

64034-8

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COA No. 64034-8-1

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

STATE OF WASHINGTON,

Respondent,

v.

LEANDRE GAINES,

Appellant.

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

The Honorable James Cayce

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR.

1. Because the State failed to prove every prior conviction used to calculate Mr. Gaines' offender score, his sentence was not authorized by law.

2. Mr. Gaines was denied effective assistance of counsel by his attorney's failure to object to the State's representation of his criminal history or to argue that some of the prior offenses should be treated as same criminal conduct.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. A sentence based on a miscalculated offender score is not authorized by law. A sentencing court may not include in the offender score a prior conviction which is constitutionally invalid on its face. One of the prior convictions offered by the State was a juvenile disposition from 1997 which was supported only by a certified copy of a sentencing order. This document did not name the offense and no other evidence provided that information. Was the sentencing order facially invalid, requiring reversal for a miscalculated offender score?

2. A claim for ineffective assistance of counsel requires the defendant to show that the attorney's performance fell below an objective standard of reasonableness and that her deficiency

resulted in prejudice to the defendant. Defense counsel failed to hold the State to its burden of proving the defendant's criminal history, to object to an unsupported offender score, to bring an obviously facially invalid sentencing order to the court's attention, and to argue that prior offenses of the same nature and with the same cause number, violation date, and sentencing date should be counted as same criminal conduct. Was Mr. Gaines denied the effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution and article I, § 22 of the Washington Constitution?

C. STATEMENT OF THE CASE.

Leandre Gaines' first trial for possession of a controlled substance (cocaine) ended in a hung jury. 5/27/09RP 2. The court ordered a mistrial and the State refiled the same charge. Id. After a jury trial before the Honorable James Cayce, Mr. Gaines was convicted as charged. CP 32.

Without objection by the defense, the State asserted Mr. Gaines had an offender score of eight, resulting in a standard range of 12-24 months. 7/22/09RP 2-3; CP 34. The court imposed a low-end sentence of 12 months plus one day. CP 36.

D. ARGUMENT.

1. BECAUSE THE STATE FAILED TO PROVE A PRIOR CONVICTION IN MR. GAINES' CRIMINAL HISTORY, THE SENTENCE IS FUNDAMENTALLY DEFECTIVE.

- a. The State presented insufficient evidence to prove Mr.

Gaines' criminal history. The Sentencing Reform Act provides for the structured sentencing of felony offenders through standard sentence ranges based upon the seriousness of the offense and the defendant's criminal history. State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). At sentencing, the State has the burden of proving, by a preponderance of the evidence, the prior convictions offered to support the defendant's offender score. RCW 9.94A.530(2); In re Personal Restraint of Cadwallader, 155 Wn.2d 867, 876, 123 P.3d 456 (2005); State v. Ammons, 105 Wn.2d 175, 186, 713 P.2d 719 (1986), cert. denied, 479 U.S. 930, 107 S.Ct. 398, 93 L.Ed.2d 351 (1986). A sentence which is based on a miscalculated offender score is not authorized by law, requiring reversal. In re Goodwin, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002).

At Mr. Gaines' sentencing hearing, the following exchange took place:

[PROSECUTOR]: The offender score is 8, seriousness level is a one.

THE COURT: Is there any dispute as [sic] the standard range?

[DEFENSE COUNSEL]: No dispute as to the standard range.

....

[PROSECUTOR]: With regard to the scoring, I have passed forward certified copies of the judgment and sentence for the defendant's three out-of-county prior felonies. I'd ask the Court to take judicial notice of that and make a finding by a preponderance of the evidence that the defendant's offender score is 8.

The State's recommendation –

THE COURT: Does the defense have any objection?

[DEFENSE COUNSEL]: No objection. It was calculated originally and we know what it is.

THE COURT: I'll take judicial notice and make that finding.

7/22/09RP 2-3. Both parties then made recommendations within the standard range as characterized by the State.

The offender score was calculated using eight King County convictions and three Thurston County convictions. The King County offenses (totaling seven points) were listed as follows:

<u>Crime</u>	<u>Sent. Date</u>	<u>A/J</u>	<u>Cause No.</u>	<u>Points</u>
VUCSA - section(A)	12/13/02	Adult	021045215	1
VUCSA - section(A)	12/13/02	Adult	021045215	1
VUCSA - section(A)	12/13/02	Adult	021070171	1
VUCSA - section(A)	1/25/02	Adult	011108677	1
Custodial Assault	9/6/95	Juv.	958048929	½
Mal. Mischief 2	3/18/95	Juv.	958004603	½
Att. Rape 2	4/1/94	Juv.	948009445	1
Rape 2	4/1/94	Juv.	948009445	1 ¹

¹ The juvenile dispositions for rape and attempted rape are counted as a full

CP 39. The State offered no documentation to prove these prior offenses. The State did offer documentation to prove the following Thurston County offenses (totaling one and a half points):

<u>Crime</u>	<u>Sent. Date</u>	<u>A/J</u>	<u>Cause No.</u>	<u>Points</u>
Custodial Assault	UNKNOWN	Juv.	968017158	½
Custodial Assault	12/4/95	Juv.	958018067	½
Custodial Assault	9/11/95	Juv.	958014193	½

CP 39. Because half-points are rounded down, Mr. Gaines agrees that if the State had met its burden to prove each of these prior offenses, the calculation would be correct. But that burden was not met.

The State offered certified copies of the following documents to support the Thurston County juvenile offenses:

- 1) "JRA Sentencing Order" for Custodial Assault, Cause No. 958018067, entered December 4, 1995, sentencing Mr. Gaines to 52-65 weeks;
- 2) Disposition Order for Custodial Assault, Cause No. 958014193, entered September 11, 1995, sentencing Mr. Gaines to 21-28 weeks;
- 3) "JRA Sentencing Order" for Cause No. 96817158, entered January 13, 1997, sentencing Mr. Gaines to 30-40 weeks. The

point each pursuant to RCW 9.94A.525(7).

document does not name this offense.

CP __ (Sub No. 158), attached at Appendix A.

i. The sentencing order for Cause No. 96817158 is facially invalid. The offender score cannot include a conviction which is “constitutionally invalid on its face.” Ammons, 105 Wn.2d at 187. “That is, the judgment and sentence must evidence the invalidity ‘without further elaboration.’” In re Personal Restraint of Rowland, 149 Wn.App. 496, 505, 204 P.3d 953 (2009) (quoting Goodwin, 146 Wn.2d at 866). For example, in Goodwin, the offender score was facially invalid because it included juvenile offenses that had “washed out” – the dates on the faces of the judgments and sentences established, without further elaboration, that those offenses should never have been included in the offender score. Id. at 865.

The best evidence of a prior conviction is a certified copy of the judgment and sentence. State v. Bergstrom, 162 Wn.2d 87, 93, 169 P.3d 816 (2007). But the State may introduce “other comparable documents of record” if necessary. Ford, 137 Wn.2d at 480. The State chose to offer only the order of disposition for the Cause No. 96817158 despite the fact that it was fatally incomplete.

The sentencing order for Cause No. 96817158 provides no

clue as to the title, nature, or classification of the offense. App. A. The prosecutor's presentence statement lists Cause No. 96817158 as a custodial assault (CP __ (Sub No. 145), CP __ (Sub No. 153)), but the sentencing court cannot rely on the prosecutor's "bare assertions." Ford, 137 Wn.2d at 483, quoted in State v. Mendoza, 165 Wn.2d 913, 926, 205 P.3d 113 (2009). Nothing else suggests this information. The only way the State can fill the critical gap in this document, so that it can possibly prove the prior conviction used in the offender score, is through further elaboration and reference to extraneous documents. It is therefore facially invalid by definition.

ii. Facially invalid or not, the disposition order fails to prove a prior conviction. "It is the obligation of the State, not the defendant, to assure that the record before the sentencing court supports the criminal history determination." Mendoza, 165 Wn.2d at 920, citing Ford, 137 Wn.2d at 480.

Courts have of course found the State failed to carry that burden where it offered nothing to support the asserted criminal history (see, e.g. State v. Lopez, 107 Wn.App. 270, 279, 27 P.3d 237 (2001), aff'd, 147 Wn.2d 515, 55 P.3d 609 (2002); Bergstrom, 162 Wn.2d at 92). But Courts have also reversed

sentences where the State offered proof that was fatally insufficient. For example, in State v. Knippling, the Supreme Court considered a superior court judgment and sentence which was entered when the defendant was a juvenile but which did not establish the juvenile court had declined jurisdiction. 166 Wn.2d 93, 101, 206 P.3d 332 (2009). The State should have been able to prove that fact through additional documentation but had not done so. Id. The Court held that, without proof that the conviction was entered by a court with valid jurisdiction, the State had failed in its burden to show that this prior offense was a “strike” under the Persistent Offender Act. Id. at 104. Similarly, in State v. Gill, NCIC reports were insufficient to prove two prior convictions and although the defendant stipulated to a third out-of-state conviction, the sentencing court failed to classify it or determine whether it had washed out. 103 Wn.App. 435, 449, 13 P.3d 646 (2002). In State v. Cabrera, the State offered prior Washington judgments and sentences to prove prior out-of-state convictions, but because the State failed to present additional evidence after the defendant objected, this Court found the evidence insufficient. 73 Wn.App. 165, 868 P.2d 179 (1994).

As the Supreme Court has observed,

the State's burden under the SRA... is not overly difficult to meet. The State must introduce evidence of some kind to support the alleged criminal history... The SRA expressly places this burden on the State because it is inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove... Absent a sufficient record, the sentencing court is without the necessary evidence to reach a proper decision, and it is impossible to determine whether the convictions are properly included in the offender score.

Ford, 137 Wn.2d at 480-81 (emphasis added, internal citations and quotations omitted). That is precisely the problem here. The defective sentencing order provided the sentencing court with an insufficient record to make its determination, and leaves this Court with an insufficient record to review the sentence. The sentence is therefore unsupported by the evidence and must be reversed.

b. Mr. Gaines did not waive his challenge to the offender score. Although a defendant's challenge to his offender score may be waived where the error involves an agreement to facts or a matter of trial court discretion, it cannot be waived if the excessive sentence is caused by legal error. Goodwin, 146 Wn.2d at 874.

Here, the error must be considered legal. The error clearly "exists within the four corners" of the sentencing order. State v. Ross, 152 Wn.2d 220, 231, 95 P.3d 1225 (2004). And there is no

factual dispute; there are no facts to dispute with respect to this disposition. The problem is simply that the document fails to name the offense, with all the consequences that entails. An unnamed juvenile offense cannot legally suffice to increase an offender score. Mr. Gaines' failure to object to the offender score did not waive his challenge to the legal error.

2. MR. GAINES WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY HIS ATTORNEY'S FAILURE TO OBJECT TO THE STATE'S REPRESENTATION OF HIS CRIMINAL HISTORY.

The federal and state constitutions provide the accused with the right to representation of counsel and to due process of law. U.S. Const., amends. 6, 14; Wash. Const., article 1, § 3, 22. The right to counsel necessarily includes the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); In re Personal Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001).

The right to counsel is not met simply because an attorney is present in court; the attorney must actually represent the client. Strickland, 466 U.S. at 685.

That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of

counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.

Id.

In order to prevail on a claim of ineffective assistance, a defendant must show: (1) that his or her lawyer's performance fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that the deficient performance prejudiced the defense. Id. at 687; State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

a. Counsel was ineffective in failing to object to the King County convictions as well as the Thurston County offense discussed above. As discussed above, Mr. Gaines does not concede waiver of his challenge to the unnamed Thurston Court disposition. But if this Court finds waiver of that issue, it should also find it was the result of ineffective assistance of counsel. In addition, defense counsel's performance fell below an objective standard of reasonableness in failing to require the State to prove

the King County priors.

The State made no effort to prove the King County convictions, believing it only had the obligation to prove out-of-county priors, as long as the defendant did not object to the in-county priors. Defense counsel did not object, saying the offender score of eight “was calculated originally and we know what it is.” 7/22/09RP 3. Here, “originally” presumably refers to negotiations or other communications which took place when this case was first tried in 2008.

The prosecutor’s statement of criminal history was compiled on January 11, 2008, a year and a half before the sentencing hearing. CP ___ (Sub. No. 153). At that time, former RCW 9.94A.500(1) required sentencing courts to consider “the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history” in determining the defendant’s offender score by a preponderance of the evidence. Former RCW 9.94A.530 further provided, ““may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.... Acknowledgment includes not objecting to information stated in the presentence reports.”

Last year in State v. Mendoza, the Court considered two consolidated appeals where the State failed to prove the defendants' criminal histories under the former statute. 165 Wn.2d at 918-19. In both cases, the defendants did not agree with or stipulate to the State's representations of the defendants' criminal histories, but they failed to object to those representations, and made their own recommendations using the standard range put forth by the State. Id. The Court held that a prosecutor's presentence statement is not a "presentence report" within the meaning of former RCW 9.94A.500(1). Id. at 925. Therefore, "acknowledgement" required more than failure to object to the prosecutors' statements or recommendations within the standard range asserted by the prosecutor. Id. at 928-29, citing Ford, 137 Wn.2d at 47980, 483-84. "Importantly," the Court explained, "we have emphasized the need for an affirmative acknowledgment by the defendant of facts and information introduced for the purposes of sentencing." Mendoza, 165 Wn.2d at 929 (emphasis in the original), citing Ford, 137 Wn.2d at 482-83 and Ross, 152 Wn.2d at 233. Because the defendants in this case did not affirmatively acknowledge the criminal histories as characterized by the State, they did not waive their challenges to the offender scores and

sentences. Mendoza, 165 Wn.2d at 920. Because their sentencing courts had no information with which to find those assertions valid by a preponderance of the evidence, the sentences were reversed. Id. at 929.

By the time Mendoza was decided, the Legislature had already amended the statute. RCW 9.94A.500 now provides:

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein.

RCW 9.94A.530 now provides:

Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537.

The amendments were effective June 12, 2008. Laws of 2008, Ch. 231, § 1.

When the prosecutor first compiled and, presumably, presented defense counsel with Mr. Gaines criminal history, the former statute was in effect. If a sentencing hearing had taken place then, defense counsel arguably would not have been

ineffective in failing to object because, as Mendoza made clear, failure to object without affirmative acknowledgement did not waive any rights. But sentencing took place in July 2009. By that time, defense counsel had passed up two more opportunities to consider and object to the same statement of criminal history. CP__ (Sub No. 145, Presentence Statement filed June 18, 2009); (CP__ (Sub No. 153, Presentence Statement filed July 22, 2009). Not only had the current versions of RCW 9.94A.500 and .530 been in effect for over a year, but Mendoza had thoroughly highlighted the amendments and their effects on waiver. 165 Wn.2d at 924-25. Thus, counsel should have known that her failure to object to the State's representation of criminal history, before or at sentencing, waived Mr. Gaines' objections to factual errors.

Competent defense counsel is aware of the sentencing law applicable to her client's case. State v. Saunders, 120 Wn.App. 800, 825, 86 P.3d 232 (2004) (counsel deficient for not making same criminal conduct argument supported by case law); Personal Restraint of McCready, 100 Wn.App. 259, 263, 996 P.2d 658 (2000) (counsel deficient for not informing defendant of applicable maximum and minimum sentences prior to accepting plea offer). Counsel's failure to make the necessary objections in light of the

amendments was constitutionally deficient.

The presumption of effective representation may be overcome by showing “the absence of legitimate strategic or tactical reasons supporting the challenged conduct by counsel.” State v. McFarland, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995). There could be no conceivable tactical or strategic reason for this omission. It could have only resulted in a lower offender score for Mr. Gaines. The King County convictions totaled seven points; there was nothing to gain by relieving the State of its burden to prove them.

It also appears that counsel “failed to conduct appropriate investigations,” further overcoming the presumption of effective representation. Thomas, 109 Wn.2d at 230; see, e.g. Brett, 142 Wn.2d at 873 (at a minimum counsel must conduct a reasonable investigation in order to determine how best to represent the client). The fact that counsel failed to specifically object to Cause No. 968017158 suggests that she did not even peruse the documentation provided by the State, since it is plainly obvious that the one-page order does not identify the offense. This is further highlighted by the State’s own statement, which failed to list the sentencing date for that offense. CP __ (Sub No. 145), CP__ (Sub

No. 153). This translated into the sentencing date being listed as “UNKNOWN” in the criminal history appended to the judgment and sentence. CP 39. But the sentencing date (January 13, 1997) appears twice on the face of the order. App. A (CP ___ (Sub No. 158)). This calls into question the sufficiency of the document (because it fails to name the offense, only the cause number matches it to the prosecutor’s unsupported assertion) and the sentencing court’s determination (clearly the court looked no further than the presentence statement, as the sentencing order supplies the “UNKNOWN” date). Again, a simple review of the State’s presentence statement would have revealed this error to defense counsel. “The trial court has the power and duty to correct the erroneous sentence, when the error is discovered.” In re Personal Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980) (internal citation omitted).

b. Defense counsel was ineffective in failing to argue that two sets of prior convictions should have been treated as same criminal conduct. RCW 9.94A.525(5)(a)(i) provides:

Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other

prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used.

RCW 9.94A.589(1)(a) defines same criminal conduct as "two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." *Id.* Offenses that encompass the same criminal conduct count as one crime for purposes of calculating the offender score. State v. Taylor, 90 Wn.App. 312, 321, 950 P.2d 1218 (2002). Two crimes may constitute the same criminal conduct when they are completed with the same objective intent, intended to further the other offenses, and occur close in time to the same victim. *Id.*; 13A Seth Aaron Fine, Washington Practice Sec. 2810 at 112 (Supp. 1996).

As noted above, the State made no attempt to prove the King County offenses, and the prosecutor's presentence statement is not evidence. However, with nothing else to suggest the nature or dates of the King County convictions, Mr. Gaines relies on that document only for the purposes of this argument. The prosecutor

listed juvenile dispositions for rape in the second degree and attempted rape in the second degree, both with cause number 94-8-00944-5 and date of offense February 13, 1994, sentenced on April 1, 1994. CP __ (Sub No. 145), CP__ (Sub No. 153). The prosecutor also listed two felony VUCSA convictions, both with cause number 02-1-04521-5 and date of offense April 29, 2002, sentenced on December 13, 2002, to be served concurrent with each other and another cause number. Id.

These circumstances – multiple offenses which are identical or very similar in nature, with the same cause number, violation date, and sentencing date – strongly suggest same criminal conduct, reducing Mr. Gaines' offender score by one point for the attempted rape and one point for one of the 2002 VUCSA's. Defense counsel's failure to notify the court that these priors should be counted as same criminal conduct was ineffective. See, e.g. Saunders, 120 Wn.App. at 825 ("counsel's decision not to argue same criminal conduct as to the rape and kidnapping charges constituted ineffective assistance of counsel and requires a remand for a new sentencing hearing where defense counsel can make this argument").

c. The errors were prejudicial. In State v. Thiefault, the Supreme Court found an attorney ineffective for failing to object to the comparability, both legal and factual, of an out-of-state conviction. 160 Wn.2d 409, 417, 158 P.3d 580 (2007). The Court found the foreign statute was not legally comparable to the Washington statute, and while it was possible that the State would have been able to obtain a continuance and additional documentation to prove factual comparability, it was “equally as likely” that such documentation would not have been sufficient to prove comparability. Id. The attorney’s error was therefore prejudicial. See also In re Personal Restraint of Crawford, 150 Wn.App. 787, 209 P.3d 507 (2009) (defense counsel ineffective for failing to object to the comparability of an out-of-state conviction).

Here, defense counsel failed to hold the State to its burden of proving the defendant’s criminal history, to object to an unsupported offender score, to bring an obviously facially invalid sentencing order to the court’s attention, and to argue that prior offenses of the same nature and with the same cause number, violation date, and sentencing date should be counted as same criminal conduct. If she had taken these reasonable measures, Mr. Gaines’ offender score could have been reduced by anything from

a half point to seven and a half points. Her omissions were prejudicial, and the sentence must be reversed.

E. CONCLUSION.

For the reasons set forth above, Mr. Gaines respectfully requests this Court reverse his sentence and remand for resentencing.

Respectfully submitted this 31st day of March, 2010.



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APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY JUVENILE COURT

STATE OF WASHINGTON

NO. 96817158

Plaintiff,

JRA SENTENCING ORDER

vs.

Leandre Gaines
Respondent.

9/24/80

97 JAN 13 PM 6:03

On 1/13/97, Respondent appeared before the Court for sentencing on the above-captioned case(s). Respondent [] waived the right to counsel. [X] Respondent was represented by Martin Meyer. Prior to sentencing this day, Respondent [X] pled guilty to: [] found guilty as contained in the information.

The respondent was found to be a middle offender.

Accordingly, the Court hereby ORDERS that respondent be committed to Juvenile Rehabilitation Administration for a term of 30-40 weeks.

Respondent to have credit for days served.

Further, the Juvenile Rehabilitation Administration shall have authority to consent to Respondent's treatment and care, whether medical, psychological, psychiatric or dental, as attending professionals may deem necessary. [] The Respondent having been convicted of a violent offense is required to provide a sample of his/her blood for purposes of DNA analysis.

The Court also ORDERS respondent to pay the following:

[X] Court Costs: \$ 6.00 [X] Crime Victim Fund: \$ 100.00 [] Fines: \$ Such sums shall be paid by/within

[] RESTITUTION Payable to:

[] As agreed: \$

[] By further order of the court, hearing date:

The Court further ORDERS

DATED this 13th day of January, 1997.

M. Penick
Deputy Prosecuting Attorney, WSBA # 25721

Jean E. Meyer
JUDGE/COURT COMMISSIONER Pro Tem

Martin Meyer
Attorney for Respondent, WSBA # 2338

Respondent

JASS

JRA SENTENCING ORDER

STATE OF WASHINGTON
County of Thurston
I, Betty J. Gould, County Clerk/Deputy Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing pages.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court
DATED: July 26, 2007

BETTY J. GOULD
County Clerk/Deputy Clerk
MICROFILMED by

11/10/00 10:00:00 AM 1550116884

