

71198-9

71198-9

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN 12 PM 1:10

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
 Avery Williams)
 (your name))
)
 Appellant.)

No. 71198-9
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Avery Williams, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

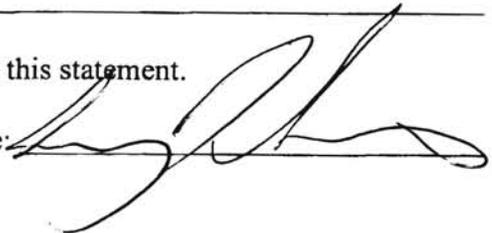
please Review the documents that Ive Filed in A
Discretionary Review to Speak for me as my
additional grounds as well as I Believe that it is on the
same topic and has the same issue at hand covers
what I would like to say.

Additional Ground 2

I would like to move forward with everything and
expidite my matter and have it heard.
except my documents presented as additional grounds.

If there are additional grounds, a brief summary is attached to this statement.

Date: 6-11-14

Signature: 

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2014 JUN 12 PM 1:10

Cause No. 90145-7

**Court of Appeals No(s).
71273-0-I and 71272-1-I**

WASHINGTON STATE SUPREME COURT

EVERY CARTREL WILLIAMS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

MOTION FOR DISCRETIONARY REVIEW

2014 JUN 12 PM 1:10

WASHINGTON STATE SUPREME COURT

AVERY CARTREL WILLIAMS,))
Petitioner,))
v.))
STATE OF WASHINGTON,))
Respondent.))
_____))

Cause No. 90145-7

**MOTION FOR
DISCRETIONARY REVIEW**

I. IDENTITY OF PETITIONER

Mr. AVERY CARTREL WILLIAMS asks this Court to accept review of the decision designated in Part II of this motion.

II. DECISION

Mr. AVERY CARTREL WILLIAMS asks this Court to accept review of the Order Dismissing Personal Restraint Petition, filed by the Division One Court of Appeals on the 17th day of March 2014.

A copy of the decision is attached as Appendix "A" (Order Dismissing Petition).

III. ISSUES PRESENTED FOR REVIEW

Is the Petitioner entitled to credit for time served on the present sentence?

Petitioner has only been awarded 141 days credit by the King County Jail for pretrial time served. However, petitioner was in custody at

the King County Jail for a total of 760 days awaiting trial for this case. The failure to apply the missing days is not compliant with the plea agreement nor the judgment and sentence in this case. The additional time served causes a substantial prejudice to the petitioner of 1.7 extra years in prison. These calculations also do not include the earned time and good time credits earned by the petitioner. Those amount to an additional 380 days.

Petitioner is entitled to full credit for pretrial time served, pursuant to RCW 9.94A.505. Therefore, this Court should accept review of the Court of Appeals decision to Dismiss Petitioner's Petition and remand for amendment of the clerical errors in this case and resentencing to the correct terms of the plea agreement.

IV. STATEMENT OF THE CASE

Petitioner was arrested September 24, 2010 in the King County Jail, under Cause No. 101057176. He was also considered under arrest under Cause No. 101087784 as of October 19, 2010. Jail Time Certification for Cause No. 101057176 shows that 620 days were "applied to other matters." See Appendix "B" (Jail Time Certification).

In a plea agreement, petitioner pled guilty to charges of Theft of a

Motor Vehicle (Cause No.10-1-08778-4 KNT) and Unlawful Possession fo a Firearm (Cause No.10-1-05717-6 KNT) on June 4, 2012. He was subsequently sentenced to a total of 51 Months and 43 Months, respectively, both sentences to run concurrent. *See* Appendix “C” (Judgment and Sentence(s), Page 4, § 4.4).

On January 18, 2014, Petitioner sent the King County Superior Court a Motion to Support Clarification, most likely intending this to be a CrR 7.8 Motion to correct the clerical error of the missing jail time credits. The Superior Court transferred the motion to the Division One Court of Appeals to be considered as a Personal Restraint Petition, pursuant to CrR 7.8(c)(2). Petitioner filed letters with the Superior Court objecting the transfer.

The Division One Court of Appeals dismissed the petition on March 17, 2014. Their reasoning was the petitioner failed to establish error in the transfer under CrR 7.8(c)(2). This dismissal is the focus of this present motion for discretionary review.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court should grant review because petitioner is entitled to full credit for pretrial time served, pursuant to RCW 9.94A.505. RCW

9.94A.505(6), states, in pertinent part:

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

RCW 9.94A.505(6).

The Jail Time Certification for Cause No. 101057176 shows that the petitioner was arrested on September 24, 2010 and released June 4, 2012; thus, he spent 620 days on this charge. He was again arrested on May 29, 2013 and released on bond October 6, 2013; thus, he spent another 130 days on this charge. Finally, he was arrested November 9, 2013; on November 19, 2013, he was delivered into the custody of the Department of Corrections. The total spent in custody on this charge comes to 760 days.

On Cause No. 101087784, petitioner was arrested on October 19, 2010, and released on June 4, 2012; thus, he spent 595 days on this charge. Again, he was arrested on May 29, 2013 and released on bond October 6, 2013; thus, he spent another 130 days on this charge. Finally, he was arrested November 9, 2013 and delivered to the DOC on November 19, 2013. The total spent in custody on this charge comes to 735 days.

These totals are prior to any good time or earned time credits being awarded. If King County Jail awards half-tim, then his *total* time spent on

these Causes comes to 1140 days for Cause No. 101057176 and 1102 days for Cause No. 101087784.

The State will argue that this time, starting with October 19, 2010, should be considered as confinement not “solely in regard to the offense for which the offender is being sentenced,” since he was now under two different Cause numbers.

This is in error, however. This issue was discussed at length in the sentencing portion of this case, on November 15, 2013:

MR. YOUNG (Prosecutor): I think that the interpretation of the statute in Mr. Todd’s brief is a little tortured with all respect to counsel. I think that what the statute says on its face is that you’re entitled to credit for what you’re solely being held on. And I just don’t think he’s entitled to the time from Thurston. (VRP, pg. 5, ll. 20-25).

MR. TODD (Defense): So I believe that Mr. Young was addressing the due-diligence point which my due-diligence argument actually goes back to the original filing between June of 2010 until September of 2010 when Mr. Williams was finally booked into the King County Jail on this case.

And so that’s where he was in custody in Thurston County, ... and brought him back to the King County Jail in September to face these charges. So that was the correction on the actual timeline that had been going on. (VRP, pg. 8, ll. 15 to pg. 9, ll. 4).

MR. YOUNG (Prosecutor): I think he should get time for time spent in King County only, period. (VRP, pg. 16, ll. 4-5).

In the end, the the Judge decided:

THE COURT: My interpretation of that statute is it's pretty clear. You're looking at two or more cases being sentenced at the same time in the same place, it's concurrent. For example, Mr. Williams' two cases today. He's going to be serving – or sentenced concurrently. That's what the law says. (VRP, pg. 18, ll. 20-25).

THE COURT: Okay. And regarding the request for Mr. Todd, I'm not going to give credit to Mr. Williams for time served in other jurisdictions [Thurston County]. The jail is going to compute credit for time served in our case. (VRP, pg. 19, ll. 15-19).

See Appendix “D” (VRP Sentencing, November 13, 2013).

However, it is plain to see that the Jail Time Certification for Cause No. 101057176 does *not* reflect the judge's decision regarding the credits for time served. It shows that 620 days are “applied to other matters.” Similarly, the Jail Time Certification for Cause No. 101087784 shows that 601 days are “applied to other matters.”

Since these days should have been credited to the petitioner, he is under an unlawful restraint and collateral relief should be available to him. *See, In re Pers. Restraint of Capshaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); RAP 16.4. Removal of the unlawful restraint, under *In re Pers. Restraint of Sappenfield*, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999) would be as simple as mandating the King County Jail to credit the petitioner for the outstanding 620 days and 601 days of jail time credit

(before earned and good time) for a grand total of 1020 days and 968 days of missing credits.

RCW 9.94A.505 is clear. Even if the statute was ambiguous, the court would have had to interpret the statute in favor of the petitioner, pursuant to State v. Jacobs, 154 Wn.2d 596, at 600-601, 115 P.3d 281 (2005).

The judge in this case stated the petitioner should receive jail credit for the time in King County Jail. Caselaw and constitutional madeate require that an offender receive credit for all pretrial detention served. Failure to allow such credit violates due process, denies equal protection, and offends the prohibition against multiple punishments. *See, State v. Speacks*, 119 Wn.2d 444, 450, 69 P.3d 792 (2003).

B. STANDARD OF REVIEW

“Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders.” In re Hagler, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982). Thus a personal restraint petitioner bears the burden to prove that he was actually and substantially prejudiced by any claimed constitutional errors. In re Davis, 142 Wn.2d 165, 171, 12 P.3d 603

(2000). The petitioner bears the burden to show he was actually prejudiced even for error that would not be considered harmless on direct appeal. In re St. Pierre, 118 Wn.2d 321, 328-29, 823 P.2d 492 (1992). When raising an issue that is not of constitutional magnitude the petitioner must show that claimed error “constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

If the petitioner fails to meet the threshold burden of showing actual prejudice the petition must be dismissed. In re Rice, 118 Wn.2d 876, 885, 828 P.2d 1086, cert. denied, 506 U.S. 958, 113 S.Ct. 421, 121 L.Ed.2d 344 (1992). If a petitioner makes a prima facie showing of actual prejudice, but the merits of the contentions cannot be determined solely on the record, the court should remand the petition for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(1) and 16.12. *Id.*

In this case, petitioner attempted to obtain relief through collateral attack. However, he is inexperienced in the law and made some errors in presenting case to the court. While transfer to the Court of Appeals was proper, as was the subsequent dismissal as a personal restraint petition, this conclusion does not meet the ends of justice.

For this reason alone, this court should accept review of the order

dismissing the petition, consider the facts and evidence presented herein, and remand this case to the superior court for correction of the senetnce, to include the missing days of jail time credit due the petitioner.

VI. CONCLUSION

Based on the foregoing facts and arguments, this Court should accept review.

Dated this 28 day of APRIL, 2014.



AVERY CARTREL WILLIAMS,
Petitioner, *Pro se*; DOC# 761104
Monroe Correctional Complex
P.O. Box 777; A-322
Monroe, WA 98272

Appendix A

Order Dismissing Petition

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

March 17, 2014

Avery Cartrel Williams
#761104
Washington Correction Center
PO Box 900
Shelton, WA, 98584

CASE #: 71273-0-1
Personal Restraint Petition of Avery Cartrel Williams

Counsel:

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

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

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

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

law

enclosure

Appendix B

Jail Time Certification

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Order to transport the defendant from WCC to the King County Jail entered for this charge 9-13-2010—ECR Sub 12-Attach C

Arraignment continued/stayed to 9-27-2010 9-16-2010—ECR Sub 13

Defendant booked into KCJ on this case 9-24-2010 -Sub 20-Attach D

Defendant ARRAIGNED on this case 9-27-2010—ECR Sub 15-16

* DEFENDANT HELD IN JAIL 620 Days

Defendant plead guilty 6-04-2012—ECR Sub 93

Defendant released from custody 6-04-2012—ECR Sub 87

Defendant FTA and a warrant issued 11-06-2012—ECR Sub 104

Defendant booked in Thurston Co jail on warrant for this case 11-24-2012—Thurston Co Jail cert

Defendant released to King County 5-29-2013—Thurston Co Jail cert

Defendant booked on the warrant from this case 5-29-2013—King County Jail Reg Attachment F

130 Days

Defendant released on bond and goes to SCORE 10-06-2013—King County Jail Reg

Defendant re-booked into KCJ 11-09-2013—King County Jail Reg

10-1-08778-4 KNT—ECR DOCKETT ATTACHED—ATTACHMENT B

Case filed 10-19-2010

Defendant booked into KCJ on this case from the beginning of this case

Defendant pending competency before arraign 11-01-2010 to 11-07-2011

Defendant ARRAIGNED on this case 11-07-2011—ECR Sub 41

DEFENDANT HELD IN JAIL 594 Days

1		
2	Defendant plead guilty	6-04-2012—ECR Sub 63
3	Defendant released from custody	6-04-2012—ECR Sub 60
4	Defendant FTA and a warrant issued	11-06-2012—ECR Sub 72
5	Defendant booked in Thurston Co jail on warrant for this case	11-24-2012—Thurston Co Jail cert
6	Defendant released to King County	5-29-2013—Thurston Co Jail cert
7	<u>130</u> Defendant booked on the warrant from this case	<u>5-29-2013</u> —King County Jail Reg
8	<u>Days</u> Defendant released on bond and goes to SCORE	10-06-2013—King County Jail Reg
9	Defendant re-booked into KCJ	11-09-2013—King County Jail Reg
10		

11 In the end, the defendant was being held in the Thurston County jail on case number 10-
12 1-05717-6 KNT from 6-22-2010 until 9-24-2010 and then again from 11-24-2012 to 5-29-2013.
13 He was also being held on 10-1-08778-4 KNT from 11-24-2012 to 5-29-2013. He should get
14 credit for all of this time and should get a good time calculation on this time as well because he
15 was being held on these cases.

16 RCW 9.94A.505 set out how the court shall impose sentences and specifically in RCW
17 9.94A.505(6) it indicates that "the sentencing court SHALL give the offender credit for all
18 confinement time served before the sentencing if that confinement was solely in regard to the
19 offense for which the offender is being sentenced." (emphasis added.) This may only be
20 interpreted in one way to give Mr. Williams credit for the time that he was being held in the
21 Thurston County Jail on these charges.

Sentence Information Menu

- [View J & S - Prison](#)
- [View J & S - Field](#)
- [Conditions](#)
- [Earned Time](#)
- [Good Conduct Time](#)
- [Certified Time](#)
- [Work Ethic Program \(WEP\)](#)
- [Problem J & S](#)
- [Consecutive Relationship](#)

Inmate: WILLIAMS, Avery Cartrell (761104)

[View Offender Photo](#) | [Legal Face Sheet](#)

Gender: **Male** DOB: **11/09/1977** Age: **36** Category: **Regular Inmate** Body Status: **Active Inmate**
 RLC: **HV** Wrap-Around: **Yes** Comm. Concern: **Yes** Custody Level: **Medium** Location: **MCC-WSR — CHA / A322L**
 ERD: **05/01/2016** ICOTS Victim Sensitive: **Yes** CC/CCO: **Geer, Richard E**

View J & S — Prison

Period Of Jurisdiction
11/19/2013 - Current

Display
 Include Closed Causes Enable Scrolling

Sentence Drilldown:
Cause, Count, & Confinement Element
WEP Eligible Offender : **No**
Felony Firearm Registration : **No**

Details
 ERD Calculations MaxEx Calculations StatMax Calculations
 Out Time Graphical Sentence View

Cause	Count	Confinement Element	Consecutive Confinement	Status	Confinement Length	Time Start Date	ERD	+ Length In Days	- Cause Credits	- Cause ERT Credit	ERT %	- Potential ET	ET Earned	+ ET Not Earned	Available ET	Potential GCT	GCT Certified	+ GCT Lost	Available GCT	+ Out Time	MaxEx	Stat Max
Offender Overall				Active	0Y, 51M, 0D	11/19/2013	05/01/2016	-	-	-	-	-	-	-	-	-	-	-	-	09/30/2017	12/11/2023	
AH-101057176-King-MON				Active	0Y, 51M, 0D	11/19/2013	05/01/2016	1,551	140	70	33.33%	-	-	-	-	298	0	0	298	0	09/30/2017	07/01/2018
1- Unlawful Possession Of A Firearm 2				Active	0Y, 51M, 0D	11/19/2013	05/01/2016	1,551	140	70	33.33%	148.97	12.33	0.00	136.64	298	0	0	298	0	09/30/2017	07/01/2018
Base				-	0Y, 51M, 0D	11/19/2013	05/01/2016	1,551	140	70	33.33%	148.97	12.33	0.00	136.64	298	0	0	298	0	-	-
AI-101087784-King-MON				Active	0Y, 43M, 0D	11/19/2013	11/20/2015	1,308	141	70	33.33%	-	-	-	-	244	0	0	244	0	01/29/2017	12/11/2023
1- Theft Of Motor Vehicle				Active	0Y, 43M, 0D	11/19/2013	11/20/2015	1,308	141	70	33.33%	121.86	12.33	0.00	109.53	244	0	0	244	0	01/29/2017	12/11/2023
Base				-	0Y, 43M, 0D	11/19/2013	11/20/2015	1,308	141	70	33.33%	121.86	12.33	0.00	109.53	244	0	0	244	0	-	-

Sanctions

Maintain

Create

Action

Appendix C

Judgment and Sentence(s), Page 4, § 4.4

Appendix D

VRP Sentencing, November 13, 2013

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 10-1-08778-4 KNT
)	No. 10-1-05717-6 KNT
AVERY WILLIAMS,)	
)	Appeal No. 71198-9-I
Defendant.)	
)	

SENTENCING
NOVEMBER 15, 2013

APPEARANCES:

For the State: DOUG YOUNG
Deputy Prosecuting Attorney

For the Defendant: BRIAN TODD
Attorney at Law

BEFORE: THE HONORABLE PATRICK OISHI

PREPARED BY: R.V. WILSON
Wilson Transcription Services
(425) 391-4218
rosievwilson@yahoo.com

P R O C E E D I N G S

NOVEMBER 15, 2013

1
2
3
4 THE COURT: Thank you. Please be seated.

5 Mr. Young.

6 MR. YOUNG: Thank you, your Honor.

7 We're here for sentencing. State of Washington
8 versus Avery Williams. There are two causes before the
9 court, 10-1-08778-4 and 10-1-05717-6, both KNT. Mr.
10 Williams is present in custody with counsel, Brian
11 Todd. I'm Doug Young from the King County Prosecutor's
12 Office.

13 Your Honor, in the cause ending 78-4, Mr. Williams
14 pled guilty to theft of a motor vehicle. It's a Class
15 3 felony. The maximum term is 10 years and a \$20,000
16 fine. He has an offender score of 9, the seriousness
17 level is 2, giving him a standard range of 43 to 57
18 months.

19 In the cause ending in 7-6, he pled guilty to
20 unlawful possession of a firearm second degree, a Class
21 C felony, five years and a \$10,000 fine is the maximum
22 term. Again, an offender score of 9, the seriousness
23 level there is 3, giving him a standard range of 51 to
24 60 months in custody.

25 Mr. Todd -- sorry. As a preliminary matter, Mr.

1 go back to the victim assistance unit just for a sheer
2 resource issue. We can't afford to have them working
3 on less than the most important cases that they need to
4 get through, so --

5 THE COURT: So say again, on the cause number ending
6 in 78-4 --

7 MR. YOUNG: So that recommendation is for 50 months,
8 no contact, the victim penalty, the DNA fee and
9 restitution yet to be determined, more or less the same
10 rec in the other cause.

11 THE COURT: Okay.

12 MR. YOUNG: 55 months, again, no contact, concurrent
13 and just the mandatory LFOs plus restitution, again,
14 yet to be determined.

15 I received a -- I think we all received an email
16 from Mr. Todd. He told me he was going to do this and
17 this, that's fine, regarding credit, which I understand
18 that Mr. Williams believes he's entitled to. I don't
19 want to steal Mr. Todd's thunder, but I will a little
20 bit. I think that the interpretation of the statute in
21 Mr. Todd's brief is a bit tortured with all respect to
22 counsel. I think that what the statute says on its
23 face is you're entitled to credit for what you're
24 solely being held on. And I just don't think he's
25 entitled to the time from Thurston.

1 MR. TODD: Your Honor, if I could just have a
2 second.

3 (DISCUSSION OFF THE RECORD.)

4 MR. TODD: Sorry, your Honor.

5 (DISCUSSION OFF THE RECORD.)

6 MR. TODD: And again Brian Todd on behalf of Mr.
7 Williams, your Honor.

8 THE COURT: Mr. Todd, I'm listening.

9 MR. TODD: Understood.

10 THE COURT: I am trying to multitask because I'm
11 trying to look at a couple things of Mr. Williams, but
12 I want you to go ahead. Because I think critical to
13 Mr. Williams' sentencing is just this whole, you know,
14 should he get credit, should he not get credit, and if
15 so what he's getting credit for. So I'm listening, go
16 ahead.

17 MR. TODD: The first thing I was going to do was on
18 my presentence report I had stated the standard range
19 on 78-4 as 33 to 43, and that was what I was just
20 confirming with Mr. Young about that range did not
21 include the Pierce County case which would bump it up
22 to a 9, which would make it the 43 to 57 on there. So
23 I would correct that on mine and I do agree that that
24 standard range is correct. However, I would still be
25 asking for the low end of the sentence range.

1 Correction Center and brought him back to the King
2 County Jail in September of 2010 to face these charges.
3 So that was the correction on the actual timeline that
4 had been going on.

5 Now, with regard to whether or not Mr. Williams
6 should actually get credit for time served while he was
7 in Thurston County, the argument is that he should get
8 credit for time served while he was in Thurston County,
9 both from June until September of 2010 and again from
10 -- and then again from November of 2012 until May 29th
11 of 2013. And the reason that he should get credit for
12 those is because as the Thurston County Sheriff's
13 Office jail certification shows, he was being held on
14 these cases while he was in the Thurston County Jail.
15 He was being held there. He had the hold on him for
16 these cases. They --

17 THE COURT: Can I stop you for a minute? You cite
18 to RCW 9.94A.505(6), and I'm quoting from your brief:
19 The sentencing court shall give the offender credit for
20 all confinement time served before the sentencing if
21 that confinement was solely in regard to the offense
22 for which the offender is being sentenced.

23 Was he not being confined on the Thurston County
24 charges?

25 MR. TODD: You know, there's a problem with that

1 filed and they get booked on that case, although
2 they're still there on the first case and their time
3 starts on that second case there.

4 Then they may catch a third case that they've done
5 somewhere and the law enforcement agency refers it, the
6 prosecutor's office files it and they get booked on
7 that one and their time starts on that one. So they do
8 break it out according to each particular case that you
9 are serving time on and you're being sentenced on.

10 And so I think that .505 -- 9.94A.505(6) is somewhat
11 in conflict with the premise and the statute that says
12 that all crimes that are sentenced at the same time,
13 you know, shall be served concurrently when you get
14 credit for all those cases anyways.

15 Because if you don't say that they are served
16 concurrently, what you're in effect doing is you're
17 running them consecutively because you're saying okay,
18 on our hypothetical example on case one they're being
19 held on it and they're not getting credit for any of
20 that time that they're in there on case two and three
21 because they're being held on case one. And so we're
22 not going to start the time for case two until they're
23 either sentenced or after they're done on case one, so
24 you're doing kind of a consecutive sentence on cases
25 two and three.

1 Williams was booked, the first 94 days that he was in
2 there, that's when he was doing the Thurston County
3 time on the case that he went to trial, went to appeal,
4 got remanded, and the one charge ended up sticking.
5 The 186 days are quite frankly not in dispute, and I
6 would hope that the State concedes that Mr. Williams at
7 least needs credit for those 186 days because in the
8 end those charges were dismissed in Thurston County and
9 Mr. Williams was being held on the King County cases
10 while the charges in Thurston County were pending.
11 That charge in Thurston County was then dismissed.

12 You know, so -- but what's the difference between
13 that where you're being held on those two cases, the
14 Thurston County and the King County, you have to get
15 credit for King County, or where you're being held, you
16 know, the first time that Mr. Williams was in custody
17 back in 2010 for the 94 days where he's being held on
18 -- clearly being held on the King County warrants and
19 has the Thurston County case that's going on as well.

20 Now, in the end, your Honor, that Thurston County
21 case is counting as a point on this case, and so it
22 would be similar to whether or not he would be -- to
23 whether he would be in King County facing those exact
24 same charges he was in Thurston County facing them.
25 You know, so he should be entitled to credit for the

1 MR. YOUNG: The King County Jail does often --

2 MR. TODD: -- inappropriate.

3 MR. YOUNG: -- give multiple credit for multiple
4 causes at the same time.

5 THE COURT: But your argument is arguably the
6 practice that perhaps is engaged in fairly often is
7 actually not correct per the statute?

8 MR. YOUNG: I think that's been true, and I think we
9 just allow that to happen, and I assume it's partly for
10 budgetary reasons. I don't know. But I don't know
11 that there's any basis --

12 THE COURT: And/or frankly, you know, it may
13 facilitate more resolutions.

14 MR. YOUNG: Absolutely. But I don't know that you
15 can report that to other jails. And I misunderstood
16 the period we were talking about.

17 When Mr. Williams was unavailable at the beginning
18 of these cases, he was unavailable. He was being held
19 in a different jail.

20 THE COURT: Right.

21 MR. YOUNG: And under Criminal Rule 3.3, we can't
22 put our hands on him, so he's not available. There's
23 no lack of diligence to get him up here. And when you
24 apply .505 as the court is going to cite him, he's not
25 entitled to that because he was being held on a

1 but that's ...

2 THE COURT: Mr. Williams, you do have the right to
3 address the court before I impose sentence. Anything
4 that you want to say briefly?

5 THE DEFENDANT: No, thank you, your Honor.

6 THE COURT: Okay. Thank you, Mr. Williams.

7 You know, I think frankly we could be here for the
8 next 12 hours and give Mr. Young and Mr. Todd chances
9 to joust back and forth about the statutes and how the
10 statutes should be interpreted. They're not going to
11 agree on this. I think the design of the statute that
12 we've been talking about is arguably trying to address
13 the problem, if it is a problem, of what we in the
14 court system oftentimes call double-dipping, that
15 people should not be getting credit for a different
16 case while they're serving time on a different case.

17 You know, I agree with Mr. Todd that sometimes in
18 this jurisdiction we perhaps engage in that practice,
19 whether per statute we should be doing it or not, maybe
20 not. I think there's probably any number of valid
21 policy reasons that we do that. I can tell you in
22 other jurisdictions it's not the practice, not the
23 practice whatsoever. There's little to no
24 double-dipping at all.

25 Regarding just the concept of consecutive versus

1 charge?

2 MR. YOUNG: 55. I'm just keeping it where we
3 originally had put it over a year ago, just middle of
4 the range, essentially.

5 THE COURT: Okay. This is what I'm going to do. On
6 the gun case ending in 17-6, I'm going to impose the
7 low end, 51 months. On the theft of a motor vehicle,
8 that's the cause number ending in 78-4, I'm going to
9 impose the low end, 43 months, that's going to be
10 concurrent. Going to impose the mandatory, legal,
11 financial obligations. Also set restitution by later
12 order of the court. Neither of these cases has any
13 type of supervision, correct?

14 MR. YOUNG: That's correct, your Honor.

15 THE COURT: Okay. And regarding the request for Mr.
16 Todd, I'm not going to give credit to Mr. Williams for
17 the time served in other jurisdictions. The jail is
18 going to compute credit for time served in our case.
19 But I just did give you the low end on each case.

20 THE DEFENDANT: Okay. Thank you.

21 MR. TODD: And, your Honor, Mr. Williams has
22 previously signed the fingerprint form, the collateral
23 attack form as well as the firearm and loss of right to
24 vote form.

25 In addition, your Honor, I would be filing a Notice

1 Rights on Appeal and rights pursuant to RCW 10.73. If
2 you have any questions about this, make sure you talk
3 to Mr. Todd. You have 30 days from today to file
4 notice of direct appeal, and I believe that that's
5 exactly what Mr. Todd just did today.

6 Last document on each of thee cases are documents
7 called Notice of Ineligibility to Possess a Firearm and
8 Loss of Right to Vote. These felony convictions caused
9 you to lose your right to vote. You also cannot own,
10 possess, have under your control any type of firearm
11 until a court of record restores your right to do so.
12 You also cannot have a concealed weapons permit. So
13 I've signed all the forms. Look luck in the
14 Department.

15 MR. TODD: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. YOUNG: And I have handed him his Ineligibility
18 to Possess a Firearm. Thank you, your Honor.

19 THE COURT: Thank you.

20 (PROCEEDINGS CONCLUDED.)

21 --o0o--

22

23

24

25

C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF KING)

I hereby declare under penalty of perjury that the foregoing transcript of proceedings was prepared by me from electronic recordings of the proceedings, monitored by me and reduced to typewriting to the best of my ability;

That the transcript is, to the best of my ability, a full, true and correct record of the proceedings, including the testimony of witnesses, questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the proceedings;

That I am neither attorney for, nor a relative or employee of any of the parties to the actions; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

(Date)

R.V. WILSON

1 of Appeal on these and just to be efficient I would ask
2 the court to sign an order of indigency on both of
3 those if the court is so inclined.

4 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL AND DEFENDANT.)

5 THE COURT: And I will sign the orders regarding
6 indigency for purposes of the appeal or appeals.

7 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL AND DEFENDANT.)

8 MR. YOUNG: Your Honor regarding 8-4, there was a
9 Count II and the plea agreement contemplates dismissal
10 of that count. I would just ask the court to do that.
11 I've noted in the Count II [INAUDIBLE].

12 THE COURT: And that's the order of the court as to
13 that cause number. Count II is dismissed. I think
14 that's in -- is that the identity theft?

15 MR. YOUNG: Yes, sir, it's on Page 2 of the J and S.

16 THE COURT: And that's being dismissed.

17 MR. YOUNG: Yes. Thank you. Not the one you have
18 in your hand but the one that's coming.

19 THE COURT: Right.

20 MR. YOUNG: Thank you.

21 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL AND DEFENDANT.)

22 THE COURT: Mr. Williams, I'm going to go over these
23 forms with you. First of all, there's a judgment and
24 sentence on each case that sets forth the sentence that
25 I just imposed. Next is a document called Notice of

1 concurrent, I think we're kind of mixing the two issues
2 if we're trying to somehow compare credit for time
3 served with whether when you're sentencing two cases
4 you're imposing consecutive or concurrent. My
5 interpretation of that statute is it's pretty clear.
6 You're looking at two or more cases being sentenced at
7 the same time in the same place, it's concurrent. For
8 example, Mr. Williams' two cases today. He's going to
9 be serving -- or sentenced concurrently. That's what
10 the law says.

11 So with that said, I frankly agree more with Mr.
12 Young's interpretation of the statutes. I think plain
13 language, black letter reading of the statute leads me
14 to that conclusion.

15 What I'm going to do in Mr. Williams' cases is -- on
16 each of the cases it's the same standard range, 43 to
17 57, correct?

18 MR. YOUNG: No, your Honor, on the gun charge it's
19 51 to 60.

20 THE COURT: 51 to 60.

21 MR. YOUNG: Yes, sir.

22 THE COURT: 51 to 60. And then on the theft of a
23 motor vehicle, it's 43 to 57.

24 MR. YOUNG: That's correct, your Honor.

25 THE COURT: And so what are you asking or on the gun

1 different matter, and he shouldn't get double-credit.
2 Even though internally in King County we often do that.
3 So I'm not agreeing to the 186 days. I'm not agreeing
4 to any of that time. I think he should get time for
5 time spent in King County only, period.

6 I'm not certain how deep to go into the rest of
7 that, but my conclusion is that Mr. -- I understand the
8 appeal of Mr. Todd's argument, but the idea that
9 somehow because later he is scored on something that he
10 was held on down there and that should now somehow be
11 concurrent up here, that's not even -- that's not found
12 in the case law at all. It's when something is
13 sentenced on the same day that they should all run
14 concurrently. That's part of that argument, and I
15 think the court is being invited to conclude because
16 there's a point that's being [INAUDIBLE] out of
17 Thurston County that somehow his time down there should
18 also be concurrent up here. But under .505 there's
19 just no basis to give him double or triple or quadruple
20 credit, and that's what you're being asked to do. And
21 I just don't agree that that is the proper thing and it
22 is within the court's discretion, I would suggest, and
23 the court doesn't need to do it. That's all.

24 THE COURT: Thank you.

25 MR. YOUNG: I don't know if that's helped or hurt,

1 whole 280 days.

2 THE COURT: I think Mr. Young is now going to
3 respond and explain why he disagrees with your
4 interpretation of the statutes.

5 MR. YOUNG: And I couldn't disagree with Mr. Todd
6 more. I would say I think the court is being invited
7 to confuse a number of different issues. I think one
8 of them is the idea of concurrent to consecutive and
9 how it relates to credit.

10 THE COURT: Uh-huh.

11 MR. YOUNG: The only difference in the law between
12 concurrent and consecutive is that consecutive has no
13 overlap and concurrent does. The end points don't have
14 to be the same, there just has to be some overlap and
15 therefore it's concurrent.

16 What I think Mr. Todd is inviting you to do is
17 include that because there were -- well, that's just
18 one point. So I will set that out there. I think
19 there's been an invitation to combine those.

20 I think that the practice in King County doesn't
21 necessarily comport with the statute. I think that
22 typically Mr. Todd's recitation of what happens in King
23 County is correct even though I would suggest under the
24 statute it's inappropriate.

25 THE COURT: It's --

1 And so we do it all the time to where you're being
2 held on multiple cases, you get credit for multiple
3 cases, and the reason you get credit for multiple cases
4 while you're being held on those multiple cases is
5 because your offender score goes up because of the
6 other current offenses that are calculated on there.
7 And so, I mean, it's all similar.

8 And the only case that I could find was an
9 unpublished Division III case which, you know, I took a
10 lot out of there, but which kind of didn't seem to make
11 a lot of sense to me, quite frankly.

12 THE COURT: What didn't seem to make sense?

13 MR. TODD: So what they were saying, it was a case
14 where somebody was being held in Ireland on
15 extradition. They had a charge pending in Ireland and
16 they're being held on the extradition thing.

17 In the end what they said was that because the case
18 in Ireland was dismissed, you know, that he was only
19 being held on the extradition matter and that he should
20 get credit for the time that he was there. There were
21 a couple other examples where somebody was in for
22 probation violation and whether or not he should get
23 credit for that time that he was in there on those
24 cases as well.

25 And so, as I pointed out, the first time that Mr.

1 particular interpretation. Here's what the problem is,
2 is that, you know, we do it all the time here, and
3 quite frankly the SRA contemplates everything that
4 they're being sentenced for and everything that they're
5 being held on to be run concurrently. So, you know, we
6 have, you know, a hypothetical defendant that comes up
7 and is being held on two or three cases in the King
8 County Jail, they're getting credit on each of those
9 three cases -- as long as there's a bail or whatever,
10 they're getting credit for each of those three cases
11 concurrently while they're being held in the King
12 County Jail on those cases. And so to say that --

13 THE COURT: Well, and arguably the way that it
14 probably should be done to the extent that we do it
15 that way is kind of breaking out exactly when someone
16 is remanded on a specific cause number and so forth.
17 And I don't know that we routinely deal in those terms
18 and exactitudes, and arguably we should.

19 MR. TODD: I would say we do, and the reason we do
20 -- and if you've ever noticed like when the jail does
21 their credit for time served, you know, a defendant
22 will have three cases, but there will be three
23 different credit for time served amounts because, you
24 know, they're being held on case one. You know, later
25 the agency refers case two. Case two gets referred,

1 When Mr. Young was speaking about basically the
2 due-diligence point about getting Mr. Williams to
3 court, that was with regard to June through September
4 of 2010 where Mr. Williams was booked into Thurston
5 County Jail, was there the whole time and his
6 arraignment had been continued approximately five
7 times.

8 From October to -- well, actually from June or,
9 let's say, October and November of 2012, I would agree
10 that Mr. Williams was at large. He had been released
11 from Pierce County with the instructions to return back
12 to King County for his sentencing. The last sentencing
13 date that had been set was November 6, 2012. That was
14 the one that he failed to appear for and a warrant was
15 issued at that time. So I believe that Mr. Young was
16 addressing the due-diligence point which my
17 due-diligence argument actually goes back to the
18 original filing between June of 2010 until September of
19 2010 when Mr. Williams was finally booked into the King
20 County Jail on this case.

21 And so that's where he was in custody in Thurston
22 County. Thurston County did what they had to do with
23 him. They sent him to Washington Correction Center.
24 King County then went pursuant to the order of
25 transport and picked him up from the Washington

1 And I also would dispute factually with counsel in
2 that brief that I believe there was a period in October
3 and November of last year before Mr. Todd became
4 counsel of record where I did a pretty diligent search
5 of the various jails and Department of Corrections. We
6 could not find Mr. Williams and we came into this court
7 multiple times where counsel didn't know where Mr.
8 Williams was. We ended up filing multiple notices of
9 hearing. I mean, I don't know if the court recalls,
10 but we were here multiple times to try to get him into
11 court. And he was not incarcerated and neither was he
12 available or amenable to service. So we ultimately got
13 a bench warrant, but not because he was in custody but
14 rather because he simply wasn't responding. So I don't
15 believe that he was -- there's a narrative, a little
16 bit, in Mr. Todd's brief and perhaps I misread it, but
17 I think there was a belief that he was transported from
18 one custody status to another, and I just don't think
19 that's true in the fall of 2012. I think Mr. Williams
20 was actually out and about.

21 But my recommendation again, your Honor, is more or
22 less midrange, and again there's no community custody
23 on these causes.

24 And that's it for the State. Thank you.

25 THE COURT: Thank you.

1 Todd, is there any dispute as to the maximum term,
2 standard range, offender score or seriousness level of
3 the crimes?

4 MR. TODD: Good afternoon, your Honor. Brian Todd
5 on behalf of Avery Williams. Your Honor, there is no
6 dispute as to those which have been recited by the
7 State. Thank you.

8 MR. YOUNG: Thank you.

9 Your Honor, perhaps surprising to the court, I'm
10 just going to stay with the recommendation that was
11 made some time ago. I think you have an amended
12 presentence report from the State. In the theft of a
13 motor vehicle, the recommendation is 50 months, which
14 is more or less a midrange sentence.

15 In the UPFA, the recommendation is for 55, again,
16 more or less a midrange sentence. I'd ask that they
17 run concurrently with each other, that Mr. Williams be
18 directed to have no contact with the people who were
19 named in the State's recommendation: Marvin Johnson in
20 one cause and John Nelson and Nelson Carver in the
21 other. These are not crimes which community custody is
22 available. We're asking for the victim penalty
23 assessment, DNA fee, restitution. You might roll your
24 eyes, but yet to be determined. Part of the issue here
25 is once these cases go into warrant status, they don't

Appendix-E

- presentence- Reports -

✓

FILED
KING COUNTY, WASHINGTON

JUN 04 2012

SUPERIOR COURT CLERK
BY NANCY L. SLYE
DEPUTY

COPY TO COUNTY JAIL JUN 04 2012

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 10-1-05717-6 KNT

vs.

ORDER OF IMMEDIATE RELEASE

AVERY C. WILLIAMS

Defendant,

[Clerk's Action Required]

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State/Defendant, for an order of immediate release of the Defendant in the above-entitled cause, and the court being fully advised that THE DEFENDANT HAS ENTERED A PLEA OF GUILT. PURSUANT TO THE PLEA AGREEMENT, HE IS RELEASED ON THIS CAUSE PENDING SENTENCING ON 6-17-12 AT 1:00 PM.

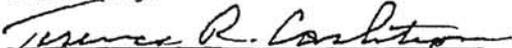
and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Defendant shall be immediately released on the above-entitled cause number only.

DONE IN OPEN COURT this _____ day of 6/4/12, _____

Presented by:


JUDGE


Deputy Prosecuting Attorney, WSBA# 32249


Attorney for Defendant, WSBA# 18114

47

STATE'S SENTENCE RECOMMENDATION
(USE FOR NON-SEX OFFENSE, NON-DOSA SENTENCES OF OVER ONE YEAR ONLY)

Date of Crime: 4-16-10

Date: 5-29-12

Defendant: Avery Williams

Cause No.: 10-1-05717-6 **SEM/KNT**

The State recommends that the defendant be sentenced to a term of total confinement in the Department of Corrections as follows:

50 months/days on Count I
_____ months/days on Count _____

_____ months/days on Count _____
_____ months/days on Count _____

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: 10-1-05778-4 ENT, Pierce 11-1-00181-6, and
Terms to be consecutive to any other term(s) not specifically referred to in this form. Transfer 10-1-00611-1

WEAPONS ENHANCEMENT - RCW 9.94A.510: The above recommended term(s) of confinement do not include the following weapons enhancement time: _____ months for Ct. _____, _____ months for Ct. _____, _____ months for Ct. _____; which is/are mandatory, served without good time and served consecutive to any other term of confinement.

_____ ENHANCEMENT: _____ months for Ct. _____.

TOTAL LENGTH OF CONFINEMENT recommended in this cause, including all counts and enhancements is 50 months.

This is an agreed recommendation.

NO DRUG OFFENDER SENTENCE ALTERNATIVE (DOSA) - RCW 9.94A.660:

Defendant is not legally eligible for DOSA because current sex or violent offense; prior violent offense within 10 years or any prior sex offense; weapon enhancement; subject to final deportation order; not small quantity of drugs; more than one prior DOSA within 10 years; felony DUI or physical control.

Defendant is eligible but DOSA is not recommended because he has served 40% of requested time.

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

NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: MARVIN JOHNSON

MONETARY PAYMENTS: Defendant shall make the following monetary payments pursuant to RCW 9.94A.753 and RCW 9.94A.760.

- Restitution as set forth in the "Plea Agreement" page and _____.
- Court costs, mandatory \$500 Victim Penalty Assessment and \$100 DNA collection fee; reimbursement of cost for appointed counsel.
- King County Local Drug Fund \$ _____; \$100 lab fee (RCW 43.43.690).
- Fine of \$ _____; \$1,000 fine for VUCSA; \$2,000 fine for subsequent VUCSA.
- Costs of incarceration in K.C. Jail at \$50 per day (RCW 9.94A.760(2)).
- Emergency response costs \$ _____ (RCW 38.52.430); Extradition costs of \$ _____; Other _____.

COMMUNITY CUSTODY: for qualifying crimes the defendant shall serve a term of community custody set forth below.

- Serious violent offense: 36 months (a range of 24 to 36 months if crime committed before 8/1/2009).
- Violent offense: 18 months
- Crimes against persons or violation of Ch. 69.50 or .52: 12 months (a range of 9 to 12 months if crime committed before 8/1/2009).

Community Custody includes mandatory statutory conditions as well as discretionary conditions set by the court or Dept. of Corrections. The State recommends the court impose these discretionary conditions:

- Obtain an alcohol/substance abuse evaluation within 30 days of release and follow all treatment recommendations.
- Enter into within 30 days of release, make reasonable progress in, and successfully complete state-certified Domestic Violence treatment.
- Other: _____

MANDATORY CONSEQUENCES: HIV blood testing (RCW 70.24.340) for any prostitution related offense, or drug offense associated with needle use. DNA testing (RCW 43.43.754). Revocation of right to possess a FIREARM (RCW 9.41.040). DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420). REGISTRATION: Persons convicted of some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.44.130.

[Signature] 23886
Deputy Prosecuting Attorney, WSEA No.

UPF 20 -

FELONY PLEA AGREEMENT

Date of Crime: 4-16-16

Date: 5-29-12

Defendant: Avery Williams

Cause No: 10-1-05717-6 **SEA/KNT**

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 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): _____

This is part of an indivisible agreement that includes cause number(s): 10-1-00979-1, 10-1-08778-4.

DISMISS: Upon disposition of Count(s) I, the State moves to dismiss: 10-1-00979-1 KJ7.

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; _____

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 \$ TBD
 agrees to pay restitution to LES of FIREARMS & for COSTS TO HOUSE

OTHER: State agrees to release at time of plea; NO FURTHER CHARGES ARISING FROM FWD #10-491
STATE AGREES TO FILE

CRIMINAL HISTORY AND OFFENDER SCORE:

a. The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, 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); 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 defendant understands that one or more convictions from other jurisdictions have been included in the offender score, and agrees that these convictions have been properly included and scored according to the comparable offense definitions provided by Washington law.

d. The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a drug offender or parenting sentencing alternative.

Maximum on Count(s) I is not more than 5 years each and \$ 10,000 fine each.

Maximum on Count(s) _____ is not more than _____ years each and \$ _____ fine each.

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

Mandatory weapon sentence enhancement for Count(s) _____ is _____ 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.

[Signature]
Defendant

[Signature] 23586
Deputy Prosecuting Attorney

[Signature] L McGuire
Attorney for Defendant 18114

[Signature]
Judge, King County Superior Court

STATE'S SENTENCE RECOMMENDATION
(USE FOR NON-SEX OFFENSE, NON-DOSA SENTENCES OF OVER ONE YEAR ONLY)

Date of Crime: 6-27-2009

Date: 10-26-2012

Defendant: Avery C. Williams

Cause No.: 10-1-08778-4 SE/VKNT

The State recommends that the defendant be sentenced to a term of total confinement in the Department of Corrections as follows:

50 months/days on Count I _____ months/days on Count _____
_____ months/days on Count _____ - DM count II _____ months/days on Count _____

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: 10-1-05717-6 KNT
Terms to be consecutive to any other term(s) not specifically referred to in this form.

WEAPONS ENHANCEMENT - RCW 9.94A.510: The above recommended term(s) of confinement do not include the following weapons enhancement time: _____ months for Ct. _____, _____ months for Ct. _____, _____ months for Ct. _____; which is/are mandatory, served without good time and served consecutive to any other term of confinement.

_____ ENHANCEMENT: _____ months for Ct. _____.

TOTAL LENGTH OF CONFINEMENT recommended in this cause, including all counts and enhancements is 50 months.

This is an agreed recommendation.

NO DRUG OFFENDER SENTENCE ALTERNATIVE (DOSA) - RCW 9.94A.660:

Defendant is not legally eligible for DOSA because current sex or violent offense; prior violent offense within 10 years or any prior sex offense; weapon enhancement; subject to final deportation order; not small quantity of drugs; more than one prior DOSA within 10 years; felony DUI or physical control.

Defendant is eligible but DOSA is not recommended because he has served a substantial portion of requested time

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

NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: Don Nelson & Nelson Carter

MONETARY PAYMENTS: Defendant shall make the following monetary payments pursuant to RCW 9.94A.753 and RCW 9.94A.760.

- Restitution as set forth in the "Plea Agreement" page and _____.
- Court costs; mandatory \$500 Victim Penalty Assessment and \$100 DNA collection fee; ~~recoupment of cost for appointed counsel.~~
- King County Local Drug Fund \$ _____; \$100 lab fee (RCW 43.43.690).
- Fine of \$ _____; \$1,000 fine for VUCSA; \$2,000 fine for subsequent VUCSA.
- Costs of incarceration in K.C. Jail at \$50 per day (RCW 9.94A.760(2)).
- Emergency response costs \$ _____ (RCW 38.52.430); Extradition costs of \$ _____; Other _____.

COMMUNITY CUSTODY: For qualifying crimes the defendant shall serve a term of community custody set forth below.

- Serious violent offense: 36 months (a range of 24 to 36 months if crime committed before 8/1/2009).
- Violent offense: 18 months
- Crimes against persons or violation of Ch. 69.50 or .52: 12 months (a range of 9 to 12 months if crime committed before 8/1/2009).

Community Custody includes mandatory statutory conditions as well as discretionary conditions set by the court or Dept. of Corrections. The State recommends the court impose these discretionary conditions:

- Obtain an alcohol/substance abuse evaluation within 30 days of release and follow all treatment recommendations.
- Enter into within 30 days of release, make reasonable progress in, and successfully complete state-certified Domestic Violence treatment.
- Other: _____

MANDATORY CONSEQUENCES: HIV blood testing (RCW 70.24.340) for any prostitution related offense, or drug offense associated with needle use. DNA testing (RCW 43.43.754). Revocation of right to possess a FIREARM (RCW 9.41.040). DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420). REGISTRATION: Persons convicted of some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.41.130.

[Signature] 23886
Deputy Prosecuting Attorney, WSBA No.

FELONY PLEA AGREEMENT

Date of Crime: 6-27-09 Date: 5-29-12
Defendant: Avery Williams Cause No: 10-1-08778-4

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 of the original 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):

This is part of an indivisible agreement that includes cause number(s): 10-1-00979-1, 10-1-05717-6

DISMISS: Upon disposition of Count(s) I, the State moves to dismiss: court 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;

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 \$ TBD

agrees to pay restitution for all losses from the charges to state take.

OTHER: STATE AGREES TO FILE NO FURTHER CHARGES ARISING FROM AUGUSTAN PD # 09-7794

CRIMINAL HISTORY AND OFFENDER SCORE:

The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, 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); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

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

- (1) Conviction: Basis:
(2) Conviction: Basis:

The defendant understands that one or more convictions from other jurisdictions have been included in the offender score, and agrees that these convictions have been properly included and scored according to the comparable offense definitions provided by Washington law.

The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a ~~community~~ parenting sentencing alternative.

Maximum on Count(s) I is not more than 10 years each and \$ 20,000 fine each.

Maximum on Count(s) is not more than years each and \$ fine each.

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

Mandatory weapon sentence enhancement for Count(s) is 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.

Signature of Defendant

Signature of Deputy Prosecuting Attorney 23586

Signature of Attorney for Defendant 14537

Signature of Judge, King County Superior Court

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