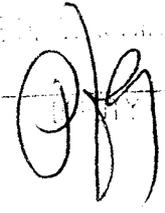


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COURT OF APPEALS

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STATE OF WASHINGTON

BY 

No. 30336-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

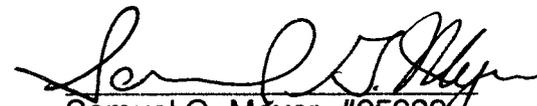
STATE OF WASHINGTON,
Respondent,

vs.

SHAWN D. DUNKELBERGER
Appellant.

Thurston County Superior Court
The Honorable Judge Christine Pomeroy
Cause Number 02-1-01152-1

OPENING BRIEF OF APPELLANT



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PM 3-3-04

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ASSIGNMENTS OF ERROR

1. Shawn Dunkelberger's plea of guilty was not made knowingly and voluntarily with a complete understanding of the consequences of his plea.

Issue: Was Shawn Dunkelberger fully advised of the consequences of his plea of guilty?

I. STATEMENT OF THE CASE

On July 16, 2002, an information was filed in Thurston County Superior Court charging Shawn Dunkelberger with one count of Rape of a Child in the First Degree in count I and four counts of Child Molestation in the First Degree in counts II, III, IV and V of the information. CP 3-4. The charge of Rape of a Child in the First Degree as charged in count I was alleged to have occurred on July 5, 2002 and the four counts of Child Molestation in the First Degree as charged in counts II through V were each alleged to have occurred between June 30, 1999 and July 5, 2002, inclusive. CP 3-4.

On March 4, 2003, Dunkelberger pleaded guilty to counts I, II and III of the information and as part of a plea agreement counts IV and V were dismissed. CP 16.

Page 2 of the statement of defendant on plea of guilty, (Attachment A) indicated that for each count, Dunkelberger had six felony points and that each count carried a standard range of 162-216 months in actual confinement. CP 15. Additionally, the statement of defendant on plea of guilty indicated that Dunkelberger's community custody range for each count was life and that the maximum term of all of the crimes was life. CP 15.

On page 3 of the statement of defendant on plea of guilty, it indicated that with regard to a recommended time spent in prison, the State would recommend "192 months to life." CP 16

When Dunkelberger entered his plea of guilty on March 3, 2003, the following exchange took place between the Judge and Dunkelberger:

THE COURT: Mr. Dunkelberger, I have received your Statement of Defendant on Plea of Guilty. It's been signed by you. Did you have an opportunity to read this before you signed it?

THE DEFENDANT: Yes.

THE COURT: Were all of your questions for Mr. McConnell answered to your satisfaction?

THE DEFENDANT: Yes.

THE COURT: You're pleading guilty to three charges here, Rape of a Child in the First Degree, Count 1; Child Molestation First Degree, Count 2; and Child Molestation First Degree, Count 3. As a consequence of that you face a standard range in each count of 162 to 216 months in prison and a community custody range of up to life imprisonment. Do you understand -- or excuse me, up to life on community custody.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: I'm further informed that the prosecutor will recommend that you receive a sentence of 192 months to life, that you pay court costs, assessments, and all conditions, and that the prosecutor would then agree to dismiss Counts 4 and 5 and to not file any additional charges based upon facts now within the prosecutor's knowledge.

Do you understand that that's the representation that the prosecutor has made to me about what his recommendation will be?

THE DEFENDANT: Yes.

THE COURT: Do you understand that I don't have to accept that recommendation even if it's an agreed recommendation; I can give you any sentence authorized by law?

THE DEFENDANT: Yes.

(3/4/03 Verbatim Report of Proceedings 4-6.)

On April 15, 2003, Dunkelberger was sentenced. CP 38. At the sentencing hearing, before a different judge, the following exchange took place between the prosecuting attorney and the sentencing court:

MR. TUNHEIM: Your Honor, this case is one involving one victim, but had a number of offenses over a period of time. In the information you may notice that the time range alleged in counts two and three went between 1999 and 2002 with a culmination of the offenses resulting in count one, which was the rape of a child, occurring in June of 2002.

This is one of those cases that falls under the new sentencing scheme under the SRA, and I'm not sure you've done a sentencing since that came into effect because it's a fairly recent statute and may have come into effect after you went to the family court assignment. But in any event, the way that this works is the court is to impose a minimum penalty that is somewhere within the standard range, which is in this case 162 to 216 months.

THE COURT: Excuse me. I thought the minimum was 192 on a rape of child.

MR. TUNHEIM: 192 is the recommended sentence, your Honor, but the range is 162 to 216.

THE COURT: Could you just hold on for a minute?

MR. TUNHEIM: Yes, your Honor.

THE COURT: I just want to make sure that that's the range.

Would you look at page -- the last page of the PSI, please. Count one, confinement, minimum 192 with a maximum of life.

MR. TUNHEIM: But that's the recommendation such --

THE COURT: Of the PSI?

MR. TUNHEIM: Exactly.

THE COURT: I just wanted to make sure. So I have the option of 162 to life?

MR. TUNHEIM: Yes. The standard range is 162 to 216. The court must impose a minimum term somewhere in between those two ends of the range. The maximum term that the court must impose here is the maximum of the offense, which is life. So essentially you're picking minimum to life.

Now, the way this will work ultimately, just so the Court knows how the sentence will be executed ultimately, is that Mr. Dunkelberger is committed to the Department of Corrections. When he reaches the end of his minimum term, less any good time that might be awarded, 15 percent in this case if he earns it, then his sentence would be reviewed by the Indeterminate Sentence Review Board.

If the review board found that he was more likely than not to re-offend, they could continue to detain him for a two-year period. Every two years thereafter it would be reviewed. If he was not found more likely than not to re-offend, then he would be released to community custody and be there for the rest of his life. So Department of Corrections gets jurisdiction now over him for life.

THE COURT: So the it's old parole board basically.

MR. TUNHEIM: It's kind of a hybrid between SRA and parole, yes.

THE COURT: Thank you. I have never done a sentencing of this magnitude. As you know, I've been away for a while.

MR. TUNHEIM: We've only done a few in this county so far, your Honor, and it's only for sex offenses, serious sex offenses.

THE COURT: Thank you.

(4/15/03 Verbatim Report of Proceedings 3-5.)

The judgment and sentence entered on April 15, 2003 indicated that Dunkelberger's standard range for Count I, Rape of a Child in the First Degree was 162-216 to life and for counts II and III, Child Molestation in the First Degree was 98-130 months at the Department of Corrections. CP 39.

For count I, Rape of a child in the First degree, Dunkelberger was sentenced to 192 months to life to be served at the Department of Corrections. CP 41. For counts II and III, Dunkelberger received a determinate sentence of 114 months. CP 41. All of the sentences were to be served concurrently. CP 41.

II. ARGUMENT

The issue in this case is whether Shawn Dunkelberger's plea of guilty was made knowingly and voluntarily.

A) Shawn Dunkelberger did not enter into a knowing and voluntary plea of guilty.

Shawn Dunkelberger did not enter into a knowing and voluntary plea of guilty in this case because he did not make his plea with complete and accurate knowledge of all of the direct consequences of his plea.

"The court shall allow a defendant to withdraw the defendants plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice."¹ CrR 4.2(f)

Manifest injustice includes pleas of guilty that are not voluntarily

¹ A defendant may raise the issue of withdrawal of a plea for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1,8, 17 P.3d 591 (2001).

made. *State v. Walsh*, 143 Wn.2d 1, 6, 17 P.3d 591 (2001). A court “shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d); *State v. Wakefield*, 130 Wn.2d 464 472, 925 P.2d 183 (1996).

The consequences must be direct consequences as opposed to collateral consequences. “The distinction between direct and collateral consequences of a plea ‘turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment’”. *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)(quoting *Cuthrell v. Director, Patuxent Inst.*, 475 F.2d 1364, 1366 (4th Cir.), *cert. denied*, 414 U.S. 1005 (1973)); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

“The State bears the burden of proving the validity of a guilty plea. Knowledge of the direct consequences of a guilty plea may be satisfied from the record of the plea hearing or clear and convincing extrinsic evidence.” *State v. Ross*, 129 Wn.2d at 287 (citation omitted).

In *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996), the defendant pleaded guilty to three counts of second degree rape of a child and was sentenced to serve 89 months in prison. The defendant was also required serve a mandatory 12-month community placement following his release from prison. The defendant, however, was not informed of the 12 months of community placement at the time he entered his plea. The court ruled that the mandatory community placement was direct consequence of the plea of guilty and therefore

the plea of guilty was not voluntary and the defendant was allowed to withdraw his plea.

In *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), the defendant pleaded guilty to a series of crimes and the State agreed to dismiss other crimes. At the time the defendant entered into his plea, both the defendant and the State believed that the defendant's standard range was 86-114 months. At the subsequent sentencing hearing, the State informed the sentencing court that the standard range was in fact 95 to 125 months. Although the defendant in *Walsh*, did not raise the issue at the sentencing hear, the Washington State Supreme Court held that the voluntariness of the plea was an issue that could be raised on appeal and furthermore, the mutual error about the standard range made the plea involuntary and could be withdrawn by the defendant.

In this case, similar to the defendants in *Ross* and *Walsh*, it does not appear as if Shawn Dunkelberger was fully aware of all of the direct consequences of his plea of guilty to one count of Rape of a Child in the First Degree and three counts of Child Molestation in the First Degree.

In Washington the direct consequences of pleading guilty to certain sex offenses changed as of September 1, 2001. RCW 9.94A.712 provides in relevant part:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or

indecent liberties by forcible compulsion;

...

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001;

...

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

RCW 9.94A.712(1)(3).

An automatic effect when a defendant pleads guilty to the crimes of Rape of Child in the First Degree and Child Molestation in the First Degree is that the sentencing court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for those offenses (life in prison for both Rape of a Child in the First Degree and Child Molestation in the First Degree) and a minimum term within the standard sentence range for those offenses. In other words, the sentencing court in this case was required to sentence Mr. Dunkelberger to life in prison with a possible early release date at some point within the standard range.

In his remarks to the sentencing court, the deputy prosecuting attorney for Thurston County correctly observed that the sentencing Judge would impose a maximum sentence of life in prison for Mr. Dunkelberger but when he reached the end of his minimum term, his case would be reviewed by the indeterminate sentencing review

board. (4/15/03 Verbatim Report of Proceedings 4.) The deputy prosecuting attorney also correctly pointed out that the indeterminate sentencing review board could continue to hold Mr. Dunkelberger for an additional two year period and he would be reviewed every two years. (4/15/03 Verbatim Report of Proceedings 4-5.) Potentially, Mr. Dunkelberger could be detained for the rest of his life.

Mr. Dunkelberger, however, was informed of none of this when he pleaded guilty. He was not informed of the sentencing scheme as it was described at the sentencing hearing. He was not informed that the maximum, life, would be imposed with a minimum amount of time within the standard range to be served. Instead, he was told that the standard range for each of his charges was 162 to 216 months in prison.² (3/4/03 Verbatim Report of Proceedings 5). Dunkelberger indicated on the record that his understanding of the standard range that he faced was 162 to 216 months in prison. (4/15/03 Verbatim Report of Proceedings 5.)

Additionally, paragraph 6(a) in the plea form signed by Mr. Dunkelberger signed indicated that he faced a standard range sentence of 162 to 216 months on each charge. CP 15. Paragraph 6(h) of the same plea form indicated that the judge was required impose a sentence within the standard range unless there were substantial and compelling reasons not to do so. CP 17. As has been shown, that plea form as well as the colloquy between Dunkelberger and the judge who accepted his plea did not fully inform Dunkelberger of the direct consequences that resulted from his plea to

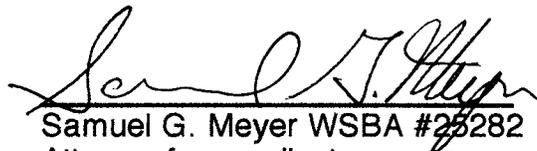
² This was also incorrect with regard to counts II and III because the standard range on the child molestation charges was actually 98 to 130 months in prison, not 162 to 216 months in prison.

those certain charges. Actually, the colloquy as well as the plea form described the law before September 1, 2001. See 2001 Laws of Washington, 2nd Spec. Session, Chapter 12, Section 303.

In *State v. Ross*, the Washington State Supreme Court stated that "Without evidence of an explicit explanation of mandatory community placement, we must conclude Defendant was unable to enter an intelligent, voluntary plea." *State v. Ross*, 129 Wn.2d at 288. Similarly, there is no evidence that Shawn Dunkelberger received an accurate explicit explanation of the consequences of his plea of guilty as required by RCW 9.94A.712 and, therefore, his plea was not made intelligently or voluntarily.

III. CONCLUSION

Shawn Dunkelberger did not enter a knowing and voluntary plea and as such, he should be allowed to withdraw his plea.


Samuel G. Meyer WSBA #25282
Attorney for appellant

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SUPERIOR COURT
THURSTON COUNTY, WASH.

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BETTY J. GOULD, CLERK

BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR

STATE OF WASHINGTON
Plaintiff

vs. Shawn Dunkleberger
Defendant.

NO. 02-1-1152-1

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY
(STTDFG)

1. My true name is: Shawn Dunkleberger

2. My age is: 19 (1/8/84)

3. I went through the 12th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with: Count I Rape of a child 1^o; Count II Child Molestation 1^o

The elements are: and Count III Child Molestation 1^o

(Note: See Information for Elements)
as set forth in the State's () information.

5. I UNDERSTAND 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 hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) That I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;



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

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

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	6	162-216	Ø	162-216	Life	Life / 50,000
2	6	162-216	Ø	162-216	Life	Life / 50,000
3	6	162-216	Ø	162-216	Life	Life / 50,000

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history has been filed with this statement. Unless I have attached a different statement, I stipulate and agree that the prosecuting attorney's statement is true, correct and complete, and that any federal or out of state convictions listed are properly classified under the laws of this state as a felony, and I waive any and all challenges to that history. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) ~~For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement,~~

the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, and I am sentenced to more than 12 months, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody. If the crime I have been convicted of is not listed in the following chart and I am sentenced to more than 12 months, then there will be no period of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge:
 ① 192 months to Life ② Normal Costs ; Assessment and Conditions.
 ③ Dismiss Counts 4 and 5 ④ Not file any additional charges with the prosecutors
 Knowledge.

- (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 the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) ~~If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.~~
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [l] This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [m] ~~The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~
- [n] ~~If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."~~
- [o] ~~If this crime involves a violent offense, committed prior to July 1, 2002, I will be required to provide a sample of my blood for purposes of DNA identification analysis. If this crime was committed on or after July 1, 2002, and involves a felony, stalking under RCW 9A.46.110, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, I will be required to provide a biological sample for purposes of DNA identification analysis, and will be assessed a \$100 fee for this purpose.~~
- [p] ~~If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~

- [q] ~~If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.~~
- [r] ~~The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.~~
- [s] ~~If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime if I am~~

pleading guilty.
- [t] ~~If this crime involves the manufacture of methamphetamine, a mandatory clean-up fine of \$3,000.00 will be assessed. If this crime involves the manufacture, delivery, or possession with intent to deliver a controlled substance, then a mandatory \$1,000 drug enforcement fund penalty will be assessed, and shall be doubled if this is a subsequent drug offense.~~
- [u] ~~If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.~~
- [v] ~~If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.~~
- [w] ~~If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).~~
- [x] ~~The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence.~~
- [y] ~~I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~

[z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. ~~Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.~~

[aa] I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. ~~The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.~~

[bb] I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:

count (1) Rape of a child 1^o
count (2) Child Molestation 1^o
count (3) Child Molestation 1^o
in the _____ 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.

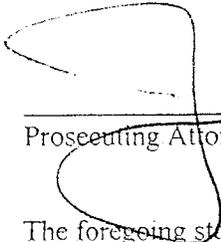
11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

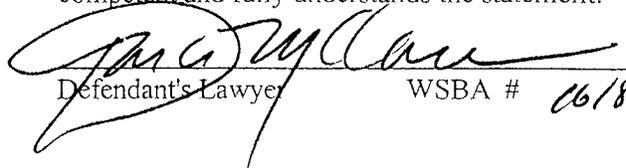
This is my statement: Alford plea: I believe a reasonable jury would find me guilty beyond a reasonable doubt. Therefore, I want to accept the favorable plea offer. I do not agree that I made any penetration but do agree that the state would produce
Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea such evidence through their experts.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A," if applicable. 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.

~~Shawn D. Kelberman~~
Defendant

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


Prosecuting Attorney WSBA # 19783

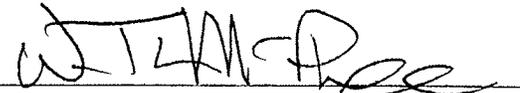

Defendant's Lawyer WSBA # 06181

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 the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. 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: March 4, 2003


JUDGE Wm. THOMAS MCPHEE

INTERPRETER'S DECLARATION

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the statement of defendant on plea of guilty for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Location: Olympia, Washington

FILED
COURT OF APPEALS

OWNER - W. P. 13 81

STATE OF WASHINGTON

BY _____
TRUITY

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

SHAWN DUNKELBERGER,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

Court of Appeals,
No. 30336-1-II

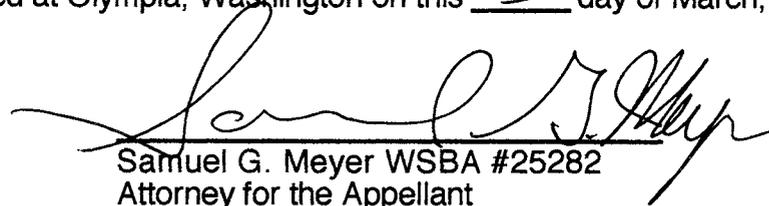
AFFIDAVIT OF MAILING

SAMUEL G. MEYER, hereby certifies and swears that the following is true and correct: I am the attorney for the appellant in the above referenced matter; that on March 3, 2004, I placed in the mails of the United States a duly addressed, stamped envelope containing a copy of the Opening Brief of Appellant to the following parties:

Steve Sherman
Thurston County Deputy
Prosecuting Atty.
2000 Lakeridge Dr. SW
Olympia, WA 98502

Shawn Dunkelberger DOC #853427
Twin Rivers Corrections Center
Monroe Correctional Complex
P.O. Box 777
Monroe, WA 98272-0777

Signed at Olympia, Washington on this 3 day of March, 2004.


Samuel G. Meyer WSBA #25282
Attorney for the Appellant

Affidavit of Mailing