

NO. 62916-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SYLVESTER CARTER, JR.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MONICA BENTON

BRIEF OF RESPONDENT

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**A. ISSUES PRESENTED**

1. Whether, under Miller, Carmen and Gray, Carter waived appellate review of the admissibility of the State's evidence of his previous convictions for violating no contact orders (VNCO) by failing to object until the evidence had been admitted, and the State had rested.

2. Whether, as a matter of law, Carter's prior conviction for domestic violence violation of a post-sentencing NCO was admissible because domestic violence post-sentencing orders can be issued only under a qualifying statute.

3. Whether, after Carter admitted that he committed the charged crime, his ineffective assistance of counsel claim fails where he cannot show that, but for the admission of his remote criminal history, the outcome of the case probably would have been different.

4. Whether Carter's ineffective assistance of counsel claim fails where, hoping for dismissal of the felony allegation,

Carter delayed objecting to the State's evidence of his 1996 conviction for VNCO until after the State had rested and jeopardy had attached.

5. Whether the defense of necessity was unavailable to Carter because he could have called the police and asked them to check on his daughter's welfare – a reasonable, legal alternative to violating an NCO.

6. Whether the charging document contained all of the essential elements of the offenses charged where the information that Carter claims was erroneously omitted is factual information that should be requested via a bill of particulars, and not an element of the crime.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

By Amended Information, the State charged defendant Sylvester Carter with one count of felony violation of a no contact

order (FVNCO), pursuant to RCW 26.50.110(1), (5).<sup>1</sup> CP 43. A jury convicted Carter as charged. CP 12-13. Over the State's objection, the trial court granted Carter's request for a Special Drug Offender Sentencing Alternative.<sup>2</sup> CP 52-54; 1/7/09 RP 2, 12-13. Carter timely appeals. CP 59.

## 2. TRIAL FACTS.

On July 8, 2008, Carter was subject to a no contact order that prohibited him from having contact with Michelle Baker, Carter's ex-girlfriend and the mother of one of his children. Ex. 4;

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<sup>1</sup> On October 30, 2009, the State filed a motion to supplement the record with certified copies of the documents pertinent to Carter's 1996 conviction. (Attached as Appendix A). The documents show that the judgment and sentence, trial exhibit 7, contained a mere scrivener's error. The conviction at issue was for a VNCO issued pursuant to Chapter 10.99 RCW, one of the enumerated statutes under RCW 26.50.110. Further, the records from the 1996 conviction established that, in exchange for a guilty plea to the felony VNCO charge, the State would move the court at sentencing to dismiss count 2, assault in the fourth degree. Appendix A (Statement of Defendant on Plea of Guilty at 4; Information; Plea Agreement).

On November 6, 2009, the State received Carter's objection to the State's motion, arguing that admitting the documents on appeal, would relieve the State of proving each essential element of the crime of felony VNCO. As discussed in section C.1.b of this brief infra the existence of the prior conviction, not the validity thereof, is the essential element of the offense.

As of November 13, 2009, the Court had not ruled on the State's motion.

<sup>2</sup> The State objected to a Special Drug Offender Sentencing Alternative because the trial record contained no evidence that substance abuse contributed to Carter's violation of the no contact order. 1/7/09 RP 2. Carter testified under oath at the sentencing hearing that he was under the influence of alcohol when he committed the crime. 1/7/09 RP 5.

10/1/08 RP 46. In addition, the order prohibited Carter from coming within 500 feet of Baker's residence. Ex. 4; 10/1/08 RP 56. Carter knew of the no contact order and its restraint provisions. Ex. 4; 10/1/08 RP 21, 48, 55-56.

On July 8, despite the no contact order, Carter drove to Baker's residence. 10/1/08 RP 48. Carter was looking for his 15-year-old daughter, Jennifer, who had run away from home about one and one half weeks earlier. 10/1/08 RP 46, 48. Carter had learned from his sister that Jennifer was staying with Baker – Jennifer's godmother. 10/1/08 RP 47.

Carter drove past Baker's home, turned around at the end of the cul-de-sac and then parked slightly down the street from her home. 10/1/08 RP 22, 62. Both times that Carter passed Baker's home he came within 500 feet of the residence. 10/1/08 RP 63. Baker, a male friend of hers (Richard David), and David's niece and nephew were standing at the end of the driveway. 9/30/08 RP 18-19, 23.

Carter leaned out the driver's side window and spoke to Baker for a few minutes. 9/30/08 RP 26; 10/1/08 RP 49, 59. After

Baker assured him that Jennifer was safe, Carter left. 10/1/08 RP 51, 59. Baker was very upset by Carter's visit.<sup>3</sup> 9/30/08 RP 26.

Richard David left shortly after Carter. 9/30/08 RP 28.

David saw a Bellevue police officer (Officer Casey Hiam) a couple of blocks away. 9/30/08 RP 28; 10/1/08 RP 2. David asked Officer Hiam to follow up on what had happened at Baker's residence. 9/30/08 RP 28.

When Officer Hiam first saw Baker, she was crying, shaking and nervous. 10/1/08 RP 6-7. Baker did not immediately calm down; she remained upset for 10 - 15 minutes. 10/1/08 RP 7. Officer Hiam requested that the Auburn Police Department dispatch officers to Carter's house. Carter's car was parked outside his apartment complex, but Carter did not answer the door. 10/1/08 RP 10. When Officer Hiam finally contacted Carter over the telephone later that night, Carter said that he had no idea what the officer was talking about. 10/1/08 RP 8.

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<sup>3</sup> Baker did not testify. A detective contacted Baker immediately after Carter's arrest to notify her that Carter had been taken into custody. 10/1/08 RP 29. After that, despite several attempts to locate Baker, the detective was unable to find her. 10/1/08 RP 29. Following Carter's arrest, Baker moved and disconnected her telephone number. 10/1/08 RP 29. Because of constitutional considerations, the State proceeded to trial on only the theory that Carter had two prior convictions for violating no contact orders. See 9/25/08 RP 32. Initially, the State had alternatively alleged that the crime was a felony based on an assault. CP 1; RCW 26.50.110(4).

However, when a Bellevue Detective, Sarah Finkel, called Carter the next day to follow up, Carter admitted that he, along with a friend, had driven to Baker's house. 10/1/08 RP 19-22, 28-29, 52. Carter admitted that he had knowingly and willfully violated the NCO. 10/1/08 RP 21. When Detective Finkel refused to give Carter several months to turn himself in, Carter was "affronted"; he told Detective Finkel that she was "cold." 10/1/08 RP 26-27.

Carter testified. He admitted that he had violated the no contact order, as he was concerned about Jennifer — because the streets are dangerous, she was sexually active, not in school and she smoked marijuana. 10/1/08 RP 46-47. Carter had filed a missing persons report with the police. 10/1/08 RP 47.

When Carter and his friend arrived at Baker's house, he saw Baker outside with David, whom Carter referred to as Baker's "Sugar Daddy." 10/1/08 RP 22, 48-49. He thought that David and Baker were dating. 10/1/08 RP 59. Although Carter did not actually see Jennifer, Baker told him that Jennifer was okay, so Carter left. 10/1/08 RP 51.

By stipulation of the parties, the trial court admitted exhibits 6 and 7, certified copies of judgment and sentences for two of Carter's previous violations of an NCO (attached as Appendix B). 9/30/08 RP 2, 5.

### **3. CARTER'S MOTION TO DISMISS.**

After the State had rested, Carter moved to dismiss the allegation that he had been convicted twice for violating an order issued under an enumerated statute. 10/1/08 RP 33-41. This allegation was an element of a felony charge of VNCO. RCW 26.50.110(5). Carter specifically challenged the State's prima facie evidence that his August 13, 2006 conviction for "Violation of Post Sentencing Court Order" had been based on the violation of an NCO issued under a listed statute.<sup>4</sup> 10/1/08 RP 33-35, 38-39; Ex. 7.

Carter claimed that the judgment and sentence was "inherently ambiguous" because it defined the charge as a violation of a post-sentence court order, yet it cross-referenced RCW 9A.36.041 (assault in the fourth degree) as the statutory citation. 10/1/08 RP 35, 38; Ex. 7. Carter contended that, because the

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<sup>4</sup> The date of the crime was 7/17/96 and the conviction date was 8/13/96. Ex. 7.

judgment and sentence reflected that count 2 therein was dismissed, it added to the confusion, i.e., it was ambiguous whether it was the violation of the post-sentencing order or the assault in the fourth degree that had been dismissed. 10/1/08 RP 36. The trial court asked defense counsel if he believed that Carter was convicted of an assault rather than the captioned crime. 10/1/08 RP 35. Counsel responded that he did not know; he stated, "It's ambiguous." 10/1/08 RP 35-36. The court directed the deputy prosecutor to find out what the court record showed, and the judge took the matter under advisement. 10/1/08 RP 36-37.

After a recess, the trial court stated that it had not checked the electronic court file (ECR) because it believed that the onus was on the defense to establish an ambiguity and that "simply showing the difference between the reference to the RCW for the assault and the title, violation of a court order, is [an] insufficient showing."<sup>5</sup> 10/1/08 RP 37. The court added that if the defendant could prove that he had only been convicted of an assault, then that

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<sup>5</sup> As discussed below, the trial court misapprehended the burden of proof where a defendant seeks a determination of whether the predicate conviction was based on a violation of a NCO issued pursuant to a proper statute. See section C.1.b of this brief infra.

would be a sufficient showing. 10/1/08 RP 37. The court inquired if the defense had such evidence. Defense counsel stated, "I do not." 10/1/08 RP 37.

The deputy prosecutor had checked the court file at the recess, per the trial court's directive. 10/1/08 RP 40. The prosecutor said,

During the break, I had the opportunity to review the documents on ECR. It appears to be just a scrivener's error. The judgment and sentence, the plea agreement references a plea of guilty to count one. The defendant's presentence report that was filed references a felony violation of a post-sentence order. And the statement of defendant on plea of guilty references a felony violation of a no contact order.

So if there was a real issue about whether or not the defendant was convicted, this judgment and sentence should never have been admitted. But it was admitted without objection from [the] defense.

10/1/08 RP 40.

Defense counsel acknowledged that the State had showed him the pertinent documents, but nevertheless argued for a dismissal. He stated,

Now, Counsel has shown me some documents today which she did retrieve from ECR. But frankly, Your Honor, the case before the Court, the evidence is complete, the State has rested and the evidence is as it is.

10/1/08 RP 38.

The trial court ruled that the State had satisfied its burden of proving the existence of two prior convictions, trial exhibits 6 and 7, whereas the issue of whether the prior convictions were for no contact orders that had been issued pursuant to one of the enumerated statutes was a legal issue for the court – and one that should have been raised pretrial.<sup>6</sup> 10/1/08 RP 39-40. Defense counsel disagreed; he stated, "It doesn't go to the admissibility, it goes to sufficiency of the evidence. There are two different thresholds." 10/1/08 RP 41.

The court denied Carter's motion to dismiss; it ruled that Carter had waived any objection to the admissibility of exhibit 7 by failing to object when the State offered it. 10/1/08 RP 37, 40-41. The court said, "[Y]ou waived your objection when you failed to oppose the admission of Exhibit 7." 10/1/08 RP 40-41.

Carter had also proposed a jury instruction that required the jury to find that the NCO underlying the previous conviction had

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<sup>6</sup> The trial court does not appear to have ruled that the State had met its burden of proving the existence of the prior convictions beyond a reasonable doubt, a question for the jury. Rather, the court's comments were in the context of whether, in the light most favorable to the State, there was sufficient evidence to permit the case to go forward, i.e., to survive the defendant's "half-time" motion.

been issued pursuant to RCW 26.50.110(5). CP 41; 10/1/08 RP 41. Because the trial court ruled that Carter had waived the issue, the court declined to give Carter's proposed instruction. 10/1/08 RP 41.

C. **ARGUMENT**

1. **CARTER WAIVED REVIEW OF THIS ISSUE BY FAILING TO TIMELY OBJECT TO EXHIBIT 7. MOREOVER, AS A MATTER OF LAW, THE 1996 CONVICTION WAS FOR A VIOLATION OF A NO CONTACT ORDER THAT WAS ISSUED UNDER THE PROPER STATUTE.**

Carter argues that the trial court erred in denying his motion to dismiss the allegation in the Amended Information regarding his two previous VNCO convictions. He couches his claim as a challenge to the sufficiency of the evidence. The actual issue, however, is whether, as a matter of law, Carter's 1996 conviction was for the violation of an NCO issued under a statute listed in RCW 26.50.110(5).<sup>7</sup> Because Carter *stipulated to the admissibility* of the judgment and sentence and did not object to evidence of his 1996 conviction until *after* the State had rested its case, he waived review. If the order underlying the 1996 conviction had not been

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<sup>7</sup> Carter does not challenge the other predicate conviction, trial exhibit 6.

issued pursuant to one of the statutes enumerated in RCW 26.50.110, it was inadmissible and Carter should have objected. But even if Carter had preserved the issue, as a matter of law, Carter's previous convictions supported the charge of felony VNCO in the present case. For these reasons, Carter's claim must fail.

a. Waiver.

Under ER 103(a)(1), error may not be predicated on a ruling that admits evidence unless a party raises a timely objection on specific grounds. To be timely, an objection must be made at the earliest possible opportunity after the basis for the objection becomes apparent. State v. Jones, 70 Wn.2d 591, 597, 424 P.2d 665 (1967).

Carter seeks review of the evidence of his 1996 conviction, despite his failure to object to the evidence when the State offered it. Carter's argument should be rejected under Miller, Carmen and Gray.

The Miller court held that,

[T]he "existence" of a no-contact order is an element of the crime of violating such an order. However the "validity" of the no-contact order is a question of law appropriately within the province of the trial court to decide as part of the court's gate-keeping function.

State v. Miller, 156 Wn.2d 23, 24, 30-31, 123 P.3d 827 (2005) (approving this Court's decision in State v. Carmen, 118 Wn. App. 655, 663, 77 P.3d 368 (2003)) (holding that "the requirement contained in RCW 26.50.110(5) that the prior convictions be for violations of no-contact orders issued under one of the listed statutes, or for violation of a 'valid foreign protection order,' relates to the *admissibility* of the State's proof of the prior convictions, rather than to an essential element of the felony crime"), review denied 151 Wn.2d 1039 (2004) (emphasis in original).

In Gray, this Court declined the defendant's invitation to apply the holdings in Miller and Carmen to only the *current* NCO, and to hold that whether the prior convictions qualified as predicate convictions under the statute was an essential element of the crime of FVNCO. State v. Gray, 134 Wn. App. 547, 555-56, 138 P.3d 1123 (2006). This Court stated that, "[I]t is, as we ruled in Carmen, a question of law for the court. Gray, at 555. The Court reiterated that the validity of the predicate convictions is a threshold determination that the trial court makes in its "gate-keeping

capacity." Gray, at 550, 556; see also Miller, 156 Wn.2d at 31 (finding that the trial court, as part of its "gate-keeping function," should determine the applicability of the NCO).

The Miller court discussed the validity of the predicate order in terms of its "applicability." Miller, 156 Wn.2d at 31. Issues such as whether the court granting the order was authorized to do so, whether the order was facially valid, and whether the order complied with the underlying statutes are, according to the Miller court, collectively referred to as "applicability." Miller, at 31. If the order is inapplicable, it should not be admitted; if no order is admitted, the charge should be dismissed. Id.

Put another way, RCW 26.50.110(5) raises an evidentiary barrier to the admission of evidence of the two prior convictions in order to prove the felony offense unless the prior convictions qualified as predicate convictions as defined in the statute. The very relevancy of the prior convictions depended upon whether they qualified as predicate convictions under the statute.

Carmen, 118 Wn. App. at 664.

Finally, in Gray, this Court held that the defendant, like the defendant in Carmen, had waived any objection by failing to timely

object. Gray, at 557-58 (citing Carmen, 118 Wn. App. at 668).<sup>8</sup> "By waiting until the State rested to move to dismiss based on the inadequacy of the judgment and sentence, rather than objecting to that document's admissibility under RCW 26.50.110(5) in the first instance, Gray waived any objection." Gray, at 558; see also id. at 550 ("Gray waived this issue by failing to object when the State offered proof of his prior convictions and the court admitted the evidence.").

Similarly to the defendants in Gray and Carmen, Carter did not object that the evidence of his predicate 1996 VNCO conviction was inadmissible because it did not state the statutory basis for issuance of the violated NCO. 9/30/08 RP 2, 5. When the State offered exhibit 7, defense counsel said, "No objection your Honor." 9/30/08 RP 5. Indeed, Carter's counsel had *stipulated to its admissibility*. 9/30/08 RP 2.

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<sup>8</sup> In Carmen, this Court also held, in part, that the defendant waived review of the same issue by failing to timely object, despite also proposing related jury instructions. The Court stated, "Thus, the trial court in the instant matter did not err by rejecting Carmen's proposed 'to convict' instruction on the ground that the court, not the jury, must determine the validity of the predicate convictions for purposes of RCW 26.50.110(5)." Carmen, 118 Wn. App. at 667-68. Thus, for purposes of waiver, it is of no moment that Carter proposed a jury instruction (CP 41) that delegated the determination of the validity of the underlying NCO to the jury.

Under these circumstances, Carter's earliest possible opportunity to object to the admissibility of evidence of his 1996 VNCO conviction, if not at the beginning of trial in a motion in limine, was at the time that the State offered the certified judgment and sentence. Under ER 103(a)(1), Miller, Carmen and Gray, Carter should have raised any objection at the latest when the State offered the evidence for admission. Instead, Carter waited until the State had rested its case to move for dismissal of the felony allegation for lack of proof that one of the VNCO convictions was for violating an order issued under the proper statute. 10/1/08 RP 33-36, 37-39. The State appropriately argued that the defense had waived any objection by stipulating to the admission of exhibit 7: "So if there was a real issue about whether or not the defendant was convicted, this judgment and sentence should never have been admitted. But it was admitted without any objection from defense." 10/1/08 RP 40; see also 9/30/08 RP 5.

Carter had ample notice of the State's evidence and opportunity to object outside the presence of the jury. But, he waited until the State had rested to raise the issue. This was

tactical.<sup>9</sup> If the trial court had accepted Carter's argument that the State had presented "insufficient evidence" of all essential elements of the charged felony before resting, then Carter would have been entitled to dismissal of the felony allegation, and the State would not have been entitled to re-open its case. When the court denied the "half-time" motion, Carter's counsel conceded that the State had produced the pertinent documents, but nevertheless argued that the State's proof was untimely. Under these circumstances, this Court should hold that Carter waived review of the issue by failing to make a timely and specific objection to the State's evidence of his 1996 conviction for VNCO.

- b. As A Matter Of Law, Carter's 1996 VNCO Conviction Was Based On The Violation Of An Order Issued Under A Proper Statute.

Under RCW 26.50.110(5), the violation of an NCO issued under RCW 10.99, 26.09, 26.10, 26.26, 26.50 or 74.34, or "a valid foreign protection order as defined in RCW 26.52.020," is a class C felony if the offender has at least two previous convictions for violating the provisions of an order "issued under" the same listed

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<sup>9</sup> Please see discussion of the defendant's tactical decision to delay objection infra section C.2 of this brief.

statutes. RCW 26.50.110(5). In Miller, the Washington Supreme Court adopted this Court's reasoning in Carmen and held that the existence of the defendant's previous VNCO convictions under RCW 26.50.110(5) was a question of fact for the jury; whether a previous VNCO conviction was based on the violation of an NCO issued under the listed statutes, however, was a question of law for the trial court. Miller, 156 Wn.2d at 830-31 (citing Carmen, 118 Wn. App. at 665).

In Gray and Carmen, the trial courts determined whether the previously violated NCOs were issued under the enumerated statutes post-trial. Gray, 134 Wn. App. at 555 n.19; Carmen, 118 Wn. App. at 664. This Court noted that the proper procedure requires that the court's determination should be made before admitting the previous convictions, but that the pre-sentencing determination was not a "fatal flaw warranting reversal." Gray, 134 Wn. App. at 555 n.19 (citing Carmen, 118 Wn. App. at 668). The trial courts' post-trial examination of the records in Gray and Carmen "cured the evidentiary gap." Carmen, at 668.

In Carter's case, the jury found beyond a reasonable doubt that Gray had two previous VNCO convictions. CP 13.

On appeal, Carter contends that the State did not establish that his 1996 felony VNCO conviction qualified as a predicate conviction under RCW 26.50.110(5). Under Miller, Carmen and Gray, this claim plainly does not raise a question of evidentiary sufficiency; rather, it involves a question of law. The appropriate standard of review, therefore, is de novo. Miller, 166 Wn.2d at 27 (validity of underlying no contact order is question of law reviewed de novo); Gray, 134 Wn. App. at 558 (same). As set forth below, the record supports a determination that, as a matter of law, Carter's 1996 felony VNCO conviction was for a valid predicate conviction under RCW 26.50.110(5).

As a preliminary matter, the trial court in this case may have confused a defendant's challenge to the *constitutional validity* of an underlying conviction (whereupon the defendant must make a "colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction," and only if the showing is made, the burden then shifts to the State to prove beyond a reasonable doubt that the predicate conviction is constitutionally sound) with Carter's *statutory challenge*. See State v. Summers, 120 Wn.2d 801, 812, 846 P.2d 490 (1993). In Carmen, this Court noted that, where a judgment and sentence does not reflect the

statutory authority, the State must be prepared to prove the underlying statutory authority to the trial court before requesting admission of its evidence. 118 Wn. App. at 668. Thus, the State concedes that it bore the burden of proving the statutory authority for the predicate conviction.

The State met its burden. When Carter moved to dismiss the allegation regarding his two previous VNCO convictions, the State responded that it checked ECR and the court record established that the defendant had pleaded guilty to a felony VNCO. 10/1/08 RP 40. The State showed defense counsel the documents from ECR that established that the underlying NCO was issued pursuant RCW 10.99.050, a statute enumerated in RCW 26.50.110(5). Appendix A. Although the State did not seek to admit the documents, Carter conceded, in essence, that the State had proved that the predicate conviction was issued pursuant to one of the proper statutes. 10/1/08 RP 38. Nevertheless, Carter moved for dismissal on the basis that the State's proof was *untimely*; he stated, "Counsel has shown me some documents today which she did retrieve from ECR. But frankly, Your Honor, the case before the Court, the evidence is complete, the State has rested and the evidence is as it is." 10/1/08 RP 38. Under Gray

and Carmen, however, the *untimely* determination of the statutory authority was not a "fatal flaw." Gray, 134 Wn. App. at 555 n.19; Carmen, 118 Wn. App. at 668.

As noted, the jury found the existence of Carter's 1996 felony VNCO conviction beyond a reasonable doubt. CP 13. While the VNCO Judgment and Sentence did not state the correct statutory basis for the conviction, the information attached to Carter's statement of defendant on plea of guilty did. Appendix A. Even though the trial court in the instant case may not have made an explicit determination that the 1996 conviction was based on an order issued pursuant to the proper statutory authority, this Court can cure any "evidentiary gap."

A de novo review of exhibit 7 supports the conclusion that, as a matter of law, the conviction was for a felony VNCO, which order had been issued pursuant to a proper statute. Exhibit 7 establishes the statutory validity based on the following.

First, in 1996, the only violation of a *post-sentence* court order that gave rise to a criminal offense, as opposed to a possible sanction for violating a no contact provision of community supervision (or any form of probation), was an NCO issued

pursuant to former chapter 26.50 RCW or RCW 10.99.050, one of the statutes listed in RCW 26.50.110(5).<sup>10</sup>

Second, Exhibit 7 is a *felony* judgment and sentence. Ex. 7. The scrivener's error therein cites RCW 9A.36.041, which is the citation for assault in the fourth degree — a gross misdemeanor. RCW 9A.36.041(2) ("Assault in the fourth degree is a gross misdemeanor."). The conviction, therefore, was for a felony violation of a post-sentence court order (as the caption states), and not an assault.

Third, exhibit 7, at page 2 therein, denoted that the "seriousness level" of the crime was "unranked." Ex. 7, at 2. In 1996, a felony VNCO was an unranked class C felony. Former RCW 10.99.050(2) (1996) (Classification from the 1996 Adult Sentencing Guidelines Manual is attached as Appendix D.).

Finally, exhibit 6, the other predicate conviction for VNCO (from 1997), listed Carter's criminal history at page 2 therein. Entry "(d)" listed the 1996 FVNCO at issue. Thus, if there was any ambiguity as to whether the 1996 conviction was for assault in the fourth degree or FVNCO, exhibit 6 clarified Carter's criminal history.

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<sup>10</sup> The text of former RCW 26.50.110 and former RCW 10.99.050 are attached as Appendix C.

In sum, a de novo review of the record supports the conclusion that Carter's 1996 VNCO conviction was for violation of an NCO issued under RCW 10.99, a statute listed in RCW 26.50.110(5), and therefore provided a proper basis to elevate his third violation of an NCO to a felony. Accordingly, Carter's FVNCO conviction should be upheld.

In the alternative, the matter should be remanded for the trial court to make the determination that the predicate conviction was for an NCO issued pursuant to RCW 10.99. Because the jury found the existence of the two prior convictions as a matter of fact, such a procedure would not violate Carter's due process right to have the State prove each essential element of the crime beyond a reasonable doubt. See In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Acosta, 101 Wn.2d 612, 615, 683 P.2d 1069 (1984).

The timing of the trial court's determination in the instant matter upon remand, while perhaps even less idyllic than the procedure followed in Carmen and Gray, would nevertheless cure the "evidentiary gap." See cf. State v. Lopez, 147 Wn.2d 515, 520, 55 P.3d 609 (2002) (holding that where the State has failed to prove a defendant's criminal history at a sentencing hearing,

"remand for an evidentiary hearing is appropriate only when the defendant has failed to specifically object to the State's evidence of the existence or classification of a prior conviction."). Carter should not get rewarded for his failure to make a timely objection at trial. Thus, upon remand the State should be permitted to produce certified copies of the documents from the 1996 conviction in support of the felony conviction.<sup>11</sup> See Gray, 134 Wn. App. at 558 (stating that the trial court did not err by going outside the State's evidence to determine whether the underlying NCO was based on an NCO issued under a listed statute).

**2. CARTER HAS FAILED TO ESTABLISH THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.**

Carter claims that his counsel was ineffective in three respects: (1) he failed to have information concerning Carter's criminal history redacted from exhibit 6, (2) he failed to timely object to the admission of exhibit 7, and (3) he failed to seek a jury instruction for a necessity defense.

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<sup>11</sup> If this Court does not grant the State's motion to supplement the record with the documents that the defense reviewed, and that served as the basis for the State's proffer to the trial court, Carter should be required to pursue his challenge in a personal restraint petition, wherein the State could provide this Court with the pertinent documents.

This Court should reject Carter's claims. First, Carter cannot establish prejudice from any alleged deficiency. Second, legitimate trial tactics cannot serve as the basis for a claim of ineffective assistance of counsel. Finally, Carter was not entitled to a necessity instruction because legal alternatives to violating the NCO existed.

To prevail on a claim of ineffective assistance of counsel, Carter must establish both deficient performance and prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). A failure to prove either element defeats his claim. Strickland, 466 U.S. at 700.

Deficient performance is established by proof that defense counsel's representation "fell below an objective standard of reasonableness based on consideration of all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "Courts engage in a strong presumption counsel's representation was effective." Id. at 335.

In addition to overcoming the strong presumption of competence and showing deficient performance, the defendant must affirmatively show prejudice. Strickland, 466 U.S. at 693.

The defendant must establish a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Furthermore, this Court reviews counsel's performance in the context of the entire record. McFarland, 127 Wn.2d at 335. The defendant alleging ineffective assistance of counsel "must show in the record the absence of legitimate strategic or tactical reasons supporting the challenged conduct by counsel." Id. at 336. There is a strong presumption that trial counsel's performance was adequate, and exceptional deference must be given when evaluating counsel's strategic decisions. Strickland, 466 U.S. at 689. Legitimate trial strategy cannot serve as the basis for a claim of ineffective assistance of counsel. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). Courts should recognize that, in any given case, effective assistance of counsel could be provided in countless ways, with many different tactics and strategic choices. Strickland, 466 U.S. at 689.

a. Carter Was Not Prejudiced By The Admission Of Exhibit 6.

Carter contends that his counsel was deficient for failing to redact his criminal history from exhibit 6. He first claims that he was prejudiced because exhibit 6 showed that he had been convicted of the *same offense* as charged in the instant case. Br. of Appellant at 6. This claim fails because the cause number listed in exhibit 6, that informed the jury that Carter had previously been convicted of VNCO, is the same cause number as the conviction in exhibit 7. Compare Ex. 6 at 2, § 2.3(d) with Ex. 7. Put another way, the jury did not learn anything from exhibit 6 regarding a prior conviction for VNCO than it had learned from exhibit 7 — and both exhibits had to be admitted because the State alleged that Carter "did have *at least two prior convictions* for violating the provisions of an order issued under" one of the enumerated statutes. CP 43 (italics added). Thus, Carter's claim, that "the jury did not even need to know Carter had been convicted of the same offense as charged," fails. See Br. of Appellant at 18.

Carter next contends that exhibit 6 contained other information about his criminal history that should have been redacted, such as his prior convictions for robbery in the first

degree and theft in the second degree. Br. of Appellant at 17. The prejudice, according to Carter, is that the jury might have inferred that he is a dangerous person with a history of disreputable acts. Br. of Appellant.

The State concedes that there is no apparent tactical advantage for having information about Carter's criminal history – other than his other prior VNCO conviction – reach the jury. However, under the facts of this case, Carter cannot show a reasonable probability that, but for this information reaching the jury, the result would have been different. See Strickland, 466 U.S. at 694.

Here, Carter admitted to knowingly and willfully violating the no contact order. He admitted he knew that on the date of the charged incident a no contact order existed. 10/1/08 RP 48, 55. He admitted that he knew one of the terms of the NCO was the prohibition against him coming within 500 feet of Baker's residence. 10/1/08 RP 56; Ex. 4. He admitted that he willfully went within 500 feet of Baker's residence. 10/1/08 RP 60, 63. And, the State proved through exhibits 6 and 7, which were admitted by stipulation of the parties, that Carter had two prior convictions for VNCO.

In addition, the convictions for robbery and theft were for crimes that Carter had committed more than ten years ago. Ex. 6, at 2, § 2.3 (showing crimes committed in 1991). Thus, the lack of any recent crimes, other than the other VNCO, about which the jury necessarily learned, and the remoteness of the prior crimes diminished any potential prejudice.

Carter contends that he was prejudiced because, without this inherently prejudicial information, the jury likely would have believed Carter's claim that he thought the NCO had expired. Br. of Appellant at 30. But Carter's conflicting statements to the police suggest otherwise. Carter initially told Officer Hiam – who was following up on the incident at Baker's house on the date of the incident – that he did not know what officer Hiam was talking about. 10/1/08 RP 8. Yet, he initially admitted to Detective Finkel, the day after the incident, that he knew he had violated the no contact order. 10/1/08 RP 21. Then, approximately twenty minutes later, Carter stated that he thought the no contact order had expired. 10/1/08 RP 21. Thus, Carter's conflicting statements to the police cast doubt on his credibility.

Consequently, because Carter has failed to establish that he was prejudiced by the admission of exhibit 6, this Court need not

reach the issue of whether counsel was deficient for failing to redact Carter's criminal history. See Hendrickson, 129 Wn.2d at 78 (holding if a defendant fails to satisfy either prong of the ineffective assistance of counsel test, the reviewing court need not address the other prong).

b. Counsel's Delayed Objection To Exhibit 7 Was Tactical.

Carter next alleges that his counsel had no reasonable tactical strategy for failing to timely object to the admission of exhibit 7. Br. of Appellant at 21. The record belies Carter's claim.

As discussed above, by waiting until the State had rested to object to exhibit 7, counsel strategized that the State would not be able to produce the documents to show that the no contact orders had been issued pursuant to a proper statute. This strategy is evident based on counsel's apparent concession that the State had produced the appropriate documents after the "half-time" motion to dismiss, but nevertheless he argued for dismissal based on the *untimely* production of the records. 10/1/08 RP 38; see also 10/1/08 RP 35-36 (counsel objected to the trial court looking at the documents from the underlying conviction on ECR because "the State has rested.")

Counsel's failure to provide the trial court with proposed jury instructions until after the State had rested and counsel argued his motion to dismiss further buttresses the State's argument that the delay was tactical. See 10/1/08 RP 33. Proposed jury instructions "shall be served and filed when a case is called for trial." CrR 6.15(a). Here, counsel knew that if he timely served and filed his proposed instructions, the State might very well see the scrivener's error and fix the problem before double jeopardy attached. See State v. George, 160 Wn.2d 727, 742, 158 P.3d 1169 (2007) (pointing out that jeopardy in a jury trial attaches when the jury is impaneled, and not after pretrial proceedings are held).

In addition, immediately before counsel brought his motion to dismiss, he conferred with Carter about the possibility of accepting the State's offer to plead guilty. 10/1/08 RP 33. The timing of counsel's conference with Carter about resolving the case relative to his motion to dismiss strongly suggests that the defense "rolled the dice" and sought an outright dismissal of the felony allegation.

In sum, Carter has failed to establish that the untimely objection was anything but a tactical decision. And, this Court

should not find ineffective assistance of counsel where the actions of counsel complained of go the trial tactics. See Garrett, 124 Wn.2d at 520.

c. Carter Was Not Entitled To A Necessity Jury Instruction.

Carter next argues that counsel's failure to propose a necessity instruction overcomes the presumption of competence. This claim is without merit.

In order to prevail on a claim of ineffective assistance of counsel based on the failure of trial counsel to request a jury instruction, this Court must find that Carter was entitled to the instruction, that counsel's performance was deficient in failing to request the instruction, and that the failure to request the instruction prejudiced Carter. See State v. Cienfuegos, 144 Wn.2d 222, 227, 25 P.3d 1011 (2001). Carter has failed to satisfy his burden.

The defense of necessity is available only when the circumstances caused the defendant to take unlawful action to

avoid greater injury.<sup>12</sup> State v. Jeffrey, 77 Wn. App. 222, 224, 889 P.2d 956 (1995) (citing State v. Diana, 24 Wn. App. 908, 913, 604 P.2d 1312 (1979)); WPIC 18.02. The defense is unavailable if the defendant had a reasonable, legal alternative to violating the law. Jeffrey, 77 Wn. App. at 225 (citing Diana, 24 Wn. App. at 913-14); WPIC 18.02. Accordingly, a defendant must prove, by a preponderance of the evidence, that (1) he reasonably believed that he had to commit the crime to avoid or minimize a harm, (2) the harm he sought to avoid was greater than the harm resulting from violating the law, and (3) he had no legal alternative. Jeffrey, 77 Wn. App. at 225; WPIC 18.02.

Carter has not shown that his concern for his daughter's welfare and what might have befallen her was a greater harm than the harm from his unlawful contact with Baker.<sup>13</sup> See Jeffrey, 77 Wn. App. at 225 (citing State v. Gallegos, 73 Wn. App. 664, 651, 871 P.2d 621 (1994)). Carter had learned from his sister that his

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<sup>12</sup> Necessity is a common law defense. See State v. White, 137 Wn. App. 227, 230, 152 P.3d 364 (2007); 11 WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 18.02, at 160 (2<sup>nd</sup> ed. 2005 Supplement) (WPIC).

<sup>13</sup> Carter stated that he violated the NCO because he was concerned about his daughter's (Jennifer's) welfare. Yet, he did not insist on seeing Jennifer. Curiously, Carter said that he "figured she was all right" by the "smile" on his 4-year-old daughter's face. 10/1/08 RP 50. Carter said that he left without seeing Jennifer, "because I knew my daughter was in safe hands." 10/1/08 RP 50.

daughter Jennifer was staying with Baker – her godmother.

10/1/08 RP 47. Nothing in the record suggests that Carter had any concern that Baker would have mistreated Jennifer. Indeed, when Carter saw Baker, she was with their (Baker and Carter's) 4-year-old daughter, M.C. Carter expressed no concern for M.C.'s welfare.

Yet, the harm to Baker from Carter's unlawful contact was great. Baker's male friend, Richard David, described how upset Baker had been after Carter's contact. 9/30/08 RP 26. David, concerned for Baker's well-being, asked a police officer to meet with Baker. 9/30/08 RP 28. Furthermore, after Carter's unlawful contact, Baker moved and disconnected her telephone number, strongly suggesting that the harm – or potential harm – to Baker was great.<sup>14</sup> See 10/1/08 RP 29.

Moreover, Carter had the legal alternative of calling the police, a point conceded by Carter at the sentencing hearing. Carter stated that if he had a chance to do it all over again, he would have called the police and had an officer escort him to

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<sup>14</sup> On appeal, Carter states that Baker's absence at trial was "unexplained." Br. of Appellant at 27. That is incorrect. As discussed above in n.3 supra, Baker moved after this incident. In addition, at trial, the defense brought motions in limine to exclude (1) Baker's statement that she feared retaliation, (2) evidence of an alleged assault (Carter rolled up the window with Baker's arm half in and half out), and (3) photographs of Baker's injuries. 9/25/08 RP 22-25; see CP 2 (detailing assault). Thus, it is misleading to imply that Baker lacked interest in Carter's prosecution, as opposed to fearing retaliation.

Baker's house.<sup>15</sup> 1/7/09 RP 7-8. Thus, because the evidence does not support a necessity defense, Carter's counsel did not render ineffective assistance by failing to propose a necessity instruction. See Cienfuegos, 144 Wn.2d at 227.

Carter alleges on appeal that he was prejudiced by his trial counsel's failure to both obtain a necessity defense instruction and to "play to juror sympathies." Br. of Appellant at 27. However, the trial judge had instructed the jury to reach its decision "based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference." WPIC 1.02; CP 23. Thus, it would have been improper for trial counsel to try and "garner sympathy for Carter," as suggested on appeal. Br. of Appellant at 27.

In sum, Carter has failed to overcome the presumption of competent counsel. Although his counsel was arguably deficient for failing to redact some of Carter's criminal history from exhibit 6, its inclusion did not prejudice Carter. The remaining claims fail

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<sup>15</sup> Inexplicably, Carter contends on appeal that, "[I]f he had the police check on Jennifer in Baker's home, *it may have caused greater harm to Jennifer, Baker, and their young child who lived with Baker.*" Br. of Appellant at 31 (italics supplied). There is no citation to the record or any explanation for this assertion. As discussed above, even Carter conceded at sentencing that he could have availed himself of police intervention in lieu of violating the NCO.

either because of trial tactics or the unavailability of a necessity defense, as a matter of law. Accordingly, the Court should reject Carter's claim of ineffective assistance of counsel.

**3. THE CHARGING DOCUMENT CONTAINS THE ESSENTIAL ELEMENTS OF THE CRIMES CHARGED.**

Lastly, Carter claims that the charging document was insufficient because it omitted an essential element of FVNCO. Specifically, Carter argues that the charging document must contain specific, identifying information regarding the two or more prior convictions that elevate a court order violation to a felony under RCW 26.50.110(5). Br. of Appellant at 32-37. This claim should be rejected. The specific information that Carter claims should have been in the charging document does not constitute an essential element of the offense. Rather, it is the kind of particularized factual information that should be requested in a bill of particulars. Accordingly, this Court should affirm.

It is well-settled that "[a]ll essential elements of a crime, statutory or otherwise, must be included in a charging document in order to afford notice to an accused of the nature and cause of the

accusation against him." State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). In this context, "[a]n 'essential element is one whose specification is necessary to establish the very illegality of the behavior' charged." State v. Ward, 148 Wn.2d 803, 811, 64 P.3d 640 (2003) (quoting State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992)).

When, as here, a charging document is challenged for the first time on appeal, the reviewing court liberally construes the document in favor of its validity. Kjorsvik, 117 Wn.2d at 102. Under the liberal construction standard, the information is valid if it reasonably apprises the defendant of all the elements of the crime. Ward, 148 Wn.2d at 813. However, even if a charging document is sufficient when liberally construed, the defendant may still prevail if actual prejudice is shown. Kjorsvik, 117 Wn.2d at 106. The remedy for an insufficient charging document is dismissal without prejudice to the State's ability to refile charges. State v. Vangerpen, 125 Wn.2d 797, 805, 888 P.2d 1185 (1995).

The starting point for this analysis is the language of the statute that defines the substantive crime. Generally, "it is sufficient to charge in the language of the statute if the statute defines the crime sufficiently to apprise an accused person with reasonable

certainty of the nature of the accusation." State v. Leach, 113 Wn.2d 679, 686, 782 P.2d 552 (1989). Furthermore, the essential elements of the crime must be distinguished from other factual information that need not be set forth in the charging document. Thus, "a charging document which states the statutory elements of a crime, but is vague as to some other significant matter, may be corrected under a bill of particulars," but is not constitutionally insufficient. Leach, 113 Wn.2d at 687. A defendant who did not request a bill of particulars at trial may not challenge a charging document on grounds of vagueness on appeal. Id.

The distinction between the essential elements of a crime and other factual information that must be requested via a bill of particulars is best illustrated by the use of examples. For instance, in State v. Winings, 126 Wn. App. 75, 107 P.3d 141 (2005), Division Two of this Court found an information sufficient to charge the crime of assault in the second degree when it stated that "the Defendant did assault another with a deadly weapon" in Clallam County on a particular date. Winings, 126 Wn. App. at 81. The information was sufficient because it mirrored the language of the applicable statute, and it gave fair notice of the conduct forming the basis of the charge. Id. at 85-86. Accordingly, the court held that

any further information, such as the identity of the person who was assaulted and the deadly weapon that was used, was factual information that the defendant should have requested in a bill of particulars. Id.

In a more analogous case, this Court concluded that the classification of the underlying crime is not an essential element of bail jumping. In State v. Gonzalez-Lopez, 132 Wn. App. 622, 132 P.3d 1128 (2006), this Court held "that the express essential elements of the crime of bail jumping stated in section (1) of the statute do not include the penalty classes of bail jumping as essential elements of the crime" based on the plain language of the statute. Id. at 629. Moreover, although this Court further held that the underlying crime must be identified in the charging document because it provides notice of the penalty the defendant will face, the classification of the underlying crime need not be specified because the penalty section of the statute does not contain the essential elements of the crime. Id. at 636.

In so holding, this Court rejected Division Two's reasoning in State v. Ibsen, 98 Wn. App. 214, 989 P.2d 1184 (1999), which held that the penalty provisions of the bail jumping statute contains

essential elements of the crime. Gonzalez-Lopez, 132 Wn. App. at 634. Notably, the Washington Supreme Court also subsequently rejected the Ibsen court's analysis in favor of this Court's analysis in Gonzalez-Lopez. See State v. Williams, 162 Wn.2d 177, 184, 170 P.3d 30 (2007) (holding that this Court's analysis is correct because "the actual elements of [bail jumping] are clearly set forth in the first section, without reference to the penalty section").

The statute proscribing court order violations as charged in this case is structured similarly to the bail jumping statute at issue in Gonzalez-Lopez and Williams in that the statutory elements of the substantive crime are set forth in one section, and additional penalty provisions are set forth in other sections. The first section of the statute sets forth the express elements of the substantive crime, i.e., willfully violating the terms of a court order with knowledge that the order exists. RCW 26.50.110(1)(a). Additional penalty provisions that elevate the substantive crime from a gross misdemeanor to a class C felony are set forth separately. RCW 26.50.110(4) and (5). Accordingly, under the reasoning of Gonzalez-Lopez and Williams, although it is necessary to include language in the charging document sufficient to notify the

defendant that he faces a felony rather than a misdemeanor, these additional penalty provisions do not constitute essential elements of the crime of violation of a court order.

The charging document in this case specifically alleged that Carter had committed a felony because he had "at least two prior convictions for violating the provisions of an order issued" under one of the enumerated statutes when he committed the current offenses. CP 43. This language mirrors the language of the applicable penalty provision, and is sufficient to provide notice of the additional penalties Carter faced as a result of his two prior convictions. RCW 26.50.110(5). Therefore, the charging document is sufficient because it contains the essential elements of the crime, and provides notice of additional penalties based on criminal history. Any further factual information about that criminal history should have been requested in a bill of particulars,<sup>16</sup> and thus, Carter's claim fails.

Nonetheless, Carter argues that the information was deficient for failure to contain specific identifying information regarding the prior convictions. In support of this proposition,

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<sup>16</sup> A bill of particulars was most likely not requested because the bail summary filed with the original information listed Carter's two prior convictions. CP 4.

Carter relies primarily on this Court's decision in City of Seattle v. Termain, 124 Wn. App. 798, 102 P.2d 183 (2004). Carter's reliance is misplaced.

In Termain, the issue was whether a charging document sufficiently apprised the defendant of the essential elements of the substantive crime of violating a court order. The charging document in question did not contain any facts identifying the order that was violated, the court that had issued the order, the person who was protected by the order, or what acts the defendant had committed in violation of the order. Rather, the criminal complaint simply recited every possible statutory alternative that could potentially constitute the crime, and contained no facts whatsoever. Termain, 124 Wn. App. at 800-01.

In holding that the complaint was insufficient, this Court observed that "the culpable act necessary to establish the violation of a no-contact order is determined by the scope of the predicate order." Id. at 804. Therefore, in order to provide sufficient notice of the acts constituting the substantive crime, this Court correctly concluded that a charging document must contain facts sufficient to describe those particular acts in some manner. Id. at 805-06.

Unlike Termain, the charging document in this case described with particularity what Carter had done to commit the substantive crime with which he was charged. The information alleged that on two particular dates, Carter had violated the terms of an order issued in November 2006 by the King County District Court for the protection of Michelle Baker. CP 43. The information further alleged that when Carter committed these substantive crimes, he had at least two prior convictions for violating a court order. CP 43. Therefore, the information is sufficient under Tremain because the substantive crimes are described with sufficient particularity, and the applicable penalty provision provides sufficient notice under Gonzalez-Lopez and Williams. Again, Carter's claim fails.

Furthermore, as discussed at length in the previous argument section, in order to obtain a conviction for felony violation of a court order, the State need prove only that at least two prior convictions exist at the time of the commission of the substantive crime. The State is not required to prove any facts underlying those prior convictions. RCW 26.50.110(5). The existence of at least two prior convictions is precisely what was alleged in the charging document in this case. CP 43. Therefore, to the extent

that the penalty provision is the equivalent of an essential element because it must be found by the jury, the charging document in this case passes constitutional muster because it mirrors precisely what the jury must find, i.e., the existence of at least two priors. CP 27, 34, 12-13.

Finally, Carter argues that he was prejudiced by the claimed deficiencies in the charging document because the trial court did not grant his motion to dismiss due to claimed deficiencies in the prior judgments introduced by the State, and because the trial court would not let him argue these issues to the jury. Br. of Appellant at 36-37. This argument is specious. Indeed, the record clearly demonstrates that Carter made a strategic decision to wait to challenge the evidence of his prior convictions until the last possible moment, hoping that the State would be unable to cure any potential defects. 10/1/08 RP 33-41. If Carter had any legitimate issues with respect to his prior convictions, he could have requested a bill of particulars and addressed the issue before trial. This Court should reject Carter's attempt to characterize a deliberate trial strategy as prejudice due to an alleged charging defect.

In sum, there is no constitutional requirement that information specifically identifying a defendant's prior convictions must be contained in a charging document for felony violation of a court order because such information does not constitute an essential element of the crime. Instead, this is quintessentially the type of factual information that should be requested in a bill of particulars. This Court should reject Carter's claims to the contrary, and affirm.

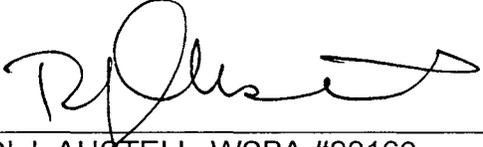
**D. CONCLUSION**

For the reasons stated above, this Court should affirm Carter's conviction for felony violation of a no contact order.

DATED this 13 day of November, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
RANDI J. AUSTELL, WSBA #28166  
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Attorneys for Respondent  
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# APPENDIX A

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

96 AUG 14 2018

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

Accelerated  
Non Accelerated  
DPA  Defense

NO. 96-1-05147-7

STATE OF WASHINGTON,

Plaintiff,

v. S

Sylvester Carter,

Defendant,

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(Felony)

1. My true name is Sylvester Carter
2. My age is 32 Date of Birth 1-31-64
3. I went through the 12th 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 Mark Fiora

(b) I am charged with the crime(s) of Felony Violation of No Contact Order  
The elements of this crime(s) are see attached information (court 2)

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 the right to refuse to testify against myself;

08/14  
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(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

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

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

(a) The crime with which I am charged carries a maximum sentence of 5 years imprisonment and a \$ 10,000 fine.

~~RCW 9.94A.030(21), provides that for a third conviction for a "most serious offense" as defined in that statute, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.~~

(b) The standard sentence range is from 0 (days) months to 12 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history. 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 always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older. Criminal history also may include convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for sex offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(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 I was on community placement at the time of the offense to which I am now pleading guilty, or if any additional criminal history is discovered, both the standard sentence range 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 recommendation increase.

~~If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030(21), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains two prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).~~

Even so, my plea of guilty to this charge may be binding on me. I may not be able to change my mind if additional criminal history is discovered, even though it will result in the mandatory sentence that the law does not allow to be reduced.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages 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 following recommendation to the judge: 90 days  
in custody; 12 months community protection; \$500 upo  
court costs, attorney fees, restitution on counts I  
and II if applicable, dismissal of count II, no contact  
order

(g) The judge does not have to follow anyone's recommendation as to the 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.]

*SC* The crime of ~~\_\_\_\_\_~~ is a most serious offense as defined by RCW 9.94A.030(21), and if a fact finder determines that I have at least two prior convictions on separate occasions whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

(i) The sentence imposed on counts ~~\_\_\_\_\_~~ will run concurrently unless the judge finds substantial and compelling reason 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 one 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.]

~~(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 9A 030(20). This sentence could include 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.]~~

~~(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) If this crime involves a sex offense, I will be required to register with the sheriff of the county in this state where I reside. I must register immediately upon completion of being sentenced if I am not sentenced to begin serving a term of confinement immediately upon completion of being sentenced. Otherwise, I must register within 24 hours of the time of my release if I am sentenced to the custody of the Department of Corrections, Department of Social and Health Services, a local division of youth services, a local jail, or a juvenile detention facility.~~

~~If I do not now reside, in Washington, but I subsequently move to this state, I must register within 24 hours of the time I begin to reside in this state, if at the time of my move I am under the jurisdiction of the~~

Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services. If at the time I move                      state I am not under the jurisdiction                      of those agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (that is, the county sheriff of my former residence) of that change of residence in writing, ~~and I must complete both acts within 10 days of my change of residence.~~ [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

30  
7. I plead guilty to the crime of Felony Violation of No Contact Order (Count I) as charged in the original 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 (these) crime(s). This is my statement:

I do not believe I am guilty of this offense. However I wish to plead guilty to take advantage of the prosecutor's offer and recommendation. I have talked about this case with my lawyer, and I believe if I were to go to trial, there is a substantial likelihood I would be found guilty. I agree the Court may read the Certification for Probable Cause to decide if there is a basis for my guilty plea and for sentencing.

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

*Spvester Carter*  
DEFENDANT

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

*[Signature]*  
PROSECUTING ATTORNEY

*[Signature]*  
DEFENDANT'S LAWYER 14026

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 appropriated box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (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 13 day of August, 1996

*[Signature]*  
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\_\_.

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INTERPRETER

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
 )  
Plaintiff, ) No. 96-1-05147-7 KNT  
 )  
v. )  
SYLVESTER L. CARTER, JR. ) INFORMATION  
 )  
 )  
 )  
Defendant. )

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse SYLVESTER L. CARTER, JR. of the crime of Domestic Violence Felony Violation of Post-Sentence Court Order, committed as follows:

That the defendant SYLVESTER L. CARTER, JR. in King County, Washington on or about July 17, 1996, did knowingly violate the terms of a no contact order issued pursuant to RCW 10.99.050(1) of which the defendant had notice, forbidding the defendant's contact with Margaret Carter, by intentionally assaulting Margaret Carter;

Contrary to RCW 10.99.050(2), and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse SYLVESTER L. CARTER, JR. of the crime of Assault in the Fourth Degree, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant SYLVESTER L. CARTER, JR. in King County, Washington on or about July 17, 1996, did intentionally assault Leif Boots;

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

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Contrary to RCW 9A.36.041, and against the peace and dignity of the State of Washington.

NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Hugh Barber, WSBA #91002  
Deputy Prosecuting Attorney

1 CAUSE NO. 96-1-05147-7 KNT

2 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Hugh Barber is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in King County Department of Public Safety case No.  
6 96-225958;

7 That this case contains the following upon which this motion  
8 for the determination of probable cause is made;

9 The defendant, Sylvester Carter, Jr. (date of birth January 31,  
10 1964) and the victim, Margaret Carter (date of birth January 19,  
11 1972), are estranged husband and wife. They have a three-year-old  
12 daughter in common. Victim Leif Boots (date of birth July 31, 1964)  
13 is Margaret's ex-boyfriend. Leif and Margaret have a six-year-old  
14 son in common. There has been a history of violence by the  
15 defendant towards Margaret.

16 On May 26, 1995, a no contact order was issued out of King  
17 County Superior Court prohibiting the defendant from having any  
18 contact with Margaret. The order was signed by the defendant in  
19 court and expires on May 26, 1997. The order contains the language  
20 notifying the defendant that any assault in violation of the order  
21 is a felony.

22 On July 16, 1996, Margaret, her two children, and Margaret's  
23 father, Jack Roth, were camping at the UPSA Park located at 3560  
24 West Lake Sammamish, in Issaquah, King County, Washington. At  
25 approximately 11:00 p.m., Margaret left the camp site to pick up  
Leif so that he could visit his son at the camp site. Margaret and  
Leif arrived back at the camp site at approximately 12:00 a.m. on  
July 17, 1996. Approximately five minutes later, the defendant  
arrived at their camp site, walked towards Margaret, and said, "What  
the fuck is up?" The defendant then noticed Leif and said, "What  
the fuck is he doing here?" The defendant then grabbed Margaret's  
hair and shirt collar and pushed her into a post, causing pain.  
Leif attempted to intervene and protect Margaret. The defendant  
then punched Leif in the jaw, causing pain and dizziness. Margaret  
quickly grabbed her daughter Jennifer and ran into the bushes to  
hide. While Margaret was hiding, she could hear the defendant  
calling out her name.

26 Margaret's father followed the defendant as he was walking  
27 through the camp site searching for Margaret.

28 The camp site manager called 911 to report that someone had  
29 been assaulted. King County Police responded to the camp site. The

Certification for Determination  
of Probable Cause - 1

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 officer's searched the camp site for the defendant. The officers  
2 walked towards the corner of the lake and heard two male voices.  
3 The defendant said, "Oh, shit!" and ran out of the bushes. The  
4 officers were able to apprehend the defendant a short time later and  
5 placed him under arrest.

6 The officers took written statement from both Margaret and Leif  
7 at the scene. Both Margaret and Leif declined medical attention,  
8 but they complained of pain. Leif indicated to the officers that he  
9 was feeling dazed. The officer's also noted that Leif was  
10 incoherent and complained of pain to his jaw. Leif signed a medical  
11 release form at the scene.

12 The State requests bail be set in the amount of \$20,000. The  
13 State also requests a no contact order be issued prohibiting the  
14 defendant from having any contact with Margaret Carter or Leif  
15 Boots. The defendant has a prior conviction for assaulting Margaret  
16 (April, 1995) and a prior conviction for Theft 2° (1991). He was  
17 arrested for Felony Harassment in 1995.

18 Under penalty of perjury under the laws of the State of Washington,  
19 I certify that the foregoing is true and correct. Signed and dated  
20 by me this \_\_\_\_ day of July, 1996, at Seattle, Washington.

21  
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---

Hugh Barber, WSBA #91002

Certification for Determination  
of Probable Cause - 2

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

PLEA AGREEMENT /  TRIAL

8/18/96

Defendant: S. Carter

Date: 8/18/96

Cause No: 96-1-05147-7

On Plea To:  As Charged in ct

Special Finding/Verdict;  Deadly Weapon (RCW 9.94.125);  School Zone-VUCSA (RCW 69.50) on Count(s) \_\_\_\_\_

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) 1, the State moves to dismiss Count(s): 2

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 certification(s) of probable cause filed herein.
- as set forth in the attached Appendix C.

3.  RESTITUTION: Pursuant to RCW 9.94A.140(2), the defendant agrees to pay restitution as follows:

- in full to the victim(s) on charged counts. - agreed both cts.
- as set forth in attached Appendix C.

4.  OTHER: \_\_\_\_\_

5.  SENTENCE RECOMMENDATION:

- a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (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 the 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.

Maximum on Count 1 is not more than 5 years and/or \$ 10,000 fine.

Maximum on Count \_\_\_\_\_ is not more than \_\_\_\_\_ years and /or \$ \_\_\_\_\_ fine.

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.120d(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 his release

S. Carter  
Defendant

[Signature]  
Attorney for Defendant

[Signature]  
Deputy Prosecuting Attorney

[Signature]  
Judge, King County Superior Court

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

Defendant: SILVOSTER L CARTER JR Date: 24 JULY 1996

CRIME	DATE OF CONVICTION	PLACE OF CONVICTION	DISPOSITION (Probation and/or incarceration and length) SRA — Counts as Prior
-------	--------------------	---------------------	---

**ADULT FELONIES:**

4-8-91 ROBBERY 10 SNOHOMISH CITY 90-1-00395-1

36 months

4-18-91 VUCR (POLY) SNOHOMISH CITY 90-1-01007-9

36 months community custody TRANSFER

4-15-93

**ADULT MISDEMEANORS:**

5-21-91 Threat 20 King 91-1-00311-1 12 months

supervising 56 hr

**JUVENILE FELONIES:**

**ADULT MISDEMEANORS:**

8-28-90 DWI SLEA license Snohomish city GUILTY

ASSAULT GUILTY (2)

5-26-95 ASSAULT KING 95-1-02452-8 4 months

TRANSFER

\_\_\_\_\_  
Deputy Prosecuting Attorney

King County Prosecuting Attorney

**GENERAL SCORING FORM**  
Unranked Offenses

Use this form only for unranked offenses (not listed on any other scoring form).

OFFENDER'S NAME <i>SULLIVAN L CARTER JR</i>	OFFENDER'S DOB <i>1-7-64</i>	STATE ID# <i>WA 14534566</i>
JUDGE	CAUSE# <i>2605147</i>	FBI ID# <i>511440CA1</i>

**ADULT HISTORY:** Not scored

**JUVENILE HISTORY:** Not Scored

**OTHER CURRENT OFFENSES:** Not Scored

**STATUS AT TIME OF CURRENT OFFENSES:** Not Scored

*ct.i*

*Domestic violence felony*

<b>STANDARD RANGE CALCULATION*</b>				
<i>Violations - Part</i>	<i>UNRANKED</i>	<i>0</i>	TO	<i>month</i> <i>12</i>
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE		HIGH STANDARD SENTENCE RANGE

\* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.

*Sentence court order*

STATE'S SENTENCE RECOMMENDATION  
(SENTENCE OF ONE YEAR OR LESS)

8/18/96

Defendant: S. Carter

Date: \_\_\_\_\_

Cause No: 96-1-05747-17

SENTENCE OPTION

1. OFFENDER STATUS:  FIRST TIME OFFENDER — NO WAIVER  
 NON-VIOLENT OFFENDER  VIOLENT OFFENDER
2. ALTERNATIVE SENTENCE DECISION
- a.  ALTERNATIVE SENTENCE — TOTAL CONFINEMENT TO BE CONVERTED:  
This sentence of partial confinement and/or community service is a conversion of \_\_\_\_\_ months/days of total confinement on Count(s) \_\_\_\_\_
- b.  REASONS FOR NOT RECOMMENDING ALTERNATIVE SENTENCE: The reasons for not recommending an alternative sentence are as follows:  criminal history,  failure to appear history,  
 Other: PRIOR P.V.

SENTENCE RECOMMENDATIONS

CONFINEMENT: Defendant serve 90 months/days of total/partial confinement on Count \_\_\_\_\_

with credit for time served as provided under RCW 9.94A.120(12), work release is recommended if eligible. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: \_\_\_\_\_

Terms to be consecutive to any other term(s) not specifically referred to in this form.

SENTENCE MODIFICATION: State recommends modification of community supervision on King County Cause Number(s) \_\_\_\_\_ and recommends that terms be run concurrently/consecutively.

COMMUNITY SERVICE: Defendant perform \_\_\_\_\_ hours/days of community service (maximum of 240 hours).

COMMUNITY SUPERVISION: Community supervision (one year maximum) with a termination date of 12 months from the date of release from confinement if confinement is ordered, or from date of judgement and sentence if no confinement is ordered.

MONETARY PAYMENTS: Defendant make the following monetary payments under the supervision of the Department of Corrections in a manner and time specified by the court.

- a.  Restitution as set forth on attached page entitled "Plea Agreement/Trial" and  Appendix C.  
b.  Pay costs, mandatory \$100 Victim Penalty Assessment, recoupment of cost of defense attorney fees, if appointed.  
c.  Pay to King County Local Drug Fund \$ \_\_\_\_\_  
d.  Pay a fine of \$ \_\_\_\_\_;  \$1000, fine for VUCSA;  \$2000, fine for subsequent VUCSA.

Pursuant to RCW 9.94A.120d(9) and RCW 9.94A.140, the defendant is under ten (10) years jurisdiction to make monetary payments.

NO CONTACT: For the maximum term, defendant shall have no contact with victims - ~~all~~ both  
cts.

HIV TESTING: State recommends HIV testing and counseling.

OFF-LIMITS ORDER: The defendant is a "known drug trafficker" and the state recommends defendant shall neither enter nor remain in the protected against drug trafficking area (described in the attachment) during the term of community supervision.

OTHER: (crime related prohibitions RCW 9.94A.030(4)(7), etc.)

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.

Approved by

[Signature]  
Deputy Prosecuting Attorney

# APPENDIX B

~~CERTIFIED~~

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

COPY

FILED

STATE OF WASHINGTON

No. 97-1-02248-3 KNT

97 NOV -3 11:10:03

Plaintiff,

JUDGMENT AND SENTENCE

KING COUNTY SUPERIOR COURT CLERK

v.

SYLVESTER CARTER

Defendant.

COMMITMENT ISSUED

COPY TO SENTENCING GUIDELINES COMMISSION 3/1997

I. HEARING

1.1 The defendant, the defendant's lawyer, DENNIS HOUGH, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were:

1.2 The state has moved for dismissal of count(s)

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 08-27-97 by jury verdict of:

Count No. 1 Crime: FELONY VIOLATION OF A COURT ORDER
RCW 10.99.050 Crime Code 06010
Date of Crime 03-25-97 Incident No.

JUDGMENT NUMBER
C/PROC
CUST
CASH
JUDG
CSB
CSM
ACCTG
EXH

Count No.: Crime:
RCW Crime Code
Date of Crime Incident No.

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

- (a) A special verdict/finding for being armed with a Firearm was rendered on Count(s):
(b) A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s):
(c) A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s):
(d) A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place in a school zone, in a school, on a school bus, in a school bus route stop zone, in a public park, in public transit vehicle, in a public transit stop shelter in Count(s):
(e) Vehicular Homicide, Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)
(f) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are:

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

000056

Handwritten signature/initials

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) Robbery 1 <sup>st</sup>	4.10.91	Adult	90-1-01007-9	Sno. Co.
(b) VUCSA - Del.	4.10.91	Adult	90-1-00375-1	Sno. Co.
(c) Theft 3 <sup>rd</sup>	5.31.91	Adult	91-1-00311-1 SEA	King Co.
(d) FVICO	9.13.96	Adult	96-1-05147-1	King Co.

- Additional criminal history is attached in Appendix B.
- Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): \_\_\_\_\_
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count 1	0	UNRANKED			0 TO 12 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

- The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.  Date to be set.
  - Defendant waives presence at future restitution hearing(s).
- Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and 6500 if any crime date in the Judgment is after 6-5-96.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ \_\_\_\_\_ Court costs;  Court costs are waived;
- (b)  \$ \_\_\_\_\_ Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104;  Recoupment is waived (RCW 10.01.160);
- (c)  \$ \_\_\_\_\_ Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.430);
- (d)  \$ \_\_\_\_\_ King County Interlocal Drug Fund;  Drug Fund payment is waived;
- (e)  \$ \_\_\_\_\_ State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (f)  \$ \_\_\_\_\_ Incarceration costs;  Incarceration costs waived (9.94A.145(2));
- (g)  \$ \_\_\_\_\_ Other cost for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is \$ 500.00. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.  \_\_\_\_\_ The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

4.4 <sup>UNDER</sup> CONFINEMENT ~~ORDER~~ ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  Immediately;  (Date): 4:00 p.m. by 12/5/97

Adult Detention  
12 months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
WORK RELEASE AUTHORIZED

ENHANCEMENT time due to special deadly weapon/firearm finding of \_\_\_\_\_ months is included for Counts \_\_\_\_\_

The terms in Count(s) \_\_\_\_\_ are concurrent/consecutive.  
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) \_\_\_\_\_  
\_\_\_\_\_ but consecutive to any other cause not referred to in this Judgment.

Credit is given for  43 days served  days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15).

4.5  NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with Margaret Carter  
Violation of this no contact 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.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 <sup>SUPERVISION</sup> COMMUNITY PLACEMENT, RCW 9.94A.120(9): <sup>for a period of 12 months.</sup> Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH. 69.50 or 69.52 RCW offense, for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.  
 Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

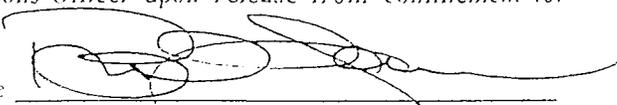
4.8  WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).  
 Appendix K for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9  SEX OFFENDER REGISTRATION (sex offender prime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10  ARMED CRIME COMPLIANCE, RCW 9.94A.103,105. The state's plea/sentencing agreement is  attached  as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 10/31/97

Judge: 

Print Name: Brian Lewis

Presented by:   
Deputy Prosecuting Attorney, Office WSBA ID #91002  
Print Name: Owen Lavetz

Approved as to form:  
Doris W. Hough 11487  
Attorney for Defendant, WSBA #  
Print Name: Dennis W. Hough

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

SYLVESTER CARTER

DEFENDANT'S SIGNATURE: Sylvester Carter  
DEFENDANT'S ADDRESS: 500 MONROE AVE. #C-5  
RENTON, WA. 98056

DATED: 10-31-97

[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY:  
M. JANICE MICHELS, SUPERIOR COURT CLERK  
BY: [Signature]  
DEPUTY CLERK

CERTIFICATE

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA14534588  
DATE OF BIRTH: JANUARY 31, 1964  
SEX: M  
RACE: BLACK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

COPY

No. 96-1-03147-7-KNT

JUDGMENT AND SENTENCE

SEP 17 1996

COMMITMENT ISSUED

STATE OF WASHINGTON

Plaintiff,

v.

SYLVESTER CARTER

Defendant.

CLERK OF COURT  
SEATTLE, WA.

I. HEARING

1.1 The defendant, the defendant's lawyer, MARK FLORA *Kathy Lynn* and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Cheryl ~~EB~~ Carter

1.2 The state has moved for dismissal of count(s) II

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 08-13-96 by plea of:

Count No.: I Crime: VIOLATION OF POST SENTENCE COURT ORDER  
RCW 9A.36.041 Crime Code 01037  
Date of Crime 07-17-96 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

- (a)  A special verdict/finding for being armed with a Firearm was rendered on Count(s): \_\_\_\_\_
- (b)  A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s): \_\_\_\_\_
- (c)  A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s): \_\_\_\_\_
- (d)  A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place  in a school zone  in a school  on a school bus  in a school bus route stop zone  in a public park  in public-transit vehicle  in a public transit stop shelter in Count(s): \_\_\_\_\_
- (e)  Vehicular Homicide  Violent Offense (D.W.I. and/or reckless) or  Nonviolent (disregard safety of others)
- (f)  Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: \_\_\_\_\_

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_

96 9 22834 1

POSTED

COPY TO SENTENCING GUIDELINES COMMISSION SEP 16 1996

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

- Additional criminal history is attached in Appendix B.
- Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):
- One point added for offense(s) committed while under community placement for count(s)

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count 1	0	UNRANKED			0 TO 12 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.  Date to be set.
- Defendant waives presence at future restitution hearing(s).
- Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ 100 Court costs;  Court costs are waived;
- (b)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104;  Recoupment is waived (RCW 10.01.160);
- (c)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.430);
- (d)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived;
- (e)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (f)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (9.94A.145(2));
- (g)  \$ \_\_\_\_\_, Other cost for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600<sup>00</sup>. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.  \_\_\_\_\_ The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

4.4 CONFINEMENT ONE YEAR OR LESS: Defendant shall serve a term of total confinement in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections as follows, commencing:  Immediately;  (Date): \_\_\_\_\_ by no later than \_\_\_\_\_ m.

90 months/days on Count I \_\_\_\_\_ months/days on Count \_\_\_\_\_  
\_\_\_\_\_ months/days on Count \_\_\_\_\_ months/days on Count \_\_\_\_\_

Work release is authorized if eligible.  
 Home detention pursuant to RCW 9.94A.030(42) is ordered if defendant is eligible for  \_\_\_\_\_ day(s),  the last one-third of the term of confinement,  \_\_\_\_\_  
 The terms in Count(s) No. \_\_\_\_\_ are concurrent/consecutive.  
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) \_\_\_\_\_ but consecutive to any other term of confinement not referred to in this Judgment.

Credit is given for  59 day(s) served  days determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15).  Jail term is satisfied; defendant shall be released under this cause.

(a) ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.380: \_\_\_\_\_ days of total confinement are hereby converted to:  
 \_\_\_\_\_ days of partial confinement to be served subject to the rules and regulations of the King County Jail.  
 \_\_\_\_\_ days/hours community service under the supervision of the Department of Corrections to be completed as follows:  on a schedule established by the defendant's community corrections officer.  \_\_\_\_\_  
 Alternative conversion was not used because:  Defendant's criminal history,  Defendant's failure to appear,  Other: \_\_\_\_\_

(b)  COMMUNITY SUPERVISION, RCW 9.94A.383: Defendant shall serve 12 months in community supervision. Community supervision shall commence immediately but is tolled during any period of confinement. The Defendant shall report to the Dept. of Corrections, Intake Officer, 2401 4th Avenue, 6th Floor, Seattle, WA, 98121-1435 (phone 464-7055) no later than 72 hours of the commencement of community supervision. The defendant shall comply with all rules and regulations of the Department created for community supervision and shall not own, use, or possess any firearm or ammunition.  
 Defendant shall comply with special "crime related prohibitions" defined in RCW 9.94A.030 and set forth in Appendix F.

4.5  NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with victims

Violation of this no contact 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.

- 4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.
- 4.7  OFF-LIMITS ORDER: (known drug trafficker) Appendix I is an off limits order that is part of and incorporated by reference into this Judgment and Sentence.
- 4.8  SEX OFFENDER REGISTRATION: (sex offender crime conviction) Appendix J covering sex offender registration, is attached and incorporated by reference into this Judgment and Sentence.

Violations of the conditions or requirements of this sentence are punishable for a period not to exceed sixty (60) days of confinement for each violation. (RCW 9.94A.200(2))

Date: 9/13/96

W. Downing  
Judge  
Print Name: W. Downing

Presented by:  
Kathleen C. Van Oost  
Deputy Prosecuting Attorney, Office WSBA ID #91002  
Print Name: Kathleen C. Van Oost

Approved as to form:  
[Signature]  
Attorney for Defendant WSBA # 1739F  
Print Name: Kathleen C. Van Oost  
Mark Flora

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Sylvester Carter  
DEFENDANT'S ADDRESS: 500 MONROE AVE. "C-5"  
RENTON, WA

SYLVESTER CARTER

DATED: 13 September 1996  
[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY:  
M. JANICE MICHELS, SUPERIOR COURT CLERK  
BY: [Signature]  
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

S.I.D. NO. WA14534583  
DATE OF BIRTH: JANUARY 31, 1964  
SEX: M  
RACE: BLACK

CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

CARTER, Sylvester L., Jr.

Defendant,

No. 96-1-05147-7

JUDGMENT AND SENTENCE  
(FELONY) - APPENDIX F,  
ADDITIONAL CONDITIONS  
OF SENTENCE

CRIME-RELATED PROHIBITIONS:

1. Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
2. ~~Do not enter any business where alcohol is the primary commodity for sale.~~
3. Do not have direct or indirect contact with Margaret Carter, Jack Roth, or Leif Boots, until further order of the Court.

Date: 9/13/96

*W. L. Downing*  
JUDGE, KING COUNTY SUPERIOR COURT

# APPENDIX C

**26.50.110. Violation of order--Penalties**

(1) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, a violation of the restraint provisions or of a provision excluding the person from a residence, workplace, school, or day care is a gross misdemeanor. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, workplace, school, or day care, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this chapter that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

Former RCW 26.50.110 (1996).

**10.99.050. Victim contact--Restriction, prohibition--Violation, penalties--Written order--Procedures**

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2) Willful violation of a court order issued under this section is a misdemeanor. Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. The written order shall contain the court's directives and shall bear the legend: 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.

Former RCW 10.99.050 (1996).

# APPENDIX D

State of  
Washington

Sentencing  
Guidelines  
Commission

**Adult  
Sentencing  
Guidelines  
Manual  
1996**

**Table 4. Felony Offenses Affected by 1996 Session Laws**

Title	RCW	Class	Level	Effective Date	Law Reference	Comment
Abandonment of Dependent Persons 1	9A.42.060	B	V	6/6/96	c 302 § 2	New offense.
Abandonment of Dependent Persons 2	9A.42.070	C	III	6/6/96	c 302 § 3	New offense.
Assault 3	9A.36.031	C	III	6/6/96	c 266	Expands definition to include employees of county fire marshal's office or fire prevention bureau.
Burglary 1	9A.52.020	A	VII	6/6/96	c 15	Expands definition to include assault outside building while in immediate flight therefrom.
Create, Deliver, or Possess Counterfeit Methamphetamine	69.50.401(b)(1)(ii)	B	II	6/6/96	c 205 § 2	Increase statutory maximum to 10 years.
Hit and Run with Vessel: Injury Accident	88.12.155	C	IV	6/6/96	c 36 § 1	New offense.
Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Methamphetamine	69.50.401(a)(1)(ii)	B	VIII	6/6/96	c 205 § 2	Increase statutory maximum to 10 years.
No Contact Order (Pretrial) Violation: 3 <sup>rd</sup> offense	10.99.040(4)(c)	C	Unranked	6/6/96	c 248 § 7	Raised from gross misdemeanor.
No Contact Order (Sentence) Violation: 3 <sup>rd</sup> offense	10.99.050(2)	C	Unranked	6/6/96	c 248 § 8	Raised from misdemeanor.
Nonpayment of Motor Vehicle Fuel Tax Funds Held in Trust: Over \$1,500	82.36.045	B	Unranked	6/6/96	c 104 § 2	New offense.
Nonpayment of Motor Vehicle Fuel Tax Funds Held in Trust: \$250-1,500	82.36.045	C	Unranked	6/6/96	c 104 § 2	New offense.
Nonpayment of Special Fuel Tax Funds Held in Trust: Over \$1,500	82.38.030	B	Unranked	6/6/96	c 104 § 7	New offense.
Nonpayment of Special Fuel Tax Funds Held in Trust: \$250-1,500	82.38.030	C	Unranked	6/6/96	c 104 § 7	New offense.
Nonpayment of Aircraft Fuel Tax Funds Held in Trust: Over \$1,500	82.42.020	B	Unranked	6/6/96	c 104 § 13	New offense.
Nonpayment of Aircraft Fuel Tax Funds Held in Trust: \$250-1,500	82.42.020	C	Unranked	6/6/96	c 104 § 13	New offense.
Over 18 and Deliver Methamphetamine to Someone Under 18	69.50.406(a)	B	IX	6/6/96	c 205 § 7	Definition expanded to include Methamphetamine.
Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine	69.50.440	B	VIII	6/6/96	c 205 § 1	New offense.

## FELONY INDEX (continued)

Statute (RCW)	Offense	Class	Seriousness Level
9.47.090	Maintaining a Bucket Shop	C	Unranked
69.50.402(a)(6)	Maintaining a Dwelling for Controlled Substances	C	Unranked
9.45.220	Making False Sample or Assay of Ore	B	Unranked
9A.36.080	Malicious Harassment	C	IV
81.60.070	Malicious Injury to Railroad Property	A	Unranked
9A.48.070	Malicious Mischief 1	B	II
9A.48.080	Malicious Mischief 2	C	I
9.62.010	Malicious Prosecution	C	Unranked
9A.32.060	Manslaughter 1	B	IX
9A.32.070	Manslaughter 2	C	VI
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess With Intent to Deliver Heroin or Cocaine	B	VIII
69.50.401(a)(1)(iii)	Manufacture, Deliver, or Possess With Intent to Deliver Marijuana	C	III
69.50.401(a)(1)(ii)	Manufacture, Deliver, or Possess With Intent to Deliver Methamphetamine	B	VIII
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess With Intent to Deliver Narcotics from Schedule I and II (Except Heroin or Cocaine)	B	VI
69.50.401(a)(1)(iii-v)	Manufacture, Deliver, or Possess With Intent to Deliver Narcotics from Schedule III-V or Nonnarcotics from Schedule I-V (Except Marijuana or Methamphetamine)	C	IV
69.52.030(1)	Manufacture, Distribute, or Possess With Intent to Distribute Imitation Controlled Substance	C	III
9.81.030	Member Subversive Organization	C	Unranked
42.20.070	Misappropriating and Falsifying Accounts by Public Officer	B	Unranked
42.20.090	Misappropriating and Falsifying Accounts by Treasurer	C	Unranked
19.110.120	Misleading/Untrue Statements Made During Sale of Business Opportunity	B	Unranked
9.82.030	Misprision of Treason	C	Unranked
29.04.120	Misuse of Registered Voter Data Tapes	C	Unranked
9.45.070	Mock Auction	C	Unranked
9A.83.020	Money Laundering	B	Unranked
9A.32.030	Murder 1	A	XIV
9A.32.050	Murder 2	A	XIII
10.99.050(2)	No Contact Order Violation - Assault or Reckless Endangerment	C	Unranked
10.99.040(4)(b)	No Contact Order Violation - Domestic Violence Assault	C	Unranked
26.20.030	Nonsupport of Child Under 16 (Family Abandonment)	C	Unranked

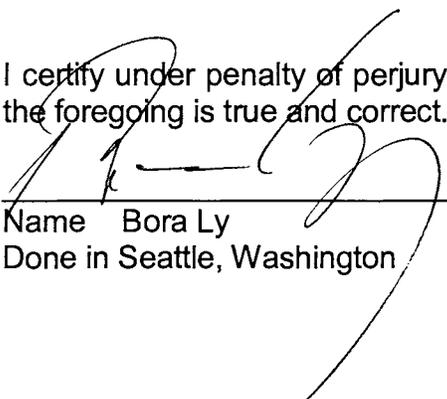
## FELONY INDEX (continued)

Statute (RCW)	Offense	Class	Seriousness Level
9.46.215	Possession of Gambling Device	C	Unranked
9.40.120	Possession of Incendiary Device	A	Unranked
9A.56.095	Possession of Leased Property	C	Unranked
69.50.401(d)	Possession of Phencyclidine (PCP)	C	II
69.41.070(8)(b)	Possession of Steroids in Excess of 200 tablets or eight 2cc Bottles, Without a Valid Prescription	C	Unranked
9A.56.150	Possession of Stolen Property 1	B	II
9A.56.160	Possession of Stolen Property 2	C	I
9.05.110	Possession of Unlawful Emblems	B	Unranked
9.94.040	Possession of Weapons by Prisoners	B	Unranked
9.94.043	Possession of Weapons in Prison by Nonprisoner	B	Unranked
33.36.030	Preference in Case of Insolvency - Savings Bank	C	Unranked
30.44.110	Preference Prohibited - Bank or Trust Company	B	Unranked
9.94.020	Prison Riot	B	Unranked
9.46.220	Professional Gambling 1	B	Unranked
9.46.221	Professional Gambling 2	C	Unranked
9A.36.060	Promoting a Suicide Attempt	C	Unranked
9.68.140	Promoting Pornography	C	Unranked
9A.88.070	Promoting Prostitution 1	B	VIII
9A.88.080	Promoting Prostitution 2	C	III
26.50.110(4)	Protection Order Violation - Assault or Reckless Endangerment	C	Unranked
9A.44.040	Rape 1	A	XI
9A.44.050	Rape 2	A	X
9A.44.060	Rape 3	C	V
9A.44.073	Rape of a Child 1	A	XI
9A.44.076	Rape of a Child 2	A	X
9A.44.079	Rape of a Child 3	C	VI
29.82.170	Recall (Violation by Signer)	B	Unranked
9A.68.030	Receiving or Granting Unlawful Compensation	C	Unranked
9A.48.040	Reckless Burning 1	C	I
9A.36.045	Reckless Endangerment 1	B	VII
90.56.530	Reckless Operation of a Tank Vessel	C	Unranked
9A.82.050(1)	Recklessly Trafficking in Stolen Property	C	III
19.110.050	Registration Knowingly Not Obtained Prior to Sale of Business Opportunity	B	Unranked
46.12.075	Remove Marking Inscribed by WSP on Rebuilt Vehicles	C	Unranked
68.50.145	Removing Human Remains	C	Unranked

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Nancy Collins, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of Brief of Respondent, in STATE V. SYLVESTER LENORD CARTER, JR., Cause No. 62916-6-I, in the Court of Appeals, Division I, for the State of Washington.

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

  
\_\_\_\_\_  
Name Bora Ly  
Done in Seattle, Washington

11-13-2009  
\_\_\_\_\_  
Date

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COURT OF APPEALS, DIV. I  
STATE OF WASHINGTON  
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