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COURT OF APPEALS

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STATE OF WASHINGTON

NO. 34085-2-II

**THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

In Re the Personal Restraint Petition of:

JUSTIN M. HEGNEY,

Petitioner.

RESPONSE OF THE
DEPARTMENT OF
CORRECTIONS

Respondent, the Department of Corrections (Department or DOC), by and through its attorneys, ROB MCKENNA, Attorney General, and DONNA H. MULLEN, Assistant Attorney General, respectfully submits this response to Mr. Hegney’s personal restraint petition.

I. BASIS OF CUSTODY

Petitioner, Justin M. Hegney, is in the custody of the Department pursuant to a valid 2002 Pierce County conviction by jury verdict of Murder in the First Degree. Exhibit 1, Judgment and Sentence, State v. Hegney, Pierce County Superior Court Cause No. 01-1-01150-4. Mr. Hegney was sentenced to 240 months confinement. Id. at 6.

II. STATEMENT OF THE CASE

Mr. Hegney, represented by counsel, filed this personal restraint petition challenging his 2002 conviction and sentence for First Degree Murder. He raises six claims for relief, to include his fourth claim that the Department is erroneously refusing to award any earned early release time to Mr. Hegney’s 20 year mandatory sentence. This is the only claim where the Department is the properly named Respondent. For the remaining claims,

the proper Respondent is the Pierce County Prosecuting Attorney's Office. For that reason, the Department's response will focus solely on Mr. Hegney's fourth claim for relief, alleging that the State (the Department) is erroneously refusing to award any earned early release time to Mr. Hegney's 20 year mandatory sentence.

III. ISSUE PRESENTED

IS THE DEPARTMENT ERRONEOUSLY DENYING MR. HEGNEY EARNED EARLY RELEASE TIME FOR HIS TWENTY YEAR MANDATORY SENTENCE FOR FIRST DEGREE MURDER WHERE THE LEGISLATURE PROPERLY REENACTED FORMER RCW 9.94A.120(4)?

IV. STANDARD OF REVIEW

To obtain relief through a personal restraint petition, a petitioner must prove actual, substantial prejudice resulting from a constitutional error or a non-constitutional error that inherently results in a complete miscarriage of justice. In re Krier, 108 Wn. App. 31, 37-38, 29 P.3d 720 (2001). Failure to meet this threshold burden necessarily results in dismissal of the petition.

To determine whether the petitioner has experienced actual prejudice from an asserted constitutional error, the merits of the claim must first be examined. Conclusory allegations of constitutional violations are insufficient to support a personal restraint petition. In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

If the petitioner is able to establish that collateral review is appropriate, he carries the ultimate burden of proof. The petitioner must

show the existence of an error, and must show by a preponderance of the evidence that he was prejudiced by the asserted error. Cook, 114 Wn.2d at 814. The petitioner must state in his petition the facts underlying the claim of unlawful restraint and the evidence supporting the factual allegations. In re Rice, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). If the petitioner's allegations are based on matters outside the existing record, he must demonstrate that he has competent admissible evidence to establish the facts that entitle him to relief. Rice, 118 Wn.2d at 886. If the petitioner's evidence is based on knowledge of others, he may not simply state what he thinks those others would say, but must present evidence showing that his factual allegations are based on more than speculation, conjecture, or inadmissible hearsay. Id.

V. ARGUMENT

THE DEPARTMENT DOES NOT ERR IN DENYING MR. HEGNEY EARNED EARLY RELEASE TIME FOR HIS MANDATORY TWENTY YEAR SENTENCE FOR FIRST DEGREE MURDER, BECAUSE THE LEGISLATURE PROPERLY REENACTED FORMER RCW 9.94A.120(4).

In his fourth claim for relief, Mr. Hegney alleges that the State of Washington (Department) is erroneously failing to award any earned early release credits to Mr. Hegney's twenty year mandatory sentence for first degree murder. He argues that, under State v. Cloud, 95 Wn. App. 606, 976 P.2d 649 (1999), the restriction on earned early release time in former RCW 9.94A.120(4), based on Initiative 593, violated the single subject

rule of Wash. Const. art. II, § 19. He further argues that the later passage of HB 1924 in 1997, Laws of 1997, chapter 340 § 2, did not cure the problem because the bill title also violated the “single subject” rule of Wash. Const. art. II § 19. Mr. Hegney’s claim is without merit because the Legislature reenacted RCW 9.94A.120 five times in 1997, one time in 1998, and twice in 2000. At least one reenactment, Engrossed Third Substitute House Bill 3900, Laws of Washington, chapter 338, § 4 clearly does not violate the “single subject” rule of Art. II, § 19. As a result, the Department does not err in denying Mr. Hegney earned early release time on the 20 year mandatory portion of his sentence.

Article II, Section 19, of the Washington Constitution provides: “No bill shall embrace more than one subject, and that shall be expressed in the title.” Wash. Const. Art. II, § 19. The policies underlying the constitutional provision are the prevention of “logrolling’ or pushing legislation through by attaching it to other necessary or desirable legislation” and general notice to members of the legislature and the public of what is contained in the proposed legislation. State v. Thorne, 129 Wn.2d 736, 757, 921 P.2d 514 (1996). Generally, a legislative title is constitutionally sufficient if it “gives such notice as should reasonably lead to an inquiry into the body of the act itself, or indicates, to an inquiring mind, the scope and purpose of the law.” State ex. re. Washington

Tollbridge Auth. v. Yelle, 32 Wn.2d 13, 26, 200 P.2d 467 (1948)(citations omitted).

A legislative title can be either general or restrictive and it is this distinction that determines the legal analysis that is applied. See Thorne, 129 Wn.2d at 758, Yelle, 32 Wn.2d at 26. “A restrictive title expressly limits the scope of the act to that expressed in the title.” State v. Broadaway, 133 Wn.2d 118, 127, 942 P.2d 363 (1997). A restrictive title is “one where a particular part or branch of a subject is carved out and selected as the subject of the legislation.” Gruen v. State Tax Comm’n., 35 Wn.2d 1, 23, 211 P.2d 651 (1949), overruled on other grounds by State ex. rel. State Fin. Comm. v. Martin, 62 Wn.2d 645, 384 P.2d 833 (1963). Accordingly, the title “will not be regarded as liberally and a provision not fairly within it will not be given force.” Id. at 127; Thorne, 129 Wn.2d at 758; Yelle, 32 Wn.2d at 26.

Where a legislative title is general, “any subject reasonably germane to such title may be embraced within the body of the bill.” Washington Fed’n of State Employees v. State, 127 Wn.2d 544, 555-56, 901 P.2d 1028 (1995). “[A] general title consisting of a few well-chosen words, suggesting the general subject stated, is all that is necessary to comply with” Article II, Section 19. In re Boot, 130 Wn.2d 553, 566, 925 P.2d 964 (1996).

A general title is given liberal construction and no unconstitutionality exists even if the “general subject contains several incidental subjects or subdivisions. . . . All that is required is that there be some “rational unity” between the general subject and the incidental subdivisions.” State v. Grisby, 97 Wn.2d 493, 498, 647 P.2d 6 (1982)(quoting Kueckelhan v. Federal Old Line Ins. Co., 69 Wn.2d 392, 403, 418 P.2d 443 (1996), cert. denied, 459 U.S. 1211, 103 S. Ct. 1205, 75 L. Ed. 2d 446 (1983)).

This principle has been explained as follows:

Under the true rule of construction, the scope of the general title should be held to embrace any provision of the act, directly or indirectly related to the subject expressed in the title and having a natural connection thereto, and not foreign thereto. Or, the rule may be stated as follows: Where the title of a legislative act expresses a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all measures which will, or may facilitate the accomplishment of the purpose so stated, are germane to its title.

Almgamated Transit Union, Local 587 v. State, 142 Wn.2d 183, 209, 11 P.2d 756 (2000) (quoting Kueckelhan, 69 Wn.2d at 403).

The requirement of rational unity has been explained as follows:

[A constitutional single-subject prohibition] does not be restricting the contents of an ‘act’ to one subject, contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act, the unity found in the general purpose of the act and the practical problems of efficient administration. It is hardly necessary to suggest that matters which ordinarily would not be though to have any common features or characteristics might, for purposes of

legislative treatment, be grouped together and treated as one subject. For purposes of legislation, ‘subjects’ are not absolute existences to be discovered by some sort of a priori reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act. . . .

Amalgamated Transit Union, 142 Wn.2d at 209-210 (quoting Yelle, 61 Wn.2d at 33 (quoting State ex. rel. Test v. Steinwedel, 203 Ind. 457, 467, 180 N.E. 865 (1932))).

Effective December 2, 1993, for the first time in Washington’s history, Initiative 593, the “three strikes” law (Laws of 1994, chapter 1, § 2) denied eligibility for earned early release time to inmates serving a mandatory minimum term. In State v. Cloud, supra, the Washington Supreme Court invalidated the initiative, at least to the extent it denied earned early release credit to offenders not defined as persistent offenders, the restrictive title of the act.

When the initiative was originally passed, it was codified at former RCW 9.94A.120(4). Subsequently, the Legislature reenacted RCW 9.94A.120 five times in 1997, once in 1998, and twice in 2000. The following chart indicates the various enactments:

- | | |
|------------------|---|
| 1997 Ch. 69 §1 | “An Act relating to community placement of offenders; and reenacting and amending RCW 9.94A.120.” |
| 1997 Ch. 121 § 2 | “An Act relating to the payment of fees; amending RCW.6.17.020, 9.94A.140, 9.94A.145, 13.40.145, 13.40.080, and 13.40.090; reenacting and amending RCW 9.94A.120 and 9.94A.142; and adding a new section to chapter 13.40 RCW.” |

- 1997 Ch. 144 §2 “An Act relating to assuring compliance with sentence conditions; and reenacting and amending RCW 9.94A.030 and 9.94A.120.
- 1997 Ch. 338 § 4 “An Act relating to offenders; . . . reenacting and amending RCW . . . 9.94A.120 . . . prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.”
- 1997 Ch. 340 § 2 “An Act relating to sex offenses; reenacting and amending RCW 9.94A.320 and 9.94A.120; and prescribing penalties.”
- 1998 Ch. 260 § 3 “An Act related to mentally ill offenders; amending RCW 9.94A.110; reenacting and amending RCW 9.94A.120 and 9.94A.200; and creating new sections.”
- 2000 Ch. 43 § 1 “An Act relating to the termination of offenders from the special drug offender sentencing alternative; and reenacting and amending RCW 9.94A.120.”
- 2000 Ch. 226 § 2 “An Act relating to terms of community supervision; amending RCW 9.94A.145; reenacting RCW 9.94A.120, 9.94A.142, and 9.94A.170; creating a new section; and declaring an emergency.

Mr. Hegney argues that HB 1924, Laws of 1997, ch. 340 § 2 “did not cure the problem since the bill title of that piece of legislation also violated the ‘single subject’ rule of Wash. Const. art. II, § 19.” Petition at 16. However, even if HB 1924 does violate the “single subject” rule, the Legislature’s reenactment of RCW 9.94A.120 in Laws of 1997, ch. 338, § 4, does not violate the “single subject” rule of Art. II, § 19.

The complete title of Laws of 1997, ch. 338 is as follows:

AN ACT Relating of offenders; amending RCW 5.60.060, 9.94A.030, 13.04.011, 13.40.010, 13.40.0357, 13.40.040, 13.40.045, 13.40.050, 13.40.060, 13.40.070, 13.40.077, 13.40.100, 13.40.110, 13.40.130, 13.40.135, 13.40.150,

13.40.160, 13.40.190, 13.40.193, 13.40.200, 13.40.210, 13.40.230, 13.40.250, 13.40.265, 13.40.320, 13.50.010, 13.50.050, 72.09.460, 9A.36.045, 9A.36.050, 9.41.040, 9.94A.103, 9.94A.105, 9.94A.310, 10.99.020, 10.99.040, 10.99.050, 82.44.110, 69.50.520, and 13.40.080; reenacting and amending RCW 9.94A.030, 9.94A.120, 9.94A.360, 13.04.030, 13.40.020, 9.94A.320 and 9A.46.060; adding new sections to chapter 13.40 RCW; adding a new section to chapter 70.96A RCW; adding a new section to chapter 72.01 RCW; adding a new section to chapter 43.121 RCW; creating new sections; repealing RCW 9.94A.045, 13.40.025, 13.40.075, 13.40.125, and 13.40.0354; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.

Laws of 1997, ch. 338.

The title of the Laws of 1997, ch. 338 is a general title, therefore, “any subject reasonably germane to such title may be embraced within the body of the bill.” Washington Fed’n of State Employees v. State, 127 Wn.2d at 555-56. Here, the amount of earned early release time credit given to mandatory sentences is related to criminal offenders. Article II, Section 19, is to be liberally construed so as to sustain the validity of a legislative enactment. Id. at 555. The section related to mandatory sentences in RCW 9.94A.120(4) is clearly encompassed within the title of the Act. This Court should determine that there is no violation of the single-subject requirement of Article II, Section 19.

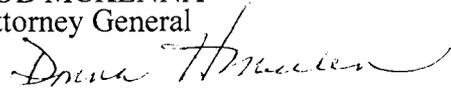
VI. CONCLUSION

For the above stated reasons, the Department respectfully requests this Court determine that the reenactment of RCW 9.94A.120 in Laws of 1997, ch. 338 does not violate the single subject rule of Art. II § 19 of the Wash. Constitution and that the Department does not err in denying Mr.

Hegney earned early release time for the mandatory 20 year sentence for first degree murder.

RESPECTFULLY SUBMITTED this 12th day of January, 2006.

ROB MCKENNA
Attorney General



DONNA H. MULLEN, WSBA #23542
Assistant Attorney General
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Criminal Justice Division
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(360) 586-1445

EXHIBIT

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF PIERCE

10 STATE OF WASHINGTON,

11 Plaintiff,

12 vs.

13 JUSTIN MICHAEL HEGNEY,

14 Defendant.

15 DOB: 06/05/1985
16 SID NO.: WA20203762

CAUSE NO.01-1-01150-4

JUDGMENT AND SENTENCE (JS)

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- Prison
 - Jail One year or less
 - First Time Offender
 - Special Sexual Offender Sentencing Alternative
 - Special Drug Offender Sentencing Alternative
 - Breaking The Cycle (BTC)

I. HEARING

1.1 A sentencing hearing in this case was held on 2.22.02 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

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 28th day of January, 2002 by

plea jury-verdict bench trial of:

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

EXHIBIT 1
1 of 13

cc to client
Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

Count No.: I
 Crime: MURDER IN THE FIRST DEGREE, Charge Code: (D3)
 RCW: 9A.32.030(1)(c) and 9A.08.020
 Date of Crime: 08/19/2000
 Incident No.: TPD 00-232-1277

as charged in the Original Information.

- A special verdict/finding for use of a firearm was returned on Count(s) _____. RCW 9.94A.125, .310.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.125, .310.
- A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.127.
- A special verdict/finding for violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, or within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local government authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.129.
- The crime charged in Count(s) _____ involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

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 (Felony)(6/2000)

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):
NONE KNOWN OR CLAIMED.

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	0	XV	240-320 MOS	NONE	240-320 MOS	LIFE/\$50,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

2.4 EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

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(Felony)(6/2000)

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

Date recommended sentencing of 32 months.

III. JUDGMENT

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

3.2 [] The Court DISMISSES Count(s) _____. [] The defendant is found NOT GUILTY of Count(s) _____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402):

\$ 120.11 Restitution to: Brian Towns *see attached bill*

\$ 7,035.53 Restitution to: Crime Victims

\$ _____ Restitution to: _____
(Name and Address address may be withheld and provided confidentially to Clerk's Office).

\$ 500.00 Victim assessment RCW 7.68.035

\$ 110.00 Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ _____

Witness costs \$ _____

Sheriff service fees \$ _____

Jury demand fee \$ _____

Other \$ _____

\$ _____ Fees for court appointed attorney RCW 9.94A.030

\$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

\$ _____ Fine RCW 9A.20.021 [] VUCSA additional fine waived due to indigency RCW 69.50.430

JUDGMENT AND SENTENCE (JS)
(Felony) (6/2000)

\$ _____ Drug enforcement fund of _____ RCW 9.94A.030

\$ _____ Crime Lab fee [] deferred due to indigency RCW 43.43.690

\$ _____ Extradition costs RCW 9.94A.120

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 7,765.94 TOTAL RCW 9.94A.145

ALWAYS The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed order may be entered. RCW 9.94A.142. A restitution hearing:

[] shall be set by the prosecutor
[] is scheduled for _____

RESTITUTION. See attached order.

[] Restitution ordered above shall be paid jointly and severally with:

NAME OF OTHER DEFENDANT	CAUSE NUMBER	VICTIM NAME	AMOUNT-\$
<i>See attached order</i>			

[] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.145.

[] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

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(Felony)(6/2000)

[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

[V] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).
[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.4(a) Bond is hereby exonerated.

4.5 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

240 months on Count No. I _____ months on Count No. _____
_____ months on Count No. _____ months on Count No. _____

Actual number of months of total confinement ordered is 240 months.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.400. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set

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(Felony)(6/2000)

forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] The sentence herein shall run consecutively to the felony sentence in cause number(s)

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here:

Confinement shall commence immediately unless otherwise set forth here:

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

544 days

4.6 ~~AW~~ COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

- Count ___ for ___ months;
Count ___ for ___ months;
Count ___ for ___ months;

[X] COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:

- Count I for a range from 24 to 48 months;
Count ___ for a range from ___ to ___ months;
Count ___ for a range from ___ to ___ months;

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(Felony)(6/2000)

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses-- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.
[] Defendant shall have no contact with: _____
[] 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 undergo an evaluation for treatment for [] domestic violence [] substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

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

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

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(Felony)(6/2000)

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4 4.7 [] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court
5 finds that the defendant is eligible and is likely to qualify for work
6 ethic camp and the court recommends that the defendant serve the
7 sentence at a work ethic camp. Upon completion of work ethic camp, the
8 defendant shall be released on community custody for any remaining time
of total confinement, subject to the conditions below. Violation of the
conditions of community custody may result in a return to total
confinement for the balance of the defendant's remaining time of total
confinement. The conditions of community custody are stated in Section
4.6.

9 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The
10 following areas are off limits to the defendant while under the
supervision of the County Jail or Department of Corrections:

11
12 V. NOTICES AND SIGNATURES

13 5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for
14 collateral attack on this judgment and sentence, including but not
15 limited to any personal restraint petition, state habeas corpus
16 petition, motion to vacate judgment, motion to withdraw guilty plea,
17 motion for new trial or motion to arrest judgment, must be filed within
one year of the final judgment in this matter, except as provided for
in RCW 10.73.100. RCW 10.73.090.

18 5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1,
19 2000, the defendant shall remain under the court's jurisdiction and the
20 supervision of the Department of Corrections for a period up to 10
21 years from the date of sentence or release from confinement, whichever
22 is longer, to assure payment of all legal financial obligations unless
the court extends the criminal judgment an additional 10 years. For an
offense committed on or after July 1, 2000, the court shall retain
jurisdiction over the offender, for the purposes of the offender's
compliance with payment of the legal financial obligations, until the
obligation is completely satisfied, regardless of the statutory maximum
for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

23 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered
24 an immediate notice of payroll deduction in Section 4.1, you are
25 notified that the Department of Corrections may issue a notice of
26 payroll deduction without notice to you if you are more than 30 days
past due in monthly payments in an amount equal to or greater than the
amount payable for one month. RCW 9.94A.200010. Other income-
withholding action under RCW 9.94A may be taken without further notice.
RCW 9.94A.200030.

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5.4. RESTITUTION HEARING.

[] Defendant waives any right to be present at any restitution hearing (defendant's initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of the Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of

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Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 2.22.02

Diana M. Williams
Deputy Prosecuting Attorney
Print Name: Diana M. Williams
WSB# 19725

Karen A. Strickland
JUDGE Print Name:

Wayne Franke
Attorney for Defendant
Print name: Wayne Franke
WSB# 16550

Justin Hegney / Justin Hegney
Defendant
Print name: Justin Hegney

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CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 01-1-01150-4

I, Bob San Soucie, Interim Clerk of this Court, certify that the foregoing is a full, true and correct copy of the judgment and sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed on this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No.: WA20203762 Date of Birth: 06/05/1985
(If no SID take fingerprint card for WSP)

FBI No. UNKNOWN Local ID No. _____

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:	Ethnicity:	Sex:
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male
<input type="checkbox"/> Black/African-American	<input type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female
<input checked="" type="checkbox"/> Caucasian		
<input type="checkbox"/> Native American		
<input type="checkbox"/> Other: _____		

trp

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FINGERPRINTS

Right four fingers taken simultaneously

Right thumb

Left four fingers taken simultaneously

Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Interim Clerk of the Court, BOB SAN SOUCIE:

_____, Deputy Clerk.

Dated: 2

DEFENDANT'S SIGNATURE: Austin Hegarty

DEFENDANT'S ADDRESS: _____

DEFENDANT'S PHONE#: _____

FINGERPRINTS

CERTIFICATE OF SERVICE

I certify that I served a copy of RESPONSE OF THE DEPARTMENT OF CORRECTIONS on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

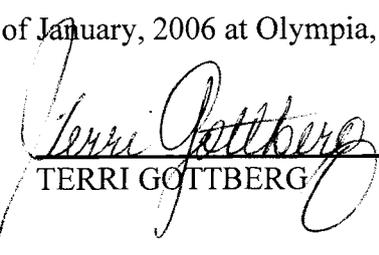
TO:

NEIL MARTIN FOX, ESQ.
COHEN AND LARIA
1008 WESTERN AVENUE, SUITE 302
SEATTLE, WA 98104-1090

KATHLEEN PROCTOR
PIERCE COUNTY DEPUTY PROSECUTOR
930 Tacoma Avenue South
Tacoma, WA 98402

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

EXECUTED this 12th day of January, 2006 at Olympia, WA.



TERRI GOTTBERG

FILED
COURT OF APPEALS
PIERCE COUNTY
06 JAN 13 AM 10:20
STATE OF WASHINGTON
BY _____
DEPUTY