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STATE OF WASH  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

In re Personal Restraint Petition of

GARTH D. SNIVLEY,

Petitioner.

NO. ~~61983-71~~ 59975-5

RESPONSE TO PERSONAL  
RESTRAINT PETITION

**I. IDENTITY OF RESPONDENT**

The State of Washington, as represented by the Snohomish County Prosecutor, submits this response to the petition, insofar as it challenges the petitioner's convictions under Snohomish County cause no. 93-1-01790-6 and 93-1-01420-6.

The petition also challenges the petitioner's commitment as a sexually violent predator under Snohomish County cause no. 03-2-07258-1. In that proceeding, the State is represented by the Attorney General. Since the Prosecutor has no authority to represent the State in that matter, this response does not address the propriety of any restraint under that proceeding.

## **II. AUTHORITY FOR RESTRAINT OF PETITIONER**

The petitioner was convicted of two counts of second degree child molestation under Snohomish County cause no. 93-1-01420-6. Ex. 5. He was convicted of indecent liberties under cause no. 93-1-01790-6. Ex. 12. He has completed serving his sentences for these crimes.

## **III. DOCUMENTS RELEVANT TO PETITION**

The following documents are incorporated into this response:

a. Under Snohomish County cause no. 93-1-01420-6:

- i. Exhibit 1 – Information (filed 10/8/1993).
- ii. Exhibit 2 – Affidavit of Probable Cause (filed 10/8/1993).
- iii. Exhibit 3 – Statement of Defendant on Plea of Guilty (filed 10/25/1993).
- iv. Exhibit 4 – Transcript of Proceedings of 10/25/1993.
- v. Exhibit 5 -- Judgment and Sentence (filed 1/27/1994).
- vi. Exhibit 6 – State's Response to Motion to Transfer Judgment (filed

12/4/2000).

vii. Exhibit 7 – Order Transferring Motion for Relief from Judgment (filed 12/7/2000).

viii. Exhibit 8 – Certificate of Finality (filed 7/1/2002).

b. Under Snohomish County cause no. 93-1-01790-6:

- i. Exhibit 9 – Information (filed 12/20/1993).
- ii. Exhibit 10 – Affidavit of Probable Cause (filed 12/20/1993).
- iii. Exhibit 11 – Statement of Defendant on Plea of Guilty (filed 12/21/1993).
- iv. Exhibit 12 – Judgment and Sentence (filed 1/27/1994).

**IV. RESPONSE TO PETITIONER'S FACTUAL ALLEGATIONS**

The State responds to the allegations in the Declaration of Garth D. Snivley in Support of Personal Restraint Petition as follows:

1. Admitted, except that the appeal under Court of Appeals cause no. 58574-6-I has concluded since the date of the petitioner's declaration.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Insofar as the petitioner alleges that his lawyer failed to give him certain information, the respondent has no information or belief concerning the content of attorney-client communications. The respondent therefore denies such allegations.

The remaining allegations in this paragraph are admitted.

9. Denied.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Insofar as the petitioner alleges that his lawyer failed to give him certain information, the respondent has no information or belief concerning the content of

attorney-client communications. The respondent therefore denies such allegations.

The remaining allegations in this paragraph are admitted.

15. Denied.

**V. RESPONSE TO LEGAL ALLEGATIONS**

The State's response to the petitioner's legal allegations is set out in the accompanying Brief in Opposition to Personal Restraint Petition.

**VI. CONCLUSION**

The personal restraint petition should be denied.

Respectfully submitted on December 19<sup>th</sup>, 2008.

FOR JANICE ELLIS  
Snohomish County Prosecutor

  
\_\_\_\_\_  
SETH A. FINE, WSBA # 10937  
Deputy Prosecuting Attorney  
Attorney for Respondent

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
)  
SNIVELY, Garth David )  
DOB: 11/3/49 )  
)  
Defendant(s). )

No. 93-1-01420-6  
INFORMATION

FILED  
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KAY D. ANDERSON  
COUNTY CLERK  
SNOHOMISH CO. WASH.

**CERTIFIED  
COPY**

Comes now Seth R. Dawson, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, charges and accuses the above-named defendant(s) with the following crime(s) committed in Snohomish County, Washington:

COUNT I. CHILD MOLESTATION IN THE FIRST DEGREE, committed as follows: That the defendant, on or about the 1st day of July, 1990 through the 30th day of May, 1993, but an occasion separate and distinct from that charged in Count II, did have sexual contact with Michael Gollihar, who was less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; proscribed by RCW 9A.44.083, a felony.

COUNT II. CHILD MOLESTATION IN THE FIRST DEGREE, committed as follows: That the defendant, on or about the 1st day of July, 1990 through the 30th day of May, 1993, but an occasion separate and distinct from that charged in Count I, did have sexual contact with Jerry Brogan, Matthew Cory, Thaddeus Harrison and Adam Rybacki, who were less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victims; proscribed by RCW 9A.44.083, a felony.

SETH R. DAWSON  
PROSECUTING ATTORNEY  
  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

Information - Page 1 of 2  
State v. Garth David Snively  
PA# 9301643

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STATE'S WITNESSES:

Michael Gollihar  
Jerry Brogan  
Matthew Cory  
Rebecca Capshaw  
Lisa Cory  
Matthew Cory, Sr.  
16513 Jim Creek Road  
Arlington, WA 98223

Carol DeMonbrun  
Corey DeMonbrun  
1304 Bruskrud Road, #5110  
Everett, WA 98208

Dr. Carol Baer  
The Everett Clinic  
3901 Hoyt  
Everett, WA 98201

Dinah Harrison  
Thaddeus "TJ" Harrison  
1304 Bruskrud Road, #1206  
Everett, WA 98208

Fred LaCasse  
1715 100th Place S.E.  
Everett, WA

Roberta Snively  
5112 Wilmington  
Everett, WA 98208

Officer Innes  
Elaine Metz - Interview Spec.  
Everett Police Dept.

Sharon Waite  
1304 Bruskrud Road, #3116  
Everett, WA 98208

Jesse Ray Raines  
1324 100th Place S.E., #4  
Everett, WA 98208

Sue Taninecz  
Luther Child Center  
4526 Federal  
P. O. Box 2097  
Everett, WA 98203

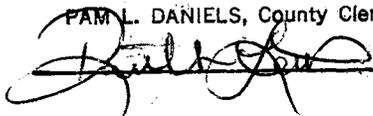
\*\*\*\*\*  
Defendant Information:  
Address: c/o John Tario, 2918 Colby, #101, Everett, WA 98201  
5112 Wilmington, Everett, WA 98201  
Sex: M Race: W DOB: 11/3/49 DOL: SNIVEGD516QC STATE: WA  
SID#: Height: 5'9" Weight: 200 DOC#:  
Hair: Brown Eyes: Hazel  
\*\*\*\*\*

Information - Page 2 of 2  
State v. Garth David Snively  
PA# 9301643

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss.

I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 MAY 15 2007 20\_\_\_\_

PAM L. DANIELS, County Clerk  
 Deputy

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THE STATE OF WASHINGTON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
SNIVELY, Garth David )  
)  
Defendant(s). )

No. 93-1-01420-6

AFFIDAVIT OF PROBABLE CAUSE  
SNOHOMISH CO. WASH.

KAY D. ANDERSON  
COUNTY CLERK

**CERTIFIED  
COPY**

**AFFIDAVIT BY CERTIFICATION:**

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

According to investigative reports from the Everett Police Department and witness statements:

The defendant, Garth David Snively (DOB 11/3/49) has sexually molested a number of young boys over a several year time frame, beginning in approximately 1990. All of the known boys were under twelve years of age. The defendant had access to the boys because he was a Cub Scout leader.

The abuse initially came to light in June, 1993 when victim Michael Gollihar (DOB 8/15/81) disclosed years of abuse at the hands of the defendant. The defendant was considered a close family friend and Michael had spent many weekends at both the defendant's Arlington and Everett homes. Michael was initially questioned by his mother regarding abuse when she noticed that Michael began actively avoiding the defendant approximately a year previously. Michael disclosed that the defendant had played with his privates, made him wear diapers, and manually masturbated him to ejaculation on numerous occasions. Michael also disclosed that on one occasion the defendant told Michael to change the defendant's diapers and to rub baby powder on his genitals. During this process the defendant became erect.

Based on Michael's disclosure, three other boys in the household, Matthew Cory (DOB 10/4/86), Jerry Brogan (DOB 10/12/85), and Adam Rybacki (DOB 3/29/87) were questioned regarding their frequent overnight visits to the defendant's home. All three boys disclosed similar instances of the defendant making them wear diapers and rubbing baby powder on their genitals. None of the boys, including Michael, have worn diapers at home for a number of years.

After the disclosures from the boys, the Everett Police Department was contacted. Det. Don DeNevers interviewed the various adults in the household and set up interviews for the three younger boys, Matthew, Jerry and Adam with Child Interview

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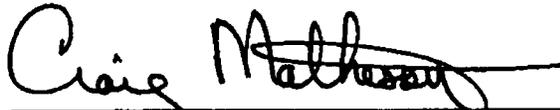
Jerry again discussed the aberrant diapering. Adam indicated that he wasn't ready to talk at that time.

Based on this information, a search warrant was served on the defendant's home on 6/30/93. Detectives seized a large number of both adult and child sized diapers and baby powder. The defendant has no children living at the home. Also present at the defendant's home at that time was Corey DeMonbrun (DOB 9/2/84). The defendant was the Cub Scott pack leader of the den that Corey belonged to. Immediately after the police left the defendant took Corey home. Upon his arrival home, Carol DeMonbrun, Cory's grandmother, asked if Corey had done something wrong to be taken home early. The defendant, with tears streaming down his face, answered, "No, Corey has done nothing wrong. I have. I've molested a child. The authorities are at my home right now." Also present for this confession was the defendant's wife, who repeatedly asked, "How could I have lived with him for 18 years and not have known?"

In contacting other boys who the defendant has had access to, detectives talked to Thaddeus "TJ" Harrison (DOB 8/3/85). TJ also disclosed that the defendant attempted to diaper him, and had rubbed his genitals.

The defendant has no known felony convictions.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

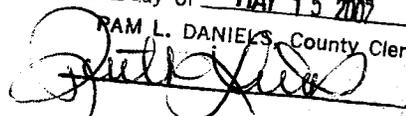
DATED this 8th day of October, 1993, at the Snohomish County Prosecutor's Office.

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss.

I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 MAY 15 2007 20

PAM L. DANIELS, County Clerk

  
Deputy

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CERTIFIED COPY

THE STATE OF WASHINGTON,

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Plaintiff, )  
No. 93-1-01420-6

vs.

W. D. ANDERSON  
COUNTY CLERK  
SNOHOMISH CO. WASH.

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY

SNIVELY, Garth David

Defendant )

1. My true name is Garth David Snively.

2. My age is 43. 3. I went through the 12 + grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is John Tario

(b) I am charged with the crime(s) of Child Molestation in the First Degree (2 Counts)

The elements of the crime(s) are: Ct. I. That the defendant, (1) in Snohomish County, (2) on or about the 1st day of July, 1990 through the 30th day of May, 1993, but an occasion separate and distinct from that charged in Count II, (3) did have sexual contact, for the purpose of sexual gratification, with Michael Gollihar, who was less than twelve years old and not married to the defendant, and (4) the defendant was at least thirty-six months older than the victim; proscribed by RCW 9A.44.083, a felony. Ct. II. That the defendant, (1) in Snohomish County, (2) on or about the 1st day of July, 1990 through the 30th day of May, 1993, but an occasion separate and distinct from that charged in Count I, (3) did have sexual contact, for the purpose of sexual gratification, with Jerry Brogan, Matthew Cory, Thaddeus Harrison and Adam Rybacki, who were less than twelve years old and not married to the defendant, and (4) the defendant was at least thirty-six months older than the victims; proscribed by RCW 9A.44.083, a felony.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) The right to remain silent before and during trial, and I need not testify against myself.
- (c) The right at trial to hear and question witnesses who testify against me.
- (d) The right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.

9/10

standard range, no one can appeal the sentence.

*SRJ*  
~~(h) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

~~(i) The sentence imposed on Counts \_\_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

~~(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

*BS*  
~~(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

*BS*  
~~(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

~~(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

~~(n) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.~~

~~(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

~~(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the State of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.~~

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written

notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

7. I plead guilty to the crime of Child Molestation in the First Degree (2 Counts) as charged in the Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

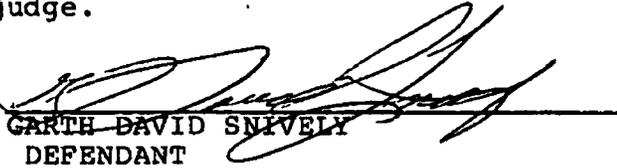
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

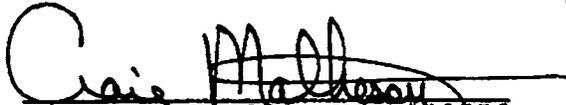
*During the periods 7-1-50 thru 5-70-93 I did have sexual contact for the purpose of sexual gratification with Michael Gallyhan, Jerry Brown, William Cole, Thomas Francis and Alan Kravak. This contact occurred in various places. All individuals were more than 16 years of age but I had sex more than 36 months older than any one were on the same level as to what one Michael Gallyhan or Jerry Brown, William Cole, Thomas Francis, and Alan Kravak.*

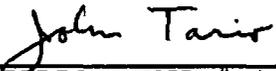
12. I am aware that an Affidavit of Probable Cause has been filed in this case. The court may consider this Affidavit in deciding whether there is a factual basis for my plea.

13. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

  
GARTH DAVID SNIVELY  
DEFENDANT

I have read, and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

  
CRAIG MATHESON - WSB # 18556  
PROSECUTING ATTORNEY

  
JOHN TARIO - WSB # 16712  
DEFENDANT'S LAWYER

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read; or  
 (b) The defendant's lawyer had previously read to him or her;  
\*  (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 25<sup>th</sup> day of October, 1993.

  
JUDGE

\*I am fluent in the \_\_\_\_\_ language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
INTERPRETER

APPENDIX D TO PLEA AGREEMENT  
NOTIFICATION OF REGISTRATION REQUIREMENT  
RCW 9A.44.130,140

I have been informed and fully understand that: 93-1-01420-6

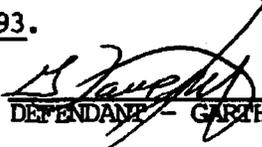
1. If I am convicted of any sex offense, I will be required to register with the County Sheriff in the county of my residence.
2. If I am convicted of any sex offense, I must report to register immediately after sentencing. If I am in custody, I must register within 24 hours of my release from custody.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington.
4. When registering, I must provide the County Sheriff with the following information:
  - (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; and (h) Social Security number.
5. If I am required to register pursuant to the above obligations and I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within ten days of establishing the new residence. If I am required to register pursuant to the above obligations and I move to a new county, I must register with the County Sheriff in the new county within ten days of establishing the new residence, and must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. If I have been convicted of any sex offense, the County Sheriff will obtain a photograph of me and will obtain a copy of my fingerprints.
7. If I am required to register pursuant to the above obligations and if I knowingly fail to do so, I may be charged and convicted of a crime.
8. The crime(s) for which I am pleading guilty is/are a:

COUNT#

I & II

- (X) a. Class A felony. My obligation to register continues until I am specifically relieved of it by court order.
- \_\_\_\_\_ ( ) b. Class B felony. My obligation to register continues for 15 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction or entry of the judgment and sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses.
- \_\_\_\_\_ ( ) c. Class C felony. My obligation to register continues for 10 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses.

Dated this 25 day of October, 1993.

  
DEFENDANT - GARTH DAVID SNIVELY

10/25/93 (da)

SNIVELY, Garth David

CHILD MOLESTATION, FIRST DEGREE

(RCW 9A.44.083)

VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.360 (17))

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions 0 x 3 = 0
Enter number of other serious violent and violent felony convictions 0 x 2 = 0
Enter number of other nonviolent felony convictions 0 x 1 = 0

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of sex offense adjudications 0 x 3 = 0
Enter number of other serious violent and violent felony adjudications 0 x 2 = 0
Enter number of other nonviolent felony adjudications 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions 1 x 3 = 3
Enter number of other serious violent and violent felony convictions 0 x 2 = 0
Enter number of other nonviolent felony convictions 0 x 1 = 0

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes) + 1 = 0

Total the last column to get the Offender Score (Round down to the nearest whole number) 3

II. SENTENCE RANGE

A. OFFENDER SCORE:

Table with 10 columns (0-9 or more) and 2 rows (STANDARD RANGE, LEVEL X) showing sentence ranges in months.

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).

C. Community placement must be served following release from state prison (RCW 9.94A.120 (8)).

III. SENTENCING OPTIONS

A. If no prior sex offense conviction and sentence is less than eight years: Special Sex Offender Sentencing Alternative (RCW 9.94A.120 (7)(a)).

**APPENDIX A TO PLEA AGREEMENT**  
**PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY**  
**(SENTENCING REFORM ACT)**

DATE: **October 25, 1993**  
DEFENDANT: **SNIVELY, Garth David**  
DOB: **11/03/49**  
SID: **WA1**

DATE OF CRIME	PLACE OF CONVICTION	DISPOSITION (Probation and/or Incarceration and length)	CONVICTION	DISPOSITION
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**ADULT FELONIES:**

NONE

**ADULT MISDEMEANORS:**

NONE

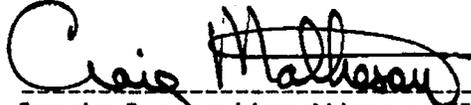
**JUVENILE FELONIES:**

NONE

**JUVENILE SERIOUS TRAFFIC:**

NONE

\_\_\_\_\_  
October 25, 1993  
DATE

  
\_\_\_\_\_  
Deputy Prosecuting Attorney/WSBA #  
CRAIG MATHESON - WSB #18556

Snohomish County Prosecuting Attorney  
White: Court  
Canary: Defense  
Pink: Prosecutor

**PLEA AGREEMENT  
(SENTENCING REFORM ACT)**

Date: October 25, 1993

Defendant: GARTH DAVID SNIVELY Cause No. 93-1-01420-6

On Plea To:  As charged  \_\_\_\_\_

Special Finding/Verdict of possession of deadly weapon on Count(s) \_\_\_\_\_  
RCW 9.94A.125

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

1.  DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss Count(s) \_\_\_\_\_
2.  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:  
 as set forth in the affidavit(s) of probable cause filed herein  
 as set forth in the attached Appendix C.
3.  RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as follows:  
 in full to victim(s) on charged counts  
 as set forth in attached Appendix C.
4.  OTHER: \_\_\_\_\_

The defendant agrees to undergo an evaluation by Treatment Alternatives to Street Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting Attorney, prior to sentencing.

5.  SENTENCE RECOMMENDATION:

- a.  The defendant agrees to the foregoing Plea Agreement and that the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in State's Sentence Recommendation.
- b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regards to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Mandatory Minimum Term (RCW 9.94A.120(4) only): \_\_\_\_\_

Mandatory license revocation RCW 46.20.285.

Ten years jurisdiction and supervision for monetary payments. RCW 9.94A.120(9).

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

GARTH DAVID SNIVELY

Defendant

CRAIG MATHESON - WSB #18556

Deputy Prosecuting Attorney

JOHN TARIO - WSB # 16712

Attorney for Defendant

Herbert J. Smith  
Judge, Snohomish County Superior Court

SNOHOMISH COUNTY PROSECUTING ATTORNEY

White Copy: Court  
Canary Copy: Defense  
Pink Copy: Prosecutor

STATE'S SENTENCE RECOMMENDATION (CONFINEMENT OF OVER ONE YEAR)  
(SENTENCING REFORM ACT)

Date: October 25, 1993

Defendant: GARTH DAVID SNIVELY Cause No. 93-1-01420-6

State recommends that the sentence of this defendant be as follows:

- TOTAL CONFINEMENT: State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:
 

Count I <u>89</u> <u>months</u> <del>years</del>	Count IV _____ months/years
Count II <u>89</u> <u>months</u> <del>years</del>	Count V _____ months/years
Count III _____ months/years	Count VI _____ months/years

Terms on each count to run concurrently consecutively.

- MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Secretary of the Department within 10 years:
  - Restitution as set forth on attached page entitled "Plea Agreement" and  Appendix C.
  - Mandatory \$100 Victim Penalty Assessment
  - Pay a fine of \$ \_\_\_\_\_.
  - Pay costs of extradition.

- COMMUNITY PLACEMENT: The defendant shall serve a one-year term of community placement subject to the conditions set forth in RCW9.94A.120(8)(b) and the following conditions. The defendant shall:

- Have no direct contact with Michael Galligan, Terry Brosnan, Matthew Cony, Theodorus Harrison, Adam Rybacki, Conny De Monbrun
- Not consume alcohol.
- Participate in crime-related treatment and counseling.
- Shall remain (within) (outside of) the following geographical area: \_\_\_\_\_
- Shall comply with the following crime-related prohibitions: No contact with children under 18 years of age

- PROBATION REVOCATION/MODIFICATION: State recommends revocation/modification of probation or community supervision on Snohomish County Cause Number(s) \_\_\_\_\_ and recommends that terms be run concurrently/consecutively.

- EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

- OTHER: The defendant will be seeking a SSOSA, the State is not recommending a SSOSA

Craig Matheson  
Deputy Prosecuting Attorney  
CRAIG MATHESON - WSB #18556

(f) The right to appeal a determination of guilty after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence: Count I: Life imprisonment and a \$ 50,000 fine. Count II: Life imprisonment and a \$ 50,000 fine. Count III: \_\_\_\_\_ imprisonment and a \$ \_\_\_\_\_ fine. The standard sentence range is/are:

67 to 89 months as to Count I; 67 to 89 months as to Count II; \_\_\_\_\_ to \_\_\_\_\_ months as to Count III, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also always includes convictions in juvenile court for sex offenses, whatever my age was when the sex offense was committed, or is now. Criminal history also includes convictions in juvenile court for other felonies or serious traffic offenses that were committed when I was 15 years of age or older. However, if I was 23 years of age or older when I committed the crime to which I am now pleading guilty, the juvenile conviction only counts if it was for a class A felony, or a sex offense.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendations increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ \_\_\_\_\_ as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the recommendation to the judge as stated on the attached plea agreement form.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the

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**FILED**

00 SEP 28 PM 3:10

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

PAM L. DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASH.

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GARTH DAVID SNIVELY, )  
 )  
 Defendant. )

NO. 93-1-01420-6

**TRANSCRIPT OF PROCEEDINGS**

THE HONORABLE GERALD L. KNIGHT, JUDGE  
Snohomish County Courthouse  
Everett, Washington  
October 25, 1993

**APPEARANCES:**

FOR THE PLAINTIFF: CRAIG MATHESON  
Deputy Prosecuting Attorney

FOR THE DEFENDANT: JOHN TARIO  
Attorney at Law

SHARON L. WESTLING, RMR  
OFFICIAL COURT REPORTER  
CSR No. WE-ST-LS-L452Q5  
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1 MS. VANDERLEE: Next matter is the Snivley  
2 matter, and Mr. Matheson will be handling that.

3 THE COURT: All right.

4 MR. MATHESON: That's going to be a plea of  
5 guilty. Does the Court want to take that now or foot  
6 it?

7 THE COURT: That is going to be a plea?

8 MR. MATHESON: Yes.

9 THE COURT: Let's go ahead and do it.

10 MR. MATHESON: The State of Washington vs. Garth  
11 David Snivley, cause number 93-1-01420-6. Craig  
12 Matheson for the State, John Tario for Mr. Snivley.  
13 Mr. Snivley is present, out of custody. This comes  
14 on for arraignment this afternoon, anticipated pleas  
15 of guilty to a two-count information alleging two  
16 counts of child molestation in the first degree. I  
17 have reviewed paragraph eleven which does set forth  
18 the necessary language for the Court to accept the  
19 plea, and I hand that forward for the court At this  
20 time.

21 MR. TARIO: We've received a copy of the  
22 Information, we waive formal reading. Mr. Snivley is  
23 prepared to enter a guilty plea today on both counts.

24 THE COURT: Did you go over this Statement of  
25 Defendant on Plea of Guilty with him?

1 MR. TARIO: Yes, Your Honor.

2 THE COURT: Fully?

3 MR. TARIO: Yes, Your Honor.

4 THE COURT: Do you feel confident that he  
5 understands what's contained in those documents?

6 MR. TARIO: I do, Your Honor.

7 THE COURT: And that he's entering these pleas  
8 freely and voluntarily so?

9 MR. TARIO: Yes, Your Honor.

10 THE COURT: Let's find out.

11 Sir, did you read this document entitled  
12 statement of defendant on plea of guilty?

13 MR. SNIVLEY: I did, Your Honor.

14 THE COURT: Did you read it all?

15 MR. SNIVLEY: Yes, sir.

16 THE COURT: Did you understand what you read?

17 MR. SNIVLEY: Yes, sir.

18 THE COURT: Has anybody made any threats or  
19 promises to you to enter pleas of guilty?

20 MR. SNIVLEY: No, sir.

21 THE COURT: Do you do this of your own free will  
22 and choosing?

23 MR. SNIVLEY: I do.

24 THE COURT: Are you aware that the maximum  
25 sentence for each offense is life imprisonment and a

1 \$50,000 fine?

2 MR. SNIVLEY: I am.

3 THE COURT: That the standard sentencing range  
4 as calculated now based upon these offenses and any  
5 prior criminal history or lack thereof in regards to  
6 Count I and Count II, they're the same, and it's 67  
7 to 89 months in prison?

8 MR. SNIVLEY: I do.

9 THE COURT: Are you aware that should I accept  
10 your pleas of guilty, the sentencing judge doesn't  
11 have to follow any recommendation made by your  
12 attorney or the State but could impose a maximum  
13 sentence under the law?

14 MR. SNIVLEY: I do.

15 THE COURT: Are you aware that you could only  
16 appeal if the judge gave you an exceptional sentence  
17 up over and above the rest?

18 MR. SNIVLEY: I am.

19 THE COURT: I'm trying to read the statement  
20 and I'm having a difficult time. I'm going to go  
21 through it and see.

22 During the period of July 1st, 1990 through May  
23 30th, 1993, I did have sexual contact for the purpose  
24 of sexual gratification with Michael Gallagher?

25 MR. TARIO: Gollihar.

1 THE COURT: Jerry Brogan?

2 MR. TARIO: Matthew Corey. Would you like me to  
3 read that?

4 THE COURT; Yes, please.

5 MR. TARIO: Thaddeus Harrison and Adam Rybacki.  
6 This contact occurred in Snohomish County. All  
7 individuals were less than 12 years of age. I am  
8 more than 36 months older than them and none of them  
9 were married to me.

10 THE COURT: Can you read the rest.

11 MR. TARIO: As to count one, Michael Gollihar.  
12 And as to the second count, Jerry Brogan, Matthew  
13 Cory, Thaddeus Harrison and Adam Rybacki.

14 THE COURT: Is that a true and accurate  
15 statement?

16 MR. SNIVLEY: Yes, sir.

17 THE COURT: Do you have any questions of your  
18 attorney before I ask you what your plea is?

19 MR. SNIVLEY: None.

20 THE COURT: Do you have any questions of me  
21 before I ask you what your plea is?

22 MR. SNIVLEY: None.

23 THE COURT: What is your plea to Count I?

24 MR. SNIVLEY: Guilty as charged.

25 THE COURT: What is your plea to Count II?

1 MR. SNIVLEY: Guilty as charged.

2 THE COURT: Pleas of guilty will be accepted.  
3 The law mandates a PSI; right?

4 MR. MATHESON: Yes, Your Honor. The State's not  
5 opposed to Mr. Snivley being out on his PR pending  
6 the sentencing.

7 THE COURT: With usual conditions?

8 MR. MATHESON: Usual conditions. With the  
9 additional condition that Mr. Snivley have no contact  
10 with children under the age of 18.

11 THE COURT: As I understand it, sir, do you  
12 understand that the State will be making a  
13 recommendation that you serve 89 months in prison per  
14 count to run concurrently?

15 MR. SNIVLEY: I do.

16 THE COURT: That you -- furthermore, that  
17 apparently you will be seeking a SSOSA, but the State  
18 is not recommending a SSOSA?

19 MR. SNIVLEY: I do understand that.

20 THE COURT: And we already went through, you do  
21 understand that the sentencing judge doesn't have to  
22 pay any attention to what your counsel may recommend  
23 or what the State may recommend?

24 MR. SNIVLEY: Yes, I understand that.

25 THE COURT: I have accepted the pleas. I'm

1 going to sign an order allowing you to remain  
 2 released on your personal recognizance with all the  
 3 conditions contained in that order, which clearly is  
 4 no contact with the victims and the other young boys  
 5 mentioned, that you have no contact, unsupervised  
 6 contact with minors, et cetera. They will all be in  
 7 the order. If you violate any of those conditions, I  
 8 can almost assure you that you will make it easy for  
 9 the sentencing judge to throw the book at you.

10 MR. SNIVLEY: I understand that, Your Honor.

11 THE COURT: Any particular sentencing date in  
 12 mind, counsel?

13 MR. MATHESON: Mr. Snivley is going to be  
 14 seeking a SSOSA. It's my understanding that they  
 15 have not got the evaluation process under way yet, so  
 16 we probably need six to eight weeks.

17 THE COURT: Counsel?

18 MR. TARIO: At least, Your Honor, my experience  
 19 has been that it takes at least that long for the  
 20 evaluation process to be completed. My client's  
 21 willing to waive his right to be sentenced within 45  
 22 days. We're just asking for sufficient time to have  
 23 that evaluation put together.

24 THE COURT: Sir, you have the right to be  
 25 sentenced within 40 judicial days from today. You

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may also waive that right. What is your pleasure?

MR. SNIVLEY: I would waive.

THE COURT: Treat that as a valid waiver.

Sentencing will be December 27th, Department 7, nine a.m., Judge Thibodeau. PSI to be returned ten days prior to that date.

MR. MATHESON: Is the Court ordering Mr. Snivley to report to the Department of Corrections by 4:30 tomorrow afternoon?

THE COURT: Yes. Okay. I believe that concludes this matter for now.

MR. MATHESON: Thank you, Your Honor.

MR. TARIO: Thank you.

MR. SNIVLEY: Thank you.

(End of the hearing.)

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss.

I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 MAY 15 2007 20

PAM L. DANIELS, County Clerk

*[Signature]* Deputy

FILED

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SNIVELY, Garth David )  
 )  
 Defendant. )

**CERTIFIED COPY**

No. 93-1-01420-6

JUDGMENT AND SENTENCE

JAN 27 PM 1:38  
KAY D. ANDERSON  
COUNTY CLERK  
SNOHOMISH CO. WASH.

**FILED**

JAN 27 1994

I. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

- 1. CURRENT OFFENSE(S): The defendant was found guilty on 10/25/93 by (plea) of:
  - Count No.: I Crime: Child Molestation in the First Degree  
RCW 9A.44.083 Crime Code \_\_\_\_\_  
Date of crime 7/1/90-5/30/93 Incident # EVE 314305
  - Count No.: II Crime: Child Molestation in the First Degree  
RCW 9A.44.083 Crime code \_\_\_\_\_  
Date of crime 7/1/90-5/30/93 Incident # EVE 314305
  - Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of crime \_\_\_\_\_ Incident # \_\_\_\_\_

- ( ) Additional current offenses are attached in Appendix A.
- ( ) With a special verdict/finding for use of deadly weapon on Count(s) \_\_\_\_\_.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

() Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): Indecent Liberties 93-1-01790-6

- ( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are:

2. CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are:

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Class
(a) <u>None</u>	_____	_____	_____	_____
(b) _____	_____	_____	_____	_____
(c) _____	_____	_____	_____	_____

- ( ) Additional criminal history is attached in Appendix B.
- ( ) Prior convictions counted as one offense in determining the offender score are: \_\_\_\_\_

JUDGMENT AND SENTENCE (Felony)  
Page 1 of 5

94-9-00666-9

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EXHIBIT 5

3 cc: find/copy.

3. SENTENCING DATA:

Count No.	Offender Seriousness			Range	Maximum Term
	Score	Level			
Count No. <u>I</u>	<u>6</u>	<u>X</u>		<u>98</u> to <u>130</u> months	<u>Life</u>
Count No. <u>II</u>	<u>6</u>	<u>X</u>		<u>98</u> to <u>130</u> months	<u>Life</u>
Count No. _____	_____	_____		_____ to _____ months	_____

( ) Additional current offense sentencing data is attached in Appendix C.

4. EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above)(below) the standard range for Count(s)\_\_\_\_\_. The reasons are set forth in Appendix D.

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

(a) (✓) ~~\$To be determined~~ Court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;

(b) (x) \$100.00, Victim assessment;

(c) (✓) ~~\$To be determined~~, Total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;

(d) ( ) \$631./\$691, Recoupment for attorney's fees; ~~retained~~

(e) ( ) \$\_\_\_\_\_, Fine;

(f) ( ) \$\_\_\_\_\_, \_\_\_\_\_ Dep't, Drug enforcement fund;

(g) (✓) \$\_\_\_\_\_, Other costs;

2. (✓) The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: ( ) Not less than \$\_\_\_\_\_ per month, ( ) on a schedule established by the defendant's community corrections officer, to be paid within 120 months of ( ) this date (✓) release from confinement.

3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4. (X) The defendant shall be prohibited from having any contact, directly or indirectly, with Michael Gollihar, Jerry Brogan, Matthew Cory, Thaddeus Harrison, and Adam Rybacki for a period of life years.

5. (X) The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

6. The Court, upon motion of the State, DISMISSES Count(s)\_\_\_\_\_

JUDGMENT AND SENTENCE (Felony)

5. SEXUAL OFFENDER SENTENCE OVER ONE YEAR - CRIMES COMMITTED ON OR AFTER JULY 1, 1987: The court, having found that the defendant is convicted of a felony sexual offense which will require a term of confinement of more than one year but less than six years, imposes the following sentence:

(a) CONFINEMENT: A term of total confinement in the custody of the State Department of Corrections as follows commencing ( immediately;  no later than the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_ .M.

130 months on Count No. I.

130 months on Count No. II.

\_\_\_\_\_ months on Count No. \_\_\_\_\_.

( The terms in Counts No. I & II are (concurrent) (consecutive).

( The sentence herein shall run (concurrently) (consecutively) with the sentence in cause number(s) 93-T-61790-6.

( ) Credit is given for 0 days served.

(b) SEXUAL OFFENDER TREATMENT PROGRAM: The court requests that the State Department of Corrections evaluate whether the defendant is amenable to treatment and if appropriate, that department may place the defendant in a treatment program within a correctional facility operated by that department.

6. (X) The defendant shall serve a two year term of community placement during which term the mandatory conditions set forth below shall be followed:

(a) The defendant shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The defendant shall work at department of corrections-approved education, employment, and/or community service;

(c) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The defendant in community custody shall not unlawfully possess controlled substances; and

(e) The defendant shall pay community placement fees as determined by the department; and, in addition, the following conditions shall also be followed:

(f) ( ) The defendant shall remain ( ) within ( ) outside of the following geographical area: \_\_\_\_\_.

(g) (X) The defendant shall not have direct or indirect contact with: Michael Golihar, Jerry Brogan, Matthew Cory, Thaddeus Harrison, and Adam Rybacki.

(h) ( ) The defendant shall participate in crime-related treatment or counseling services as directed by the department.

(i) ( ) The defendant shall not consume alcohol.

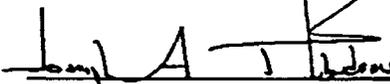
(j) ( ) The residence location and living arrangements of the defendant shall be subject to the prior approval of the department.

(k) ( ) The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- ( ) Appendix A, Additional Current Offenses;
- ( ) Appendix B, Additional Criminal History;
- ( ) Appendix C, Current Offense(s) Sentencing Data; and
- ( ) Appendix D, Reasons for an Exceptional Sentence.
- ( ) Appendix E, Additional Conditions of Sentence.
- (X) Appendix F, Notification of Registration Requirement.
- (X) Order for Blood Testing.
- (X) No Contact Order

DONE IN OPEN COURT this 25 day of January <sup>94</sup> ~~December~~, 1993

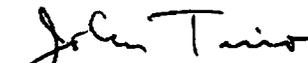
  
\_\_\_\_\_  
Judge - JOSEPH A. THIBODEAU

Presented by:

  
\_\_\_\_\_  
CRAIG MATHESON - WSB #18894  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
GARTH DAVID SMIVELY  
Defendant

Approved as to form:

  
\_\_\_\_\_  
JOHN TARIO - WSB #16712  
Attorney for Defendant

\_\_\_\_\_  
\_\_\_\_\_  
Defendant's current address  
Telephone number \_\_\_\_\_

JUDGMENT AND SENTENCE (Felony)  
SEX OFFENDER SENTENCE OVER ONE YEAR  
CRIMES COMMITTED AFTER 7/1/87  
Page 4 of 5

FINGERPRINTS



Right Hand  
Fingerprints of:

[Signature]  
(Defendant's Signature)

Dated: 1-25-94

Attested by:  
Kay D. Anderson, Snohomish Co. Clerk

By: [Signature]  
(Deputy Clerk)

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: \_\_\_\_\_  
Kay D. Anderson, Snohomish Co. Clerk

By: \_\_\_\_\_  
(Deputy Clerk)

JUDGMENT AND SENTENCE (Felony)  
FINGERPRINTS

OFFENDER IDENTIFICATION

S.I.D. No. WA

Date of Birth 11/3/49

Sex Male

Race White

ORI WA0310000

OCA \_\_\_\_\_

OIN \_\_\_\_\_

DOA \_\_\_\_\_

APPENDIX F TO JUDGMENT AND SENTENCE  
NOTIFICATION OF REGISTRATION REQUIREMENT  
RCW 9A.44.130,140

FILED

94 JAN 27 PM 1:39

I have been informed and fully understand that: 93-1-01420-6

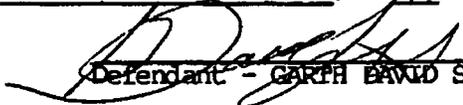
WAY D. ANDERSON  
COUNTY CLERK  
STROMBOLM CO. WASH.

1. I have been convicted of a sex offense, and I am required to register with the County Sheriff in the county of my residence.
2. If I am not immediately sentenced to a term of confinement, I must report to register immediately after sentencing. If I am in custody, I must register within 24 hours of my release from custody.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington.
4. When registering, I must provide the County Sheriff with the following information:
  - (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; and (h) Social security number.
5. I am required to register pursuant to the above obligations. If I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within ten days of establishing the new residence. If I am required to register pursuant to the above obligations and I move to a new county, I must register with the County Sheriff in the new county within ten days of establishing the new residence, and must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. Because I have been convicted of a sex offense, the County Sheriff will obtain a photograph of me and will obtain a copy of my fingerprints.
7. I am required to register pursuant to the above obligations and if I knowingly fail to do so, I may be charged and convicted of a crime.
8. The crime(s) for which I have been convicted is/are a:

Count #

- I & II (X) a. Class A felony. My obligation to register continues until I am specifically relieved of it by court order.
- \_\_\_\_\_ ( ) b. Class B felony. My obligation to register continues for 15 years after the last date of release from confinement, if any, (including full-time residential treatment) sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses.
- \_\_\_\_\_ ( ) c. Class C felony. My obligation to register continues for 10 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses.

Dated this 25 day of December Jan, 1994.

  
Defendant - GARTH DAVID SNIVELY

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

FILED

94 JAN 27 PH 1:39

THE STATE OF WASHINGTON, )  
 )  
 ) Plaintiff, )  
 vs. )  
 )  
 ) SNIVELY, Garth David )  
 ) Defendant. )

No. 93-1-01420-6  
NO CONTACT ORDER  
(CLERK'S ACTION REQUIRED)  
WAY D. ANDERSON  
COUNTY CLERK  
SNOHOMISH CO. WASH.

Defendant's Sex: M Race: W DOB: 11/3/49 Hgt: 5'9"  
Wgt: 200 Eyes: Hazel Hair: Brown

The Court being fully advised and pursuant to RCW 10.99,  
IT IS HEREBY ORDERED that:

- (1) The above defendant shall have no contact, direct or indirect, with the victim(s) Michael Gollihar, Jerry Brogan, Matthew Cory, Thaddeus Harrison, and Adam Rybacki. The defendant shall not approach the victim in person; or contact the victim through another person (except the defendant's lawyer); or contact the victim in writing, by telephone, or by any other means.
- (2) The Court Clerk shall promptly forward a copy of this Order to the Snohomish County Sheriff's Office.
- (3) The Snohomish County Sheriff's Office shall enter this Order for one year \_\_\_\_\_ in WACIC, the law enforcement computer-based records system.

NOTICE: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT A VIOLATOR TO ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

DATED this 25 day of December JAN, 1994.

Joseph A. Thibodeau  
JOSEPH A. THIBODEAU - JUDGE

Presented by Craig Matheson  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

Copy received on the \_\_\_\_\_ day of December, 1993.  
Garth David Snively  
GARTH DAVID SNIVELY  
Defendant  
John Tario  
JOHN TARIO - WSB #16712  
Defendant's attorney

1cc: SCSO

White copy: Court  
Canary copy: SCSO (Warrants--civil)  
Pink copy: Victim  
Goldenrod copy: Defendant  
Extra copy: Prosecutor  
Extra copy: Defendant's attorney

SUPERIOR COURT--SNOHOMISH COUNTY--STATE OF WASHINGTON

THE STATE OF WASHINGTON

JAN 27 PM 1:38

vs.

Plaintiff, W.D. ANDERSON No. 93-1-01420-6

COUNTY CLERK  
SNOHOMISH CO. WASH.

ORDER FOR BLOOD TESTING

SNIVELY, Garth David

Defendant

(X) 1. HIV TESTING. (Required for defendants convicted of sexual offenses, drug offenses associated with the use of hypodermic needles, or prostitution related offenses committed after March 23, 1988): (RCW 70.24.340)

The defendant shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

(X) 2. DNA IDENTIFICATION TESTING. (Required for defendants convicted of sexual offenses or violent offenses): (RCW 43.43.754)

The defendant shall cooperate with the Snohomish County Department of Corrections and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall report to the Snohomish County Jail today, between 1:00 and 5:00 p.m., to arrange for the test.

If both (1) and (2) are checked, two independent blood samples shall be taken.

DONE IN OPEN COURT this 25 day of January, 1994.

Joseph A. Thibodeau  
JUDGE - JOSEPH A. THIBODEAU

Presented by:  
Craig Matheson  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

Copy received:  
John Tario  
JOHN TARIO - WSB #16712  
Attorney for Defendant

White: Court  
Yellow: Jail  
Pink: Prosecutor  
Gold: Defendant

Garth David Snively  
Defendant - GARTH DAVID SNIVELY

FILED

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Y. D. ANDERSON  
COUNTY CLERK  
SNOHOMISH CO. WASH.

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

WHEREAS, GARTH DAVID SNIVELY, has been duly convicted of the crime(s) of CHILD MOLESTATION IN THE FIRST DEGREE (2 COUNTS) as charged in the INFORMATION filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term of \_\_\_\_\_ months all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable JOSEPH A. THIBODEAU, Judge of the said Superior Court and the seal thereof, this 25 day of ~~December~~ January 19 ~~93~~ 94

CLERK OF THE SUPERIOR COURT

By: K. Alan  
Deputy Clerk

FILED

**CERTIFIED  
COPY**

00 DEC -4 PM 3: 15

PHIL L. DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASH.

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

STATE OF WASHINGTON,	)	
	)	No. 93-1-01420-6
Plaintiff,	)	93-1-01790-6
	)	
v.	)	STATE'S RESPONSE TO MOTION
	)	FOR RELIEF FROM JUDGMENT
SNIVLEY, GARTH D.,	)	
	)	
Defendant.	)	

**I. INTRODUCTION**

The State of Washington submits the following response to the defendant's motion for relieve from the judgments. The State further moves for an order transferring the motion to the Court of Appeals, for consideration as a personal restraint petition

**II. FACTS**

On October 8, 1993, an information was filed charging the defendant with two counts of first degree child molestation (cause no. 93-1-01420-6). One of these counts involved a single victim; the other involved four separate victims. Both counts were committed between July 1, 1990, and May 30, 1993. On October 25, the defendant pled guilty to these charges. The standard sentencing range was computed as 67 to 89 months, which made the defendant potentially eligible for SSOSA. In the plea statement, the defendant was told that he would serve a 1-year term of community placement.

Following the defendant's guilty plea, two additional victims came forward to report that they had been abused in a similar manner. An information was filed charging one count of indecent liberties,

STATE'S RESP. TO MOT. FOR RELIEF FROM JUDGMENT-- 1

ORIGINAL

*dk*  
31

**EXHIBIT 6**

committed against these two victims "on or about the 2<sup>nd</sup> day of July, 1984 through 1987" (cause no. 93-1-01790-6). On December 21, 1993, the defendant pled guilty to this new information. In his plea statement, the defendant acknowledged that the additional charge increased his standard range on the other information to 98-130 months, thereby rendering him ineligible for SSOSA. Again, the plea statement advised the defendant that he would serve a 1-year term of community placement.

On January 25, 1994, the defendant was sentenced on both informations. The court sentenced him to 130 months' confinement for each count of child molestation and 27 months' for the indecent liberties. All of these terms were made concurrent, for a total of 130 months. The court also imposed 2 years of community placement on each count. The defendant is now moving to vacate both convictions, based on the mis-advice concerning the length of community placement.

### **III. RESPONSE TO MOTION TO VACATE**

#### **A. CAUSE NO. 93-1-01420-6**

RCW 10.73.090(1) sets out a time limit on collateral attacks:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

The term "collateral attack" includes motions to vacate judgments. RCW 10.73.090(2). Under the circumstances of this case, the judgments became "final" when they were filed, on January 27, 1994. RCW 10.73.090(3)(a). The present motion was filed in November, 2000. It is untimely by over 5 years.

The defendant claims that this case falls within the exception set out in RCW 10.73.100(6):

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

...

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal ... proceeding, ... and ... a court ... determines that sufficient reasons to exist to require retroactive application of the changed legal standard.

The defendant seeks to rely on State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). Ross holds that a defendant may withdraw his guilty plea if he was not informed that he would be subject to

community placement. The Court of Appeals has held, however, that Ross was not a significant change in the law:

One of the tests for determining whether a new rule represents a significant, material change is applied by asking if the defendant could have argued the same issue before the new law was decided. Even before Ross, it was well settled that a guilty plea would not be accepted until the defendant had been informed of all direct consequences of the plea. State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). Direct consequences were defined as those with "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." Ross, 129 Wn.2d at 284 (quoting Barton, 93 Wn.2d at 305). Mandatory community placement has been a direct consequence of a felony drug conviction since RCW 9.94A.120 was amended in 1988. [The defendant in the present case] was on notice that he was subject to one year of mandatory community placement when he was sentenced immediately after he entered his guilty pleas. He, like the defendant in Ross, could have argued that community placement was a direct consequence and that the failure to inform him of that consequence rendered his pleas involuntary. Since Ross did not create a significant, material change in the law, [the defendant's] failure to raise the issue of his pleas' constitutional validity in a timely manner precludes review now.<sup>1</sup>

State v. Olivera-Avilla, 89 Wn. App. 313, 321-22, 949 P.2d 824 (1997) (some citations omitted).

The defendant seems to claim that Olivera-Avilla was overruled by In re Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000). In Stoudmire, the defendant filed a petition raising several claims. Some of these claims came within exceptions to the statutory time limit; others did not. The Supreme Court held that since RCW 10.73.100 allows petitions that are based "solely" on one or more exceptions, it bars "mixed" petitions. Id. at 349. The court then went on to discuss the defendant's ability to re-file some of his claims:

Of the four claims brought by [the petitioner's] counsel, one does not survive: that petitioner be allowed to withdraw his guilty pleas ... because [he] was not properly informed of the mandatory two-year community placement period. Raising that claim would be barred if it were not for RCW 10.73.100(6), which allows an exception where there has been a significant change in the law. Since petitioner cannot take advantage of RCW 10.73.100, claims that depend on .100 are barred from consideration by this court because petitioner submitted a mixed petition. However,

---

<sup>1</sup>Olivera-Avilla also holds that the Ross rule would be subject to retroactive application, because it "requires the observance of a procedure ... that is implicit in due process." Id. at 321. The State believes that this mis-states the test for retroactivity. Not all due process requirements are retroactive. Teague v. Lane, 489 U.S. 288, 311-13, 103 L. Ed. 2d 334, 109 S. Ct. 1061 (1989) (plurality op.). To be retroactive, a new rule must rise to the level of a "watershed rule[] of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." Lambrix v. Singletary, 520 U.S. 518, 539, 137 L. Ed. 2d 771, 117 S. Ct. 1517 (1997). The rule of Ross does not rise to this level. The State nevertheless concedes that this court is bound by Olivera-Avilla until a different division of the Court of Appeals disagrees with it or the Supreme Court overrules it.

petitioner may resubmit this claim in a subsequent petition.

Id. at 350 (citations omitted).

This language cannot reasonably be interpreted as overruling Olivera-Avilla. The Supreme Court made it clear that, because the petition was "mixed," the exceptions set out in RCW 10.73.100 could not be used to save individual claims. The opinion does not mention Olivera-Avilla or Ross, nor does it discuss any standards for determining whether a new decision constitutes a significant change in the law." The only reasonable conclusion is that the Supreme Court did not resolve this question, leaving it open for future proceedings. Since Stoudmire does not resolve that issue, this court is bound by the holding of Olivera-Avilla that Ross is *not* a new rule. Since the defendant's claims do not fall within the "new rule" exception to the statutory time limit, they must be rejected as untimely.

**B. CAUSE NO. 93-1-01790-6**

With respect to the indecent liberties conviction, a different analysis applies. At the time of sentencing, the parties apparently overlooked a significant fact. Under RCW 9.94A.120(9)(a)(i), community placement only applies to sex offenses committed after July 1, 1987. The indecent liberties was committed between July 2, 1984 and 1987. Community placement should not have been imposed for this crime as all.

The statutory time limit does not prevent correction of this error. That limit only applies "if the judgment and sentence is valid on its face." RCW 10.73.090(1). This judgment and sentence on its face sets out offense dates that render community placement unavailable.

Once this *sentencing* error is recognized, the defendant's challenge to the *conviction* disappears. The defendant did not need to be informed that he was subject to 2 years of community placement, since he was not. The proper sentence is *less* severe than the defendant anticipated. Consequently, there is no basis for setting aside the defendant's plea. The community placement provision should simply be stricken from the judgment on this charge.

**V. ARGUMENT ON TRANSFER OF CASE**

Initial consideration of a motion to vacate judgment is governed by CrR 7.8(c)(2):

The court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. The court may transfer a motion to the Court of Appeals for consideration as a personal restraint petition if such transfer would serve the ends of justice. Otherwise, the court shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

Thus, this court has 3 options: (1) transferring the motion to the Court of Appeals; (2) denying the motion without further hearing; or (3) scheduling a hearing.

The personal restraint petition was designed as a "sound, more expeditious, single, comprehensive system for post-conviction review." Holt v. Morris, 84 Wn.2d 841, 844-45, 529 P.2d 1081 (1974) (discussing former CrR 7.7, the predecessor to RAP 16.3 - 16.15). A personal restraint petition is initially considered by the Chief Judge of the appropriate division of the Court of Appeals. If the petition is frivolous, it will be dismissed. If it is not frivolous and can be determined solely on the record, it will be referred to a panel of judges for a decision on the merits. The petition will be transferred to this court only if it cannot be determined solely on the record. RAP 16.11(b).

Resolution of the present case primarily turns on a legal issue: whether Ross constituted "a significant change in the law" within the meaning of RCW 10.73.100(6). If this court were to rule on that issue, its decision would be subject to review on appeal. It is more efficient to allow the Court of Appeals to decide the issue in the first instance. The case should therefore be transferred.

**VI. CONCLUSION**

Transferring this motion of the Court of Appeals would allow the defendant's claims to be considered in a manner that is more complete, expeditious, and economical. This court should therefore exercise its discretion under CrR 7.8(c)(2) to transfer the motion.

Respectfully submitted on December 4, 2000.

*Seth A. Fine*  
SETH A. FINE # 10937  
Deputy Prosecuting Attorney

STATE'S RESP. TO MOT. FOR RELIEF FROM JUDGMENT-- 5

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss.

I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 MAY 15 2002 day of MAY 15 2002 20

PAM L. DANIELS, County Clerk  
*Pam L. Daniels* Deputy

ILED

00 DEC -7 AM 11:11

PAM L. DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASH.

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COPY**

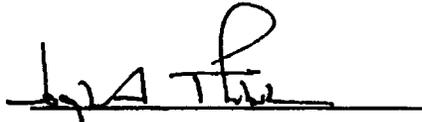
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,	)
	) No. 93-1-01420-6
Plaintiff,	) 93-1-01790-6
	)
v.	) ORDER TRANSFERRING MOTION
	) FOR RELIEF FROM JUDGMENT
SNIVLEY, Garth D.	)
	) (Clerk's Action Required)
Defendant.	)

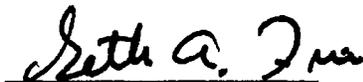
This matter came before the court pursuant to CrR 7.8(c)(2), for initial consideration of the defendant's Motion for Relief from Judgment. The court has considered the Motion and the State's response. Being fully advised, the court has concluded that the interests of justice would be served by transferring the motion to the Court of Appeals. Therefore, it is hereby ORDERED:

1. Pursuant to CrR 7.8(c)(2), the defendant's Motion for Relief from Judgment is transferred to the Court of Appeals for consideration as a personal restraint petition.
2. The clerk of this court shall transmit copies of the following to the Court of Appeals:
  - a. This order;
  - b. The Motion for Relief from Judgment, together with any supporting affidavits or memoranda

Entered this 6<sup>th</sup> day of December, 2000.

  
\_\_\_\_\_  
Judge

Presented by:

  
SETH A. FINE # 10937  
Deputy Prosecuting Attorney

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss.  
I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 \_\_\_\_\_ 20\_\_\_\_

MAY 15 2007  
PAM L. DANIELS, County Clerk  
  
Deputy

ORDER TRANSFERRING MOT. FOR RELIEF FROM JUDGMENT

ORIGINAL

EXHIBIT 7

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**CERTIFIED  
COPY**

**FILED**

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

2002 JUL -1 PM 2: 52

In the Matter of the Personal  
Restraint of:

GARTH SNIVELY,

Petitioner.

In the Matter of the Personal  
Restraint of:

GARTH SNIVELY,

Petitioner.

No. 47900-8-1 consolidated with  
47918-1-1  
SNOMISH CO. WASH.

**CERTIFICATE OF FINALITY**

Snohomish County

Superior Court No. 93-1-01420-6

PAM L. DANIELS  
COUNTY CLERK

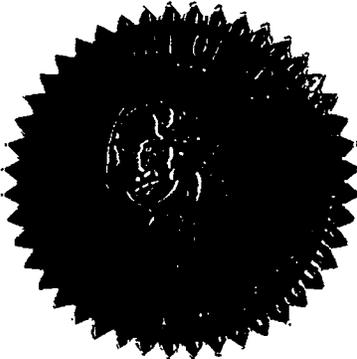
DOCKET \_\_\_\_\_  
CALENDAR \_\_\_\_\_  
EXECUTION \_\_\_\_\_  
JTL STAT \_\_\_\_\_

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in  
and for Snohomish County.

This is to certify that the order of the Court of Appeals of the State of Washington,  
Division I, filed on May 8, 2002, became final on June 28, 2002.

Pursuant to RAP 14.4 costs in the amount of \$125.00 are awarded in favor of  
judgment creditor SNOHOMISH COUNTY PROSECUTING ATTORNEY against  
judgment debtor GARTH SNIVELY.

c: Garth Snively  
Seth Fine



**IN TESTIMONY WHEREOF, I**  
have hereunto set my hand  
and affixed the seal of  
said Court at Seattle, this 28th  
day of June, 2002

Richard D. Johnson  
Court Administrator/Clerk of the  
Court of Appeals, State of  
Washington Division I.

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RICHARD D. JOHNSON,  
Court Administrator/Clerk

The Court of Appeals  
of the  
State of Washington  
Seattle  
98101-4170

**FILED** DIVISION I  
One Union Square  
600 University Street  
(206) 464-7750  
TDD: (206) 587-5505  
2002 JUL -1 PM 2:52

May 8, 2002

Garth D. Snively  
M.c.c.  
D.o.c. #714805  
P.O. Box 888  
Monroe, WA. 98272-0888

Seth Aaron Fine  
Snohomish Co. Prosecutor's  
Office  
Snohomish Co Pros Office  
3000 Rockefeller  
Everett, WA. 98201

PAM L. DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASH.

CASE #: 47900-8-1  
Personal Restraint Petition Of: vs Garth D. Snively

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16-14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5(a), (b) and (c)."

This court's file in the above matter has been closed

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

bte

enclosure



No. 47900-8-1  
No. 47918-1-1/2

ORDERED that the personal restraint petitions are dismissed.

Done this 8<sup>th</sup> day of May, 2002.

Cox, ACT

Acting Chief Judge

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2002 MAY - 8 AM 9:14

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } \$

I, PAM L. DANIELS, Clerk of the above entitled Court, do hereby certify that the 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 MAY 15 2002

PAM L. DANIELS, County Clerk

Deputy

**CERTIFIED  
COPY**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF SNOHOMISH**

THE STATE OF WASHINGTON, )  
Plaintiff, )  
vs. )  
SNIVELY, Garth David )  
Defendant(s). )

No. 93-1-01790-6

**INFORMATION**

FILED  
JUL 21 2:22  
CRAIG MATHESON  
CLERK

Comes now Seth R. Dawson, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, charges and accuses the above-named defendant(s) with the following crime(s) committed in Snohomish County, Washington:

INDECENT LIBERTIES, committed as follows: That the defendant, on or about the 2nd day of July, 1984 through 1987, did knowingly cause Jason LeMay and Jessie LeMay, not the spouse of the defendant and less than 14 years of age, to have sexual contact with the defendant or another; proscribed by RCW 9A.44.100(1)(b), a felony.

SETH R. DAWSON  
PROSECUTING ATTORNEY  
*Seth R. Dawson*  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

STATE'S WITNESSES:

Jason LeMay  
Jessie LeMay  
Karla LeMay  
Daniel LeMay  
509 Circle Drive  
Monroe, WA 98272

\*\*\*\*\*  
Defendant Information:  
Address: (SCJ) 5112 Wilmington, Everett, WA 98203  
Sex: M Race: W DOB: 11/3/49 DOL: SNIVEGD516QC1996 STATE: WA  
SID#: Height: 5'9" Weight: 200 DOC#:  
Hair: Brown Eyes: Hazel  
\*\*\*\*\*

Information  
State v. Garth David Snively  
PA# 93F03104

*91*

**CERTIFIED  
COPY**

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH  
THE STATE OF WASHINGTON, )  
Plaintiff, )  
vs. ) No. 93-1-01790-6  
SNIVELY, Garth David )  
Defendant(s). )  
AFFIDAVIT OF PROBABLE CAUSE

**AFFIDAVIT BY CERTIFICATION:**

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

According to investigative reports of the Snohomish County Sheriff's Office and witness statements:

The defendant, Garth David Snively (DOB 11/3/49) sexually molested two boys, Jason and Jessie LeMay on multiple occasions over a several year time frame from approximately 1984 to 1987. Jessie LeMay (DOB 6/8/77) was between the ages of 6 - 10 during this time frame, and Jason LeMay (DOB 7/31/79) was between the ages of 4 - 7.

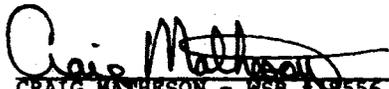
The sexual abuse initially came to light in the fall of 1993 when the defendant was charged with molesting other young boys. These charges indicated that the defendant had diapered and fondled several boys after gaining their trust and that of their families. These charges received extensive publicity in the media.

On October 25, 1993, the defendant pled guilty to two counts of Child Molestation in the First Degree. This plea was also widely covered by the media. Both Jason and Jessie read of the defendant's plea and came forward to their parents. They described abuse during the time frame indicated remarkably similar to that that the defendant had just pled guilty to. Both Jason and Jessie described multiple instances of the defendant having them wear diapers, although they were both toilet trained. Both young men also described the defendant fondling their genitals on a pretext of checking to see if they were "wet." Both LeMay boys described seeing the defendant do this to each other. This fondling and diapering occurred approximately 10 times.

**EXHIBIT 10**

In late October, 1993, the defendant called the LeMay residence and spoke to Jason and Jessie's mother, Karla. During the phone conversation the defendant confessed to the molestation. He stated, "I guess you know what I did to your boys. I am a child molester, and my trademark is diapers and I guess your boys wore diapers. I don't have total recall, but I hear they think they were molested." The defendant indicated that a counselor he had spoken to had suggested the call as a way of "doing something for the boys."

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

  
CRAIG MATHESON - WSB #19556  
Deputy Prosecuting Attorney

DATED this 20th day of December, 1993, at the Snohomish County Prosecutor's Office.

**CERTIFIED  
COPY**

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
SNIVELY, Garth David )  
)  
Defendant )

No. 93-1-01790-6

PERSON  
CLERK  
STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY

1. My true name is Garth David Snively.

2. My age is 43. 3. I went through the 12+ grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is John Tario.

(b) I am charged with the crime(s) of INDECENT LIBERTIES. The elements of the crime(s) are: That the defendant, (1) on or about the 2nd day of July, 1984 through 1987, (2) did knowingly cause Jason LeMay and Jessie LeMay, not the spouse of the defendant and less than 14 years of age, (3) to have sexual contact, for the purpose of sexual gratification, with the defendant or another; proscribed by RCW 9A.44.100(1)(b), a felony.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) The right to remain silent before and during trial, and I need not testify against myself.
- (c) The right at trial to hear and question witnesses who testify against me.
- (d) The right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) The right to appeal a determination of guilty after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence: Count I: 10 Years imprisonment and a \$ 20,000 fine. Count II:            imprisonment and a \$            fine. Count III:            imprisonment and a \$            fine. The standard sentence range is/are: 21 to 27 months as to Count I;            to            months as to

**EXHIBIT 11**

Count II; \_\_\_\_\_ to \_\_\_\_\_ months as to Count III, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also always includes convictions in juvenile court for sex offenses, whatever my age was when the sex offense was committed, or is now. Criminal history also includes convictions in juvenile court for other felonies or serious traffic offenses that were committed when I was 15 years of age or older. However, if I was 23 years of age or older when I committed the crime to which I am now pleading guilty, the juvenile conviction only counts if it was for a class A felony, or a sex offense.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendations increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ \_\_\_\_\_ as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the recommendation to the judge as stated on the attached plea agreement form.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) ~~The crime of \_\_\_\_\_~~ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(i) The sentence imposed on Counts \_\_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

SDS  
(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). ~~This sentence could include as much as 90 days confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

SDS  
(l) ~~This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(n) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the State of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

7. I plead guilty to the crime of INDECENT LIBERTIES as charged in the Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

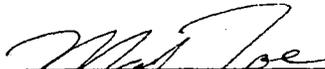
I OLD KNOWINGLY CALLED JASON & JESSIE LAMMY TO HAVE SEXUAL CO  
WITH MYSELF. THEY ARE NOT MY SPOUSE AND WERE UNDER 18 YEARS OF AGE. THIS  
IN SHERMAN COUNTY. AND WAS FOR THE PURPOSE OF GETTING EVIDENCE

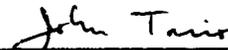
12. I am aware that an Affidavit of Probable Cause has been filed in this case. The court may consider this Affidavit in deciding whether there is a factual basis for my plea.

13. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

  
GARTH DAVID SNEGELY  
DEPENDANT

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

  
CRAIG MATHESON - WSB #18556  
PROSECUTING ATTORNEY

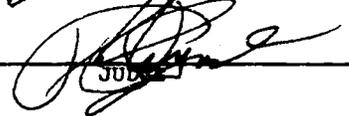
  
JOHN TARIO  
DEFENDANT'S LAWYER 16712

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read; or  
 (b) The defendant's lawyer had previously read to him or her;  
 (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 21st day of Dec, 1993

  
JUL

\*I am fluent in the \_\_\_\_\_ language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
INTERPRETER

APPENDIX D TO PLEA AGREEMENT  
NOTIFICATION OF REGISTRATION REQUIREMENT  
RCW 9A.44.130,140

I have been informed and fully understand that: 93-1-01790-6

1. If I am convicted of any sex offense, I will be required to register with the County Sheriff in the county of my residence.
2. If I am convicted of any sex offense, I must report to register immediately after sentencing. If I am in custody, I must register within 24 hours of my release from custody.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington.
4. When registering, I must provide the County Sheriff with the following information:
  - (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; and (h) Social Security number.
5. If I am required to register pursuant to the above obligations and I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within ten days of establishing the new residence. If I am required to register pursuant to the above obligations and I move to a new county, I must register with the County Sheriff in the new county within ten days of establishing the new residence, and must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. If I have been convicted of any sex offense, the County Sheriff will obtain a photograph of me and will obtain a copy of my fingerprints.
7. If I am required to register pursuant to the above obligations and if I knowingly fail to do so, I may be charged and convicted of a crime.
8. The crime(s) for which I am pleading guilty is/are a:

COUNT#

- a. Class A felony. My obligation to register continues until I am specifically relieved of it by court order.
- I  b. Class B felony. My obligation to register continues for 15 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction or entry of the judgment and sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses.
- c. Class C felony. My obligation to register continues for 10 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses.

Dated this 21st day of December, 1993.

  
DEFENDANT GARTH DAVID SNIVELY

6

**PLEA AGREEMENT  
(SENTENCING REFORM ACT)**

Date: December 21, 1993

Defendant: GARTH DAVID SNIVELY Cause No. 93-1-01790-6

On Plea To:  As charged

Special Finding/Verdict of possession of deadly weapon on Count(s) RCW 9.94A.125

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

1.  DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss Count(s) \_\_\_\_\_.
2.  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:  
 as set forth in the affidavit(s) of probable cause filed herein  
 as set forth in the attached Appendix C.
3.  RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as follows:  
 in full to victim(s) on charged counts  
 as set forth in attached Appendix C.
4.  OTHER: Parties agree to have sentencing this cause on January 25, 1994, same date that 93-1-01420-6 is being sentenced.  
 The defendant agrees to undergo an evaluation by Treatment Alternatives to Street Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting Attorney, prior to sentencing.
5.  SENTENCE RECOMMENDATION:
  - a.  The defendant agrees to the foregoing Plea Agreement and that the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in State's Sentence Recommendation.
  - b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regards to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Mandatory Minimum Term (RCW 9.94A.120(4) only): \_\_\_\_\_

Mandatory license revocation RCW 46.20.285.

Ten years jurisdiction and supervision for monetary payments. RCW 9.94A.120(9).

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

GARTH DAVID SNIVELY  
Defendant

Craig Matheson  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

John Tario  
JOHN TARIO 16712  
Attorney for Defendant

[Signature]  
Judge, Snohomish County Superior Court

SNOHOMISH COUNTY PROSECUTING ATTORNEY

White Copy: Court  
Canary Copy: Defense  
Pink Copy: Prosecutor

⑦

**STATE'S SENTENCE (RECOMMENDATION (CONFINEMENT) OF OVER ONE YEAR)  
(SENTENCING REFORM ACT)**

Date: December 21, 1993

Defendant: GARTH DAVID SNIVELY Cause No. 93-1-01790-6

State recommends that the sentence of this defendant be as follows:

- TOTAL CONFINEMENT:** State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:
 

Count I <u>27</u> months	Count IV _____ months/years
Count II _____ months/years	Count V _____ months/years
Count III _____ months/years	Count VI _____ months/years

Terms on each count to run concurrently/consecutively. Concurrent with 93-1-01420-6

- MONETARY PAYMENTS:** The defendant shall make the following monetary payments under the supervision of the Secretary of the Department within 10 years:
  - Restitution as set forth on attached page entitled "Plea Agreement" and  Appendix C.
  - Mandatory \$100 Victim Penalty Assessment
  - Pay a fine of \$ \_\_\_\_\_
  - Pay costs of extradition

- COMMUNITY PLACEMENT:** The defendant shall serve a one-year term of community placement subject to the conditions set forth in RCW9.94A.120(8)(b) and the following conditions. The defendant shall:

- Have no direct contact with Jason & Jessie LeMay
- Not consume alcohol.
- Participate in crime-related treatment and counseling.
- Shall remain (within) (outside of) the following geographical area: \_\_\_\_\_
- Shall comply with the following crime-related prohibitions: 1) No contact with minor children 2) Holding no positions that would put him in contact with children/adolescents i.e. Boy Scouts, Big Brothers, Church Group

- PROBATION REVOCATION/MODIFICATION:** State recommends revocation/modification of probation or community supervision on Snohomish County Cause Number(s) \_\_\_\_\_ and recommends that terms be run concurrently/consecutively.

- EXCEPTIONAL SENTENCE:** This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

- OTHER:** 1) By pleading to this cause number and being sentenced 1/25/94, the defendant realizes that his standard range on #93-1-01420-6 will increase to 98 to 130 months. The defendant realizes that this leaves him ineligible to ask for a SSOSA. The defendant further realized that the State is recommending high end 130 months on 93-1-01420-6.

Craig Matheson  
Deputy Prosecuting Attorney  
CRAIG MATHESON - WSB #18556

8

**INDECENT LIBERTIES (WITHOUT FORCIBLE COMPULSION)**  
 (RCW 9A.44.100 (1)(b) and (c))  
 NONVIOLENT

**I. OFFENDER SCORING (RCW 9.94A.360 (8))**

**ADULT HISTORY:** (If the prior offense was committed BEFORE 7/1/86, count prior adult offenses served concurrently as ONE offense; those served consecutively are counted separately. If both current and prior offenses were committed AFTER 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of felony convictions . . . . .            x 1 =           

**JUVENILE HISTORY:** (All adjudications entered on the same date count as ONE offense)

Enter number of Serious Violent and Violent felony adjudications . . . . .            x 1 =           

Enter number of Nonviolent felony adjudications . . . . .            x 1/2 =           

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same criminal conduct count in offender score)

Enter number of other felony convictions . . . . . 2 x 1 = 2

**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes), + 1 =           

**Total the last column to get the TOTAL OFFENDER SCORE** . . . . . 2  
 (round down to the nearest whole number)

	STANDARD SENTENCE RANGE									
A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE:	12+ - 14	15 - 20	21 - 27	28 - 34	35 - 41	42 - 48	49 - 61	57 - 75	67 - 89	77 - 102
(Seriousness Level VI)	months	months	months	months	months	months	months	months	months	months

- B. The range for attempt, solicitation, and conspiracy is 75% of the standard sentence range for the completed crime (RCW 9.94A.410)
- C. One year of community placement must be served following release from state prison (RCW 9.94A.120(8))

**III. SENTENCING OPTIONS FOR INDECENT LIBERTIES (WITHOUT FORCIBLE COMPULSION)**

- A. If no prior sex offense conviction and sentence is less than six years: special sexual offender sentencing alternative (RCW 9.94A.120 (7)(a))
- B. If sentence is less than six years: sexual offender treatment program (RCW 9.94A.120 (7)(b),(c))

**CERTIFIED  
COPY**

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SNIVELY, Garth David )  
 )  
 Defendant. )

No. 93-1-01790-6

JUDGMENT AND SENTENCE

FILED  
JAN 27 PM 1:39  
ANDERSON  
CLERK

I. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

1. CURRENT OFFENSE(S): The defendant was found guilty on 12/21/93 by plea of:

Count No.: I Crime: Indecent Liberties  
RCW 9A.44.100(1)(b) Crime Code \_\_\_\_\_  
Date of crime 7/2/84-1987 Incident # SCSO 9319065  
Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime code \_\_\_\_\_  
Date of crime \_\_\_\_\_ Incident # \_\_\_\_\_  
Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime code \_\_\_\_\_  
Date of crime \_\_\_\_\_ Incident # \_\_\_\_\_

- ( ) Additional current offenses are attached in Appendix A.
- ( ) With a special verdict/finding for use of deadly weapon on Count(s) \_\_\_\_\_.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

(X) Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): Child Molestation I, two counts  
93-1-01790-6

- ( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are:

2. CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are:

	Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Class
(a)	<u>NONE KNOWN</u>	_____	_____	_____	_____
(b)	_____	_____	_____	_____	_____
(c)	_____	_____	_____	_____	_____
(d)	_____	_____	_____	_____	_____

- ( ) Additional criminal history is attached in Appendix B.
- ( ) Prior convictions counted as one offense in determining the offender score are:

JUDGMENT AND SENTENCE (Felony)

Page 1 of 5

94-9-00670-7

*See jail copy.*

*Cy*

*11*

**EXHIBIT 12**

3. SENTENCING DATA:

Count No.	Offender Seriousness		Range	Maximum Term
	Score	Level		
I	2	VI	21 to 27 <del>days</del> <sup>months</sup>	10 Years
Count No. _____	_____	_____	to _____ months	_____
Count No. _____	_____	_____	to _____ months	_____

( ) Additional current offense sentencing data is attached in Appendix C.

4. EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above)(below) the standard range for Count(s) \_\_\_\_\_ . The reasons are set forth in Appendix D.

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:
  - (a)  \$ 10 to be determined, court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;
  - (b)  \$100.00, victim assessment;
  - (c)  \$ 10 to be determined, total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;
  - (d) ( ) \$631./\$691, Recoupment for attorney's fees; ~~retained~~
  - (e) ( ) \$ \_\_\_\_\_, Fine;
  - (f) ( ) \$ \_\_\_\_\_, Dep't, Drug enforcement fund;
  - (g)  \$ \_\_\_\_\_, Other costs;
2.  The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: ( ) Not less than \$ \_\_\_\_\_ per month, ( ) on a schedule established by the defendant's community corrections officer, to be paid within 120 months of ( ) this date (  release from confinement.
3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.
4. (X) The defendant shall be prohibited from having any contact, directly or indirectly, with Jason LeMay and Jessie LeMay for a period of 10 years.
5. (X) The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.
6. The Court, upon motion of the State, DISMISSES Count(s) \_\_\_\_\_

JUDGMENT AND SENTENCE (Felony)

7. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the State Department of Corrections as follows commencing  immediately  no later

27 months for Count No. I.  
\_\_\_\_\_ months for Count No. \_\_\_\_\_.  
\_\_\_\_\_ months for Count No. \_\_\_\_\_.

The terms in Counts No. \_\_\_\_\_ are (concurrent) (consecutive)

The sentence herein shall run ~~(concurrently)~~ (consecutively) with the sentence in cause number(s) 93-1-01420-6.

Credit is given for 0 days served solely in regard to this offense.

8.  The defendant shall serve a 2 year term of community placement, or up to the period of earned early release, whichever is longer, during which term the mandatory conditions set forth below shall be followed:

(a) The defendant shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The defendant shall work at department of corrections-approved education, employment, and/or community service;

(c) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The defendant in community custody shall not unlawfully possess controlled substances; and

(e) The defendant shall pay community placement fees as determined by the department; and, in addition, the following conditions shall also be followed:

(f)  The defendant shall remain  within  outside of the following geographical area: \_\_\_\_\_

(g)  The defendant shall not have direct or indirect contact with: Jason LeMay and Jessie LeMay.

(h)  The defendant shall participate in crime-related treatment or counseling services as directed by the department.

(i)  The defendant shall not consume alcohol.

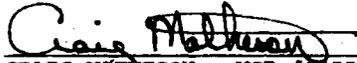
(j)  The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

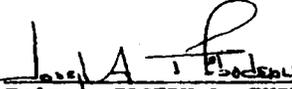
The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- ( ) Appendix A, Additional Current Offenses;
- ( ) Appendix B, Additional Criminal History;
- ( ) Appendix C, Current Offense(s) Sentencing Data; and
- ( ) Appendix D, Reasons for an Exceptional Sentence.
- ( ) Appendix E, Additional Conditions of Sentence.
- (X) Appendix F, Notification of Registration Requirement.
- (X) Order for Blood Testing.
- (X) No Contact Order

DONE IN OPEN COURT this 25 day of January, 1994.

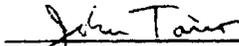
Presented by:

  
CRAIG MATHESON - WSB #18556  
Deputy Prosecuting Attorney

  
Judge - JOSEPH A. THIBODEAU

  
GARTH DAVID SNIVELY  
Defendant

Approved as to form:

  
JOHN TARIO  
Attorney for Defendant

\_\_\_\_\_  
\_\_\_\_\_  
Defendant's current address  
Telephone number \_\_\_\_\_

APPENDIX F TO JUDGMENT AND SENTENCE  
NOTIFICATION OF REGISTRATION REQUIREMENT  
RCW 9A.44.130,140

FILED  
JAN 27 PM 1:39  
ANDERSON  
COUNTY CLERK  
CO. WASH.

I have been informed and fully understand that: 93-1-01790-6

1. I have been convicted of a sex offense, and I am required to register with the County Sheriff in the county of my residence.
2. If I am not immediately sentenced to a term of confinement, I must report to register immediately after sentencing. If I am in custody, I must register within 24 hours of my release from custody.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington.
4. When registering, I must provide the County Sheriff with the following information:
  - (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; and (h) Social security number.
5. I am required to register pursuant to the above obligations. If I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within ten days of establishing the new residence. If I am required to register pursuant to the above obligations and I move to a new county, I must register with the County Sheriff in the new county within ten days of establishing the new residence, and must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. Because I have been convicted of a sex offense, the County Sheriff will obtain a photograph of me and will obtain a copy of my fingerprints.
7. I am required to register pursuant to the above obligations and if I knowingly fail to do so, I may be charged and convicted of a crime.
8. The crime(s) for which I have been convicted is/are a:

Count #

- ( ) a. Class A felony. My obligation to register continues until I am specifically relieved of it by court order.
- I   (X) b. Class B felony. My obligation to register continues for 15 years after the last date of release from confinement, if any, (including full-time residential treatment) sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses.
- ( ) c. Class C felony. My obligation to register continues for 10 years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses.

Dated this 25 day of January, 1994.

  
Defendant: GARTH DAVID SNIVELY

FINGERPRINTS

Right Hand  
Fingerprints of:

[Signature]  
(Defendant's Signature)

Dated: 1-25-94

Attested by:  
Kay D. Anderson, Snohomish Co. Clerk

By: [Signature]  
(Deputy Clerk)

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: \_\_\_\_\_  
Kay D. Anderson, Snohomish Co. Clerk

By: \_\_\_\_\_  
(Deputy Clerk)

JUDGMENT AND SENTENCE (Felony)  
FINGERPRINTS

OFFENDER IDENTIFICATION

S.I.D. No. \_\_\_\_\_

Date of Birth 11/3/49

Sex Male

Race White

ORI WA0310000

OCA 102593

OIN 03931430502

DOA 10/25/93