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NO. 72582-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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In re Personal Restraint Petition of

VINH QUANG TRAN,

Petitioner.

FILED  
Dec 17, 2014  
Court of Appeals  
Division I  
State of Washington

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**STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION**

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A. AUTHORITY FOR RESTRAINT OF PETITIONER

Vinh Quang Tran is restrained pursuant to the Judgment and Sentence in King County Superior Court No. 98-C-05129-5 SEA.

Appendix A.

B. ISSUE PRESENTED

Whether this untimely, mixed, and frivolous petition should be dismissed?

C. STATEMENT OF THE CASE

On May 27, 1998, at about 3:00 p.m., Vinh Q. Tran and two others broke into Lien Giang's home armed with handguns. Appendix B (Renton Police Department Certification for Determination of Probable Cause in case number 98-5247). Giang, a 70-year-old female, was alone in her home. Id. Tran and his codefendants, armed with handguns, surprised Giang upstairs and threw her on the floor. Id. Tran, the apparent leader, demanded \$12,000. Id. The three then ransacked her home by dumping out drawers, clearing out cabinets, overturning flower pots, and cutting into furniture to find cash and jewelry. Id.

Despite locating \$3,000 in cash and jewelry, Tran and his codefendants returned to violently assault Giang and demand that she reveal where she had additional cash and valuables hidden.

Appendix B. They struck her in the head with their pistols, threw her around, and cut her clothing to make her comply. Id.

Tran committed the majority of the assaults on Giang. Appendix B. For one of his threats, Tran set up a pillow in front of a picture of Giang's family then fired his gun through it. Id. He told her that he would shoot her in the same way unless she revealed where more cash was hidden. Id. For another of the assaults, they boiled water in a pan, bound Giang with tape, and Tran then dipped Giang's feet into the boiling water. Id.

At approximately 5:00 p.m., Giang's 26-year-old cousin, Nguyen Luong, arrived at the home. Appendix B. Tran and the two others seized Luong, bound him, and subjected him to similar treatment as Giang. Id. They cut Luong's clothes, struck him in the head, kicked him, and poured hot water on his back. Id. They also used a lighter to singe the hair on his head and face. Id. Throughout, they demanded money. Id. They then took Luong's wallet and ATM card and forced him to reveal his PIN. Id. Tran then used Luong's truck to go to an ATM. He returned approximately 10 minutes later. Id.

A half an hour later, Giang's niece, 34-year old Hao Lee, arrived home. Appendix B. She was also seized at gunpoint. Id.

Tran and the others then assaulted her by striking her with a handgun, kicking her, and cutting her clothing. Id. They stole her wallet and forced her to reveal her PINs. Id. Tran also cut Lee's hair with a knife while holding her head to the ground with his foot. Id. He then tied her to a chair with an electric cord around her neck, bound her ankles with tape, taped her hands behind her back, and taped her mouth shut. Id. He also struck Giang in an effort to force Lee to reveal more information. Id.

Tran and one of the others then took Luong to Fred Meyer to withdraw money using his ATM card. Appendix B. Tran told Luong that Lee and Giang would be killed if he did not cooperate. Id. They returned, and Tran instructed one codefendant to boil water. Id. Tran covered Lee's head and commented about her reporting him and his codefendants to the police. Id. He then cut Lee's pants, exposed her bare thighs, and placed the boiling hot pot on Lee's thighs. Id. Tran told Lee that she did not recognize him, that he had connections with the police and gangs, that he would kill her and her family, and that all of the people in their family picture would be dead. Id. He placed the boiling hot pot on her left thigh. Id. Lee pulled her leg back and splashed some of the water. Id.

Tran and the others fled in Lee's Honda Accord with stolen cash, a handgun, jewelry, and other miscellaneous items. Appendix B. Luong was able to free himself and then freed the others. Id. Each of the victims was injured. Id. Giang suffered second and third degree burns on her feet and ankles. Id. Lee suffered second-degree burns on her thighs. Id. Luong had lesser, though obvious, burns and bruises. Id.

Several days later, on June 2, 1998, Tran committed another, unrelated attack. He and a different codefendant, Singer, surprised Bo Li as Li returned to his Seattle home in the mid-afternoon. Appendix C (Seattle Police Department Certification for Determination of Probable Cause for case number 98-225058). Tran came up behind Li and put his gun into Li's side. Id. He then walked him into the home and tied him up. Id. Singer stood guard over Li with his firearm while Tran ransacked Li's home. Id. Li was able to break free, wrestled the handgun from Singer, and shot Singer. Id. Li fled, but Tran shot Li in the side. Id. Tran and Singer stole Li's vehicle and fled the scene. Id.

The State charged Tran by amended information as follows:

Count 1: first-degree burglary, against Bo Li on June 3, 1998;

Count 2: first-degree robbery, against Bo Li on June 3, 1998;

Count 3: first-degree rendering criminal assistance on June 3, 1998;

Count 4: first-degree burglary, against Lien Giang, Nguyen Luong, and Hao Lee on May 27, 1998;

Count 5: first-degree robbery, against Lien Giang, Nguyen Luong, and Hao Lee on May 27, 1998;

Count 6: first-degree assault, against Bo Li on June 3, 1998; and

Count 7: second-degree assault, against Lien Giang on May 27, 1998. Appendix D (Amended Information). The State further alleged that Tran was armed with a firearm during the commission of the crimes in counts 1, 2, 4, and 5, pursuant to former RCW 9.94A.310(3). Id.

On April 22, 2005, Tran pled guilty as charged to all counts except for count 3, which the State dismissed pursuant to the plea agreement. Appendix E (Statement of Defendant on Plea of Guilty); Appendix F (Plea Agreement). After pleading guilty, Tran absconded from the law and was not sentenced until August 11, 2008. Appendix A; Appendix G (Order for Bench Warrant). The

sentencing court imposed 318 months of total confinement.

Appendix A. Tran did not file a direct appeal.

In December of 2013, Tran filed a personal restraint petition, contending that his offender score was incorrect because it included a washed-out juvenile conviction, and because two of his convictions merged under double jeopardy principles. The State filed a response on May 1, 2013. Tran filed a reply on May 28, 2014. However, before this Court determined the merits of the petition, Tran moved to withdraw it on July 12, 2014. This Court dismissed Tran's petition on July 21, 2014. Appendix H (Dismissal Order).

Tran has now filed this second personal restraint petition, raising two of the same issues as in his first petition.

D. ARGUMENT

Tran appears to make three primary claims: (1) that his offender score is incorrect because it mistakenly included a juvenile conviction committed before Tran was 15 years old; (2) that each of the burglary and robbery convictions, counts 1-2 and 4-5, constitute the same criminal conduct and should not have separately counted towards his offender score; and (3) that his second-degree assault and robbery convictions in counts 5 and 7 merge under double

jeopardy principles. Tran's claims fail. The petition must be dismissed because it is untimely, "mixed," and frivolous.

1. STANDARD OF REVIEW.

Relief by way of a personal restraint petition is extraordinary. In re Pers. Restraint of Coats, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice, or nonconstitutional error constituting a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Pers. Restraint of Davis, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004).

2. THIS "MIXED" PETITION INCLUDES BOTH TIMELY AND UNTIMELY CLAIMS AND MUST BE DISMISSED.

Tran's date of finality is August 1, 2008, when the trial court entered the judgment and sentence. RCW 10.73.090(3); Appendix A. Tran's claim that his offender score was incorrect is time barred because Tran fails to demonstrate that his judgment and sentence is facially invalid. His claim that two of his convictions merge is potentially exempt from the time-bar. RCW 10.73.100(3). However, because Tran's petition raises

issues that are not “solely based” on the statutory exceptions to the one-year time limit, the petition is “mixed” and must be dismissed in its entirety.

a. Tran Cannot Demonstrate His Judgment And Sentence Is Facially Invalid.

The petitioner bears the burden of demonstrating that his judgment and sentence is facially invalid. In re Pers. Restraint of McKiernan, 165 Wn.2d 777, 781, 203 P.3d 375 (2009). A judgment and sentence is not facially invalid merely because the court makes a legal error. In re Pers. Restraint of Scott, 173 Wn.2d 911, 916, 271 P.3d 218 (2012). Generally, a judgment and sentence is facially invalid only where “it demonstrates that the trial court did not have the power or the statutory authority to impose the judgment or sentence.” Id. Not all errors on the face of a judgment render it invalid. Coats, 173 Wn.2d at 143 (finding no facial invalidity despite that judgment and sentence listed the incorrect maximum sentence because the court sentenced defendant within the standard range). The judgment must contain a substantial defect that is more than a technical misstatement that had no actual effect on the petitioner’s rights. McKiernan, 165 Wn.2d at 783.

Generally, a sentence based on an incorrect offender score is a facial invalidity. In re Pers. Restraint of Johnson, 131 Wn.2d 558, 568-69, 933 P.2d 1019 (1997). However, even if the offender score was incorrect, there is no facial invalidity if the court sentenced the defendant based on the correct standard range. In re Pers. Restraint of Toledo-Sotelo, 176 Wn.2d 759, 767-69, 297 P.3d 51 (2013).

- i. Tran is not entitled to relief based on his claim regarding his prior washed-out juvenile conviction.

Here, Tran is correct that his juvenile conviction should not have been included in his offender score. Tran's offender score should have been calculated as 10 rather than 13 or 12.<sup>1</sup> However, this error does not render the judgment facially invalid because the correction still results in an offender score above 9. The trial court sentenced Tran to the high end of the standard range given the egregious facts of Tran's crimes. There is no indication that the court would have imposed a different sentence within the same standard range if Tran's offender score were a 10. Because the sentencing court sentenced Tran within the correct standard range, it did not exceed its authority by imposing 318 months of

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<sup>1</sup> Tran's offender score for the first-degree assault was 13 and it was 12 for the remaining charges. Appendix A.

confinement. Tran's claim that his juvenile conviction should not have been included in his offender score is time barred.

Before 1997, the Sentencing Reform Act (SRA) provided that the offender score for a current adult offense did not include juvenile offenses committed before the age of 15, unless the offense was a sex or serious violent offense. Former RCW 9.94A.030(12)(b)(ii); Former RCW 9.94A.360(4). In 1997, the SRA was amended to include all prior juvenile offense adjudications. Laws of 1997, Ch. 338, § 5 (eff. date July 1, 1997). However, the Washington Supreme Court held that this amendment only applied prospectively. State v. Smith, 144 Wn.2d 665, 670-71, 30 P.2d 1245 (2001).

In 2002, the legislature again amended the SRA. This amendment stated that all previously "washed out" prior convictions shall be included in a defendant's offender score if the current version of the SRA required inclusion of those convictions. Former RCW 9.94A.525(18). The 2002 amendments applied only to offenses occurring after the statute's effective date, June 13, 2002. Laws of 2002, ch. 107, § 4; State v. Varga, 151 Wn.2d 179, 191-95, 86 P.3d 139 (2004). Thus, if the current adult offense occurred before the 2002 SRA amendments, and the prior juvenile

offense (occurring before 1997) was committed before age 15, and the offense was not a sex or serious violent offense, then the prior juvenile offense does not count as criminal history. In re Pers. Restraint of Jones, 121 Wn. App. 859, 871, 88 P.3d 424 (2004).

Here, Tran committed the current offenses in 1998, his juvenile conviction was for first-degree robbery (not a sex offense or serious violent offense), and Tran was 14 years old at the time he committed the juvenile offense.<sup>2</sup> Therefore, his juvenile robbery conviction should not have been included in his offender score for these offenses. His correct offender score was 10, rather than 12 and 13. See Appendix J (scoring sheets attached to statement of defendant on plea of guilty).

However, this error does not affect Tran's standard range. Thus, the sentencing court did not exceed its legal authority in imposing sentence. Moreover, Tran has provided no evidence that the sentencing court intended to sentence him to anything less than the high end of the standard range. Thus, Tran has not met his burden to establish facial invalidity and his claim is time barred.

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<sup>2</sup> Tran was born on December 25, 1997, and he committed the juvenile first-degree robbery on November 18, 1992. Appendix I (information for Tran's juvenile first-degree robbery conviction).

Therefore, he has not established the necessary prejudice for relief in a collateral attack.

- ii. Tran is not entitled to relief based on his claim regarding "same criminal conduct."

Next, Tran contends that his offender score was incorrect because the sentencing court should have concluded that each count of burglary and robbery were the same criminal conduct. He claims that this would have resulted in an offender score of 4 because counts 1 and 2 would have counted only as 1 point, and counts 4 and 5 would have counted only as 1 point. Tran fails to point to any evidence in the record to support his claim. He cannot establish his judgment was facially invalid on this basis.

Two or more offenses constitute the "same criminal conduct" if the crimes require the same criminal intent, are committed at the same time and place, and involve the same victim. RCW 9.94A.589(1)(a). All three elements must be met to support a finding of "same criminal conduct." State v. Graciano, 176 Wn.2d 531, 536, 295 P.3d 219 (2013). If the sentencing court finds that two or more offenses encompass the "same criminal conduct" then those offenses count as one crime. RCW 9.94A.589(1)(a). The statute is narrowly construed to

disallow most "same criminal conduct" claims. Graciano, 176 Wn.2d at 540.

The defendant bears the burden in this fact-based inquiry. Graciano, 176 Wn.2d at 536, 539. The sentencing court's determination will not be disturbed unless the court abuses its discretion or misapplies the law. Id. at 536.

Here, Tran fails to produce any evidence that the sentencing court exceeded its authority by counting the burglary and robbery offenses as separate offenses. In fact, as part of the plea, Tran specifically agreed to ask for 300 months confinement, a figure based upon a calculation of his offender score as greater than 9 which could only be reached by counting each crime as separate conduct. Appendix F; Appendix J. Tran also fails to address the burglary anti-merger statute. The burglary anti-merger statute gave the sentencing court authority to punish Tran separately for each burglary and robbery, even if it found the crimes constituted "same criminal conduct." RCW 9A.52.050; State v. Williams, \_\_\_ Wn.2d \_\_\_, 336 P.3d 1152, 1155 (2014) (holding that the burglary anti-merger statute allows the trial court to separately punish a defendant for burglary and another offense constituting "same criminal conduct" only for current offenses).

Because Tran has not carried his burden to demonstrate that the sentencing court exceeded its authority, Tran has not shown his judgment is facially invalid. His "same criminal conduct" claim is time barred and his petition must be dismissed.

b. The Petition Is "Mixed" And Must Be Dismissed.

Because Tran filed this petition more than one year after his judgment became final, he must demonstrate that *all* of his claims fall within the statutory exceptions to the time bar set out in RCW 10.73.090 and .100. Otherwise, the entire petition is "mixed" and must be dismissed. Tran has not demonstrated that *all* of his claims fall within an exception. Therefore, his petition is "mixed" and must be dismissed.

In In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 348-49, 5 P.3d 1240 (2000), the court explained the unmixed petition requirement of RCW 10.73.100. RCW 10.73.100 provides several exceptions to the one-year time limit for collateral attacks. Specifically, it provides that the time limit "does not apply to a petition or motion that is based solely on one or more of the following grounds," and then goes on to enumerate six distinct grounds. RCW 10.73.100. Additionally, RCW 10.73.090

"specif[ies] two preconditions in order for the time limit to apply: (1) that the judgment and sentence be 'valid on its face' and (2) that the judgment and sentence be 'rendered by a court of competent jurisdiction.'" In re Pers. Restraint of Adams, 178 Wn.2d 417, 424, 309 P.3d 451(2013). These preconditions are treated as two "additional, narrow 'exceptions' to the time limit." Id.

In Stoudmire, this Court astutely gave effect to the legislature's use of the term "solely," concluding that in order for a petition to be exempt from the one-year time limit, all grounds for relief that are asserted must fall within the exceptions set forth in RCW 10.73.100.<sup>3</sup> If one or more of the claims do not fall within those exceptions, the petition is "mixed" because it is not based "solely" on the enumerated exceptions. Stoudmire, 141 Wn.2d at 349.

Thus, RCW 10.73.100 allows this Court to consider a petition *only* if the petition is based *solely* upon grounds listed in RCW 10.73.100 (or if the grounds fit under the two exceptions contained in RCW 10.73.090). A "mixed" petition must be dismissed in its entirety. Stoudmire, 141 Wn.2d at 349. It must be

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<sup>3</sup> Or, as the facts in Stoudmire indicate, the claim must fall within one of the two other statutory exceptions that are outlined in RCW 10.73.090(1): that the judgment and sentence is facially invalid or that the court rendering the judgment was not of competent jurisdiction.

dismissed without analyzing claims that may not be time-barred.

In re Pers. Restraint of Hankerson, 149 Wn.2d 695, 703, 72 P.3d 703 (2003). RAP 16.4(d) does not bar a petitioner from filing a future petition based solely on claims that fall within the exceptions to the time bar. Id. at 703-04.

Tran's claim that counts 5 and 7 merge is exempted from the time bar because it is within one of the exceptions of RCW 10.73.100.<sup>4</sup> However, as noted above, Tran's offender score claims do not fall within any of the statutory exceptions to the one-year time limit for collateral attacks, because Tran fails to establish a facial invalidity. Because Tran raises claims that fall both within and outside of the exceptions found in RCW 10.73.100 and RCW 10.73.090, his petition is "mixed," and the entire petition must be dismissed.

3. TRAN WAIVED A CLAIM THAT FOUR OF HIS CONVICTIONS ARE THE SAME CRIMINAL CONDUCT BY HIS AGREEMENT TO THE STATE'S CALCULATION OF HIS OFFENDER SCORE.

Despite agreeing as part of his plea and at sentencing that his current convictions should score separately, Tran now argues in this personal restraint petition that the trial court erred by not finding

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<sup>4</sup> RCW 10.73.100(3) provides that the one-year time limit for a collateral attack does not apply to a petition based solely on grounds that the conviction was barred by double jeopardy.

that the crimes constituted the same criminal conduct. Tran's arguments must be rejected. He has waived the right to raise this issue by affirmatively agreeing with the State's calculation of his standard range to include the crimes as separate criminal conduct.

a. Tran Has Waived His Right To Present This Claim.

Tran never raised the issue of same criminal conduct with respect to any of his convictions in the trial court. Instead, he pled guilty and affirmatively agreed with the State's calculation of his standard ranges, which were based on all of his crimes constituting separate criminal conduct. Therefore, Tran has waived the right to present this claim. His petition should be dismissed.

Generally speaking, a criminal defendant does not waive a challenge to a miscalculation of an offender score by failing to object in the sentencing court. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 874, 50 P.3d 618 (2002). Normally, a sentence based on a miscalculated offender score will constitute a "fundamental defect that results in a complete miscarriage of justice." Johnson, 131 Wn.2d at 568-69.

However, it is well settled that a defendant can agree to *facts* underlying his plea, even if erroneous. Goodwin, 146 Wn.2d at

874. In fact, the Washington Supreme Court has foreclosed Tran's exact claim by stating that if a defendant agreed to the offender score and sentencing range as part of his plea bargain, then he has waived any challenge to his offender score based on same criminal conduct arguments. In re Pers. Restraint of Shale, 160 Wn.2d 489, 495, 158 P.3d 588 (2007), overruled on other grounds by State v. Knight, 162 Wn.2d 806, 174 P.3d 1167 (2008). See also State v. McDougall, 132 Wn. App. 609, 612-13, 132 P.3d 786 (2006) (finding that defendant could not raise the issue of same criminal conduct for the first time on appeal when he agreed to an offender score that included the two current counts as separate conduct). Because the issue of "same criminal conduct" involves an analysis of the *facts* surrounding the crimes, and requires an exercise of the sentencing court's *discretion*, the "failure to identify a factual dispute for the court's resolution" results in a waiver of the issue by the defendant. Goodwin, 146 Wn.2d at 875 (quoting State v. Nitsch, 100 Wn. App. 512, 520, 997 P.2d 1000, review denied, 141 Wn.2d 1030 (2000)).

As part of his plea, Tran agreed to the State's understanding of his criminal history. Appendix E at 3. He also specifically agreed in the plea agreement that both he and the State would ask

for a sentence of 300 months of confinement. Appendix F. The 300-month calculation was within the standard range for the most serious offense, first-degree assault. The 300 months necessarily included an agreement that each of his crimes were based on separate conduct, because it was based on an offender score of 9 or more, which could only result from each count scoring separately.

While Tran's presentence report is not in the court record, the clerk's minutes from the sentencing hearing give no indication that Tran asked for anything other than 300 months, as agreed upon in the plea agreement. Appendix K. In fact, had he asked for a lesser sentence, he would have breached the plea agreement. As such, the sentencing court did not have occasion to exercise its discretion to resolve any factual dispute that could possibly have existed and Tran has waived the right to raise the issue.

Moreover, Tran clearly benefitted from his plea agreement. The State dismissed the rendering criminal assistance charge, count 3. Appendix A; Appendix F. The State also did not add a firearm enhancement to the first-degree assault charge, although the facts would have allowed it. Such an amendment would have added 60 months consecutive to the base sentence, meaning Tran

would have faced 378 months total confinement.<sup>5</sup> See Former RCW 9.94A.310(3). Most importantly, Tran obtained the State's agreement not to seek the high end of the standard range in exchange for his pleas. Appendix F.

Because Tran affirmatively agreed that his crimes constituted separate criminal conduct, he is precluded from raising the claim in this collateral attack.

4. TRAN'S FIRST-DEGREE ROBBERY AND SECOND-DEGREE ASSAULT IN COUNTS 5 AND 7 DO NOT MERGE.

Tran further argues that his convictions for first-degree robbery and second-degree assault in counts 5 and 7 violate double jeopardy. According to Tran, these two charges merge. Tran's argument should be rejected because: (1) the assault on Giang with a pistol, the purpose of which was to obtain information as to where more valuables could be recovered, was a separate act that took place after an already-completed robbery; (2) the act of striking Giang on the head with a pistol did not elevate the charge from second-degree to first-degree robbery; and (3) the robbery and assault involved different victims and created separate and

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<sup>5</sup> The first-degree assault had the highest standard range of all of the crimes—240-318 months. The firearm enhancement would have added 60 months consecutive to the 318 months, resulting in a total of 378 months. Former RCW 9.94A.310(3).

distinct injuries. Tran's petition has no merit and should be dismissed.

Double jeopardy claims are questions of law that are reviewed de novo. State v. Kelley, 168 Wn.2d 72, 76, 226 P.3d 773 (2010). Although the constitutional guaranty against double jeopardy bars multiple punishments for the same offense, the legislature can enact statutes imposing cumulative punishments for the same conduct. Id. at 76-77; State v. Wade, 133 Wn. App. 855, 871, 138 P.3d 168 (2006). If the legislature intends to impose multiple punishments, their imposition does not violate the double jeopardy clause. Kelley, 168 Wn.2d at 77.

The merger doctrine is one tool for determining legislative intent. Wade, 133 Wn. App. at 871. Under this doctrine, when the degree of one offense is raised by conduct separately criminalized by the legislature, the presumption is that the legislature intended to punish both offenses through a greater sentence for the greater crime. State v. Freeman, 153 Wn.2d 765, 772-73, 108 P.3d 753 (2005). For instance, the merger doctrine may be triggered when a completed second-degree assault elevates robbery to the first degree. RCW 9A.56.200(1)(a)(i)-(ii); RCW 9A.56.190;

RCW 9A.36.021(1)(c); State v. Kier, 164 Wn.2d 798, 805, 194 P.3d 212 (2008).

This presumption is not a rule. Freeman, 153 Wn.2d at 774. Each case must be analyzed on its own facts and given a "hard look." Id. Even if on an abstract level two convictions appear to merge, if there is an independent purpose or effect to each conviction they may be punished as separate offenses. Id. at 773.

In other words, merger for these two offenses is not automatic, and "a case by case approach is required to determine whether first-degree robbery and second-degree assault are the same for double jeopardy purposes." Freeman, 153 Wn.2d at 780. "For example, when the defendant struck a victim after completing a robbery, there was a separate injury and intent justifying a separate assault conviction, especially since the assault did not forward the robbery." Id. at 779.

The hypothetical presented by the Freeman court is precisely what occurred in this case: Tran and his accomplices broke into Giang's house armed with handguns, and after having stolen \$3,000 and assorted jewelry, Tran proceeded to strike Giang on the head with a pistol in order to force her to give more information as to where additional valuables were located.

Appendix B. This latter act of assault did not further the already-completed robbery. Tran had already taken the victim's property using force and violence, and by displaying a firearm.

Wade is also instructive. In Wade, the defendant and two female accomplices unlawfully entered Ben and Jennifer Dobbe's home and demanded money. 133 Wn. App. at 861. The two females claimed that they were owed for their services at a bachelor party. Id. At the time of the break-in, Christopher Wakefield was also in the residence. Wade displayed a gun and asked where the bachelor was. When Ben said he did not know, Wade hit Ben in the head with the gun. Id. Wade then asked where the money was. When Ben replied, "What money?", Wade again hit Ben in the head and shoulder with the gun. Id. Wade pointed the gun at Jennifer, Christopher, and Ben, in that order, and demanded money and jewelry from each. Id. A jury found Wade guilty of the first-degree robberies of Ben, Jennifer, and Christopher, first-degree burglary, and the second-degree assault of Ben. Id.

On appeal, Wade argued that his convictions for the first-degree robbery and second-degree assault of Ben Dobbe violated double jeopardy. Wade, 133 Wn. App. at 870. The court disagreed

because the assault conviction was based on Wade's multiple acts of clubbing Ben with the gun when Ben responded that he did not know where the bachelor was or where the women's money was, while the robbery occurred when he pointed the gun to rob the three victims. Id.

The court observed that when Wade pointed the gun at Ben demanding money and jewelry, the robbery had already taken place, and, thus, he committed a separate assault. Wade, 133 Wn. App. at 870. The court distinguished the purpose and effect of the robbery and the assault: "The assault conviction was based on acts designed to obtain information." Id. The court concluded that this act had a purpose independent of the robbery of Ben's money and jewelry. Wade's convictions for second-degree assault and first-degree robbery did not violate double jeopardy. Id.

Similarly, Tran's assault on Giang had a different purpose from the robbery. Tran and his accomplices had already ransacked the residence. It is evident from the Certification for Determination of Probable Cause that the purpose or effect of Tran striking Giang with the pistol after the robbery was complete was the same as in Wade - to obtain more information as to where additional items could be located. Appendix B.

Furthermore, the application of the merger doctrine rests on how the crimes were charged and proved in the individual case. Freeman, 153 Wn.2d at 778. In State v. Zumwalt, 119 Wn. App. 126, 128-29, 82 P.3d 672 (2003), aff'd, Freeman, 153 Wn.2d 765 (2005), a case consolidated under Freeman, the defendant was charged with assault and robbery after punching the victim in the face and robbing her. The first-degree robbery charge was based on the reckless infliction of bodily injury alternative means, and the second-degree assault charge was based on the reckless infliction of bodily harm alternative means. Zumwalt, 119 Wn. App. at 131. Unlike here, the only facts that elevated Zumwalt's robbery to first-degree also established his separate assault charge. Id. at 131-32. Therefore, Zumwalt's convictions merged for double jeopardy purposes because "[a]s charged and proved, without the conduct amounting to assault, [Zumwalt] would be guilty of only second-degree robbery." Freeman, 153 Wn.2d at 778.

Here, however, Tran was charged with first-degree robbery in count 5 because he was armed with or displayed a deadly weapon in the course of the robbery of Giang, Luong, and Lee. He was charged with second-degree assault in count 7 for intentionally assaulting Giang with a deadly weapon. Appendix D.

By entering his guilty plea pursuant to North Carolina v. Alford,<sup>6</sup> Tran acknowledged that there was a substantial likelihood that he would be found guilty at trial based on the facts contained in the police reports. Appendix E. Tran further agreed that the trial judge could review the Certification for Determination of Probable Cause as basis for his plea. Thus, in order to determine if the two counts merge as charged and proved, this Court must look at the Certification for Determination of Probable Cause. Appendix B.

As to count 5, first-degree robbery, the facts contained in Detective Gustine's certification established that Tran and two other males broke a window in Giang's residence through the basement, entered the house, went upstairs, surprised Giang and threw her on the floor. Appendix B. Tran and one of the other males were both armed with and displayed handguns. Id. Tran demanded money, specifically \$12,000. Id. The three males ransacked the house by dumping drawers, cabinets, flower pots and cutting furniture. Id. As to count 7, second-degree assault, the certification established that after locating \$3,000 and assorted jewelry in the residence, Tran struck Giang on the head with a pistol, threw her around, and

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<sup>6</sup> North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

cut her clothing in an effort to make her reveal where *additional* money was hidden. Id.

In order to prove first-degree robbery as charged and proven in this case, the State was not required to prove an assault with a deadly weapon. It was required only to prove that Tran was armed with or displayed what appeared to be a deadly weapon. Tran's later and distinct act of striking Giang on the head with a pistol was the sole basis for the assault charge.

Lastly, in addition to the fact that the robbery and the assault in question each had an independent purpose and effect, Tran's convictions do not merge because the assault and robbery involved different victims and created separate and distinct injuries. State v. Vladovic, 99 Wn.2d 413, 421-22, 662 P.2d 853 (1983). Tran was charged with robbing Giang, Luong, and Lee. The robbery charge involved forcing these *three* people to the ground and pointing a weapon at them while demanding money. Appendix B. The assault charge against Giang alone arose after money and jewelry had already been taken from her residence, while she was home alone. Id. Given that the injuries of the robbery and assault involved different people, and occurred at separate times, they clearly created separate and distinct injuries.

In sum, Tran's assault on Giang with a pistol, after he had already successfully stolen valuables from the residence, was gratuitous and in no way elevated the crime from second to first degree robbery. Therefore, Tran's claim is frivolous.

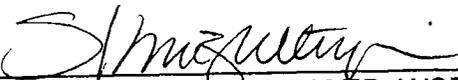
E. CONCLUSION

This personal restraint petition must be dismissed because it is untimely, "mixed," and frivolous.

DATED this 17<sup>th</sup> day of December, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
STEPHANIE D. KNIGHTLINGER, WSBA #40986  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

APPENDIX A

FILED

2008 AUG 11 AM 11:44

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

JUDGMENT NUMBER 08-9-09931-3

DOC AUG 11 2008  
COMMITMENT ISSUED  
PRESENTENCING STATEMENT & INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, Kevin Donnelly and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Kim Giang, Hao Lee, (in 8/08), As Emily (in 8/08)

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 4/18/2005 by plea of:

Count No.: I Crime: BURGLARY IN THE FIRST DEGREE  
RCW 9A.52.020 Crime Code: 02304  
Date of Crime: 06/03/1998 Incident No. 98-5247, 98-62525

Count No.: II Crime: ROBBERY IN THE FIRST DEGREE  
RCW 9A.56.200(1)(A)(I) & 9A.56.190 Crime Code: 02904  
Date of Crime: 06/03/1998 Incident No. \_\_\_\_\_

Count No.: IV Crime: BURGLARY IN THE FIRST DEGREE  
RCW 9A.52.020 Crime Code: 02304  
Date of Crime: 05/27/1998 Incident No. \_\_\_\_\_

Count No.: V Crime: ROBBERY IN THE FIRST DEGREE  
RCW 9A.56.200(1)(A)(I)(II) & 9A.56.190 Crime Code: 02904  
Date of Crime: 05/27/1998 Incident No. \_\_\_\_\_

[X] Additional current offenses are attached in Appendix A

	C/PRO
	CUST
	CASH
<input checked="" type="checkbox"/>	JUDG
	DISB
<input checked="" type="checkbox"/>	CRIM
<input checked="" type="checkbox"/>	ACCTG
	EXH

52

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E. *Signed today*
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
    - Date to be set.
    - Defendant waives presence at future restitution hearing(s).
  - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

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

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500 + restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

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

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

~~170~~ 170 months/days on count I; 231 months/days on count II; 176 months/day on count IV  
231 months/days on count V; 318 months/days on count VI; 84 months/day on count VII

The above terms for counts I, II, IV, V, VI & VII are consecutive / concurrent.

The above terms shall run  CONSECUTIVE  CONCURRENT to cause No.(s) \_\_\_\_\_

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

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: \_\_\_\_\_

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

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

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

Credit is given for  508 days served  days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with Boli, Lien Giang, Hao Lee, Nguyen Luong

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.  
 HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

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

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

- (c)  **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
  - Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
  - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
  - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
  - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
  - Felony Violation of RCW 69.50/52 - 9 to 12 months
 or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
  - APPENDIX H for Community Custody conditions is attached and incorporated herein.
  - APPENDIX J for sex offender registration is attached and incorporated herein.

4.8  **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480.** The State's plea/sentencing agreement is  attached  as follows:

\_\_\_\_\_

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

Date: July 2008 Aug. 1, 2008

[Signature]  
 JUDGE  
 Print Name: Jeffrey M. Ramsdell

Presented by:  
[Signature]  
 Deputy Prosecuting Attorney, WSBA# 31563  
 Print Name: KARISA TAYLOR

Approved as to form:  
[Signature]  
 Attorney for Defendant, WSBA # 10821  
 Print Name: Kevin P. Donnelly

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE:  
DEFENDANT'S ADDRESS:

*[Handwritten signature]*

*King County Jail/DA*

VINH QUOC TRAN

DATED: 8/1/08

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK

BY: *Kristin Grant*  
DEPUTY CLERK

*[Handwritten signature]*  
JUDGE, KING COUNTY SUPERIOR COURT  
JEFFREY RAMSDELL

CERTIFICATE

OFFENDER IDENTIFICATION

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

S.I.D. NO.  
DOB: DECEMBER 25, 1977  
SEX: M  
RACE: A

\_\_\_\_\_  
CLERK

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

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
(FELONY) - APPENDIX A  
ADDITIONAL CURRENT OFFENSES

2.1 The defendant is also convicted of these additional current offenses:

Count No.: VI Crime: ASSAULT IN THE FIRST DEGREE  
RCW 9A.36.011(1)(A)(C) Crime Code 01016  
Date Of Crime 06/03/1998 Incident No. \_\_\_\_\_

Count No.: VII Crime: ASSAULT IN THE SECOND DEGREE  
RCW 9A.36.021(1)(C) Crime Code 01020  
Date Of Crime 05/27/1998 Incident No. \_\_\_\_\_

Date:

8/1/08

J. J. [Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

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

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ROBBERY 1 <sup>ST</sup> DEGREE	2/1/1993	JUVENILE	928075115	KING CO

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

Date:

*[Signature]*  
8/1/08

*[Signature]*  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
(FELONY) - APPENDIX C,  
ADDITIONAL CURRENT OFFENSE(S)  
SENTENCING DATA

2.3 SENTENCING DATA: Additional current offense(s) sentencing information is as follows:

Count	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
VI	9+	XII	240 TO 318 MONTHS		240 TO 318 MONTHS	10 YRS AND/OR \$50,000
VII	9+	IV	63 TO 84 MONTHS		63 TO 84 MONTHS	10 YRS AND/OR \$20,000

[ ] The following real and material facts were considered by the court pursuant to RCW 9.94A.530(2):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

*[Signature]*  
8/1/08

*[Signature]*  
Judge, King County Superior Court

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-S  
Set

ORDER SETTING RESTITUTION

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following person (s) is entitled to restitution in the following amounts; IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

MRS. GIANG  
330-Maple Ave N.W.  
Renton, WA. 98055  
Amt \$3,000.00

CRIME VICTIMS COMPENSATION  
P.O. Box 44520  
OLYMPIA, WA. 98504-4520  
Amt \$134.55  
(VH. 46081)

HAO Q. LEE  
330-Maple Ave N.W.  
Renton, WA. 98055  
Amt \$19,660.00

STATE FAEN INS.  
15320-N.E. 40<sup>th</sup> ST.  
REDMOND WA. 98052  
Amt \$10,153.48  
(Claim # 47-M030-114)

REGENCE BLUE SHIELD  
P.O. Box 91015  
Seattle WA 98111  
Amt \$3,103.00  
SS# 533-90-9247

BOEING CREDIT UNION  
12770 GATEWAY DR.  
TUKWILA WA. 98168  
Amt \$1600.00

(FERNANDO use of funds of HAO Q. LEE & NGUYEN HUONG)

Norm Maleng, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

DONE IN OPEN COURT this 18 day of August, 2008

JUDGE Jeffrey Ramsdell

Presented by:

Norm Maleng  
31503

Deputy Prosecuting Attorney

Copy received; Notice  
Presentation waived:

Kevin Donnelly  
19991  
Attorney for Defendant

Order Setting Restitution  
CCN#                      REF#

\* Pay Primary Victims Before Insurance Co or Govt Agencies.  
Restitution is a joint + several obligation with co-defendants: Viet Nguyen. 98-C-05130-0  
David Singer 98-C-05099-0, if convicted & ordered to pay under separate order.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

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

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

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

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

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

Date:

*[Handwritten signature]*  
8/11/08

*[Handwritten signature]*  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
APPENDIX H  
COMMUNITY PLACEMENT OR  
COMMUNITY CUSTODY

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

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

OTHER SPECIAL CONDITIONS:

The defendant shall not consume any alcohol.  
 Defendant shall have no contact with: Bo Li, Lien Giang, Hoa Lee, Nguyen Luong

Defendant shall remain  within  outside of a specified geographical boundary, to wit:

The defendant shall participate in the following crime-related treatment or counseling services:

The defendant shall comply with the following crime-related prohibitions:

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

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

Date: 8/1/08

[Signature]  
JUDGE

APPENDIX B

## RENTON POLICE DEPARTMENT AFFIDAVIT OF PROBABLE CAUSE

That Donald Gustine is a Detective with the Renton Police Department and has reviewed the investigation conducted in Renton Police Case Number 98-5247.

There is probable cause to believe that Viet Q. Nguyen and Vinh Q. Tran committed the crimes of Burglary 1, Robbery 1 and Assault 1. This belief is predicated on the following facts and circumstances:

On 05-27-98 at about 1500, Ms. Lien Giang, a 70 year-old female was alone in the upstairs portion of her house at 330 Maple Ave. NW, Renton, King County, Washington. Three male intruders broke a window in the basement and entered the house. They made their way upstairs, surprised her and threw her to the floor. Suspect #1, the leader, demanded money, specifically \$12,000, and ordered the other two about. Suspects #1 and #2 were Vietnamese and #3 of other Asian descent. Suspects #1 and #2 were armed with handguns, and all three gloved. The last suspect was seen little, wore hat and sunglasses, and remained near the front door. During the next few hours suspects ransacked the house dumping drawers, cabinets, flower pots, cutting furniture, etc. while searching for money and jewelry. Periodically, Giang was struck about the head with a pistol, thrown about, and clothing cut in an effort to make her reveal hiding places of money, despite the fact suspects had already located about \$3,000 cash, plus assorted jewelry. The principal assaults were committed by suspect #1, with the others following orders. Suspect #1 also set up a picture of the family and fired the handgun through a pillow into the picture. He threatened to shoot her in the same way if she didn't tell him about the money. She was also bound using masking and shipping tape. Suspects boiled water in a kitchen pan, then, one foot at a time, Suspect #1 placed Giang's feet into boiling water.

At about 1700 Giang's cousin, 26 year-old Nguyen Luong arrived home. Immediately he was seized by the armed suspects, bound and subjected to similar treatment. One suspect was armed with Luong's Tec 9 semi-auto pistol, previously located in a locked box in the basement. Luong was assaulted in a similar fashion as his clothes were cut, struck about the head, kicked, and hot water poured on his back. Additionally, a lighter was used to singe his head hair and cheek. The suspects demanded money. They took his wallet and ATM card and forced him to reveal his PIN. Suspect #1 took Luong's Toyota truck and left to use the card in a US Bank ATM machine. He returned within about 10 minutes.

At about 1730 Giang's niece, 34 year-old Hao Lee arrived home. Likewise, she was seized at gunpoint and forced to lie on the floor. She too was struck with the handgun, kicked, clothing cut. Her wallet was stolen, along with credit cards, and forced to reveal PINs. Suspect #1 struck Giang in an effort to extract information from Lee. They threw water on her face and #1 hit her on the head with the phone when he thought she lied to him. Suspect #1 cut her hair with a knife while holding her head to the floor with his foot. #1 tied her to a chair with electric cord around her neck and used tape to bind her ankles to the chair. Her hands were taped behind her back and tape placed over her mouth. Suspects #1 and #3 took Luong to the Fred Meyer to use his

# RENTON POLICE DEPARTMENT AFFIDAVIT OF PROBABLE CAUSE

ATM card, while #2 stayed behind to guard the others. Luong was told the others would be killed if he didn't cooperate.

When suspects returned, #1 instructed #2 to boil water. #1 placed a cover over Lee's head and made comments about their reporting to police. #1 checked with #2 to see if the water was hot. He cut her pants and underwear, exposing her thighs. Lee could see slightly through and under the head covering. #1 set the boiling pan on Lee's thigh. It was very hot and burning and held there for a few seconds. He told her she didn't recognize him, that he had connections with the police and gangs and he would kill she and her family; that the people in their family picture would be dead. Then he put the pot on her left thigh and she pulled her leg splashing some of the water. Luong pleaded with them to stop, but they wouldn't. The suspects took various items including cash, jewelry, handgun, and other miscellaneous, and fled in Lee's Honda Accord. Luong freed himself, then the others and police were called.

Police confirmed the above ATM card usage, plus other usage within about five hours of the crime.

The three victims sustained bruising and burning of varying degrees. Giang suffered second and third degree burns on her feet and ankles, while Lee suffered second degree burns on both thighs. Luong had lesser, though obvious burning, plus various bruising and singed hair and skin.

On 06-02-98 Seattle Police investigated a home invasion case with very similar methods and suspect descriptions. Composites in the Renton case resembled Seattle's suspects. Participants in that case included Vinh Tran, Viet Nguyen, and David Singer. Singer told Seattle Police that Tran and Nguyen were involved in the Renton case, though he wasn't clear how he knew this. Viet Nguyen told Seattle Police that he, Tran, and Singer committed the Renton incident, with the proceeds going to Tran. Individual montages of these suspects were shown independently to Giang, Lee, and Luong. Giang and Lee positively identified Viet Nguyen as suspect #2 in the case. Giang positively identified Vinh Tran as the leader, or "mean one". Likewise, Lee recognized, but could not positively identify, Tran as the leader, suspect #1. Seattle Police have arrested Singer and Nguyen. It is believed Tran fled to Texas.

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

07-01-98, Renton In King County  
Date and Place

 #1740  
Signature/ID#

D. Gustine

Renton Police

APPENDIX C

CAUSE NO. \_\_\_\_\_

SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	98-225058
UNIT FILE NUMBER	R98-113

That Dennis L Hossfeld is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 98-225058;

There is probable cause to believe that David R Singer committed the crime(s) of Assault/ Robbery/ Burglary.

This belief is predicated on the following facts and circumstances:

On June 2, 1998 at about 1429 hrs. Bo Li returned home to his house at 10239 59 Av S, City of Seattle, King County when two suspects, one later identified as David Singer and the other as VINH Q TRAN came up behind Mr. Li and put a gun into his side. The suspects walked Mr. Li into his residence where he was tied up and David Singer, with a 38 Caliber Revolver stood over him while the other suspect VINH TRAN ransacked the residence. VINH TRAN was collecting items to be taken at a later time. Mr. Li was able to untie himself and grabbed the 38 and shot David Singer. Mr. Li ran outside and was shot once in the side by a 25 Auto that VINH TRAN found inside the house. David Singer and VINH TRAN got into Mr. Li 95 Nissan Pathfinder Wa. 261HTB, vehicle and drove away in it. A 98 VW Jetta Wa. 936JAM belonging to David Singer mother was found parked in the 5700 blk of S Prentice, City of Seattle, King County. This is the vehicle the David Singer and VINH TRAN came to the residence in. That vehicle was impounded. At 1513 hrs. David Singer walked into Valley Medical center with gun shot wounds.

On June 3, 1998 at about 1300 hrs. I interview David Singer at Harborview hospital. He was advised of his Miranda Rights from a SPD form and he said that he wanted to talk to me. He said that he was at Mr. Li's house and that he was watching over him while VINH TRAN ransacked the house, that he got shot by Mr. Li, and VINH TRAN did shot Mr. Li. He said that they took the 95 Nissan Pathfinder from Mr. Li's driveway.

VINH TRANH drove DAVID Singer to Tien's house where HIEP and VIET NGUYEN were staying. VINH drove DAVID in the victim's vehicle to Valley Medical Center followed by HIEP in his black Jeep. VIET NGUYEN got the keys to DAVID SINGER's vehicle and drove with Phi Nguyen to the area looking for the vehicle. VIET NGUYEN knew they had a gun before the left the residence to do the robbery. VIET NGUYEN also admitted to doing a robbery in Renton with DAVID and VINH.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 10 day of JUNE, 1998, at Seattle, Washington.

*Dennis L. Hossfeld*  
 \_\_\_\_\_  
*Dennis L. Hossfeld*

APPENDIX D



1 accuse the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
2 each of them, at said time of being armed with a handgun, a firearm  
as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

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COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse DAVID RICHARD SINGER and VINH Q. TRAN, and each of them, of  
the crime of Robbery in the First Degree, based on the same conduct  
as another crime charged herein, committed as follows:

That the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
each of them, together with another, in King County, Washington, on  
or about June 3, 1998, did unlawfully and with intent to commit  
theft take personal property of another, to-wit: jewelry, from the  
person and in the presence of Bo Li, against his will, by the use or  
threatened use of immediate force, violence and fear of injury to  
such person or his property and in the commission of and in  
immediate flight therefrom the defendant was armed with a deadly  
weapon, to-wit: a handgun;

Contrary to RCW 9A.56.200(1)(a)(i) and 9A.56.190, and against  
the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the  
name and by the authority of the State of Washington further do  
accuse the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
each of them, at said time of being armed with a handgun, a firearm  
as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse VIET QUOC NGUYEN of the crime of Rendering Criminal  
Assistance in the First Degree, based on a series of acts connected  
together with another crime charged herein, committed as follows:

That the defendant VIET QUOC NGUYEN in King County, Washington,  
on or about June 3, 1998, with intent to prevent, hinder or delay  
the apprehension or prosecution of David Singer and Viet Tran, did  
render criminal assistance to David Singer and Viet Tran, a person  
who he knew, committed a Class A felony by concealing physical  
evidence, to-wit: a set of keys, that might aid in the discovery or  
apprehension of such person;

Contrary to RCW 9A.76.070(1)(2)(b) and 9A.76.050, and against  
the peace and dignity of the State of Washington.

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COUNT IV

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, of the crime of Burglary in the First Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, in King County, Washington on or about May 27, 1998, did enter and remain unlawfully in a building located at 330 Maple Avenue Northwest, Renton, in said county and state, with intent to commit a crime against a person or property therein, and in entering, and while in such building and in immediate flight therefrom, the defendants and another participant in the crime were armed with deadly weapons and did assault persons, to-wit: Lien Giang, Nguyen Luong, and Hao Lee;

Contrary to RCW 9A.52.020, and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, at said time of being armed with a Tec-9 and a pistol, firearms as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

## COUNT V

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, of the crime of Robbery in the First Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, in King County, Washington on or about May 27, 1998, did unlawfully and with intent to commit theft take personal property of another, to-wit: U.S. currency, a firearm, jewelry, and ATM and credit cards, from the person and in the presence of Lien Giang, Nguyen Luong, and Hao Lee, against their will, by the use or threatened use of immediate force, violence and

1 fear of injury to such persons or their property and to the person  
2 or property of another, and in the commission of and in immediate  
3 flight therefrom the defendants displayed what appeared to be  
4 firearms, to-wit: a Tec-9 and a pistol;

5 Contrary to RCW 9A.56.200(1)(a)(i)(ii) and 9A.56.190, and  
6 against the peace and dignity of the State of Washington.

7 And I, Norm Maleng, Prosecuting Attorney for King County in the  
8 name and by the authority of the State of Washington further do  
9 accuse the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of  
10 them, together with others, at said time of being armed with a Tec-9  
11 and a pistol, firearms as defined in RCW 9.41.010, under the  
12 authority of RCW 9.94A.310(3).

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COUNT VI

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse VINH Q. TRAN of the crime of Assault in the First Degree, a  
crime of the same or similar character as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

That the defendant VINH Q. TRAN in King County, Washington on  
or about June 3, 1998, with intent to inflict great bodily harm, did  
assault Bo Li, with a firearm, and a deadly weapon and force and  
means likely to produce great bodily harm or death, to-wit: a  
firearm, and did inflict great bodily harm upon Bo Li;

Contrary to RCW 9A.36.011(1)(a)(c), and against the peace and  
dignity of the State of Washington.

COUNT VII

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse VINH Q. TRAN of the crime of Assault in the Second Degree, a  
crime of the same or similar character as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

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

1 That the defendant VINH Q. TRAN in King County, Washington on  
2 or about May 27, 1998, did intentionally assault Lien Giang, with a  
3 deadly weapon, to-wit: a firearm;

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

6 NORM MALENG  
7 Prosecuting Attorney

8 By: \_\_\_\_\_  
9 Karissa L. Taylor, WSEA #31563  
10 Deputy Prosecuting Attorney

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APPENDIX E

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KING COUNTY  
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 98-C-05129-5 SEA

vs.

Vinh Tran

Defendant,

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

1. My true name is Vinh Q. Tran

2. My date of birth is 12/25/77

3. I went through the 9th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

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

(b) I am charged with the crime(s) of Burglary 1<sup>o</sup> (2 counts) Robbery 1<sup>o</sup> (2 counts) Assault 2<sup>o</sup>, and Assault 1<sup>o</sup>

The elements of this crime(s) are set forth in the ~~information~~ amended information, which is incorporated by reference and which I have reviewed with my lawyer.

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

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

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

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

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

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

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

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

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

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I + IV	87-116 months	60 months	Life - years \$ 50,000
II + V	129-171 months	60 months	Life - years \$ 50,000
VI	240-318 months	Ø	Life - years \$ 50,000
VII	63-84 months	Ø	10 years \$ 20,000

1           ~~The crime of~~ Each charge is a most serious offense as defined by  
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this  
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent  
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence  
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not  
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

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

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

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

21           (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a  
22 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to

1 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances  
2 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,  
3 attorney fees, and other costs and fees. Furthermore, the judge may place me on community  
4 supervision, community placement or community custody and I will have restrictions and  
5 requirements placed upon me.

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

8 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community  
9 supervision for a period of up to one year; or (B) to community placement or community custody for  
10 a period up to three years or up to the period of earned release awarded pursuant to RCW  
11 9.94A.728, whichever is longer. [If not applicable, this paragraph should be stricken and initialed by  
12 the defendant and the judge \_\_\_\_\_.]

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

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

22 Counts I & IV: 116 months confinement + 60 month enhancement, Counts II & V: 129  
months confinement + 60 month enhancement, Count VI: 300 months confinement  
(agreed), Count VII: 63 months confinement (continued on next page)

\$500 VPA, restitution, court costs, NCO w/ victims, community placement, ~~recompment~~. Parties agree that the defendant is entitled to credit for all time served awaiting extradition from Texas. Parties agree that pursuant to In re Charles, 135 Wn.2d 239 (1998), the weapon enhancements run consecutively to the base sentence for the crime to which they are attached but run concurrently to each other and to the base sentence for Count VI (Assault 1).

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

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

(i) The crime of Assault 1<sup>o</sup> has a mandatory minimum sentence of at least 5 years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge        .]

(j) The crime charged in Count I, II, IV, V includes a firearm / deadly weapon sentence enhancement of 60 months.

This additional confinement time is mandatory and must be served consecutively to any other sentence and any other enhancement I have already received or will receive in this or any other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge     VT.] Not applicable pursuant to In re Charles, 135 Wn.2d 239 (1998)

(k) The sentences imposed on counts I, II, IV, V, except for any weapons enhancement, VI, + VII will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and judge        .]

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

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

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

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

1 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions  
 2 described in paragraph (6)(e). During confinement and community custody, I will be required to  
 3 participate in substance abuse evaluation and treatment, not to use illegal controlled substances, and  
 4 to submit to testing to monitor that.

5 (p) This plea of guilty will result in revocation of my privilege to drive under RCW 46.20.285  
 6 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not applicable,  
 7 this paragraph should be stricken and initialed by the defendant and the judge KC. VI.]

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

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

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

17 (t) I will be required to provide a biological sample for purposes of DNA identification  
 18 analysis.

19 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a  
 20 minor, I will be required to register with the sheriff of the county of the state of Washington where I  
 21 reside, study, or work. The specific registration requirements are described in the "Offender  
 22 Registration" Attachment. [KC. VI.]

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

7. I plead guilty to the crime(s) of *Robbery 1<sup>o</sup> (2 counts), Burglary 1<sup>o</sup> (2 counts) Assault 1<sup>o</sup>, and Assault 2<sup>o</sup>*

\_\_\_\_\_ as charged in the ~~information~~ \_\_\_\_\_ amended information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

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

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

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

I am entering this plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). After reviewing the police reports in this case with my attorney, I have decided to enter a plea of guilty to the crimes charged. I believe that there is a substantial likelihood that I would be found guilty at trial, so I am pleading guilty in order to take advantage of the State's plea offer. I agree that the judge may review the certifications for determination of probable cause as a basis for this plea, but not for sentencing.

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12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

*Vicki Lee*  
DEFENDANT

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

*Vanessa Taylor*  
PROSECUTING ATTORNEY  
Print Name: *Vanessa Taylor*  
WSBA# *31563*

*E. Probst*  
DEFENDANT'S LAWYER  
Print Name:  
WSBA# *22881*

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

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this *18<sup>th</sup>* day of *April*, 20*05*.

*Samuel Constock*  
JUDGE  
*Pro Tem.*

1 I am fluent in the \_\_\_\_\_ language, which the defendant understands, and I have  
 2 translated this entire document for the defendant from English into that language. I certify under  
 3 penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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 6 \_\_\_\_\_  
 TRANSLATOR

\_\_\_\_\_ INTERPRETER

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APPENDIX F

PLEA AGREEMENT

Date: 4/14/05

Defendant: Vinh Tran

Cause No: 98-05129-5 (SENT)

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, II, IV, V, VI, VII of the (Original) Amended information

With Special Finding(s):  deadly weapon - firearm, RCW 9.94A.310(3);  deadly weapon other than firearm, RCW 9.94A.310(4);  sexual motivation, RCW 9.94A.127;  protected zone, RCW 69.50.435 for count(s) I, II, IV, V

Parties agree enhancements run concurrently to one another + consecutive to underlying crime. Parties also agree enhancements run concurrently to base sentence for count VII, Assault

1.  DISMISS: Upon disposition of Count(s) the State moves to dismiss Count(s);

2.  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:  as set forth in the certification(s) of probable cause filed herein.  as set forth in the attached Appendix C.

3.  RESTITUTION: Pursuant to RCW 9.94A.142, the defendant agrees to pay restitution as follows:  in full to the victim(s) on charged counts.  as set forth in the attached Appendix C.

4.  OTHER: NO CONTACT w/ victims. Defendant agrees to a M for 300 months + to not ask for exceptional sentence.

SENTENCE RECOMMENDATION: a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Maximum on Count I, IV is not more than life years and/or \$ 50,000 fine.

Maximum on Count II, III, VII is not more than life years and/or \$ 50,100 fine.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.120(4) only: Assault I (A-VI): 5 years (60 months)

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

Mandatory drivers license revocation RCW 46.20.285

Mandatory revocation of right to possess a firearm for any felony conviction.

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

X [Signature] # 22881 Attorney for Defendant

[Signature] Deputy Prosecuting Attorney 3553  
[Signature] Judge King County Superior Court

KING COUNTY PROSECUTING ATTORNEY Revised 10/97

WHITE COPY: COURT  
CANARY COPY: DEFENSE  
PINK COPY: PROSECUTOR

\* State and defense agree not to ask or suggest, directly or indirectly that others request imposition of a sentence other than 300 months.

APPENDIX G

FILED  
KING COUNTY, WASHINGTON ISSUED  
JUN - 3 2005 JUN - 6 2005

SUPERIOR COURT CLERK  
BY ANNE C. SMITH  
DEPUT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Vinh Q. Tran

Defendant,

No. 98-C-05129-5 SEA

MOTION, CERTIFICATION AND  
ORDER FOR BENCH WARRANT

The undersigned deputy prosecuting attorney moves the court for an order directing the clerk of the court to issue a bench warrant for the defendant in the above-entitled cause and certifies that: on this date the defendant failed to appear for ( ) Case Setting hearing; ( ) Omnibus Hearing; ( ) Trial;  Sentencing; ( ) Sentence Modification Hearing; ( ) Other \_\_\_\_\_

Signed and dated by me this 3rd day of June, 2005, at Seattle, Washington.

Deputy Prosecuting Attorney

ORDER

Good cause having been shown, it is hereby ORDERED that the Clerk of this court issue a bench warrant for the arrest of the above-named defendant, directing the King County Sheriff to apprehend the said defendant. Bail on this warrant shall:  not be allowed; ( ) fixed in the amount of \$ \_\_\_\_\_, cash or surety; surety bond to be approved by the King County Superior Court.

DONE IN OPEN COURT this 3rd day of June, 2005.

JUDGE

Presented by:

Deputy Prosecuting Attorney

MOTION, CERTIFICATION AND ORDER FOR  
BENCH WARRANT

Revised 4/01

Norm Maleng, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

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APPENDIX H

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

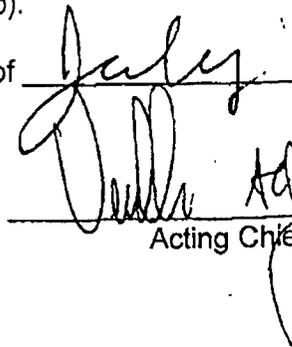
IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF:	)	No. 71274-8-1
VINH QUANG TRAN,	)	ORDER OF DISMISSAL
_____	)	
Petitioner.	)	

Vinh Tran filed a petition challenging his sentence in King County Superior Court No. 98-1-05129-5 SEA. Tran has now filed a request to voluntarily dismiss the petition. In light of Tran's request, the petition should be dismissed without prejudice. Should Tran wish to refile the petition in the future, the petition must comply with all relevant substantive and procedural rules, including RCW 10.73.090, in effect at the time of filing.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed without prejudice pursuant to RAP 16.11(b).

Done this 27<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Acting Chief Judge

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 JUL 21 AM 8:09



APPENDIX I



APPENDIX J

### GENERAL SCORING FORM

#### Burglary 1 Offenses

Use this form only for Burglary 1 offenses.

OFFENDER'S NAME <i>TRAN, VINH QUANG</i>	OFFENDER'S DOB <i>12-25-77</i>	STATE ID# <i>WA</i> <i>18696135</i>
JUDGE	CAUSE# <i>98-C-05129-5 SEA</i>	FBI ID# <i>62372 AB5</i>

*Doc. # 773774*

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions .....	_____ x 2 = _____
Enter number of Residential Burglary and Burglary 2 convictions .....	_____ x 2 = _____
Enter number of other nonviolent felony convictions .....	_____ x 1 = _____

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of other serious violent and violent felony adjudications .....	<u>1</u> x 2 = <u>2</u>
Enter number of Residential Burglary and Burglary 2 adjudications .....	_____ x 1 = _____
Enter number of other nonviolent felony adjudications .....	_____ x 1/2 = _____

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions .....	<u>5</u> x 2 = <u>10</u>
Enter number of Residential Burglary and Burglary 2 convictions .....	_____ x 2 = _____
Enter number of other nonviolent felony convictions .....	_____ x 1 = _____

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point	+ 1 = _____
---	-------------

Total the last column to get the Offender Score  
(Round down to the nearest whole number)

**12**

<i>GI+IV</i>	STANDARD RANGE CALCULATION*		<i>87</i>	TO	<i>116</i>
<i>BURB 10 WAADW</i>	<i>VII</i>	<i>12</i>	LOW		HIGH
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD SENTENCE RANGE		

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

\* If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-18 to calculate the enhanced sentence.

*ARMED WITH A HANDGUN*

## GENERAL DEADLY WEAPON ENHANCEMENT FORM A

Firearm or Other Deadly Weapon Enhancements\* 1

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

### CLASS A FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	5 years	Firearm	10 years
Other Deadly Weapon	2 years	Other Deadly Weapon	4 years

### CLASS B FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	3 years	Firearm	6 years
Other Deadly Weapon	1 year	Other Deadly Weapon	2 years

### CLASS C FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	18 months	Firearm	3 years
Other Deadly Weapon	6 months	Other Deadly Weapon	1 year

\* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Reckless Endangerment 1, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.

\*\* This enhancement is limited to offenses committed after July 23, 1995.

\*\*\* To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

### STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
BURG 1 <sup>st</sup> w/awful	III	12	87	116
			LOW	HIGH
	DEADLY WEAPON ENHANCEMENT		60	60
NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.		STANDARD RANGE	147	176
			LOW	HIGH

1 For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

## GENERAL SCORING FORM

### Violent Offenses

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <i>TRAN, VINH G.</i>	OFFENDER'S DOB <i>12-25-77</i>	STATE ID# <i>WA</i> <i>18696135</i>
JUDGE	CAUSE# <i>98-C-05129-5 SEA</i>	FBI ID# <i>62372AB5</i>

*COC# 773774*

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions .....        x 2 =         
 Enter number of other nonviolent felony convictions .....        x 1 =       

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications .....   1   x 2 =   2    
 Enter number of other nonviolent felony adjudications .....        x 1/2 =       

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions .....   5   x 2 =  10    
 Enter number of other nonviolent felony convictions .....        x 1 =       

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point ..... + 1 =       

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

**12**

<i>GTII + IV</i> <b>ROBBERY 1<sup>st</sup> WANTED</b>	STANDARD RANGE CALCULATION*	*	TO	
<b>CURRENT OFFENSE BEING SCORED</b>	<b>SERIOUSNESS LEVEL</b>	<b>OFFENDER SCORE</b>	<b>LOW STANDARD SENTENCE RANGE</b>	<b>HIGH STANDARD SENTENCE RANGE</b>
<i>IX</i>	<i>12</i>	<i>129</i>	<i>171</i>	

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

\* If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

*ARMED WITH A HANDGUN*

## GENERAL DEADLY WEAPON ENHANCEMENT FORM A

Firearm or Other Deadly Weapon Enhancements\*<sup>1</sup>

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

### CLASS A FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**: Firearm <span style="margin-left: 100px;">5 years</span> Other Deadly Weapon <span style="margin-left: 100px;">2-years</span>	Subsequent*** Deadly Weapon Offense: Firearm <span style="margin-left: 100px;">10 years</span> Other Deadly Weapon <span style="margin-left: 100px;">4 years</span>
--	---

### CLASS B FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**: Firearm <span style="margin-left: 100px;">3 years</span> Other Deadly Weapon <span style="margin-left: 100px;">1 year</span>	Subsequent*** Deadly Weapon Offense: Firearm <span style="margin-left: 100px;">6 years</span> Other Deadly Weapon <span style="margin-left: 100px;">2 years</span>
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### CLASS C FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**: Firearm <span style="margin-left: 100px;">18 months</span> Other Deadly Weapon <span style="margin-left: 100px;">6 months</span>	Subsequent*** Deadly Weapon Offense: Firearm <span style="margin-left: 100px;">3 years</span> Other Deadly Weapon <span style="margin-left: 100px;">1 year</span>
---	---

\* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Reckless Endangerment 1, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.

\*\* This enhancement is limited to offenses committed after July 23, 1995.

\*\*\* To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

### STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
ROBBERY 1° WAWAD	IX	12	129	171
			LOW	HIGH
			60	60
NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.				
			189	231
			LOW	HIGH

<sup>1</sup> For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

ASSAULT, FIRST DEGREE

(RCW 9A.36.011)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict, use form on page III-33)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

In the case of multiple prior convictions for offenses committed before July 1, 1988, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent\* felony convictions..... x3 = \_\_\_\_\_
Enter number of violent felony convictions..... x2 = \_\_\_\_\_
Enter number of nonviolent felony convictions..... x1 = \_\_\_\_\_

JUVENILE HISTORY:

Enter number of serious violent\* felony adjudications..... 1 x3 = 3
Enter number of violent felony adjudications..... x2 = \_\_\_\_\_
Enter number of nonviolent felony adjudications..... x1 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other violent felony convictions..... 5 x2 = 10
Enter number of nonviolent felony convictions..... x1 = \_\_\_\_\_
+1 = \_\_\_\_\_

STATUS: Was the offender on community placement on the date the current offense was committed? (If yes),

Total the last column to get the Offender Score (Round down to the nearest whole number)

13

II. SENTENCE RANGE

A. OFFENDER SCORE: STANDARD RANGE (LEVEL XII)

Table with 10 columns: 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 or more. Rows show sentence ranges in months for each score level.

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
C. Following release from state prison, the offender must serve community placement of 24 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).
D. Statutory minimum sentence is 60 months if the offender used force or means likely to result in death or intended to kill the victim (RCW 9.94A.120).
E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.

\*The serious violent offenses that triple-score are Murder 1\*, Murder 2\*, Assault 1\*, Assault of a Child 1\*, Kidnapping 1\*, Homicide by Abuse or Rape 1\*.

**ASSAULT, SECOND DEGREE**

(RCW 9A.38.021)

**CLASS B FELONY**

**VIOLENT**

*(If sexual motivation finding/verdict, use form on page III-35)*

**I. OFFENDER SCORING (RCW 9.94A.360 (8))**

In the case of multiple prior convictions for offenses committed before July 1, 1988, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

**ADULT HISTORY:**

Enter number of serious violent and violent felony convictions.....            x 2 =             
 Enter number of nonviolent felony convictions.....            x 1 =           

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony adjudications .....   1   x 2 =   2    
 Enter number of nonviolent felony adjudications.....            x 1/4 =           

**OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)**

Enter number of other serious violent and violent felony convictions .....   5   x 2 =  10    
 Enter number of nonviolent felony convictions.....            x 1 =           

STATUS: Was the offender on community placement on the date the current offense was committed? (If yes),            + 1 =           

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

**12**

**II. SENTENCE RANGE**

A. OFFENDER SCORE:  
 STANDARD RANGE  
 (LEVEL IV)

0	1	2	3	4	5	6	7	8	9 or more
3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 67 months	53 - 70 months	83 - 84 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410)
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.
- D. One year of community placement must be served following release from state prison (RCW 9.94A.120).

**III. SENTENCING OPTIONS**

- A. If sentence is one year or less: part or all of the sentence may be converted to partial confinement (RCW 9.94A.380).
- B. If sentence is one year or less: community supervision may be ordered for up to one year (RCW 9.94A.383).

APPENDIX K

**CLERK'S MINUTES: Felony Sentencing Hearing**

SCOMIS CODE: SNTHRG

Judge: Jeffrey M. Ramsdell  
Bailiff: Kenya Hart  
Clerk: Kirstin Grant  
Reporter: JoAnn Bowen

Dept. 09  
Date: 8/1/2008

Page 1 of 4

---

**KING COUNTY CAUSE NO.: 98-1-05129-5 SEA**

**State of Washington**

**Plaintiff**

**vs.**

**Vinh Tran**

**Defendant**

---

**Appearances:**

Defendant appearing in person and through counsel, Kevin Donnelly.  
State appearing through counsel, DPA Karissa Taylor.

*SO [Signature]*

**State of Washington vs. Vinh Tran  
King County Cause No. 98-1-05129-5 SEA**

**MINUTE ENTRY**

Ct I. = Burglary 1<sup>st</sup> Degree; Ct. II = Robbery 1<sup>st</sup> Degree; Ct. IV Burglary 1<sup>st</sup> Degree; Ct. VI = Assault 1<sup>st</sup> Degree and Ct VII = Assault 2<sup>nd</sup> Degree

THE COURT:

- makes findings for an exceptional sentence above the standard range for Count(s) \_\_\_\_\_.
- defers imposition of sentence for \_\_\_\_\_.
- sentences Defendant to serve \_\_\_\_\_ in King County Jail, suspended.
- Defendant shall serve a term of confinement as follows: Ct I and IV = 176 months w/firearm enhancement; Ct. II and V = 231 months; Ct. VII = 84 months and Ct. VI = 318 months.
- To begin immediately;  to begin \_\_\_\_\_.
- In Dept. of Corrections, with credit for time served: 508 days.
- With \_\_\_\_\_ hours of community restitution.
- With \_\_\_\_\_ days converted to \_\_\_\_\_ hours of community restitution.
- On EHD Basic.
- Count(s) I - VII are concurrent.
- Sentence shall run consecutively to the sentence(s) in Cause \_\_\_\_\_.
- Defendant shall be on community custody for 24 months.
- 

RESTITUTION:

- Defendant shall pay restitution:
- in the amount of \$37,651.03;
- in an amount to be determined.

State of Washington vs. Vinh Tran  
King County Cause No. 98-1-05129-5 SEA

Restitution hearing \_\_\_\_\_.

Defendant waives right to be present at restitution hearing(s).

OTHER FINANCIAL OBLIGATIONS:

- Mandatory Victim Penalty Assessment to be paid.
- Court costs are waived.
- Recoupment of attorney's fees is waived.
- All other non-mandatory fines and fees waived.
- Court Clerk's trust account fees waived.
- All interest is waived except with respect to restitution.
- 
- 

Defendant shall pay all other costs and fees as ordered in the Judgment and Sentence.

PAYMENT SCHEDULE:

Defendant shall make payments to the King County Superior Court Clerk:

- of not less than \$\_\_\_\_\_ per month;
- on a schedule to be established.

THE COURT FURTHER ORDERS THAT DEFENDANT:

- not associate with known drug users or sellers;
- not frequent or loiter in areas of known drug activity, as defined by C.C.O.;
- not purchase, possess, or use controlled substances without valid prescription;
- not purchase, possess, or consume alcoholic beverages;
- not frequent establishments where alcohol is the primary commodity for sale;
- obtain alcohol abuse evaluation and follow recommendations therein;
- obtain sexual deviancy evaluation and follow treatment recommendations;
- Enter and successfully complete programs for the following treatment as directed by C.C.O.:
  - mental health;                       anger management;
  - domestic violence;                       ;
- submit to urinalysis as directed by C.C.O.;

State of Washington vs. Vinh Tran  
King County Cause No. 98-1-05129-5 SEA

- submit to DNA testing;
- submit to random searches of person, residence, and vehicles;
- register as a sex offender;
- have no contact with victims for life;
- have no further law violations;
- 
- 
- 

and comply with all other conditions required by the Judgment and Sentence.

FURTHER:

- The Court advises Defendant of his/her rights on appeal and collateral attack. Certificate of Compliance is executed.
- Defendant's driver's license is invalidated.
- Affidavit Re Driver's License is executed.
- Defendant is fingerprinted.
- 
- 
- 
- 

THE COURT SIGNS:

- Judgment and Sentence
- Order Setting Restitution
- Notice to King County Jail / Release of Defendant
- Order Prohibiting Contact
- Notification of Ineligibility re Firearms / Right to Vote
- Order Remanding Defendant to Dept. of Adult Detention
- Order Exonerating Bond
- Conditions of Conduct Re: CCAP
- 
-

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Vinh Tran, the petitioner, at Vinh Quang Tran, #773774, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, WA 98520, containing a copy of State's Response to Personal Restraint Petition, in IN PERSONAL RESTRAINT OF VINH TRAN, Cause No. 72582-3-I, in the Court of Appeals, Division I, for the State of Washington.

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

W Brame  
Name

Done in Seattle, Washington

12/17/19  
Date