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FILED
KING COUNTY, WASHINGTON

APR 12 2012

SEA
SUPERIOR COURT CLERK

APR 13 2012

COPY TO COURT OF APPEALS

**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

STATE OF WASHINGTON,

Plaintiff,

vs.

BENJAMIN LEE SMALLS,

Defendant.

08740-9
NO. 08-1-02482-9 SEA

ORDER OF TRANSFER

"CLERK'S ACTION REQUIRED"

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 APR 17 AM 11:44

The above-entitled court, having considered a:

- motion to withdraw a guilty plea
- motion for relief from judgment
- petition for writ of habeas corpus

and having determined that a transfer to the Court of Appeals would serve the ends of justice, Toliver v. Olsen, 109 Wn.2d 607, 612-613; CrR 7.8(c)(2), it is hereby

ORDERED that the Clerk is directed to transfer the motion petition to the Court of Appeals, Division I.

DATED this 11 day of April, 2012.

PETITIONER MAY FILE PETITION
WITHOUT PAYMENT OF FILING FEE

Gregory P. Canova

JUDGE GREGORY P. CANOVA

ORDER OF TRANSFER
COURT ADMINISTRATOR/CLERK

ORIGINAL

JUDGE GREGORY P. CANOVA
KING COUNTY SUPERIOR COURT
516 THIRD AVE
SEATTLE WA 98104
(206) 296-9290

FILED
KING COUNTY, WASHINGTON

APR 12 2012

SUPERIOR COURT CLERK

APR 13 2012

COPY TO COURT OF APPEALS _____

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON
Plaintiff,

Case No: 08-1-02482-9 SEA

vs.

ORDER OF INDIGENCY

BENJAMIN L. SMALLS
Defendant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR 17 AM 11:44

This matter having come before the court upon the motion of the defendant and it appearing to the court finds from defendants Financial Certificate that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants defendant a right to review at public expense to the extent defined in this order.

The court orders as follows:

1. Benjamin L. Smalls is entitled to counsel to represent him in this matter wholly at public expense.

ORIGINAL

(JPC)

Counsel may be appointed by the Appellate Court, pursuant to
2. Craig S. McDonald WSB# 9338 is appointed as counsel. R.A.P. 15.2(g).
Appointed counsel may be assisted by counsel in the same firm as
appointed counsel.

3. Benjamin L. Smalls is entitled to the following at public
expense;

(a) Those portions of the verbatim report of proceedings
reasonable necessary for review as follows:

- The plea hearing transcripts.
- The transcripts on hearing to withdraw plea.
- The transcripts of sentencing hearing.

(b) A certified copy of clerks papers.

- Information
- Amended Information
- Plea Agreement
- Judgement And Sentence

(c) Any other records that are necessary to prosecute the
motion.

Dated this 11 day of April, 2012.

Gregory P. Canove
Honorable Judge Gregory P. Canove
King County Superior Court

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1 **FILED**
KING COUNTY, WASHINGTON

2 APR 12 2012

3 SUPERIOR COURT CLERK

COURT OF APPEALS APR 13 2012

4 SUPERIOR COURT OF WASHINGTON
5 FOR KING COUNTY

6
7 STATE OF WASHINGTON
8 Plaintiff,

Case No: 08-1-02482-9 SEA

9 vs.

FINANCIAL CERTIFICATE

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12 BENJAMIN L. SMALLS
13 Defendant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR 17 AM 11:44

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18 1. NAME: Benjamin L. Smalls

19 2. List all persons whom you support:

NAME	RELATIONSHIP TO YOU	ADDRESS
Sav'ell Earl Edward Smalls	Son	Seattle, WA
Benjamin JacksonLee Smalls	Son	Seattle, WA

20
21
22
23 3. Name of employer: Washington Department of Corrections
Employer's address: CBCC, 1830 Eagle Crest Way, Clallam Bay, WA.

24 Monthly take home pay: \$42.00

25 4. If you have income from any other source list:

SOURCE OF INCOME	MONTHLY AMOUNT
Family	\$40.00

26
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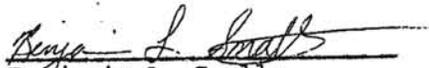
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5. Assets:

a. Cash	\$0
b. Savings Account	\$0
c. Checking Accounts	\$0
d. Real Property	\$0
e. Automobiles	\$0
f. Household Goods/Furniture	\$0
g. Stocks/Bonds/Mutual Funds	\$0
h. Notes/Mortgages/Trusts	\$0
i. Debts Owed To You	\$0
j. Other Assets	\$0

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

Dated this 9th day of April 2012.


Benjamin L. Smalls
Petitioner Pro Se

1
2 **FILED**
3 **KING COUNTY, WASHINGTON**
4 **APR 12 2012**

5 **SUPERIOR COURT CLERK**

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8 **COPY TO COURT OF APPEALS** **APR 13 2012**

9 **SUPERIOR COURT OF WASHINGTON**
10 **FOR KING COUNTY**

11 **STATE OF WASHINGTON**
12 **Plaintiff,**

13 **Case No: 08-1-02482-9 SEA**

14 **vs.**

15 **MOTION FOR ORDER OF INDIGENCY**

16 **BENJAMIN L. SMALLS**
17 **Defendant.**

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 APR 17 AM 11:44

28 **MOTION AND DECLARATION**

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31
32 I, Benjamin L. Smalls, defendant certify under penalty of
33 perjury according to the laws of the State of Washington, that the
34 following is true and correct:

35 I am the defendant and I have filed a Motion For Relief From
36 Judgement in the above captioned criminal case. I seek an order authorizing
37

1 me to proceed as an indigent person.

2 I believe that I have valid reasons for bringing this appeal and
3 that I am entitled to relief. I am unable to pay the filing fee in this
4 case. My financial certificate is attached and this certificate accurately
5 describes my financial condition.

6 Therefore, defendant moves the court for an Order of Indigency
7 authorizing the expenditure of public funds to prosecute this appeal wholly
8 at public expense. The attached certificate is submitted in support of this
9 motion.

10 Respectfully submitted this 9th day of April, 2012.

11
12 
13 Benjamin L. Smalls
14 #856519 Unit J
15 Clallam Bay Correction Center
16 1830 Eagle Crest Way
17 Clallam Bay, WA 98326

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Petitioner Pro Se

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2 **FILED**
3 **KING COUNTY, WASHINGTON**
4 **APR 12 2012**
5 **SUPERIOR COURT CLERK.**

COPY TO COURT OF APPEALS **APR 13 2012**

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8 **SUPERIOR COURT OF WASHINGTON**
9 **FOR KING COUNTY**

10 **STATE OF WASHINGTON**
11 **Plaintiff,**

Case No: 08-1-02482-9 SEA

12 **vs.**

MOTION FOR RELIEF FROM
JUDGEMENT (CrR 7.8 (b))
(Memorandum Subjoined)

13 **BENJAMIN L. SMALLS**
14 **Defendant.**

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 APR 17 AM 11:44

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18 **MOTION**

19
20 Comes Now, the Petitioner, Benjamin L. Smalls, Pro Se and hereby
21 files this Motion For Relief From Judgement pursuant to CrR 7.8(b).

22 This motion is based upon the records and files herein, including the
23 Memorandum of Points and Authorities subjoined hereto.

24 On November 14, 2008 this Court entered judgement on a plea of guilty
25 which exceeded the courts authority and which on September 25, 2009
26 resulted in this court imposing a sentence in excess of the courts
27

1 authority in that:

2 The state brought charges against petitioner via amended information
3 with two counts alleging acts against two separate victims in which count
4 II was brought and the prosecution commenced two years and eight months
5 after the applicable period of limitation as prescribed by RCW 9A.04.080
6 (1)(h) had expired. Thus, the state was barred from bringing such charges
7 and the court had no authority to entertain such charges.

8 This resulted in petitioner being misinformed about the charges and
9 the punishment he was lawfully subject to as a direct consequence of his
10 plea of guilt and/or were he to proceed to trial. Rendering such plea of
11 guilty involuntary and the Courts action unauthorized.

12 As a result of the aforementioned the judgement and sentence is void,
13 facially invalid and must be vacated.

14 Petitioner moves to have his sentence for murder in the second degree
15 with firearm enhancement and assault in the second degree vacated; to
16 withdraw his plea to both counts I and II and to have count II dismissed
17 pursuant to the authority of In Re Personal Restraint of Stoudmire, 141
18 Wn.2d 342 (2000), State v. Mendoza, 157 Wash.2d 582 (2006) and In Re
19 Personal Restraint of Bradley, 165 Wash.2d 934 (2009).

20 Dated this 9th day of April, 2012.

21
22 
Benjamin L. Smalls
23 #856519 Unit J
Clallam Bay Correction Center
24 1830 Eagle Crest Way
Clallam Bay, WA 98326

25 **Petitioner Pro Se**
26
27

MEMORANDUM OF POINTS AND AUTHORITIES

A. FACTS RELEVANT TO MOTION

On March 3, 2008, petitioner Benjamin Lee Smalls was charged by Information filed in the King County Superior Court Case No. 08-1-02482-9 with the following crimes: Murder in the Second Degree, contrary to RCW 9A.32.050(1) (a) and (b). (See Appendix ExhibitA pg.1).

On April 25, 2008, petitioner Benjamin L. Smalls was charged by Amended Information filed in King County Superior Court case no.08-1-02482-9 with the following crimes: Count I Murder in the Second Degree of Stephen Kirk on September 13, 2002 contrary to RCW 9A.32.050(1) and count II Assault in the Second Degree of Toni Antoinette King on September 13, 2002, contrary to RCW 9A.36.021 (1)(c).

It was further alleged that each of the crimes charged in count I and II occurred while petitioner was armed with a firearm, contrary, to RCW 9.94A-533(3) enhancing the presumptive sentence for each count. (See App. Exh. A pg.3,4).

Petitioner was represented by retained counsel Teri Rogers-Kemp and the state was represented by deputy prosecutor Mr. James Konat (RP 11/14/08 pg. 3).

On November 14, 2008 upon misinformation by his attorney and deputy prosecutor James Konat that petitioner had been lawfully charged with count I murder in the second degree including firearm enhancement and count II assault in the second degree including firearm enhancement and that he was subject to the punishment prescribed thereto.(RP 11/14/2008 pg.3-27).

With the advice of counsel petitioner pled guilty to Count I second degree murder including firearm enhancement and count II, second degree

1 assault with the firearm enhancement being dismissed. (RP 11/14/2008 pg. 5
2 - 32).

3 At sentencing petitioner was represented by court appointed counsel
4 Craig McDonald and the state was represented by deputy prosecutor James
5 Konat. (RP 9/25/2008 pg. 2). Mr. Konat while factoring in count II the
6 current charge of second degree assault determined petitioners offender
7 score to be 9 and the sentence range for count I to be 298 to 397 months
8 added to that the 60 months for the mandatory firearm enhancement he
9 calculated petitioners sentence range to be 358 to 457 months. And as to
10 count II with the same offender score a sentence range of 63 to 84 months.

11 Mr. Konat recommended that the court sentence petitioner to 418
12 months for count I and 84 months for count II. (RP 9/25/2009 pg. 9). The
13 court followed the states recommendation and imposed a sentence of 358
14 months for count I and 60 months consecutive for the firearm enhancement
15 for a total sentence of 418 months on count I. (RP 9/25/2009 pg. 18). As
16 for count II the court granted the states motion to dismiss the enhancement
17 and imposed 84 months to run concurrent with count I. (RP 9/25/2009 pg.
18 18).

19 **B. A RULE 7.8(b) MOTION IS THE APPROPRIATE**
20 **REMEDY TO CORRECT THE ERRONEOUS JUDGEMENT**

21 Petitioners deadline for filing a PRP was one year from the date of
22 the mandate. To wit on March 18, 2012. Petitioner did not file a PRP.

23 It appears that petitioner has two remedies: A motion for relief from
24 judgement under CrR 7.8(b) and a personal restraint petition. It is
25 appropriate for petitioner to bring this issue back to the trial court
26 first, before taking the issue to the Court of Appeals.
27

1 CrR 7.8(b)(4),(5) provides that a defendant may move for relief from
2 judgement when a judgement is void or for any other reason justifying
3 relief from the operation of the judgement. Petitioner is entitled to
4 relief from judgement in this case because the trial court had no authority
5 to enter judgement and imposed a sentence upon a plea to an information
6 charging an offense for which the statute of limitations had expired.

7 Petitioner's judgement and sentence is "invalid on its face" because
8 it exceeds the charging time duration allowed by statute and the defect is
9 evident on the face of the judgement and sentence and the plea agreement
10 documents.

11 **C. PETITIONER'S MOTION IS NOT TIME BARRED**

12
13 A motion for relief from judgement is governed by CrR 7.8(b), if the
14 motion is brought after judgement. This motion is brought under CrR 7.8(b)
15 (4) and (5). Motions under these subsections are to be made "within a
16 reasonable time."

17 CrR 7.8(b)(4) and (5), which are the prongs petitioner can challenge
18 his judgement and sentence under allows for relief if the judgement is void
19 or for any other reason justifying relief from the operation of the
20 judgement.

21 Motions brought under 7.8(4) and (5) still must be made within a reasonable
22 time, but the standard of reasonableness must be applied to the facts of
23 each particular case.

24 The rule does not set an upward limit on what is reasonable, State v.
25 Golden, 112 Wn. App. 68, 79 (2002).

26 In Golden, the defendant filed a motion to withdraw a juvenile plea
27 relying on CrR 7.8(b)(5) 8½ years after the plea. The court ruled in that

1 case that, "for purposes of CrR 7.8 under which a court may grant relief
2 from a criminal judgement that is void or for any other reason justifying
3 relief if relief is sought within a reasonable time can no longer be one
4 year." Thus, the trial court can consider a CrR 7.8 motion filed 8½ years
5 after the fact. Id. at 79. See also: State v. Carlstad, 150 Wn.2d 583, 593
6 - 94 (2003) (CrR 7.8 does not define when a filing occurs, providing only
7 that a motion 'shall be made within a reasonable time' and is subject to
8 RCW 10.73.090.").

9 In the absence of a definition of "reasonable time" in the rule or in
10 caselaw interpreting the rule, it is appropriate to look at the legal
11 definitions. "Reasonable is defined as:

12 Fair, proper, just, moderate, suitable
13 under the circumstances. Fit and
14 appropriate to the end in view. Having
15 the faculty of reason; rational,
16 governed by reason; under the influence
17 of reason; agreeable to reason. Thinking
18 speaking, or acting according to the
19 dictates of reason. Not immoderate or
20 excessive, being synonymous with
21 rational, honest, equitable, fair,
22 suitable, moderate, tolerable.

23 Black's Law Dictionary, abridged Sixth Edition (1991).

24 Under the heading of "Time", a "Reasonable Time" is defined as:

25 Such length of time as may fairly,
26 properly, and reasonably be allowed or
27 required, having regard to the nature
of the act of duty, or of the subject
matter, and to the attending circumstances.

Id.

Thus, it is clear that in assessing the timeliness of petitioners
motion the court must look at what is fair and just, what a person of
ordinary prudence would have known under similar circumstances of the
motion. Petitioners motion for relief from judgement is reasonable under

1 the facts of this case.

2 In 2008 and 2009 petitioner was 24 and 25 years old with no legal
3 knowledge or experience and a very elementary education. His case appeared
4 before a number of different judges in the Superior Court and the Courts of
5 Appeals, and in these proceedings the state was represented by two
6 attorney's and petitioner was represented by four different attorneys.
7 While petitioner did attempt to withdraw his plea for competency reasons,
8 (See App. Exh B pg. 1 Par. 11) he was unaware of the proper ground under
9 which to withdraw it and neither counsel for the state or for the
10 petitioner, nor the court's identified that count II of the amended
11 information had been brought after the statute of limitation had expired.

12 Petitioner began researching to prepare a PRP in 2011 after the
13 mandate issued and was unable to identify the error until February 2012
14 less than a month before petitioners PRP filing cutoff date, March 18,
15 2012, clearly not enough time for petitioner who is a legal novice to
16 research the issue and prepare a 7.8 motion or PRP in less than a month. A
17 person of ordinary diligence and prudence would bring a motion for relief
18 from judgement at the time he becomes aware that he had pled to a
19 information that charged offense(s) after the statute of limitations
20 expired in violation of the law.

21 This motion is filed within a reasonable time because justness and
22 fairness require that an erroneous judgement and sentence resulting from an
23 involuntary plea derived from a charging document which charged offenses
24 brought in violation of the statute of limitations be corrected when it is
25 brought to the courts attention.

26 **D. ARGUMENT**

27 1. The Judgement Is Void And

1 The Judgement And Sentence Is
2 Invalid On It's Face

3 Unlike a statute of limitations in a civil case, a criminal statute
4 of limitations is not a mere limitation upon the remedy but a limitation
5 upon the power of the sovereign to act against the accused. State v. Fogel,
6 16 Ariz. APP. 246, 248, 492 P.2d 742, 744 (1972). It is jurisdictional. An
7 indictment or information which indicates that the offense is barred by the
8 statute of limitation fails to state a public offense. State v. Glover, 25
9 Wash.App. 58, 61 (1979); State v. Eppens, 30 Wash.2d 119, 124 (1981)
10 (statutes of limitations create an absolute bar to prosecution.). State v.
11 Hodgson, 108 Wn.2d 662, 667-68 (1987); State v. Novotny, 76 Wn.App. 343,
12 345 (1994)(criminal statute of limitations is jurisdictional and creates an
13 absolute bar to prosecution and therefore may be raised for the first time
14 on appeal.); State v. Phelps, 113 Wn.App. 347, 357 (2002), State v.
15 Willingham, 169 Wn.2d 192 (2010).

16 And " A void judgement is one entered by a court which lacks
17 jurisdiction of the parties or of the subject matter, or which lacks
18 inherent power to make or enter the particular order involved..." Dike v.
19 Dike, 75 Wn.2d 1, (1968).

20 Thus, the initial question is whether the judgement entered in this
21 case is void or merely voidable, i.e. entered in error. Because the court
22 had jurisdiction of the parties and subject matter, the focus is then on
23 whether the court had the inherent power to entertain the charges.

24 Washington courts have long recognized that a judgement for an
25 offense charged after the statute of limitations has run is void and not
26 valid on it's face. See State v. Bryce, 41 Wn.App. 802, 807 (1985).(an
27 information filed after the statute of limitations has run is void...);

1 Also In Re Personal Restraint of Stoudmire, 141 Wn.2d 342, 354 (2000).

2 On this issue this case is similar to and is controlled by the
3 Washington Supreme Courts decision in Stoudmire. In 1993 Stoudmire pled
4 guilty to two counts of indecent liberties and in a second PRP filed more
5 than five years after the judgement became final Stoudmire sought relief on
6 the ground that the trial court had no authority to convict him where the
7 statute of limitations had expired.

8 The Supreme Court held as follows:

9 "Although this court has not discussed what validity on it's face
10 means in terms of the time limit in RCW 10.73.090, it has spoken in State
11 v. Ammons, 105 Wn.2d 175, 187 (1986), to what it means for a prior
12 conviction to be constitutionally invalid on it's face in a sentencing
13 proceeding, 'constitutionally invalid on it's face means a conviction which
14 without further elaboration evidences infirmities of a constitutional
15 magnitude.' Id. at 108. The phrase 'on it's face' has been interpreted to
16 mean those documents signed as part of a plea agreement. State v. Phelps,
17 94 Wn. ASpp. 313, 317 (1999)(citing Ammons, 105 Wn.2d at 187-189).

18 Stoudmire's judgement and sentence for cause number...lists two
19 counts of indecent liberties...and the dates of the crimes as between June
20 1983 and June 11, 1986 and between August 1, 1985 and December 31, 1987.

21 The information charging Stoudmire with the indecent liberties counts
22 was filed on July 20, 1992, more than four-and-one-half years after the
23 offenses were committed.

24 The cause numbers of the charges both indicate they were brought in
25 1992. Both the former and current RCW 9A.04.080 indicate that the statute
26 of limitations for the felonies in question is three years, the documents
27 of the plea agreement show on their face that the judgement and sentence
were invalid, and thus the one year time limit bar of RCW 10.73.090 does
not apply to this claim.

A plea bargaining agreement cannot exceed the statutory authority
given to the courts. In Re Personal Restraint of Moore, 116 Wn.2d 30, 38
(1991)(quoting In Re Personal Restraint of Gardner, 94 Wn.2d 504, 507
(1980).

Because the statute of limitations bars prosecution of charges
commenced after the period prescribed in the statute the sentencing court
exceeded it's authority."

The Stoudmire court went on to hold that, " on these charges the
court exceeded it's authority and we find petitioner's restraint on these
charges to result in a complete miscarriage of justice." The court vacated
Stoudmires two convictions for indecent liberties and dismissed the

1 charges.

2 Here petitioners judgement and sentence lists two counts, count I
3 second degree murder, including a firearm enhancement and count II second
4 degree assault. The date of commission for all offenses is September 13,
5 2002. (See App. Exh. C pg.1).

6 The Amended Information charging petitioner with counts I second
7 degree murder including firearm enhancement and count II second degree
8 assault including firearm enhancement was filed on April 25, 2008 more than
9 5 years and 7 months after the commission of the offenses.

10 And the documents of the plea agreement indicates that the second
11 degree assault was committed on September 13, 2002 and brought on April 25,
12 2008. (See App. Exh. D pg. 1).

13 The statute of limitations for prosecuting these offenses is RCW
14 9A.04.080. Second degree assault is not one of the crimes included in
15 9A.04.080 (a)(i) - (vi) which extends the limitations period to anytime
16 beyond the commission of the crime; (b)(i) - (iii), more than ten years
17 after their commission; (c) which may be prosecuted up to the victims 28th
18 birthday; (d)(i) - (iv), more than 6 years after it's commission; (e) more
19 than 5 years after it's commission; (f) more than 3 years after time
20 specified in RCW 9A.64.010; or (g) A violation of RCW 9A.56.030.

21 Instead the 3 year limitation period set forth in the residuary
22 clause, RCW 9A.04.080 (h), applies to count II. RCW 9A.04.080(1) prohibits
23 the state from commencing a prosecution for a criminal offense after the
24 applicable period of limitation as prescribed by that section has passed.
25 Because second degree assault is not one of those crimes with a specific
26 time limitation under the statute, like many felonies second degree assault
27 may not be prosecuted more than three years after it's commission. See

1 State v. Cook, 125 Wash.App. 709 (2005).

2 Petitioner's documents of the plea agreement and the judgement and
3 sentence supported by the Amended information show on their face that the
4 judgement and sentence is invalid, therefore the one year time bar of RCW
5 10.73.090 does not apply to this claim. And the judgement should be
6 vacated, and the charges in count II dismissed. State v. Garrison, 103
7 Wash.App. 1055 (2000) quoting State v. Bryce, 41 Wn.App. 802, 807 (1985)(
8 An information filed after the statute of limitations has run is void on
9 it's face and must be dismissed). Also Stoudmire, 141 Wn.2d at 353-54.

10
11 2. Petitioner's Guilty Plea Was Involuntary

12 Petitioner was charged by amended information with count I second
13 degree murder including firearm enhancement and count II second degree
14 assault including firearm enhancement. Petitioner was induced to plead
15 guilty to count I second degree murder including firearm enhancement and
16 count II second degree assault based on misinformation that the court had
17 the authority to prosecute the charges in count II and the punishment
18 associated with proceeding to trial on all charges.

19 Petitioner now argues that the misinformation renders his plea
20 involuntary and seeks to withdraw both count I second degree murder
21 including firearm enhancement and count II second degree assault plea,
22 claiming they were part of an indivisible plea "package deal".

23 " Due process requires that a defendants's guilty plea be knowing,
24 voluntary, ;and intelligent." In Re Personal Restraint Petition of
25 Baradley, 165 Wash.2d 934, 939 (2009), quoting In Re Personal restraint of
26 Isadore, 151 Wn.2d 294, 297 (2004). " If a defendant is not apprised of a
27 direct consequence of his plea, the plea is considered involuntary."

1
2 Bradley, 165 Wash.2d at 939, quoting State v. Ross, 129 Wn.2d 279, 284
3 (1996).

4 "A direct consequence is one that has a definite, immediate and
5 largely automatic effect on the range of the defendants punishments. Id.
6 Thus, the nature of the charges, and the length of the sentence is a direct
7 consequence of a guilty plea. State v. Mendoza, 157 Wn.2d 582, 590 (2006).

8 Moreover, a defendant who has been misinformed about a direct
9 consequence of his guilty plea need not demonstrate that the misinformation
10 materially affected his decision to plead guilty. Isadore, 151 Wash.2d at
11 296; See Also Bradley, 165 Wash.2d at 939 (citing Isadore for this
12 proposition). "Therefore, misinformation about the length of a sentence
13 renders a plea involuntary, even where the correct sentence may be less
14 than the erroneous sentence included in the plea." Bradley, 165 Wash.2d at
15 939, citing Mendoza, 157 Wash.2d at 591.

16 Here, petitioner was misinformed about the actual charges he could be
17 prosecuted for and the potential length of his sentence were he not to
18 plead guilty and the potential length of his sentence if he pled guilty, a
19 direct consequence of his plea. He was informed at the time he pled guilty
20 that he faced the charges of second degree murder including firearm
21 enhancement and second degree assault including firearm enhancement. (See
22 App. Exh. A pg. 3,4)and (RP 11/14/12 pg.3-27).

23 With a standard sentence range of 298 to 397 months confinement for
24 count I, based on an offender score of 9 of which the conviction in count
25 II represented 2 offender score points and 60 months consecutive for the
26
27

1
2 firearm enhancement. For a combined total standard range of 418 to 517
3 month.

4 When in fact as discussed above, the only offense petitioner should
5 have been charged with is count I second degree murder including firearm
6 enhancement based on an offender score of 7.

7
8 3. Because The Guilty Plea
9 Was Involuntary And Indivisible
Petitioner Is Entitled To Withdraw
His Guilty Plea

10 When a guilty plea is involuntary, the defendant may choose his
11 remedy; specific enforcement of the plea agreement, or withdrawal of the
12 guilty plea. Bradley, 165 Wash.2d at 941, citing State v. Miller, 110
13 Wash.2d 528, 536 (1988).

14 This issue here is similar to and is controlled by Bradley. In
15 Bradley, the petitioner pled guilty to possession of cocaine, and to
16 possession of cocaine with the intent to deliver, based upon two separate
17 incidents. He received concurrent sentences with the simple possession
18 charge carrying the lesser sentence. Consequently, the sentence on the
19 simple possession charge did not affect Bradley's total term of
20 confinement. After his convictions became final, and after the one year
21 time limit for filing a PRP had expired, Bradley learned that his prior
22 juvenile adjudications had been scored incorrectly in the simple possession
23 case, resulting in an erroneously high standard range on that charge.
24 Bradley then filed a personal restraint petition seeking to withdraw his
25 guilty pleas in both cases. Bradley, 165 Wash.2d at 937-38.

26 Relying primarily on Isadore and Mendoza, the Washington Supreme
27 Court concluded that Bradley's plea to the simple possession charge was

1 involuntary because he had been misinformed of a direct consequence of his
2 guilty plea when he was told the incorrect standard sentence range for that
3 charge. Bradley, 165 Wash.2d at 939. The state argued that the range on the
4 simple possession charge was not a direct consequence of the plea, because
5 Bradley's sentences were concurrent and the sentence on the other drug
6 charge carried a higher standard range than the simple possession charge.
7 In other words, the State argued that the standard range on the simple
8 possession was irrelevant because it had no effect on the total term of
9 confinement. Bradley, 165 Weash.2d at 939-40.

10 The Court flatly rejected the State's argument:

11 In Isadore, we held that a court will not speculate on the possible
12 outcomes had the defendant been properly advised on the direct consequences
13 of his plea. Id. at 302, 88 P.3d 390. Thus, we reject the State's
14 invitation to consider the practical effect of Bradley's actions, as well
15 as what the state itself might have done under other circumstances. This
16 court cannot rewind the clock and put itself in the shoes of the prosecutor
17 and the defendant as they entered into this plea agreement. As we observed
18 in Isadore: "This hindsight task is one that appellate courts should not
19 undertake. A reviewing court cannot determine with certainty how a
20 defendant arrived at his personal decision to plead guilty, nor discern
21 what weight a defendant gave to each factor relating to the decision." Id.
22 This exercise is tantamount to examining the practical effects of
23 information on a plea under the materiality test we rejected in Isadore.
24 Moreover, we have already held that the length of a sentence is a direct
25 consequence of a plea. Mendoza, 157 Wash.2d at 590, 141 P.3d 49. We
26 conclude that Bradley was not informed about a direct consequence of his
27 plea, and the plea was therefore involuntary.

Bradley, 165 Wash.2d at 940-41.

 The Court went on to hold that because the two pleas were part of an
indivisible package deal, Bradley should be allowed to withdraw his guilty
pleas in both cases. Bradley, 165 Wash.2d at 941-44.

 Petitioner asks to withdraw both his second degree murder including

1 firearm enhancement plea and his second degree assault plea. This remedy is
2 available to a defendant only where, as part of a "package deal," the
3 defendant was correctly informed of the consequences of one charge, but not
4 of another charge. State v. Turley, 149 Wn.2d 395, 399-401 (2003).

5 A plea bargain is a "package deal" if the agreements as to the
6 individual charges are indivisible from one another. See Id. at 400. The
7 Court looks to objective manifestations of intent in determining whether a
8 plea agreement was meant to be indivisible. Id. Where "pleas to multiple
9 counts or charges were made at the same time, described in one document,
10 and accepted in a single proceeding, "the pleas are indivisible from
11 oneanother. Id.

12 This case is even more egregious than Bradley in that it involves an
13 entire set of charges that the state was not authorized to charge and the
14 court was not authorized to entertain which resulted in petitioner being
15 misinformed about the charges he was lawfully facing on one count and a
16 significantly higher standard range and total punishment on the other
17 count. And unlike in Bradley where the lesser offense did not affect the
18 total term of confinement petitioner's plea on the lesser charge of second
19 degree assault added two points to the offender score which increased his
20 total term of confinement.

21 While more egregious than Bradley the fundamental principle is the
22 same, petitioner was misinformed about a direct consequence of his entire
23 plea on both counts I and II. Therefore, his plea was involuntary.
24 Petitioner is entitled to his choice of remedy, and he chooses to withdraw
25 his guilty plea on both charges.

26 CONCLUSION

27 This court should grant petitioner's motion and vacate the judgement,

1 dismiss count II of the amended information charging second degree assault
2 including firearm enhancement and grant petitioner leave to withdraw his
3 plea to count I second degree murder including firearm enhancement.

4 **DECLARATION**

5 Pursuant to RCW 9A.72.085 I, Benjamin L. Smalls certifies and
6 declares under penalty of perjury and the laws of the State of Washington
7 that the foregoing is true and correct.

8 Respectfully submitted this 9th day of April, 2012.

9 
10 Benjamin L. Smalls
11 #856519 Unit J
12 Clallam Bay Correction Center
13 1830 Eagle Crest Way
14 Clallam Bay, WA 98326

15 **Petitioner Pro Se**

APPENDIX

EXHIBIT A

WARRANT ISSUED
CHARGE COUNTY \$200.00

FILED

08 MAR -3 PM 4:06

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BENJAMIN LEE SMALLS,

Defendant.

No. 08-1-02482-9 SEA

INFORMATION

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse BENJAMIN LEE SMALLS of the crime of **Murder in the Second Degree**, committed as follows:

That the defendant BENJAMIN LEE SMALLS in King County, Washington, on or about September 13, 2002, while committing and attempting to commit the crime of Assault in the Second Degree, and in the course of and in furtherance of said crime and in the immediate flight therefrom, and with intent to cause the death of another person, did cause the death of Stephen Kirk, a human being, who was not a participant in said crime, and who died on or about September 13, 2002;

Contrary to RCW 9A.32.050(1)(a) and (b), and against the peace and dignity of the State of Washington.

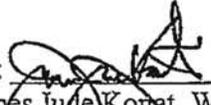
And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant BENJAMIN LEE SMALLS

INFORMATION - 1

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010, under the
2 authority of RCW 9.94A.533(3).

3 DANIEL T. SATTERBERG
4 Prosecuting Attorney

5 By: 
6 James Jude Konat, WSBA #16082
7 Senior Deputy Prosecuting Attorney

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INFORMATION - 2

COUNT II

1
2 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse
3 BENJAMIN LEE SMALLS of the crime of **Assault in the Second Degree**, a crime of the same
or similar character as another crime charged herein, and committed as follows:

4 That the defendant BENJAMIN LEE SMALLS in King County, Washington, on or about
5 September 13, 2002, did intentionally assault Toni Antoinette King with a deadly weapon, to-
wit: a handgun;

6 Contrary to RCW 9A.36.021(1)(c), and against the peace and dignity of the State of
7 Washington.

8 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the
9 authority of the State of Washington further do accuse the defendant BENJAMIN LEE SMALLS
at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010, under the
authority of RCW 9.94A.533(3).

10 DANIEL T. SATTERBERG
11 Prosecuting Attorney

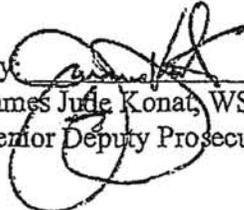
12 By 
13 James Jude Konat, WSBA #16082
14 Senior Deputy Prosecuting Attorney

EXHIBIT B

[U] State v. Smalls, No. 64348-7-I (Wash.App.Div.1 11/08/2010)

- [1] IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE
- [2] No. 64348-7-I
- [3] 2010.WA.0001468< <http://www.versuslaw.com>>
- [4] November 8, 2010
- [5] STATE OF WASHINGTON, RESPONDENT,
v.
BENJAMIN LEE SMALLS, APPELLANT.
- [6] The opinion of the court was delivered by: Grosse, J.
- [7] UNPUBLISHED OPINION
- [8] A voluntary plea obtained with proper advisement of the then-existing law is not rendered involuntary because of post-plea changes in the law. At the time the defendant entered his plea, he was advised of the correct range of community custody that would be imposed. The fact that the legislature subsequently modified the amount of community custody required does not alter the voluntariness of the plea. This is particularly true here, where the legislature's amendment required mandatory community custody of 36 months, less than the maximum previously imposed. Because the court improperly imposed community custody of 48 months, rather than 36 months, we remand for entry of an order amending the community custody period, and otherwise affirm the judgment and sentence.
- [9] FACTS
- [10] Benjamin Smalls pleaded guilty to one count of second degree murder while armed with a firearm and one count of second degree assault. In return, the State recommended a sentence of 418 months' total confinement and agreed to

dismiss not only the firearm enhancement on the second degree assault, but also charges that were pending against Smalls in another case. At the plea hearing, the prosecutor conducted an extensive colloquy with Smalls advising him as to each provision of the plea agreement. During that oral colloquy, Smalls was advised that the court would impose 24 to 48 months of community custody.

- [11] Before sentencing, Smalls obtained new counsel and sought to withdraw his guilty plea on the basis of Smalls' lack of competency. Smalls was evaluated at Western State Hospital as well as an independent doctor. Both evaluations concluded that Smalls was competent.
- [12] Smalls was sentenced on September 25, 2009. During sentencing, the court interjected that the legislature had recently amended the Sentencing Reform Act of 1981, chapter 9.94A RCW, to require that community custody be set at a specific length of time rather than a range. Believing that the range for serious violent offenses was 48 months, the court imposed a 48-month term of community custody. The plea agreement called for imposition of between 24 to 48 months of community custody. Defense counsel objected to the imposition of the fixed term of 48 months because Smalls had pleaded guilty before the new legislation was passed. The court noted the objection and imposed a sentence of 418 months' total confinement and 48 months of community custody.
- [13] ANALYSIS
- [14] A defendant's failure to understand a direct consequence of his plea constitutes manifest injustice and may be withdrawn. CrR 4.2(f). Smalls argues that he should be permitted to withdraw his plea because he was misinformed about a direct consequence of his plea-community custody. At the time of his plea, he was advised that the court would impose 24 to 48 months of community custody, rather than the fixed amount of custody actually imposed. At the time Smalls entered his guilty plea, however, former RCW 9.94A.701(1)(b) (2008) provided that the term of community custody for violent offenses was set forth in former RCW 9.94A.850 (2008).*fn1 Murder in the second degree is a serious violent offense.*fn2 The range of community custody for serious violent offenses was 24 to 48 months.*fn3
- [15] In July 2009, before Smalls was sentenced, the legislature amended RCW

EXHIBIT C

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

BENJAMIN LEE SMALLS

Defendant,

No. 08-1-02482-9 SEA

JUDGMENT AND SENTENCE
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, CRAIG McDONALD, PERI ROGERS KEMP, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Debra Kelley (mother of defendant)

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11/12/2008 by plea of:

Count No.: I Crime: MURDER IN THE SECOND DEGREE
RCW 9A.32.050(1)(A)(B) Crime Code: 00147
Date of Crime: 09/13/2002 Incident No. _____

Count No.: II Crime: ASSAULT IN THE SECOND DEGREE
RCW 9A.36.021(1)(C) Crime Code: 01018
Date of Crime: 09/13/2002 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 or FINDING(S):

- (a) While armed with a firearm in count(s) I RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

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): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

Criminal history is attached in Appendix B.

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 I	9	XIV	298 TO 397	60 MONTHS	358 TO 457 MONTHS	LIFE AND/OR \$50,000
Count II	9	IV	63 TO 84		63 TO 84 MONTHS	10 YEARS AND/OR \$25,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

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) FIREARM ENHANCEMENT IN COUNT II

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.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered. *OR SUGHT*
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500

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; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
(RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600⁰⁰. 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 or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived ~~except with respect to restitution~~

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: [] immediately; [] (Date): _____ by _____m.

358 months/days on count I; _____ months/days on count _____; _____ months/day on count _____
84 months/days on count II; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts I & II are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 60 MONTHS IN COURT I TO BEWIG
ALSO WITH A FIREARM

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 418 months.

Credit is given for 575 days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of Life years, defendant shall have no contact with TONI ANTOINETTE KING, JONETA KARIENE GLOVER, CHRIS McLEY, ANDREW JONES

→ 4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) COMMUNITY CUSTODY - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - ~~48~~ 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H for Community Custody conditions is attached and incorporated herein.
- APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, 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.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480. The State's plea/sentencing agreement is attached as follows: TO THE STATE'S PRE-SENTENCE REPORT WHICH HAS BEEN FILED

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

Date: September 25, 2009

Gregory Cannon
 JUDGE
 Print Name: GREGORY CANNON

Presented by:

[Signature]
 Deputy Prosecuting Attorney, WSBA# 16982
 Print Name: JAMES JAMES KASAT

Approved as to form:

[Signature]
 Attorney for Defendant, WSBA # 9808
 Print Name: Craig McDonald

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	Plaintiff,) No. 08-1-02482-9 SEA
)	
vs.)) JUDGMENT AND SENTENCE,
)) (FELONY) - APPENDIX B,
BENJAMIN LEE SMALLS)) CRIMINAL HISTORY
)	
	Defendant,	
)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ATTEMPT TO ELUDE (CLASS C)	05/30/2003	ADULT	021072174	KING CO
VUCSA (CLASS C)	05/30/2003	ADULT	021072174	KING CO
VUCSA (CLASS C)	09/04/2003	ADULT	031068957	KING CO
MALICIOUS MISCHIEF 2 (CLASS C)	11/10/2003	ADULT	031078553	KING CO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: September 25, 2009 Judge P. Connor
JUDGE, KING COUNTY SUPERIOR COURT

97-B-07029.7 Robbery 1st (CLASS A) 4-1-98 KING CO Juv. 80-100 WKS JRA
 00-8-03919.2 Unlaw. Poss. Firearm (CLASS C) 10-18-2000 KING. Juv. 60 DAYS - 12 mos. Con.
 00-8-03919.2 VUCSA (CLASS C) 10-18-2000 KING. Juv. - 4 - Sp.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BENJAMIN LEE SMALLS

Defendant,

No. 08-1-02482-9 SEA

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: September 25, 2009

Gregory P. Cann
JUDGE, King County Superior Court
Gregory P. Cann

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 08-1-02482-9 SEA
)	
vs.)	JUDGMENT AND SENTENCE
)	APPENDIX H
BENJAMIN LEE SMALLS)	COMMUNITY PLACEMENT OR
)	COMMUNITY CUSTODY
Defendant,)	

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: Terri Anderson King, Susanna Kariava Grabe, Cherie McCord, Andrew Jones
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: September 25, 2009

Gregory Cannon
 JUDGE
Gregory Cannon

FINGERPRINTS

RIGHT HAND
FINGERPRINTS OF:

BENJAMIN LEE SMALLS

DATED: 9/25/09

P. Carr
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

[Signature]
DOC

ATTESTED BY: BARBARA MINER,
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.
DOB: SEPTEMBER 21, 1983
SEX: M
RACE: B



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CAUSE NO. 08-1-02482-9 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Probable Cause written by Seattle Police Department Detective Russ Weklych for case number 02-414780 and signed on March 3, 2008.

REQUEST FOR BAIL

The defendant was 19 years old when he killed Stephen Kirk in September of 2002. The five-year delay in filing this case can be attributed to this defendant threatening to kill the eye witness who drove him away from the scene just moments after this murder was committed.

Since the time of this crime the defendant has been charged with and convicted of a variety of Drug and Assault cases. He has an offender score of 8 and a pending D.V. Assault 2° case at the Maleng Justice Center.

For all of these reasons the State requests that a warrant be issued for the defendant's arrest for Murder in the Second degree with a Firearm enhancement, and that bail be set at two million dollars. The State further requests that the defendant be precluded in writing from having any contact, directly or through third persons, with the witnesses in this case.

Signed this 3rd day of March, 2008.


James Jude Konat, WSBA #16082

EXHIBIT D

FELONY PLEA AGREEMENT

Date of Crime: September 13, 2002

Date: November 12, 2008

Defendant: BENJAMIN SMAUS CCN# 17745325 Cause No: 08-1-02482-9 SEARCHED

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 as follows:

On Plea To: As charged in Count(s) I AND II of the original amended information.

With Special Finding(s): deadly weapon - firearm, RCW 9.94A.510(3); deadly weapon other than firearm, RCW 9.94A.510(4); sexual motivation, RCW 9.94A.835; protected zone, RCW 69.50.435; domestic violence, RCW 10.99.020; other _____; for count(s): NONE OF I

DISMISS: Upon disposition of Count(s) I AND II, the State moves to dismiss: FIREARM ENHANCEMENT IN CT II

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:
 The facts set forth in the certification (s) for determination of probable cause and prosecutor's summary.
 The facts set forth in Appendix C; _____ AND CAUSE # 06-1-12112-7 KNT AT SENTENCING ON THIS CASE

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and agrees to pay restitution in the specific amount of for BURIAL EXPENSES FOR VICTIM IN CT. I
 agrees to pay restitution as set forth in Appendix C; _____

OTHER: NO CONTACT FOR LIFE, DIRECTLY OR INDIRECTLY THROUGH PERSON(S) WITH JONATHAN GUNDEL, TAMI KING, CHRIS McLOY, AUTMANN JONES

CRIMINAL HISTORY AND OFFENDER SCORE:

a. The defendant agrees to this 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. An essential term of this agreement is the parties' understanding of the standard sentencing range(s) and if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

(1) Conviction: _____ Basis: _____

(2) Conviction: _____ Basis: _____

c. The parties agree that neither party will seek an exceptional sentence.

Maximum on Count(s) I is not more than LIFE years each and \$ 50,000 fine each.

Maximum on Count(s) II is not more than 10 years each and \$ 25,000 fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: _____

Mandatory weapon sentence enhancement for Count(s) I is 60 months each; for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

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

B Smaus
Defendant

[Signature] 16082
Deputy Prosecuting Attorney

[Signature] #29701
Attorney for Defendant

[Signature] 522
Judge, King County Superior Court

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 08.1.02482.9 SEA

vs.

BENJAMIN LEE SMALLS

Defendant.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO FELONY
NON-SEX OFFENSE (STTDFG)

1. My true name is BENJAMIN LEE SMALLS

2. My date of birth is 2/21/83

3. I went through the 11th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is TERI ROBERS KEMP

(b) I am charged with the crime(s) of MURDER IN THE SECOND DEGREE w/ AFFRAY; ASSAULT IN THE SECOND DEGREE
The elements of this crime(s) are set forth in the information/ FIRST amended information, which is incorporated by reference and which I have reviewed with my lawyer.

ORIGINAL COPY

1
2 5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE
3 FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY
4 PLEADING GUILTY:

5 (a) The right to a speedy and public trial by an impartial jury in the county where the crime
6 is alleged to have been committed;

7 (b) The right to remain silent before and during trial, and the right to refuse to testify
8 against myself;

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

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

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

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

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

17 (a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I	298 - 397	60 MONTHS	LIFE years \$50,000.00
II	63 - 84	0	10 years \$25,000.00
			_____ years \$

21 The crime of MURDER IN THE SECOND DEGREE; ASSAULT IN THE SECOND DEGREE is a most serious offense as defined by
22 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this

1 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
2 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
3 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
4 applicable, this paragraph should be stricken and initialed by the defendant and the judge
5 .]

6 (b) The standard sentence range is based on the crime charged and my criminal history.
7 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
8 this state, in federal court, or elsewhere.

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

14 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
15 history is discovered, both the standard sentence range and the prosecuting attorney's
16 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
17 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
18 charge is binding on me.

19 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
20 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to
21 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances
22 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,

1 attorney fees, and other costs and fees. Furthermore, the judge may place me on community
2 supervision, community placement or community custody and I will have restrictions and
3 requirements placed upon me.

4 (f) In addition to confinement, the judge will sentence me to a period of community
5 supervision, community placement or community custody.

6 ~~For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community
7 supervision for a period of up to one year; or (B) to community placement or community custody
8 for a period up to three years or up to the period of earned release awarded pursuant to RCW
9 9.94A.728, whichever is longer. [If not applicable, this paragraph should be stricken and initialed
10 by the defendant and the judge _____.]~~

11 For crimes committed on or after July 1, 2000, the judge will sentence me to the community
12 custody range which is from 24 months to 48 months or up to the period of earned
13 release awarded pursuant to 9.94A.728, whichever is longer, unless the judge finds substantial and
14 compelling reasons to do otherwise. During the period of community custody I will be under the
15 supervision of the Department of Corrections, and I will have restrictions and requirements placed
16 upon me. My failure to comply with these conditions will result in the Department of Corrections
17 transferring me to a more restrictive confinement status or other sanctions being imposed. [If not
18 applicable, this paragraph should be stricken and initialed by the defendant and the judge
19 .]

20 (g) The prosecuting attorney will make the following recommendation to the judge: _____

21 DISMISS FIREARM ENHANCEMENT COUNT II; DISMISS CAUSE #06-1-12112-7 SGA;
22 (NO FURTHER CHARGES THIS POLICE INCIDENT RPT); PAY RESTITUTION FOR BURIAL
SERVICES FOR STEPHAN KIRK; RECOMMEND 918 MONTH CTI; RSL ON MEND

PAY RECOMPENT, COURT COSTS, A.N.A. FEE,
84 MONTHS COUNT II, CONCURRENTLY; NO CONTACT FOR LIFE W/
1 JONETTA GLOVER, TOM KING, CHRIS MCCOY, ANTHONY JONES; Δ'S RECOMMEND
THEM AT SENTENCING

2 The prosecutor will make the recommendation stated in the plea Agreement and State's
3 Sentence Recommendation, which are incorporated by reference.

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

9 ~~(i) The crime of _____ has a mandatory minimum sentence
10 of at least _____ years of total confinement. The law does not allow any reduction of this
11 sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the
12 judge~~

13 (j) The crime charged in Count I includes a firearm deadly weapon
14 sentence enhancement of 60 months.

15 This additional confinement time is mandatory and must be served consecutively to any
16 other sentence and any other enhancement I have already received or will receive in this or any
17 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
18 the judge _____.]

19 (k) The sentences imposed on counts I + II, except for any weapons enhancement,
20 will run concurrently unless there is a finding of substantial and compelling reasons to do
21 otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and
22 judge _____.]

1 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
2 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
3 46.61.5055(8). This additional confinement time is mandatory and must be served consecutively to
4 any other sentence and any other enhancement I have already received or will receive in this or any
5 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
6 the judge 

7 (m) Counts I are serious violent offenses arising from separate and distinct
8 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
9 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
10 stricken and initialed by the defendant and the judge 

11 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
12 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much
13 as 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I
14 may be sentenced up to two years of community supervision if the crime was committed prior to
15 July 1, 2000, or two years of community custody if the crime was committed on or after July 1,
16 2000. The judge also may require me to undergo treatment, to devote time to a specific occupation,
17 and to pursue a prescribed course of study or occupational training. [If not applicable, this
18 paragraph should be stricken and initialed by the defendant and the judge 

19 (o) The judge may sentence me under the a special drug offender sentencing alternative
20 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001, or
21 RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
22 period of total confinement for one-half of the midpoint of the standard range and community

1 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions
2 described in paragraph (6)(e). The judge could impose a residential treatment-based DOSA
3 alternative that would include three to six months of residential chemical dependency treatment and
4 24 months of community custody, plus all the other conditions described in paragraph (6)(e).
5 During confinement and community custody under either alternative, I will be required to
6 participate in substance abuse evaluation and treatment, not to use illegal controlled substances and
7 to submit to testing to monitor that, and other restrictions and requirements will be placed on me.

8 (p) This plea of guilty will result in revocation of my privilege to drive under RCW
9 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not
10 applicable, this paragraph should be stricken and initialed by the defendant and the judge
11 .]

12 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
13 judge finds I used a motor vehicle in the commission of this felony.

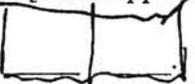
14 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with
15 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
16 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
17 judge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

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

21 (t) I will be required to provide a biological sample for purposes of DNA identification
22 analysis, *AND PAY \$ 100 FEE FOR COLLECTION*

1 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
2 minor, I will be required to register with the sheriff of the county of the state of Washington where I
3 reside, study, or work. The specific registration requirements are described in the "Offender
4 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the
5 defendant and the judge 

6 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in
7 my control any firearm unless and until my right to do so is restored by a court of record.

8 (w) Because this is a crime of domestic violence, I may be ordered to pay a domestic
9 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court
10 may order me to participate in a domestic violence perpetrator program approved under RCW
11 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and
12 the judge 

13 (x) Because this crime involves the manufacture, delivery, or possession with intent to
14 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,
15 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be
16 assessed. RCW 69.50.410. [If not applicable, this paragraph should be stricken and initialed by the
17 defendant and the judge 

18 (y) Because this crime involves a violation of the state drug laws, my eligibility for state
19 and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and
20 21 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the
21 defendant and the judge 

1 (z) Because the crimes I am pleading guilty to include both a conviction under RCW
2 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more
3 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the
4 sentences imposed for these crimes shall be served consecutively to each other. RCW
5 9.94A.589(c). [If not applicable, this paragraph should be stricken and initialed by the defendant
6 and the judge]

7 7. I plead guilty to the crime(s) of MURDER IN THE SECOND DEGREE W/ A FIREARM
8 ASSAULT IN THE SECOND DEGREE ENHANCEMENTS

9
10 as charged in the information/ FIRST amended information. I have received a copy of
11 that information.

12 8. I make this plea freely and voluntarily.

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

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

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

19 ON SEPTEMBER 13, 2002 IN SEATTLE, KING COUNTY, WA., I
20 DID COMMIT THE CRIME OF MURDER IN THE SECOND DEGREE AGAINST
21 STEPHEN KIRK, WITH A FIREARM; AND I DID COMMIT THE
22 CRIME OF ASSAULT IN THE SECOND DEGREE AGAINST

1 TOM KING, AGAINST THE PEOPLE AND SOVEREIGNTY OF WA. STATE.

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

DEFENDANT

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

PROSECUTING ATTORNEY
Print Name: JAMES CLINE KALIN
WSBA#

DEFENDANT'S LAWYER
Print Name: _____
WSBA#

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

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; 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. The 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 _____ day of _____, 20__.

JUDGE

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I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. 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 _____, 20__.

TRANSLATOR
Print Name: _____

INTERPRETER
Print Name: _____