

NO. 34271-5

FILED
COURT OF APPEALS

06 09 20 PM 1:46

STATE OF WASHINGTON
BY: *[Signature]*

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

LISA DIANE CHAVEZ, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 05-1-02595-8

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

 1. Did the court appropriately deny defendant’s motion for a continuance for the purpose of retaining private counsel when defendant was not diligent in procuring such counsel, defendant’s assigned counsel was prepared for trial that day and allowing the request would have substantially delayed the trial? 1

 2. Did the State provide sufficient evidence to prove the police officer was in uniform at the time of the elude when the State admitted a video tape of the officer’s encounter with defendant that showed the officer was in a black uniform with “POLICE” insignia? 1

 3. Did the court appropriately interpret and apply the Sentencing Reform Act by including defendant’s driving while intoxicated conviction in the calculation of her offender score for the elude? 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT.

 1. THE COURT ACTED WITHIN ITS DISCRETION IN DENYING DEFENDANT’S MOTION FOR A CONTINUANCE SO THAT SHE COULD RETAIN PRIVATE COUNSEL WHEN DEFENDANT WAS NOT DILIGENT IN PROCURING COUNSEL AND ALLOWING THE REQUEST WOULD HAVE SUBSTANTIALLY DELAYED THE TRIAL. 6

 2. THE STATE PROVIDED SUFFICIENT EVIDENCE TO PROVE THE OFFICER WAS IN UNIFORM AT THE TIME OF THE ELUDE. 9

3. THE COURT APPROPRIATELY INTERPRETED AND APPLIED THE SENTENCING REFORM ACT BY INCLUDING DEFENDANT’S DRIVING WHILE INTOXICATED CONVICTION IN THE CALCULATION OF HER OFFENDER SCORE FOR THE ELUDE..... 11

D. CONCLUSION..... 14

Table of Authorities

Federal Cases

<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).....	3
<u>Morris v. Slappy</u> , 461 U.S. 1, 11-12, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983).....	9
<u>United States v. Gonzalez-Lopez</u> , 2006 U.S. LEXIS 5165, No. 05-352, slip op. 1, 9 (U.S. June 26, 2006).....	8
<u>Wheat v. United States</u> , 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988).....	6

State Cases

<u>Burton v. Lehman</u> , 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).....	11
<u>In re Personal Restraint of Long</u> , 117 Wn.2d 292, 301, 815 P.2d 257 (1991).....	12
<u>King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</u> , 142 Wn.2d 543, 555, 14 P.3d 133 (2000).....	11
<u>King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</u> , 91 Wn. App. 1, 16, 951 P.2d 1151 (1998), <u>aff'd in part, rev'd in part</u> , 138 Wn.2d 161, 979 P.2d 374 (1999).....	11
<u>Nat'l Elec. Contractors Ass'n v. Riveland</u> , 138 Wn.2d 9, 19, 978 P.2d 481 (1999).....	11
<u>State v. Chase</u> , 59 Wn. App. 501, 506, 799 P.2d 272 (1990)	6, 7
<u>State v. Early</u> , 70 Wn. App. 452, 458, 853 P.2d 964 (1993)	6, 7
<u>State v. Garcia</u> , 92 Wn.2d 647, 656, 600 P.2d 1010 (1979).....	7
<u>State v. Ha'mim</u> , 132 Wn.2d 834, 844, 940 P.2d 633 (1997).....	12

<u>State v. Hurd</u> , 127 Wn.2d 592, 594, 902 P.2d 651 (1995).....	6
<u>State v. Knapstad</u> , 107 Wn.2d 346, 729 P.2d 48 (1986).....	4
<u>State v. Pirtle</u> , 127 Wn.2d 628, 643, 904 P.2d 245 (1995), <u>cert. denied</u> , 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996).....	9
<u>State v. Roberts</u> , 117 Wn.2d 576, 586, 817 P.2d 855 (1991)	12
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	9
<u>State v. Stannard</u> , 109 Wn.2d 29, 36, 742 P.2d 1244 (1987).....	11
<u>State v. Staten</u> , 60 Wn. App. 163, 169-70, 802 P.2d 1384, <u>review denied</u> , 117 Wn.2d 1011, 816 P.2d 1224 (1991).....	7

Statutes

RCW 46.61.024	9
RCW 9.94A.....	12
RCW 9.94A.030(24).....	12
RCW 9.94A.030(40)(a)	12
RCW 9.94A.525(1).....	12
RCW 9.94A.525(11).....	12
RCW 9.94A.589.....	12
RCW 9.94A.589(1)(a)	12, 13

Appendicies

Appendix "A"

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the court appropriately deny defendant's motion for a continuance for the purpose of retaining private counsel when defendant was not diligent in procuring such counsel, defendant's assigned counsel was prepared for trial that day and allowing the request would have substantially delayed the trial?
2. Did the State provide sufficient evidence to prove the police officer was in uniform at the time of the elude when the State admitted a video tape of the officer's encounter with defendant that showed the officer was in a black uniform with "POLICE" insignia?
3. Did the court appropriately interpret and apply the Sentencing Reform Act by including defendant's driving while intoxicated conviction in the calculation of her offender score for the elude?

B. STATEMENT OF THE CASE.

On the evening of May 24, 2005, the defendant, LISA CHAVEZ, caused a multiple car accident on Union Avenue in Steilacoom and then fled the scene in her white Dodge Intrepid. RPII¹ 13-14. Steilacoom

¹ RPII refers to the Verbatim Report of Proceedings for November 16, 17, and 18, 2005.

Police Officer Brian Weekes responded to the collision site and was interviewing the other drivers when they saw defendant drive by the scene again. RPII 7, 13. Officer Weekes got in his fully marked patrol car and tried to catch up to defendant. RPII 18-19. Officer Weekes engaged his lights and sirens in attempt to have defendant stop, but she continued driving and did not pull over. RPII 19.

In her attempt to get away, defendant sped up to 50 miles per hour in a 35 miles per hour zone. RPII 20, 22. Defendant swerved her car back and forth between her lane and the lane for oncoming traffic, causing other cars to pull over to avoid hitting her. RPII 22. Officer Weekes had Pierce County Sheriffs set up soft stakes to deflate defendant's tires at Farwest Drive and 112th Street. RPII 22. As defendant approached the other officers she turned her car into a dead end cul-de-sac and stopped. RPII 23.

Officer Weekes and Officer Whelan ordered defendant to get out of the car at gunpoint. RPII 23. Defendant refused to get out of the car and Officer Whelan had to forcefully pull her out. RPII 23. Defendant smelled like alcohol and had red, bloodshot eyes. RPII 26. Officer Weekes searched defendant's car and found two alcohol bottles of Mad Dog 20/20 on the passenger seat floor. RPII 24. One of the bottles was empty and the other was full. RPII 24. Officer Whelan then handcuffed defendant and put her in the back of Officer Weekes' patrol car. RPII 24.

Officer Weekes informed defendant she was under arrest for hit-and-run and felony eluding, then read defendant her Miranda² rights. RPII 26. Officer Whelan then went back to the accident site and had the victims of the hit and run come identify defendant. RPII 29. The victims identified defendant as the person who struck them. RPII 29. Defendant refused to take a breath or blood test to determine her blood alcohol level. RPII 32, 35.

On May 26, 2005, the State charged defendant with attempting to elude a pursuing police vehicle (Count I) and driving under the influence of intoxicants (Count II). CP 1-4. The State later filed an amended information also charging defendant with failure to remain at injury accident (Count III) and duty in case of damage to attended vehicle or other property (Count IV). CP 5-8. On June 16, 2005, a scheduling order was filed setting the trial date for July 12, 2005. CP 81. Defendant signed the scheduling order, indicating that she would be represented by the Department of Assigned Counsel (DAC). CP 81.

The trial date was continued several times. On June 29, 2005, the court granted defendant's first motion to continue. CP 82. Defendant's assigned counsel had asked for more time because he was still in the process of investigation. CP 82. The court continued the trial to August 30, 2005. CP 82. On August 30, 2005, the court granted defendant's

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

second motion to continue. CP 83. Defendant's assigned counsel had asked for more time because he was still in the process of interviewing witnesses. CP 83. The court continued the trial to October 24, 2005. CP 83. On October 24, 2005, the court granted the State's first motion to continue, due to witness availability. CP 84. On November 2, 2005, defendant's attorney was sick and the case was continued until November 3, 2005. CP 85. On November 3, 2005 the court continued the trial to November 8, 2005, because no court rooms were available. CP 86.

On the morning of November 7, 2005, the parties came before the Honorable James Orlando for a pre-trial hearing. RPI 3.³ Defendant made a Knapstad⁴ motion concerning Count III (the failure to remain at injury accident charge). RPI 3-6. The court denied the defendant's motion. RPI 9. Later that afternoon the parties were back before the court to address defendant's motion to continue in order so she could retain a new attorney. RP 10. The new attorney, Mr. O'Melveny, called the State earlier in the afternoon and indicated that defendant had retained him and that he wanted to enter an appearance on this case. RP 10. Johnson, defendant's assigned counsel, stated that he had spoke with O'Melveny, who indicated the earliest he could try the case would be between January 30, 2006 to February 20, 2006. RP 11. Johnson also indicated that he was ready for

³ RPI refers to the Verbatim Report of Proceedings for November 7, 2005.

⁴ State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986).

trial that day. RP 11. The court denied defendant's motion to continue stating:

Counsel, the case is 165 days old. This is the assigned day for trial. Ms. Chavez, I appreciate the fact that you may want to hire your own attorney, but his own indication is that he wouldn't even be able to try this case for another two months, two to three months. This case needs to be resolved. There's an alleged victim out there that is entitled to have their interest considered, and I'm not inclined to continue it.

RPI 11-12.

On November 8, 2005, the court continued the trial to November 16, 2005, because no court rooms were available. CP 87. The trial commenced on November 16, 2005. RPII 1. After a three day jury trial, defendant was found guilty on all counts. CP 42-45. The jury also returned a special verdict finding that defendant had refused to take a breath test. CP 46.

At sentencing, the court dismissed Count IV, the duty in case of damage to attended vehicle or other property conviction. RPII 180. The court found that it merged with Count III, the failure to remain at injury accident conviction. RPII 180. The court declined defendant's request for an exceptional sentence downward and imposed standard range sentences. RPII 182-183. Defendant filed a timely notice of appeal. CP 73.

C. ARGUMENT.

1. THE COURT ACTED WITHIN ITS DISCRETION IN DENYING DEFENDANT'S MOTION FOR A CONTINUANCE SO THAT SHE COULD RETAIN PRIVATE COUNSEL WHEN DEFENDANT WAS NOT DILIGENT IN PROCURING COUNSEL AND ALLOWING THE REQUEST WOULD HAVE SUBSTANTIALLY DELAYED THE TRIAL.

Appellate courts review trial court decisions to grant or deny motions for continuances under an abuse of discretion standard. State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995). The trial court in exercising its discretion considers various factors including diligence, due process, the need for an orderly procedure, and the possible impact on the trial. State v. Early, 70 Wn. App. 452, 458, 853 P.2d 964 (1993). It may also consider whether prior continuances have been granted. Id. Denial of the motion will not be disturbed absent a showing that the defendant was prejudiced or that the result of the trial would likely have been different had the motion been granted. Id.

A defendant has the right to retain counsel of his choice and may be unlawfully deprived of the right by a denial of a motion for continuance. State v. Chase, 59 Wn. App. 501, 506, 799 P.2d 272 (1990) (citing Wheat v. United States, 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988)). The right to retain counsel of one's choice, however, is limited -- the assertion of the right must be made within a reasonable time before trial. Id. A motion for continuance to secure or replace counsel

may be denied "where the accused's lack of representation is attributable to his own lack of diligence in procuring or replacing counsel"

Early, 70 Wn. App. at 458-59. "In the absence of substantial reasons a late request should generally be denied, especially if the granting of such a request may result in delay of the trial." Chase, 59 Wn. App. at 506 (quoting State v. Garcia, 92 Wn.2d 647, 656, 600 P.2d 1010 (1979)); State v. Staten, 60 Wn. App. 163, 169-70, 802 P.2d 1384, review denied, 117 Wn.2d 1011, 816 P.2d 1224 (1991).

In this case, the court acted within its discretion in denying defendant's motion for a continuance in order to retain new counsel. The record shows defendant was not diligent in securing private counsel and did not provide a substantial reason for her late request. In June, 2005, defendant was given a court appointed attorney to represent her. CP 81. Over the next four months, the court granted several continuances. CP 82-84. During this time, defendant never made the court aware of any intention to retain private counsel. The record indicates defendant made her first request to retain private counsel at the beginning of November, 2005. RPI 10. The request was made orally, but nothing was formally filed with the court. RPI 10.

The record shows that granting defendant's late request would have substantially delayed the trial. Johnson, defendant's assigned counsel, indicated that the attorney defendant wanted to retain had said he would not be available for trial until the end of January or February. RPI 11.

The State objected to a continuance of this length, arguing that the case had been continued several times and that the prosecution was ready for trial that day. RPI 10. Johnson informed the court that he had interviewed all the witnesses and was ready to go to trial as well. RPI 11. The court denied defendant's motion to continue reasoning that the case was 165 days old, it was assigned for trial that day, and defendant's requested attorney would not be able to try the case for two to three months. RPI 11-12. In sum, the court did not abuse its discretion by denying defendant's motion for a continuance.

Defendant relies on United States v. Gonzalez-Lopez, which held that the erroneous deprivation of a criminal defendant's choice of counsel was structural error not subject to harmless error review. See United States v. Gonzalez-Lopez, 2006 U.S. LEXIS 5165, No. 05-352, slip op. 1, 9 (U.S. June 26, 2006). In Gonzalez-Lopez, defendant hired two attorneys who appeared at trial. 2006 U.S. LEXIS 5165 at 6-7. The court would not admit one of the attorneys because the court ruled he had violated a professional rule of conduct. Id. The court ordered the attorney to sit in the audience and would not allow him to sit at counsel table with defendant. Id. On appeal, the government conceded that defendant was erroneously denied his right to counsel of choice. 2006 U.S. LEXIS 5165 at 9.

Gonzalez-Lopez does not affect the analysis here. The Supreme Court specifically noted, that it was not addressing a court's power "to

make scheduling and other decisions that effectively exclude a defendant's first choice of counsel." 2006 U.S. LEXIS 5165 at 21. The court continued to recognize a trial court's wide latitude in balancing the right to counsel of choice against the demands of its calendar. Id. (Citing Morris v. Slappy, 461 U.S. 1, 11-12, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983)).

2. THE STATE PROVIDED SUFFICIENT EVIDENCE TO PROVE THE OFFICER WAS IN UNIFORM AT THE TIME OF THE ELUDE.

When evaluating the sufficiency of the evidence for a criminal conviction, appellate courts view the evidence in the light most favorable to the State and determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. State v. Pirtle, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996). Appellate courts should draw all reasonable inferences in favor of the State and interpret the evidence most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

RCW 46.61.024 states:

Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

In this case, defendant alleges that the State failed to prove that the signaling officer was in uniform. However, at trial the State admitted and played a video tape for the jury which shows that the officer was in uniform. RPII 113-114; CP 16; Plaintiff's Exhibit 2. The video tape was from a camera attached to Officer Whelan's patrol car, which was behind Officer Weekes' patrol car during the chase and arrest. RP 112; CP 16; Plaintiff's Exhibit 2. The tape shows defendant fleeing two marked police cars that had their emergency lights activated. CP 16; Plaintiff's Exhibit 2. Officer Weekes also testified that he had activated his siren during the chase. RP 18. The tape shows that the chase continued for several minutes, with defendant crossing over the center line into the other lane with oncoming traffic. CP 16; Plaintiff's Exhibit 2. The tape shows that when defendant finally stopped, Officer Weekes got out of his patrol car and was wearing a black uniform with "POLICE" written in large white letters on his back. CP 16; Plaintiff's Exhibit 2. In sum, the tape showed (1) defendant refusing to stop for the police after being signaled by a marked patrol car's emergency lights, (2) defendant continuing to drive away in a reckless manner, and (3) that the officer who had signaled her to stop was in uniform. The record provided sufficient evidence to satisfy all the elements that defendant was guilty of attempting to elude a police officer.

3. THE COURT APPROPRIATELY INTERPRETED AND APPLIED THE SENTENCING REFORM ACT BY INCLUDING DEFENDANT'S DRIVING WHILE INTOXICATED CONVICTION IN THE CALCULATION OF HER OFFENDER SCORE FOR THE ELUDE.

The interpretation of a statute is a question of law, reviewed de novo. King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 555, 14 P.3d 133 (2000). The primary goal of interpreting a statute is to ascertain and give effect to the intent of the Legislature. Id. (Citing Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). To determine the intent, the court looks to the plain words of the statute. Id. However, the court is also required to read legislation as a whole and determine intent from more than just a single sentence; effect should be given to all of the language used and provisions must be considered in relation to each other and harmonized to ensure proper construction. Id. at 560. (Citing King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 91 Wn. App. 1, 16, 951 P.2d 1151 (1998), aff'd in part, rev'd in part, 138 Wn.2d 161, 979 P.2d 374 (1999)). "In undertaking this plain language analysis, the court must remain careful to avoid 'unlikely, absurd or strained' results." Burton v. Lehman, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005) (quoting State v. Stannard, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)).

When a sentencing provision is reasonably subject to differing interpretations, an interpretation most favorable to the criminal defendant

is adopted. See State v. Roberts, 117 Wn.2d 576, 586, 817 P.2d 855 (1991). When interpreting the Sentencing Reform Act of 1981 (RCW 9.94A), a court may consult and be guided by the Sentencing Guidelines Commission's interpretations of the act. E.g., State v. Ha'mim, 132 Wn.2d 834, 844, 940 P.2d 633 (1997); In re Personal Restraint of Long, 117 Wn.2d 292, 301, 815 P.2d 257 (1991).

Under RCW 9.94A.525(1), “[c]onvictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed ‘other current offenses’ within the meaning of RCW 9.94A.589.” Under RCW 9.94A.589(1)(a), “whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score.” Under RCW 9.94A.525(11), each adult prior conviction for a serious traffic offense should count as one point when calculating offender scores for felony traffic offenses. Eluding a police officer is defined as a felony traffic offense under RCW 9.94A.030(24). Driving under the influence is defined as a serious traffic offense under RCW 9.94A.030(40)(a). Therefore, under a plain language analysis, a driving under the influence conviction that is a current offense should be treated as a prior conviction and count as one point when calculating an offender score for eluding a police officer conviction. This reading of the statute is

also consistent with the Sentencing Guidelines Commission interpretation. See Appendix A.

In this case, the court appropriately interpreted and applied the Sentencing Reform Act by including defendant's driving while intoxicated conviction in her offender score for the eluding a police officer conviction. Defendant's convictions for eluding a police officer (Count I) and driving under the influence (Count III) were both sentenced on December 9, 2005. CP 50-62. This made the driving under the influence conviction an "other current offense" for the purpose of determining the sentence range for the eluding a police officer conviction. The driving under the influence conviction should be treated as if it were a prior conviction and count for one point. Accordingly, the court appropriately scored defendant's driving while intoxicated conviction as one point when calculating her offender score for the eluding a police officer conviction. CP 50-60.

Defendant alleges that RCW 9.94A.589(1)(a) is ambiguous. RCW 9.94A.589(1)(a) states "whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score." Defendant argues that the language "the sentence range for each current offense," presumes that all current offenses must have a sentence range, which is only applicable to felonies. This is not a reasonable interpretation of the statute. First, the plain language of the statute does not state that the current

offenses used in determining the sentence range must only be felonies. Second, this interpretation fails to consider the other provisions of the statute which mandate counting misdemeanors. Finally, it would produce the unlikely result of overlooking current misdemeanors, while punishing more harshly for past ones.

D. CONCLUSION.

For the foregoing reasons this Court should affirm defendant's convictions and sentences.

DATED: OCTOBER 17, 2006

GERALD A. HORNE
Pierce County
Prosecuting Attorney



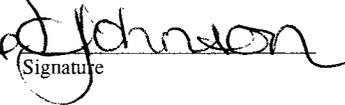
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Levi Larson
Rule 9 Intern

FILED
COURT REPORTERS
06 OCT 20 PM 1:46
STATE OF WASHINGTON
BY _____

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10/19/06 
Date Signature

Appendix A

ATTEMPTING TO ELUDE PURSUING POLICE VEHICLE
(RCW 46.61.024(1))
CLASS C FELONY
NONVIOLENT TRAFFIC OFFENSE

I. OFFENDER SCORING (RCW 9.94A.525(11))

ADULT HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault convictions..... _____ x 2 = _____
 Enter number of other felony convictions _____ x 1 = _____
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving and
 misdemeanor Hit and Run - Attended convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault dispositions..... _____ x 2 = _____
 Enter number of other felony dispositions _____ x 1/2 = _____
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving
 and misdemeanor Hit and Run - Attended dispositions _____ x 1/2 = _____

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

Enter number of Vehicular Homicide and Vehicular Assault convictions..... _____ x 2 = _____
 Enter number of other felony convictions _____ x 1 = _____
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving
 and misdemeanor Hit and Run - Attended convictions _____ x 1 = _____

STATUS: Was the offender on community custody 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)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL I)	0 - 60 days	0 - 90 days	2 - 5 months	2 - 6 months	3 - 8 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months

- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-**Error! Bookmark not defined.** or III-**Error! Bookmark not defined.** to calculate the enhanced sentence.
- C. If a sentence is one year or less: community custody *may* be ordered for up to one year (See RCW 9.94A.545 for applicable situations).

III. SENTENCING OPTIONS

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.
- B. If sentence is one year or less: one day of jail can be converted to one day of partial confinement or eight hours of community service (up to 240 hours) (RCW 9.94A.680).
- C. Partial confinement may be served in home detention (RCW 9.94A.030).
- D. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).
- E. If Drug Offender Sentencing Alternative (DOSA) eligible: see DOSA form for alternative sentence on page III-**Error! Bookmark not defined.** (RCW 9.94A.660).

- *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*