
WSB # 22936

____
Attorney for Defendant
Print name: MARY K. High
WSB # ~~Adrian Contreras Reboller~~ 20123

____
Defendant
Print name: Adrian Contreras Reboller

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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: declined - but Rc'd copy



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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-01643-4

I, KEVIN STOCK 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 said County and State, by: ______________________, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Karla Johnson
Court Reporter

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

____ sex offense
_X_ serious violent offense
____ assault in the second degree
____ any crime where the defendant or an accomplice was armed with a deadly weapon
____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

_X_ (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO.

_X_ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: See paragraph 4.3

_X_ (III) The offender shall participate in crime-related treatment or counseling services;

[illegible] (IV) The offender shall not consume alcohol; [illegible] Per CCO

____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

_X_ (VI) The offender shall comply with any crime-related prohibitions.

____ (VII) Other: ____

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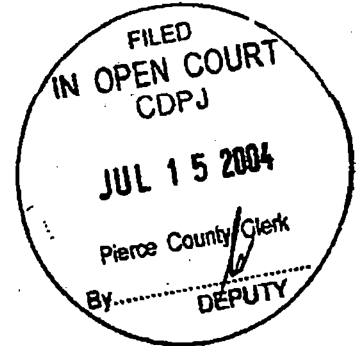

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ADRIAN CONTRERAS

Defendant.

SID: 20977722
DOB: 03/11/1985

CAUSE NO. 04-1-01908-9

JUDGMENT AND SENTENCE (JS)
[ ] Prison
[X] Jail One Year or Less
[ ] First-Time Offender
[ ] SSOSA
[ ] DOSA
[ ] Breaking The Cycle (BTC)

JUL 1 5 2004

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present. SMSA

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 7/15/04
by [X] plea [ ] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE THIRD DEGREE (E32)	9A.36.031(1)(a) 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530		04/15/04	041060722

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

[X] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I. RCW 9.94A.602, .510.

04-9-08412-2

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[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	Unl Poss Imit CSWID	03/11/03	Pierce Co.	02/05/03	Juv	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

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	III	1-3 mos	6 mos DWSE	7-9 mos	5 yrs

2.4 [ ] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) ________. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

____

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.

3.2 [ ] The court DISMISSES Counts ___________ [ ] The defendant is found NOT GUILTY of Counts

____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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04-1-01908-9

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE		
RTN/RJN	$ 3.02	Restitution to: Mega Foods at 7911 S. Hosmer ST Tacoma, WA
	$ ______	Restitution to: ______
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	$ 500.00	Crime Victim assessment
DNA	$ 100.00	DNA Database Fee
PUB	$ 100.00	Court-Appointed Attorney Fees and Defense Costs
FRC	$ 110.00	Criminal Filing Fee
FCM	$ ______	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$ ______ Other Costs for: ______

$ ______ Other Costs for: ______

$ 813.02 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $ PR/DOC per month commencing. upon release. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 **RESTITUTION**

[ ] The above total does not include all restitution 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.

[ ] is scheduled for ______.

[ ] defendant waives any right to be present at any restitution hearing (defendant's initials): ______

[X] RESTITUTION. ~~Order Attached~~ As set above

4.3 **COSTS OF INCARCERATION**

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 **COLLECTION COSTS**

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 **INTEREST**

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

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

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4.7 [ ] **HIV TESTING**

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] **DNA TESTING**

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 **NO CONTACT**

The defendant shall not have contact with ____________________ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for ________ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 **OTHER:**

No direct / indirect contact w/ victim / victim business

Forfeit weapon now in property Room

4.11 **BOND IS HEREBY EXONERATED**

4.12 **JAIL ONE YEAR OR LESS.** 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 county jail:

3 days/(months) on Count I ________ days/months on Count ________

________ days/months on Count ________ ________ days/months on Count ________

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

6 months on Count No I ________ months on Count No ________

________ months on Count No ________ ________ months on Count No ________

________ months on Count No ________ ________ months on Count No ________

Sentence enhancements in Counts I shall run

[ ] concurrent [X] consecutive to each other.

Sentence enhancements in Counts I shall be served

[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 9 months

[X] **CONSECUTIVE/CONCURRENT SENTENCES:** RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

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The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commision of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [ ] the sentence herein shall run consecutively to the felony sentence in cause number(s) ______

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: ______

Confinement shall commence immediately unless otherwise set forth here: ______

[ ] **PARTIAL CONFINEMENT.** Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: ______

[ ] Work Crew RCW 9.94A.135 [ ] Home Detention RCW 9.94A.180, .190

[ ] Work Release RCW 9.94A.180 [ ] BTC Facility

[ ] **CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses).** RCW 9.94A.380(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[ ] **ALTERNATIVE CONVERSION.** RCW 9.94A.680. ______ days of total confinement ordered above are hereby converted to ______ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than ______ hours per month.

[ ] **Alternatives to total confinement were not used because of:** ______

[ ] criminal history [ ] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) 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: 91 days

4.13 **COMMUNITY [ ] SUPERVISION [X] CUSTODY.** RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in [ ] community supervision (Offense Pre 7/1/00) or [X] community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

[ ] remain in prescribed geographic boundaries specified by the community corrections officer

[ ] notify the community corrections officer of any change in defendant's address or employment

[ ] Cooperate with and sucessfully complete the program known as Breaking The Cycle (BTC)

Other conditions: ______

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04-1-01908-9

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

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

4.14 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.

5.3 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 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 may be taken without further notice. RCW 9.94A.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 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 court clerk 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 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

5.7 OTHER: ______

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04-1-01908-9

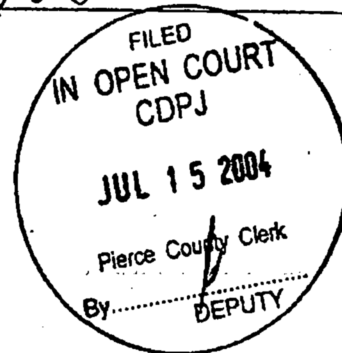
DONE in Open Court and in the presence of the defendant this date: 7/15/04

JUDGE
Print name

S. Smith-Ahrens
Deputy Prosecuting Attorney
Print name:
WSB # 32184

Attorney for Defendant
Print name:
WSB # 6510

Adan Contreras
Defendant
Print name:



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04-1-01908-9

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-01908-9

I, KEVIN STOCK 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 said County and State, by: ______________________________________, Deputy Clerk

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX F

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

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IN RE THE PERSONAL RESTRAINT PETITION OF: ADRIAN CONTRERAS-REBOLLAR, Petitioner.	NO. 48336-0 STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

14
15

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

16 1. Must the petition be dismissed where State agrees that petitioner's 2013
17 judgment and sentence was entered without jurisdiction and has corrected the issue,
18 thus resolving the issue in petitioner's first claim?
19 2. Must the petition be dismissed where petitioner's second and third claims
20 are moot in light of the resentencing and entry of the new judgment and sentence?

21 B. STATUS OF PETITIONER:

22 Petitioner, ADRIAN CONTRERAS-REBOLLAR, is restrained pursuant to a
23 Judgment and Sentence entered in Pierce County Cause No. 06-1-01643-4. Appendix A
24 (Judgment and Sentence dated March 1, 2013). Petitioner was convicted by a jury of two
25 counts of assault in the first degree and one count of unlawful possession of a firearm in

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1 evidence produced during that hearing and thus, reviewing the evidence presented during
2 the 2013 hearing is frivolous. Petitioner may challenge his offender score in a direct
3 appeal or collateral attack of the 2016 judgment and sentence. This Court should decline to
4 review the issue regarding petitioner's offender score in the 2013 judgment and sentence as
5 it is moot and frivolous in light of the new determination in 2016.

6 Petitioner's third claimed ground for relief alleges that the trial court erroneously
7 believed it had no discretion to impose concurrent terms of confinement in any of the
8 sentencing of petitioner through 2015. Personal restraint petition at 18-19. Again, as
9 discussed above, any challenge regarding the court's awareness of its discretion to run
10 sentences concurrent is moot in light of the resentencing and entry of the new judgment
11 and sentence on April 21, 2016. In addition, even if the Court were to consider petitioner's
12 claim, he provides no evidence to support or explain how the court failed to recognize its
13 discretion during the previous resentencing hearings. This Court should decline to review
14 this issue as it is unsupported, frivolous and moot.

15

16 D. CONCLUSIONS:

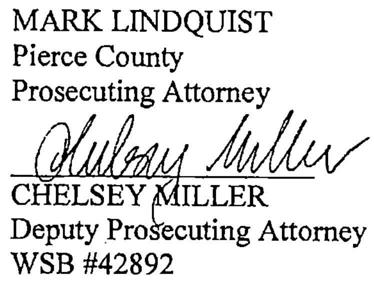
17 For the foregoing reasons, the State respectfully requests this Court dismiss this
18 personal restraint petition.

19 DATED: May 2, 2015.

20

MARK LINDQUIST
Pierce County
Prosecuting Attorney

21



22 CHELSEY MILLER
Deputy Prosecuting Attorney
23 WSB #42892

24

25

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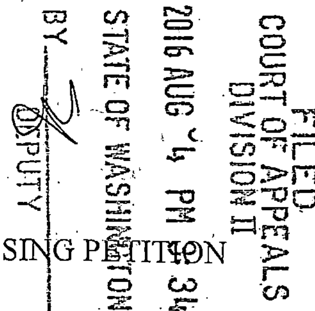
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of ADRIAN CONTRERAS-REBOLLAR, Petitioner.	No. 48336-0-II ORDER DISMISSING PETITION



Adrian Contreras-Rebollar seeks relief from personal restraint imposed following his 2013 resentencing for convictions of two counts of first degree assault and one count of second degree unlawful possession of a firearm. He argues: (1) the trial court lacked jurisdiction to enter the March 1, 2013 judgment and sentence; (2) the State failed to present sufficient evidence of his community custody status at the times of his crimes; and (3) the trial court failed to recognize that it had the discretion to impose concurrent sentences instead of consecutive sentences.

On June 26, 2012, in consolidated cause numbers 40962-3-II and 41672-7-II, we (1) remanded Contreras-Rebollar's judgment and sentence for resentencing to consider his community custody status at the time of the alleged offense, (2) denied his personal restraint petition, and (3) denied his supplemental personal restraint petition. The trial court resentenced Contreras-Rebollar on March 1, 2013 and entered a new judgment and sentence. But it did so before this court had issued its mandate of the appeal. Contreras-Rebollar had filed a petition for review with the Washington State Supreme Court. The Supreme Court granted his petition in part and remanded to us for consideration of

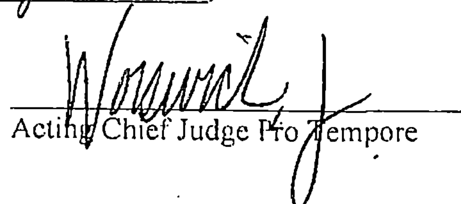
Contreras-Rebollar's supplemental petition. We did so on August 5, 2014, denying the petition, and finally issued the mandate on January 9, 2015.

After Contreras-Rebollar filed his petition, the State recognized that because the mandate had not been issued before the resentencing on March 1, 2013, the trial court lacked jurisdiction to enter the March 1, 2013 judgment and sentence. RAP 7.2. The State scheduled another resentencing hearing for April 21, 2016. During that hearing, the parties addressed Contreras-Rebollar's community custody status and whether the sentences should be concurrent or consecutive. On April 21, 2016, the trial court entered another judgment and sentence, imposing the same sentence it had imposed before.

By being resentenced on April 21, 2016, Contreras-Rebollar has received the relief he sought in his first argument. And because his second and third arguments challenge the March 1, 2013 judgment and sentence, which has been superseded by the April 21, 2016 judgment and sentence, those arguments are moot, although he may raise them in a new petition challenging the April 21, 2016 judgment and sentence. Accordingly, it is hereby

ORDERED that Contreras-Rebollar's petition is dismissed under RAP 16.11(b).

DATED this 4th day of August, 2016.



Acting Chief Judge Pro Tempore

Cc: Adrian Contreras-Rebollar
Chelsey Miller
Pierce County Clerk
County Cause No. 06-1-01643-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN THE MATTER OF THE PERSONAL RESTRAINT OF: ADRIAN CONTRERAS-REBOLLAR, Petitioner.	No. 48336-0-II RULING ON COST BILL

FILED
COURT OF APPEALS
DIVISION II
2016 NOV -7 PM 12: 36
STATE OF WASHINGTON
BY ______
DEPUTY

In its August 4, 2016 Order Dismissing Petition, this court dismissed Adrian Contreras-Rebollar's personal restraint petition that sought relief from his convictions for two counts of first degree assault and one count of second degree unlawful possession of a firearm. The Respondent State of Washington seeks an award of costs as the prevailing party. RAP 14.2; RCW 10.73.160(2). It requests $494 in costs. RAP 14.3(a). Contreras-Rebollar objects on grounds of indigency and challenges the $2.00 requested per page.

Under RCW 10.73.160(1), this court may order an unsuccessful petitioner to pay appellate costs. The State, as the prevailing party, is entitled to its costs. RAP 14.2. Unless the order dismissing the opinion states that costs are not to be awarded, this court must grant the State its costs. *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000). Under *State v. Sinclair*, 192 Wn. App. 380, 386, 367 P.3d

612, *review denied*, 185 Wn.2d 1034 (2016), unless the appellate court directs in its decision terminating review that appellate costs are not to be awarded, a commissioner has no discretion to not award costs. *Sinclair*, 192 Wn. App. at 386. And as to the charge per page, Washington State Supreme Court Order 25700-B-367 sets the amount per page in cost bills under RAP 14.3(b) as $2.00 per page. Accordingly, it is hereby

ORDERED that Contreras-Rebollar is ordered to pay costs of $494 to the Pierce County Prosecuting Attorney's Office and that award will be added to his judgment and sentence under RCW 10.73.160(3).

DATED this 7th day of November, 2016.

Eric B. Schmidt
Court Commissioner

cc: Adrian Contreras-Rebollar, Pro Se
Chelsey L. Miller

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

vs.

ADRIAN CONTRERAS REBOLLAR

Defendant

No 06-1-01643-4

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Judge/Room
MOTION-APPELLATE COSTS	Friday, Jan 6, 2017 8:30 AM	CDPJ 260

2. [redacted]

3. ☐ DAC; Defendant will be represented by Department of Assigned Counsel.
   ☐ Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 12/28/16

Copy Received:

Ordered By:

SEE ORIGINAL
ADRIAN CONTRERAS REBOLLAR, Defendant

SEE ORIGINAL
JUDGE/COMMISSIONER

SEE ORIGINAL
Attorney for Defendant/Bar #

SEE ORIGINAL
PATRICK COOPER
Prosecuting Attorney/Bar #15190

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6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS REBOLLAR, Defendant.	CAUSE NO. 06-1-01643-4 NOTICE OF MOTION TO ADD APPELLATE COSTS

TO: ADRIAN CONTRERAS REBOLLAR, WASHINGTON CORRECTION CENTER, PO BOX 900, SHELTON, WA 98584

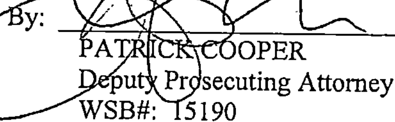
AND TO: DEPARTMENT OF ASSIGNED COUNSEL, Attorney for Defendant, 949 MARKE ST, TACOMA, WA 98402

YOU ARE HEREBY GIVEN NOTICE that a Motion for Order Adding Appellate Costs has been set before Criminal Presiding Judge Room #260, of the above-entitled court on Friday, the 6th day of January, 2017, at the hour of 08:30 a.m for MOTION TO ADD APPELLATE COSTS.

Pursuant to CrR8.4 under CR5(b)(1), the defense attorney shall notify his client accordingly.

DATED this 28 day of December, 2016.

MARK LINDQUIST
Pierce County Prosecuting Attorney

By:  14720

PATRICK COOPER
Deputy Prosecuting Attorney
WSB#: 15190

Certificate of Service:
The undersigned certifies that on this day he/she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the defendant c/o his/her attorney or to the attorney of record for the defendant c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12-28-16 ______
Date Signature

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of: ADRIAN CONTRERAS-REBOLLAR, Petitioner.	No. 48336-0-II ORDER GRANTING MOTION TO MODIFY AND WAIVING APPELLATE COSTS

Petitioner filed a motion to modify the commissioner's decision of November 7, 2016. After review, it is hereby

ORDERED that the motion to modify the commissioner's decision of November 7, 2016 is granted; it is further

ORDERED that appellate costs are hereby waived.

IT IS SO ORDERED.

DATED this 9th day of December, 2016.

Bjorgen, C.J.
CHIEF JUDGE

FILED
COURT OF APPEALS
DIVISION II
2016 DEC -9 PM 1:04
STATE OF WASHINGTON
BY ____
DEPUTY

FILED
COURT OF APPEALS
DIVISION II
2018 SEP -4 AM 8:26
STATE OF WASHINGTON
BY ______ DEPUTY

NO. 48923-6

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 2

ADRIAN CONTRERAS-REBOLLAR,
Appellant,

v.

STATE OF WASHINGTON,
Respondent,

DECLARATION OF MAILING

I, Contreras-Rebollar, hereby declare:

1. I am over the age of eighteen years and I am competent to testify herein.

2. On the below date, I caused to be placed in the U.S. Mail, first class postage prepaid, 1 envelope(s) addressed to the below-listed individual(s):

Court of Appeals, Div. 2
Clerk
950 Broadway, Suite 300
Tacoma, WA. 98402- 4454

_______________________ _______________________

_______________________ _______________________

_______________________ _______________________

_______________________ _______________________

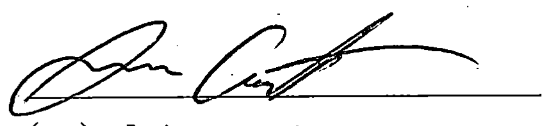
3. I am a prisoner confined in the State of Washington Department of Corrections ("DOC"), housed at the Monroe Correctional Complex ("MCC"), P.O. Box 888, Monroe, WA 98272, where I mailed the said envelope(s) in accordance with DOC and MCC Policy 450.100 and 590.500. The said mailing was witnessed by one or more correctional staff. The envelope contained a true and correct copy of the below-listed documents:

1. PETITION FOR DISCRETIONARY REVIEW
2. ______________________
3. ______________________
4. ______________________
5. ______________________
6. ______________________

4. I invoke the "Mail Box Rule" set forth in GR-3.1—the above listed documents are considered filed on the date that I deposited them into DOC's legal mail system.

5. I hereby declare under pain and penalty of perjury, under the laws of State of Washington, that the foregoing declaration is true and accurate to the best of my ability.

DATED this 30 day of August, 2018.



(Print) Adrian Contreras-Rebollar, *Pro se.*
DOC# 819639, Unit D
Monroe Correctional Complex
(Street address)
P.O. Box 888
Monroe, WA 98272

FILED
COURT OF APPEALS
DIVISION II
2018 SEP -4 AM 8:26
STATE OF WASHINGTON
BY
DEPUTY

STATEMENT OF FINANCES

I, Contreras-Rebollar, certify that I cannot afford to pay the $250 filing fee normally required to file a personal restraint petition.

1. I request that the filing fee be waived and that I be allowed to file a personal restraint petition without prepayment of the filing fee.
2. My request in this matter is brought in good faith.
3. I am _____ am not X employed. My salary or wages amount to $ 0 per month. My employer is (Name and address):

   ____
4. I do ___ do not X have any checking or savings accounts in any financial institutions. The total amount of funds I have in any such accounts of any type is $__________________.
5. In the past 12 months, I did ___ did not X receive any interest, dividends, rental payments, or other money. The total amount of such money I received was $____________. The total amount of cash I have other than otherwise indicated above is $__________________.
6. I own or have an interest in the following real estate, stocks, bonds, notes, and other property (list any property of a present value of more than $50, its current value and the amount, if any, currently owed against said property).

Item	Value	Amount Owed
0		
0		
0		
0		

7. I am ___ am not X married. My spouse is ___ is not ___ employed. His or her salary or wages amount to $____________ per month. He or she owns the following property not already described above:

____

____

8. These following persons depend upon me for support (list name, relationship to you, and address for each person):

N/A

9. I owe the following bills (list name and address of creditors and any amount currently owed):

LFOs Debts

[IF APPLICABLE – Petitioner incarcerated in a correctional facility – COMPLETE #10]

10. I have a spendable balance of $ 0 in my prison institutional account as of the date of this financial statement.

I declare under the penalty of perjury (pursuant to the laws of the State of Washington) that I have read this financial statement, know its contents, and I believe all of the information and statements contained herein to be true.

Dated this 30 day of August, 2018.

PETITIONER