

No. 70913-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

STEVEN HOUSER,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The charging document is constitutionally deficient because it failed to include all essential elements of driving while under the influence.

2. The trial court abused its discretion when it admitted court dockets of Mr. Houser's prior convictions into evidence.

3. The trial court misapplied RCW 9.94A.525, resulting in a miscalculation of Mr. Houser's offender score.

4. At the sentencing hearing, the trial court imposed legal financial obligations without considering Mr. Houser's financial resources and the nature of the burden that payment of costs would impose as required by RCW 10.01.160(3).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An accused has a protected right under the U.S. and Washington Constitutions to be informed of the criminal charge against him. A charging document must include all necessary elements to meet these constitutional requirements. Was the charging document constitutionally deficient because it failed to allege that Mr. Houser's prior offenses under RCW 46.61.5055 were within ten years of the current offense?

2. When a defendant stipulates to the existence of his prior offenses, a trial court abuses its discretion by allowing other evidence of the prior convictions because it is unduly prejudicial in light of the stipulation. Did the trial court's admission of dockets pertaining to Mr. Houser's prior convictions constitute reversible error in light of the stipulation and records of conviction that had already been admitted?

3. Where an offender score is legally erroneous due to misapplication of the statute, a reviewing court must reverse the sentence regardless of whether the appellant previously raised the argument. Former RCW 9.94A.525(2)(e) (2011) exclusively governs calculation of an offender score for driving under the influence. Did the trial court miscalculate Mr. Houser's offender score by including convictions that failed to meet the requirements of RCW 9.94A.525(2)(e)?

4. A sentencing court shall not order a defendant to pay legal financial obligations unless the defendant is or will be able to pay them. In determining the amount and method of payment of legal financial obligations, the court must take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. Does the imposition of legal financial obligations constitute a

sentencing error because the trial court failed to make any inquiry into Mr. Houser's individual financial circumstances as required?

C. STATEMENT OF THE CASE

The Information charged Mr. Houser with two offenses: driving under the influence and driving while license revoked in the first degree. CP 4-5.¹ The Information used the following language to charge driving under the influence:

That on or about the 19th day of May, 2013, the said defendant, STEVEN R. HOUSER, then and there being in said county and state, did drive a vehicle (a) and had, within two hours of driving, an alcohol concentration of .08 or higher as shown by analysis of the person's breath or blood, and/or (b) while under the influence of or affected by intoxicating liquor or any drug; and/or (c) while under the combined influence of or affected by intoxicating liquor or any drug; And furthermore, that the defendant has more than four (4) or more prior offenses for Driving Under the Influence of Alcohol or Drugs as defined in RCW 46.61.5055; in violation of RCW 46.61.502(1)(6),^[2] which violation is a Class C Felony.

CP 4-5.

At trial, the defense stipulated that Mr. Houser had previously been convicted four times of driving under the influence. CP 8. The

¹ A copy of the Information is included herein as Appendix A.

² Felony driving under the influence committed by having four or more prior convictions within ten years is governed by RCW 46.61.502(6)(a).

trial court instructed the jury regarding this stipulation. CP 33. Even though Mr. Houser stipulated to his prior convictions, the trial court also admitted the record of conviction³ for each prior offense. Ex. 19-21, 29; 8/14/13 RP 20-22, 39. Additionally, over defense counsel's objection, the trial court admitted court dockets for three of the prior convictions. 8/14/13 RP 23-25. These dockets consisted of a total of 34 pages and were heavily redacted. Ex. 22-24.

The jury returned verdicts of guilty on both counts. 8/14/13 RP 156-57. At sentencing, the State asserted that Mr. Houser's offender score was six, thereby subjecting him to a standard sentencing range of 41 to 54 months of confinement. 9/16/13 RP 4. Defense counsel did not dispute the State's calculation of Mr. Houser's offender score. 9/16/13 RP 9. There was no discussion on the record as to which prior convictions were being used to calculate the offender score. 9/16/13 RP 3-9. The trial court concluded that Mr. Houser's offender score was six and imposed 44 months confinement. CP 43-44; 9/16/13 RP 12.

At the sentencing hearing, the trial court did not inquire into Mr. Houser's financial circumstances or his ability to pay legal financial

³ Ex. 19-21 are titled "Sentence and Order Placing Defendant on Probation" and Ex. 29 is titled "Judgment and Sentence." These documents will be referred to generally throughout appellant's brief as the records of conviction.

obligations. 9/16/13 RP 8-17. There were no findings in the Judgment and Sentence regarding Mr. Houser's past, present, or future ability to pay legal financial obligations. CP 43. Mr. Houser was ordered to pay \$3,150 in legal financial obligations. CP 45.⁴

D. ARGUMENT

1. The charging document alleging driving under the influence was constitutionally deficient because it did not include all necessary elements of the crime.

An accused has a constitutional right to be informed of the nature and cause of the accusation against him or her so as to enable the accused to prepare a defense. U.S. Const. amend. VI; Const. art. I, § 22. Every material element of the charge, along with all essential supporting facts, must be put forth with clarity. CrR 2.1(a)(1); *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991).

A charging document satisfies these constitutional principles only if it states all the essential elements of the crime charged, both statutory and non-statutory. *Kjorsvik*, 117 Wn.2d at 97; *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). An essential element is one whose specification is necessary to establish the very illegality of the behavior charged. *Vangerpen*, 125 Wn.2d at 787. The

⁴ A copy of the Judgment and Sentence is included herein as Appendix B.

adequacy of a charging document is reviewed de novo. *State v. Johnson*, 172 Wn. App. 112, 136, 297 P.3d 710 (2012).

- a. When the necessary elements cannot be found or fairly implied in the charging document, prejudice is presumed.

If a charging document is challenged for the first time after a verdict, it will be construed liberally and will be found sufficient if the necessary elements appear in any form on the face of the document. *Kjorsvik*, 117 Wn.2d at 105. In reviewing a charging document, courts employ a two-prong test: (1) do the necessary elements appear in any form, or by fair construction can they be found, in the information, and if so (2) can the defendant show he or she was actually prejudiced by the inartful language. *Id.* at 105-06.

If the document cannot be construed to give notice or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it. *State v. Moavenzadeh*, 135 Wn.2d 359, 363, 956 P.2d 1097 (1998) (quoting *State v. Campbell*, 125 Wn.2d 797, 802, 888 P.2d 1185 (1995)). When the necessary elements are not found or fairly implied, reviewing courts presume prejudice and reverse. *Id.*; *see also*, *City of Auburn v. Brooke*, 119 Wn.2d 623, 636, 836 P.2d 212 (1992) (one does not reach question of prejudice unless there is some language in the document, however inartful, relating to the necessary elements).

b. The charging document did not allege the necessary element that the prior convictions under RCW 46.61.5055 were within ten years of the current offense.

Driving under the influence is a class C felony if the person has four or more offenses within ten years. RCW 46.61.502(6)(a). “Within ten years” means that the arrest for the prior offense occurred within ten years before or after the arrest for the current offense. RCW 46.61.5055(14)(d). A charging document for felony driving under the influence that fails to allege that the prior convictions occurred within ten years is constitutionally deficient. *State v. Cochrane*, 160 Wn. App. 18, 24, 253 P.3d 95 (2011).

The Information does allege that Mr. Houser has four prior offenses for driving under the influence as defined in RCW 46.61.5055. CP 4-5. The charging document in *Cochrane* contained the same reference to prior offenses as defined in RCW 46.61.5055. *Cochrane*, 160 Wn. App. at 21. RCW 46.61.5055 merely defines what types of adjudications constitute a “prior offense” and what application to give to the term “within ten years.” Former RCW 46.61.5055(14)(a), (c).⁵ This reference to the definitions contained within RCW 46.61.5055

⁵ The legislature amended this subsection effective September 28, 2013. Laws of 2013, 2d Spec. Sess., ch. 35, §13.

does remedy the failure of the Information to allege an essential element that is necessary to establishing the very illegality of the behavior charged: that the four prior offenses occurred within ten years of the current offense. Because this necessary element is not found or fairly implied from the charging document, prejudice is presumed and no further analysis is required.

c. This Court should reverse the driving under the influence conviction and dismiss without prejudice.

The remedy for an insufficient charging document is reversal and dismissal of charges without prejudice. *Vangerpen*, 125 Wn.2d at 792–93; *State v. Quismundo*, 164 Wn.2d 499, 503–04, 192 P.3d 342 (2008); *State v. McCarty*, 140 Wn.2d 420, 428, 998 P.2d 296 (2000); *Johnson*, 172 Wn. App. at 140.

2. The trial court’s admission of the court dockets for three of Mr. Houser’s prior convictions was manifestly unreasonable.

A trial court’s decision to admit evidence is reviewed for abuse of discretion. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Failure to adhere to the requirements of an

evidentiary rule can be an abuse of discretion. *State v. Foxhaven*, 161 Wn.2d 168, 174, 163 P.3d 786 (2007).

- a. Admission of the court dockets was prohibited under ER 403 in light of the stipulation and records of conviction already admitted.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. ER 403. In doubtful cases the scale should be tipped in favor of the defendant and exclusion of evidence. *State v. Smith*, 106 Wn.2d 772, 776, 725 P.2d 951 (2003) (citing *State v. Bennett*, 36 Wn. App. 176, 180, 672 P.2d 772 (1983)). If the evidence is overly inflammatory in comparison with alternative methods of proving the same facts, a trial court's decision to admit such evidence may be overturned. *State v. Bouchard*, 31 Wn. App. 381, 386, 639 P.2d 761 (1982) (abrogated on other grounds by *State v. Sutherby*, 165 Wn.2d 870, 886, 204 P.3d 916 (2009)).

The prosecution is generally entitled to prove its case by evidence of its own choice. *Old Chief v. United States*, 519 U.S. 172, 190, 117 S. Ct. 644, 136 L. E. 2d 574 (1997). This general rule is a recognition that the prosecution, with its burden of proof, needs evidentiary depth to tell a continuous story. *Id.* However, this general

rule does not apply when the point at issue is a defendant's legal status. *Id.* "Legal status" includes when the prosecution must establish a prior conviction as a necessary element of the currently charged offense. *See id.* A defendant's legal status is wholly independent of the facts of the later criminal behavior charged against him. *Id.* When a defendant offers to stipulate to a legal status, a trial court abuses its discretion by allowing evidence of the prior conviction because it is unduly prejudicial in light of the proffered stipulation. *Id.* at 191; *State v. Johnson*, 90 Wn. App. 54, 63, 950 P.2d 981 (1998).

The purpose of a stipulation accompanied by an appropriate jury instruction is to conclusively prove the status of the defendant. *See Johnson*, 90 Wn. App. at 63. The probative value of the conviction is negligible as compared to the stipulation. *Id.* Here, the State was required to prove Mr. Houser's legal status as an individual with four or more prior offenses within ten years as defined by RCW 46.61.5055. The defense stipulated that Mr. Houser had this requisite status and the trial court accepted this stipulation. CP 8. The trial court also instructed the jury regarding this stipulation. CP 33. The record of conviction for each prior offense was admitted without objection. Ex. 19-21, 29; 8/14/13 RP 20-22, 39.

Despite the fact that the stipulation combined with these records conclusively established the existence of the prior offenses, the State continued to offer cumulative evidence to establish Mr. Houser's legal status. Specifically, the State sought to admit certified court dockets from three of the prior convictions. Ex. 22-24; 8/14/13 RP 23-25. These dockets were admitted by the trial court over defense counsel's objection and without any balancing of their probative value against their prejudicial nature. 8/14/13 RP 23-25. These dockets consisted of a total of 34 pages and the vast majority of content was conspicuously redacted, presumably with the use of a black marker. Ex. 22-24. The dates that run along the left side of these dockets were not redacted. Ex. 22-24.

The probative value of these dockets, if any, was extremely limited. The only additional information these dockets provided that had not already been established by the stipulation and the admitted records of conviction was the list of dates before and after Mr. Houser's conviction on each matter. Rather than proving or disproving any material fact, these exhibits signaled loudly to the jury that circumstances existed regarding the prior convictions that they were not being permitted to know, leaving the jury to speculate as to the contents

of the 34 pages of redacted material. The prejudicial nature of providing the jury with 34 pages of redacted material substantially outweighs any minimal probative value that may be contained therein. Not only are these redacted dockets prejudicial, but they are also confusing and misleading. The admission of these exhibits was manifestly unreasonable.

b. The admission of these exhibits was prejudicial error and requires reversal.

Error is prejudicial if there is a reasonable probability that the outcome of the trial would have been materially affected had the error not occurred. *State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981). Where there is a risk of prejudice and no way to know what value the jury placed upon the improperly admitted evidence, a new trial is required. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 673, 230 P.3d 583 (2010).

These exhibits have an undue tendency to suggest a decision based on an improper basis. These dockets' emphasis on Mr. Houser's prior offenses is prejudicial in that it raises the risk that the verdict was improperly based on considerations of Mr. Houser's propensity to commit the crime of driving under the influence. There is a reasonable probability that calling the jury's attention to this sizeable quantum of

information pertaining to Mr. Houser's prior convictions affected the outcome of the trial. Thus, it constitutes prejudicial error and reversal is required.

3. The trial court miscalculated Mr. Houser's offender score.

Where an offender score is legally erroneous due to misapplication of the statute, a reviewing court must reverse the sentence regardless of whether the appellant previously raised the argument. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 872, 50 P.3d 618 (2002). A sentence that is based upon an incorrect offender score is "a fundamental defect that inherently results in a miscarriage of justice." *Id.* at 867–68 (citing *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997)). A defendant cannot waive a challenge to a miscalculated offender score because an improperly calculated score lacks statutory authority. *State v. Wilson*, 170 Wn.2d 682, 688, 244 P.3d 950 (2010). A sentencing court's offender score calculation is reviewed de novo. *Id.* at 687.

- a. Only convictions for the specific offenses listed in former RCW 9.94A.525(2)(e) (2011) may be used to calculate an offender score for driving under the influence.

RCW 9.94A.525 governs the calculation of an offender score.

Subsection 2 of that statute provides, in relevant part:

(c) Except as provided in (e) of this subsection, class C felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement ... pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing a crime that subsequently results in a conviction.

...

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) ... prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) the prior convictions were committed within five years since the last date of release from confinement ... or entry of judgment and sentence; or (ii) the prior convictions would be considered “prior offenses within ten years” as defined in RCW 46.61.5055.⁶

Former RCW 9.94A.525(2) (2011).

Only those specific classes of offenses listed in RCW

⁶ The legislature amended this subsection effective September 28, 2013. Laws of 2013, 2d Spec. Sess., ch. 35, §8. Mr. Houser was arrested for this offense on May 19, 2013. Any sentence imposed under the Sentencing Reform Act shall be determined in accordance with the law in effect when the current offense was committed. RCW 9.94A.345.

9.94A.525(2)(e) may be used to calculate an offender score for driving under the influence. *State v. Jacob*, 176 Wn. App. 351, 360, 308 P.3d 800 (2013); *State v. Morales*, 168 Wn. App. 489, 498, 278 P.3d 668 (2012). Those prior convictions that are included in the calculation of the offender score under subsection (2)(e) are limited to felony driving under the influence, felony physical control of a vehicle while under the influence, and serious traffic offenses. *Id.* at 493. “Serious traffic offenses” include non-felony driving under the influence (RCW 46.61.502), non-felony actual physical control while under the influence (RCW 46.61.504), reckless driving (RCW 46.61.500), and hit and run an attended vehicle (RCW 46.52.020(5)). RCW 9.94A.030(44).

- b. The trial court erroneously included Mr. Houser’s prior escape in the second degree conviction in his offender score.

At sentencing, there was no discussion on the record as to which prior convictions were being included in Mr. Houser’s offender score. 9/16/13 RP 3-9. The State asserted that Mr. Houser had an offender score of six and defense counsel did not dispute the State’s calculation. CP 43; 9/16/13 RP 9. The Judgment and Sentence contained the following summary of Mr. Houser’s criminal history:

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME	DV* YES
ASSAULT 4TH DV	04/16/09	Whatcom, WA	A	Gross Misdo	XX
ESCAPE 2ND	04/16/09	Whatcom, WA	A	Class C felony	
ASSAULT IN THE 4TH - DV	08/15/07	Skagit, WA	A	Gross Misdo	XX
OPERATING A VEHICLE W/O IGNITION INTERLOCK	12/21/05	Whatcom, WA	A	Misdo	
DUI	12/21/05	Whatcom, WA	A	Gross Misdo	
DUI	12/16/05	Skagit, WA	A	Gross Misdo	
DWLS 2ND	12/16/05	Skagit, WA	A	Gross Misdo	
DUI	12/16/05	Skagit, WA	A	Gross Misdo	
DUI	06/15/05	Skagit, WA	A	Gross Misdo	
DISORDERLY CONDUCT	05/15/01	Skagit, WA	A	Misdo	
CRIMINAL TRESPASS 2°	06/29/99	Skagit, WA	A	Misdo	
DUI	12/30/98	Skagit, WA	A	Gross Misdo	
DWLS 3RD	12/20/98	Skagit, WA	A	Misdo	
DWLS 2ND	12/20/98	Skagit, WA	A	Gross Misdo	
NEGLIGENT DRIVING 1ST	11/30/98	Whatcom, WA	A	Misdo	
DWLS 3RD	05/28/98	Skagit, WA	A	Misdo	
DWLS 3RD	05/22/98	Skagit, WA	A	Misdo	
NO VALID OPERATOR'S LICENSE	05/07/96	Skagit, WA	A	Misdo	
NO VALID OPERATOR'S LICENSE	03/17/96	King, WA	A	Misdo	
NO VALID OPERATOR'S LICENSE	02/05/93	Whatcom, WA	A	Misdo	
THEFT 3RD	02/05/93	Snohomish, WA	A	Gross Misdo	
FAILURE TO COMPLY	02/03/93	Skagit, WA	A	Gross Misdo	

CP 42-43.

According to this recitation of his criminal history, Mr. Houser has five prior convictions for non-felony driving under the influence during his lifetime and one felony conviction for escape in the second degree. CP 42-43. None of the other convictions listed in the Judgment and Sentence are felony offenses or serious traffic offenses as defined in RCW 9.94A.030(44). Presumably, the trial court relied on the five lifetime driving under the influence convictions and the escape in the second degree conviction to conclude that Mr. Houser had an offender score of six. CP 43.

As discussed, RCW 9.94A.525(2)(c) governs scoring of class C felony convictions “except as provided in (e) of this subsection.” By its express terms, subsection (2)(c) defers to subsection (2)(e) to calculate the offender score for driving under the influence. Escape in the second degree is not included within the limited classes of prior offenses that may be calculated in a driving under the influence offender score. Therefore, the sentencing court erred when including the escape conviction in its calculation of Mr. Houser’s offender score.

- c. The trial court erroneously included Mr. Houser’s 1998 driving under the influence conviction in his offender score.

Non-felony driving under the influence is a serious traffic offense. RCW 9.94A.030(44)(a). Serious traffic offenses are included in an offender score for driving under the influence if either (1) the conviction was committed within five years since the date of release from confinement or entry of the judgment and sentence, or (2) the conviction would be considered a prior offense within ten years as defined by RCW 46.61.5055. RCW 9.94A.525(2)(e)(i)-(ii).

“Prior offense” under RCW 46.61.5055 includes a non-felony conviction for driving under the influence. RCW 46.61.5055(14)(a)(i). “Within ten years” means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense. RCW

46.61.5055(14)(d). The plain language of RCW 9.94A.525(2)(e)(ii) makes clear that prior arrests for offenses that occurred within ten years of the current arrest for driving under the influence shall be included in the offender score. *Morales*, 168 Wn. App. at 494-95. Mr. Houser was arrested for the current offense on May 19, 2013. CP 4. Thus, any driving under the influence arrest that occurred on or after May 19, 2003 (i.e., within ten years of his current offense) that subsequently resulted in conviction shall be counted in Mr. Houser's offender score.

According to the recitation of criminal history contained in the Judgment and Sentence, Mr. Houser has four convictions for driving under the influence that meet the criteria of RCW 9.94A.525(2)(e)(ii). The trial court properly counted these four driving under the influence convictions for which Mr. Houser was sentenced in 2005.⁷

The driving under the influence conviction for which Mr. Houser was sentenced on 12/30/1998 does not meet the criteria of RCW 9.94A.525(2)(e)(ii) because it was not within ten years of his

⁷ The Judgment and Sentence only lists the sentencing date for each offense. CP 42-43. However, it is the arrest date that controls whether a conviction constitutes a prior offense within ten years under RCW 46.61.5055(14)(d). Mr. Houser was arrested for driving under the influence on the following dates: 11/27/2004; 03/05/2005; 06/14/2005; and 08/05/2005. Ex. 19-21, 29. There is no information contained within the record below indicating when Mr. Houser was arrested for driving under the influence resulting in his subsequent conviction and sentencing hearing on 12/30/1998.

arrest for the current offense. For this conviction to count in Mr. Houser's offender score, it must fall under RCW 9.94A.525(2)(e)(i), which requires that the prior conviction was "committed within five years since the last date of release from confinement ... or entry of judgment and sentence."

Subsection (2)(e)(i) has been interpreted to require that five years pass between offenses that would be properly included in a driving under the influence offender score. *Morales*, 168 Wn. App. at 496. More than five years elapsed between entry of the judgment and sentence on 12/30/1998 and Mr. Houser's next arrest for driving under the influence on 11/27/2004. Ex. 19. Therefore, his 1998 conviction does not meet the requirements of RCW 9.94A.525(2)(e)(i) and should not have been included in his offender score.

d. This Court should reverse and remand for resentencing.

The trial court misapplied RCW 9.94A.525 and erroneously calculated Mr. Houser's offender score as six when it should have been four. This Court should accordingly reverse and remand for resentencing.

4. The trial court's imposition of legal financial obligations without considering Mr. Houser's ability to pay as required constitutes a sentencing error.⁸

A trial court may impose costs "authorized by law" when sentencing an offender for a felony. RCW 9.94A.760. However, the sentencing court must consider an individual's financial circumstances and conclude that he has the ability or likely future ability to pay before imposing legal financial obligations (LFOs). RCW 10.01.160(3).

The record here establishes that the court did not make any inquiry into Mr. Houser's finances and thus did not make any individualized determination regarding Mr. Houser's financial circumstances before it imposed LFOs. 9/16/13 RP 8-17. The Judgment and Sentence contains no findings regarding Mr. Houser's past, present, or future ability to pay. CP 43. The sentencing court imposed LFOs totaling \$3,150: \$500 victim penalty assessment, \$450 court costs (\$200 criminal filing fee, \$250 jury demand fee), \$1,500 fee for a court appointed attorney, \$500 fine, \$100 DNA collection fee, and

⁸ On February 11, 2014 the Washington Supreme Court heard oral argument in *State v. Blazina*, Supreme Court No. 89028-5, which was consolidated with *State v. Colter*, Supreme Court No. 89109-5. The Supreme Court's opinion in *Blazina* will likely be dispositive here. In its ruling, this Court acknowledged that it had previously allowed an appellant to raise imposition of legal financial obligations for the first time on appeal. *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013). However, this Court held that RAP 2.5(a) did not compel it to allow the issue to be raised in every case and declined to allow Mr. Blazina to raise imposition of LFOs for the first time on appeal. *Id.*

\$100 crime lab fee.⁹ CP 45-46. As set forth below, the trial court's imposition of LFOs was erroneous and the validity of the order may be raised for the first time on appeal because consideration of a defendant's financial resources is statutorily required as a condition precedent to imposing LFOs.

- a. A defendant may raise the issue of imposition of legal financial obligations for the first time on appeal.

Although the general rule under RAP 2.5 is that issues not objected to in the trial court may not be raised for the first time on appeal, it is well established that illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ford*, 137 Wn.2d 427, 477-78, 973 P.2d 452 (1999); *see also*, *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (holding erroneous condition of community custody could be challenged for the first time on appeal). A defendant may challenge for the first time on appeal the imposition of a criminal penalty on the ground that the sentencing court failed to comply with the authorizing statute. *State v. Moen*, 129 Wn.2d 535, 543-48, 919

⁹ Mr. Houser does not challenge imposition of the following legal financial obligations: the \$500 victim penalty assessment pursuant to RCW 7.68.035 and the \$100 DNA collection fee pursuant to RCW 43.43.7541. The victim penalty assessment and DNA collection fee are statutorily mandated and courts are not required to consider defendant's past, present, or future ability to pay. *State v. Kustler*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013).

P.2d 69 (1996).

RCW 10.01.160(3) provides:

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3). The word “shall” establishes that the requirement is mandatory. *State v. Claypool*, 111 Wn. App. 473, 475-76, 45 P.3d 609 (2002). Before imposing discretionary LFOs, the sentencing court has an affirmative duty to make an inquiry into the defendant’s individual situation to determine his or her ability to pay. *State v. Lundy*, 176 Wn. App. 96, 103, 308 P.3d 755 (2013). Therefore, the trial court was without authority to impose LFOs as a part of Mr. Houser’s sentence because it did not first take into account his financial resources and the burden of payments.

While formal findings supporting the trial court’s decision to impose LFOs under RCW 10.01.160(3) are not required, the record must minimally establish the sentencing judge did in fact consider the defendant’s individualized financial circumstances and made an individualized determination that he or she has the ability or likely future ability to pay. *State v. Curry*, 118 Wn.2d 911, 916, 829 P.2d 166

(1992); *State v. Bertrand*, 165 Wn. App. 393, 403-04, 267 P.3d 511 (2011). Here, the record does not establish that the trial court considered Mr. Houser's financial resources at any point. The trial court's LFO order is not in compliance with RCW 10.01.160(3) and thus exceeds the trial court's authority.

b. The challenge to the imposition of legal financial obligations is ripe for review.

This case involves a direct challenge to the legal validity of the LFO order on the ground that the trial court failed to comply with RCW 10.01.160(3). Thus it is distinguishable from the line of cases that establish that the time to challenge LFOs is after the State seeks to enforce them; these cases address challenges based on an assertion of financial hardship or procedural due process principles that arise in the collection of LFOs.¹⁰

A claim is fit for judicial determination if the issues raised are primarily legal, do not require further factual development, and the

¹⁰ See, e.g., *Lundy*, 176 Wn. App. at 109 (any challenge to the order requiring payment of legal financial obligations on hardship grounds is not ripe for review until the State attempts to collect); *State v. Ziegenfuss*, 118 Wn. App. 110, 113, 74 P.3d 1205 (2003) (determining defendant's constitutional challenge to the LFO violation process is not ripe for review until the State attempts to enforce); *State v. Phillips*, 65 Wn. App. 239, 243-44, 828 P.2d 42 (1992) (defendant's constitutional objection to the LFO order based on the fact of his indigence was not ripe until the State sought to enforce the order); *State v. Baldwin*, 63 Wn. App. 303, 310, 818 P.2d 1116, 837 P.2d 646 (1991) (the meaningful time to review a constitutional challenge to the LFO order on financial hardship grounds is when the State enforces the order).

challenged action is final. *Bahl*, 164 Wn.2d at 751. The legal validity of an LFO order based on non-compliance with RCW 10.01.160 is primarily a legal issue. The issue of whether the trial court failed to comply with the statute will not be changed by time or future circumstances. As such, it requires no further factual development. LFOs become enforceable at the time the judgment is rendered and begin to accrue interest immediately. RCW 10.82.090. The challenged action is final because the original sentencing order imposing LFOs is final. While a defendant's obligation to pay can be modified or forgiven in a subsequent hearing pursuant to RCW 10.01.160(4), the order authorizing the debt in the first place does not change. Therefore, the imposition of LFOs is ripe for review.

c. Remand for resentencing is the proper remedy.

Because the imposition of LFOs without inquiring into Mr. Houser's ability to pay constitutes a sentencing error, this Court should vacate the order imposing LFOs and remand for resentencing.

E. CONCLUSION

This Court should reverse and dismiss Mr. Houser's conviction for driving under the influence because the charging document failed to allege a necessary element and was therefore constitutionally deficient.

Additionally, the admission of the court dockets for the prior offenses constitutes prejudicial error and merits reversal. Alternatively, this Court should reverse the sentence and remand for the trial court to correct the offender score and consider Mr. Houser's individualized financial circumstances before imposing LFOs.

DATED this 4th day of April, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Whitney Rivera", written over a horizontal line.

WHITNEY RIVERA, WSBA No. 38139
Washington Appellate Project
Attorneys for Appellant

APPENDIX A

FILED SCANNED 2
COUNTY CLERK
2013 MAY 22 PM 4:12
WHATCOM COUNTY
WASHINGTON
BY W

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

THE STATE OF WASHINGTON,)
) No.: 13-1-00555-0
)
) Plaintiff.)
)
) vs.) INFORMATION FOR:
)
) STEVEN R. HOUSER,) FELONY DRIVING WHILE UNDER
) THE INFLUENCE OF INTOXICANTS,
) COUNT I and DRIVING WHILE
) LICENSE REVOKED IN THE FIRST
) DEFENDANT.) DEGREE, COUNT II
)

PCN: 900,556,357

ORIGINAL

I, SHANNON R. CONNOR, Deputy Prosecuting Attorney in and for Whatcom County, State of Washington, comes now in the name and by the authority of the State of Washington and by this information do accuse **STEVEN R. HOUSER** with the crime(s) of **FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS, COUNT I and DRIVING WHILE LICENSE REVOKED IN THE FIRST DEGREE, COUNT II**, committed as follows:

then and there being in Whatcom County, Washington,

FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS, COUNT I

That on or about the 19th day of May, 2013, the said defendant, STEVEN R. HOUSER, then and there being in said county and state, did drive a vehicle (a) and had, within two hours after driving, an alcohol concentration of .08 or higher as shown by analysis of the person's breath or blood, and/or (b) while under the influence of or affected by intoxicating liquor or any drug; and/or (c) while under the combined influence of or affected by intoxicating liquor and any drug; And furthermore, that the defendant has more than four (4) or more prior offenses for Driving

1 Under the Influence of Alcohol or Drugs as defined in RCW 46.61.5055; in violation of RCW
3 46.61.502(1)(6), which violation is a Class C Felony;

5 **DRIVING WHILE LICENSE REVOKED IN THE FIRST DEGREE, COUNT II**

7 That on or about the 19th day of May, 2013, the said defendant, STEVEN R. HOUSER, then and
9 there being in said county and state, did drive a motor vehicle while the defendant's license was
11 suspended or revoked in the first degree and is a habitual offender; in violation of RCW
13 46.20.342(1)(a), which violation is a Gross Misdemeanor;

15 contrary to the form of the Statute in such cases made and provided and against the peace and
17 dignity of the State of Washington.

19 DATED THIS 23 day of May, 2013.

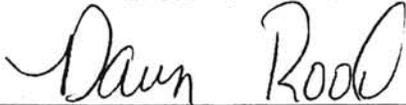
21 
23 SHANNON R. CONNOR, WSBA #34169, Deputy Prosecuting Attorney
25 in and for Whatcom County, State of Washington

27 STATE OF WASHINGTON)
29) ss.
31 COUNTY OF WHATCOM)

33 I, Shannon R. Connor, being first duly sworn on oath, depose and say: that I am a duly
35 appointed and acting Deputy Prosecuting Attorney in and for Whatcom County, State of
37 Washington. I have read the foregoing information, know the contents thereof and the same is
39 true as I verily believe.

41 
43 SHANNON R. CONNOR, #34169
45 Deputy Prosecuting Attorney

47 SUBSCRIBED AND SWORN to before me this 23 day of May, 2013.


NOTARY PUBLIC in and for the
State of Washington. My commission
expires on: May 29, 2013

APPENDIX B

SCANNED 9

FILED IN OPEN COURT
9-16 20 13
WHATCOM COUNTY CLERK
By [Signature]
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,
vs.
STEVEN RICHARD HOUSER, Defendant.
DOB: June 4, 1971
FBI: 223845HC9
SID: 16835719

No. 13-1-00555-0
JUDGMENT AND SENTENCE (EIS) JDSWC
PRISON
[XX] CLERK'S ACTION REQUIRED-para 2.1, 4.1, 5.7
(DOL) [XX] Defendant Used Motor Vehicle

ORIGINAL

I. HEARING

1.1 The court conducted a sentencing hearing **September 16, 2013** and the defendant, **Steven Richard Houser**, the defendant's lawyer, **Richard Larson**, and the Deputy Prosecuting Attorney, **Shannon R. Connor**, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced in accordance with the proceedings in this case, the Court **FINDS**:

2.1 **CURRENT OFFENSE(S)**: The defendant is guilty of the following offenses based upon a **JURY - VERDICT** on the 14th day of August, 2013:

COUNT	CRIME	RCW	CLASS	DATE OF CRIME
I	FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS	46.61.502(1)(6)	FC	May 19, 2013
II	DRIVING WHILE LICENSE REVOKED IN THE FIRST DEGREE	46.20.342(1)(a)	GM	May 19, 2013

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C); (If the crime is a drug offense, include the type of drug in the second column.)

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

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME	DV* YES
ASSAULT 4TH DV	04/16/09	Whatcom, WA	A	Gross Misdo	XX
ESCAPE 2ND	04/16/09	Whatcom, WA	A	Class C felony	
ASSAULT IN THE 4TH - DV	08/15/07	Skagit, WA	A	Gross Misdo	XX
OPERATING A VEHICLE W/O IGNITION INTERLOCK	12/21/05	Whatcom, WA	A	Misdo	
DUI	12/21/05	Whatcom, WA	A	Gross Misdo	
DUI	12/16/05	Skagit, WA	A	Gross Misdo	
DWLS 2ND	12/16/05	Skagit, WA	A	Gross Misdo	
DUI	12/16/05	Skagit, WA	A	Gross Misdo	
DUI	06/15/05	Skagit, WA	A	Gross Misdo	

Judgment and Sentence (JS) (Felony)
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)
STEVEN RICHARD HOUSER

DR-82

43A

13-9-02690-4

DISORDERLY CONDUCT	05/15/01	Skagit, WA	A	Misdo
CRIMINAL TRESPASS 2°	06/29/99	Skagit, WA	A	Misdo
DUI	12/30/98	Skagit, WA	A	Gross Misdo
DWLS 3RD	12/20/98	Skagit, WA	A	Misdo
DWLS 2ND	12/20/98	Skagit, WA	A	Gross Misdo
NEGLIGENT DRIVING 1ST	11/30/98	Whatcom, WA	A	Misdo
DWLS 3RD	05/28/98	Skagit, WA	A	Misdo
DWLS 3RD	05/22/98	Skagit, WA	A	Misdo
NO VALID OPERATOR'S LICENSE	05/07/96	Skagit, WA	A	Misdo
NO VALID OPERATOR'S LICENSE	03/17/96	King, WA	A	Misdo
NO VALID OPERATOR'S LICENSE	02/05/93	Whatcom, WA	A	Misdo
THEFT 3RD	02/05/93	Snohomish, WA	A	Gross Misdo
FAILURE TO COMPLY	02/03/93	Skagit, WA	A	Gross Misdo

* Domestic Violence was pled and proved

The defendant agrees and stipulates that the above stated criminal history and the below stated offender score and sentencing range are accurate.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL STANDARD RANGE (standard range including enhancements)	MAXIMUM TERM
I	6		41 to 54 Months		41 to 54 Months	5 yrs/\$10,000
II	6		0 to 364 Days		0 to 364 Days	1 yr/\$5,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) Criminal Street Gang Involving a Minor, (AE) Endangerment While Attempting to Elude(ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16), Passenger(s) under age 16.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows: _____

2.4 EXCEPTIONAL SENTENCE. The court finds substantial and compelling reasons that justify an exceptional sentence:

2.5 LEGAL FINANCIAL OBLIGATIONS/RESTITUTION. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). This court makes the following specific findings:

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

The defendant has the present means to pay costs of incarceration, RCW 9.94A.760:

(Name of Agency) _____'s costs for its emergency response are reasonable RCW 38.52.430 (effective August 1, 2012).

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows:

III. JUDGMENT

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

3.2 The Court DISMISSES Count(s)

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 CONFINEMENT OVER ONE YEAR. The court sentences the defendant to total confinement as follows:

(a) CONFINEMENT. RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

Actual number of months of total confinement ordered is: ⁴⁸ ~~48~~ MONTHS for Count I, 364 DAYS for Count II.

44 OTHER: The State recommends based on his offender score of 6 points that the Defendant serve 48 months on count I and 364 days on count II, that he be evaluated and comply with all recommended drug and alcohol treatment(s). He pay a \$500 fine, He pay restitution and standard LFO's. The time on count I and count II shall run concurrent! *RJG*

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

This sentence shall run consecutively with the sentence in the following cause number(s) _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence IMMEDIATELY unless otherwise set forth here: _____ (should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

(b) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

(c) [] Work Ethic Program. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for a work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on a community custody for any remaining time of total confinement, subject to the conditions in Section 4.2, Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 COMMUNITY CUSTODY. (To determine which offenses are eligible for or required for community custody, see RCW 9.94A.701)

- (A) The defendant shall be on community custody for the longer of:
1. The period of early release. RCW 9.94A.728(1)(2); or
2. the period imposed by the court as follows: 12 MONTHS FOR COUNT I

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

Defendant shall report to Department of Corrections, 1400 N. Forest Street, Bellingham, WA 98225, not later than 72 hours after release from custody.

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

- The defendant shall not consume any alcohol.
- not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.
- participate in the following crime-related treatment or counseling services:
- undergo an evaluation for treatment for.
- Domestic Violence, Substance Abuse, Mental Health, Anger Management and fully comply with all recommended treatment.
- comply with the following crime-related prohibitions:
- Other conditions: _____

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3 Defendant shall pay to the Clerk of this Court:

JASS CODE

PCV	<u>\$500.00</u>	Victim Assessment		RCW 7.68.035
CRC	<u>\$450.00</u>	Court costs, including:		RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee	<u>\$200.00</u>	FRC
		Witness costs	\$	WFR
		Sheriff service fees	\$	SFR/SFS/SFW/WRF
		Jury demand fee	<u>\$250</u>	JFR
		Other	\$	
PUB	<u>\$1,500.00</u>	Fees for court appointed attorney		RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense costs		RCW 9.94A.760
FCM	<u>\$500.00</u>	Fine		RCW 9A.20.021
LDI	\$	VUCSA Fine	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
MTH	\$	Meth Lab Cleanup	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.401(2)(B)	RCW 69.50
CDF/LDI/ FCD/NTF/ SAD/SDI	\$	Drug enforcement fund		RCW 9.94A.760
	\$	DUI Fines, Fees and Assessments		
CLF	<u>\$100.00</u>	Crime lab fee	<input type="checkbox"/> Suspended due to indigency	RCW 43.43.690
DN2	<u>\$100.00</u>	Felony DNA Collection Fee		<input type="checkbox"/> Not imposed due to hardship
FPV	\$	Specialized Forest Products		RCW 76.48.140

DEF	\$	Other fines or costs for Emergency response costs (\$1000 maximum, \$2,500 max. effective August 1, 2012.)	RCW 38.52.430
	\$	TOTAL	RCW 9.94A.760

[XX] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____.

[XX] Defendant waives any right to be present at any restitution hearing (sign initials): _____

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

[XX] **MONTHLY PAYMENT PLAN:** The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at **\$100.00**, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collections Deputy. The first payment of **\$100.00** is due immediately after imposition of sentence or release from confinement, whichever occurs last. (RCW 9.94a.760(7)(b))

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

[XX] **DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.**

[XX] The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760 (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.).

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

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

4.4 [XX]**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. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

4.6 **OTHER:**

Defendant is to be released immediately to set up jail alternatives.

[] DEPORTATION. If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

- 4.7 **OFF-LIMITS ORDER** (Known drug trafficker), RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

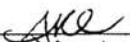
V. NOTICES AND SIGNATURES

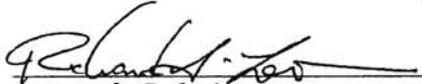
- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial, or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100
- 5.2 **LENGTH OF SUPERVISION.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purposes of the offender's compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 **COMMUNITY CUSTODY VIOLATION.**
- (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
- (b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a Superior Court in Washington State and by a Federal Court if required. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.7 **MOTOR VEHICLE:** If the court found in section 2.1 that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward and Abstract of Court Record to the Department of Licensing, which must revoke your driver's license RCW 46.20.285.
- 5.8 **OTHER:** _____

DONE in Open Court and in the presence of the defendant this date: **September 16, 2013.**


DEFENDANT
Print name: STEVEN RICHARD HOUSER


JUDGE


Deputy Prosecuting Attorney
WSBA # 34169
Print name: SHANNON R. CONNOR

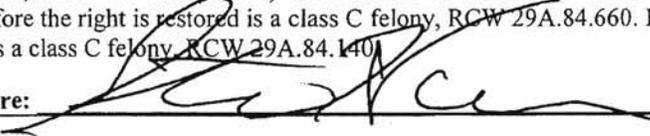

Attorney for Defendant
WSBA # 91001
Print name: RICHARD LARSON

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (Not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature:



SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,

vs.

STEVEN RICHARD HOUSER, Defendant.

DOB: June 4, 1971

No. 13-1-00555-0

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, STEVEN RICHARD HOUSER, has been convicted in the Superior Court of the State of Washington of the crime or crimes of FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS and DRIVING WHILE LICENSE REVOKED IN THE FIRST DEGREE and the Court has ordered that the defendant be punished by serving the determined sentence of 48 Months for Count I, 364 Days for Count II. The time on ~~count I~~ and count II shall ⁴⁴ run concurrent with each other. *hoy*

The defendant shall receive credit for time served prior to sentencing, as long as the time served was solely on that cause number, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By Direction of the HONORABLE



JUDGE

DAVID L. REYNOLDS, Clerk

DATED: September 16, 2013

By:

Deputy Clerk

49

STEVEN RICHARD HOUSER
CAUSE NUMBER of this case: 13-1-00555-0

IDENTIFICATION OF DEFENDANT

SID No. WA16835719
(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

Date of Birth: 06/04/71

FBI No. 223845HC9

Local ID No. _____

PCN No. 900556357

Other _____

Alias name, SSN, DOB:

Race: White

Sex: Male

Ethnicity: [XX] Non-Hispanic

Defendant's Last Known Address: 5224 GALBRAITH RD
ACME, WA 98220

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his fingerprints and signature thereto.

Clerk of the Court: Beth Houser, Deputy Clerk. Dated: September 16, 2013

DEFENDANT'S SIGNATURE (X) [Signature]



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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 70913-5-I
)	
STEVEN HOUSER,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4TH DAY OF APRIL, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | |
|--|---|
| <p>[X] SHANNON CONNOR, DPA
[Appellate_Division@co.whatcom.wa.us]
WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE
BELLINGHAM, WA 98225</p> | <p>(X) U.S. MAIL
() HAND DELIVERY
() E-MAIL BY
AGREEMENT OF
PARTIES</p> |
| <p>[X] STEVEN HOUSER
368958
OLYMPIC CORRECTIONS CENTER
11235 HOH MAINLINE
FORKS, WA 98331</p> | <p>(X) U.S. MAIL
() HAND DELIVERY
() _____</p> |

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF APRIL, 2014.

X _____ 