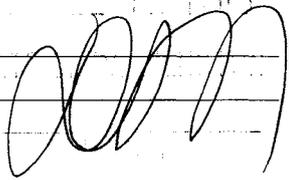


FILED
COURT OF APPEALS

NO. 34389-4

2005 FEB 16
BY: 

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

STATE OF WASHINGTON, RESPONDENT

v.

DANIEL SILVA, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald E. Culpepper

No. 05-1-02201-1

BRIEF OF RESPONDENT

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

1. Did defendant knowingly, voluntarily, and intelligently enter his plea agreement of guilty when he affirmed that he understood the plea agreement?
2. Did defendant receive effective assistance of counsel when counsel reviewed the plea statement with defendant in detail?
3. Was defendant afforded the assistance of counsel in reviewing his motion to withdraw his guilty plea when the court appointed him an attorney to review his legal grounds for withdrawal?

B. STATEMENT OF THE CASE.

On October 5, 2005, the defendant, DANIEL SILVA, entered a guilty plea before the Honorable Ronald Culpepper, to the nine count Amended Information which included one count of residential burglary (Count I), one count of attempted assault in the second degree (Count II), one count of unlawful imprisonment (Count III), one count of tampering with a witness (Count IV), two counts of felony harassment (Count V and Count IX), and three counts of violation of a protection order (Counts VI-

VIII). CP 25-29; RPII¹ 2-17. The Amended Information stated for Counts VI-VIII that defendant had “unlawfully and feloniously” violated the terms of a court order. CP 25-29.

During the plea hearing, the State confirmed that defendant was pleading to “a total of nine felony counts.” RPII 3. Defense counsel also informed the court that defendant was stipulating to felony violations of the no contact orders. RPII 6. During the plea hearing, the court also engaged in a colloquy with defendant. RPII 7-14. Defendant affirmed that he had reviewed and discussed his plea statement with his attorney. RPII 7. Defendant affirmed that he understood the various charges and did not have any questions about what he was pleading to. RPII 8. The court confirmed that the sentences would be concurrent and that defendant’s standard sentencing range with the enhancement for use of a weapon was from 75 to 96 months. RPII 9. Defendant affirmed that he understood his standard range sentence. RPII 9. Defendant also affirmed that he was pleading guilty freely and voluntarily and that he was giving up a number of rights by doing so. RPII 10. Defendant affirmed that he had received a copy of the Amended Information and that he knew he did not have to plead guilty. RPII 12. Defendant affirmed that no one had threatened or promised anything to make him plead guilty. RPII 13. After

¹ RPII refers to the transcripts from October 5, 2005; RPIII refers to the transcripts from December 30, 2005; and RPIV refers to the transcripts from January 27, 2006.

the colloquy with defendant, the court accepted defendant's guilty plea.

RPII 15.

At the sentencing hearing on December 30, 2006, another attorney from the Department of Assigned Counsel, Sverre Staurset, appeared before the court to address whether defendant could withdraw his guilty plea. RPIII 4. Staurset stated that defendant claimed to believe that Counts VI-VIII were misdemeanors and not felonies. RPIII 6. Both defendant's attorney for the plea hearing, Steve Krupa, and the State's attorney at the plea hearing were adamant that defendant knew the counts were felonies. RPIII 8-9. The court set the sentencing hearing over until January 27, 2006, in order to review the plea hearing transcripts. RPIII 19-20.

On January 27, 2006, defendant again claimed that he thought the no-contact order counts were going to be misdemeanors. RPIV 11. The court rejected defendant's contention finding that during the plea hearing defendant clearly knew they were felonies. RPIV 11. The court then imposed the following sentences to be served concurrently: 84 months for Count I; 63 months for Count II; and 60 months for Counts III-IX. CP 48-62. The court also imposed an additional 12 months for the deadly weapon enhancement. CP 48-62. Defendant filed a timely notice of appeal on February 3, 2006. CP 66-81.

C. ARGUMENT.

1. DEFENDANT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED HIS PLEA AGREEMENT OF GUILTY.

The 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. Under CrR 4.2(f), a court must allow a guilty plea to be withdrawn if withdrawal is necessary to correct a manifest injustice. A manifest injustice may arise were a defendant’s plea involuntary. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). To be valid, a guilty plea must be knowing, intelligent, and voluntary. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). An appellate court reviews a trial court’s decision on a motion to withdraw a guilty plea for abuse of discretion. State v. S.M., 100 Wn. App. 401, 409, 996 P.2d 1111 (2000). A court abuses its discretion only when it bases its decision on untenable grounds or reasons. State v. O’Neal, 126 Wn. App. 395, 109 P.3d 429, 436 (2005).

Where a defendant pleads guilty following receipt of an information, the court presumes the plea is knowing, intelligent, and voluntary. In re Pers. Restraint Petition of Hews, 108 Wn.2d 579, 596,

741 P.2d 983 (1987). A defendant's signature on the plea form provides strong evidence that the plea is voluntary. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). And "[w]hen the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable." State v. Perez, 33 Wn. App. 258, 262, 654 P.2d 708 (1982).

Courts apply contract principles in construing plea agreements. State v. Sledge, 133 Wn.2d 828, 838, 947 P.2d 1199 (1997); State v. Wheeler, 95 Wn.2d 799, 803, 631 P.2d 376 (1981). A prime object of contract interpretation is to ascertain and give effect to the parties' intent. In re Marriage of Litowitz, 146 Wn.2d 514, 528, 48 P.3d 261, 53 P.3d 516 (2002), cert. denied, 537 U.S. 1191 (2003). Courts review "the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties." Id. (quoting Scott Galvanizing, Inc. v. N.W. EnviroServices, Inc., 120 Wn.2d 573, 580-81, 844 P.2d 428 (1993)). Ambiguities in contracts are resolved against the drafter. State v. Skiggn, 58 Wn. App. 831, 838, 795 P.2d 169 (1990).

A plea generally is not rendered invalid by an obvious scrivener's error in an information, such as a statutory citation error. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701, 117 P.3d 353 (2005).

Scrivener's errors are clerical errors that are the result of mistake or inadvertence, especially in writing or copying something on the record. See BLACK'S LAW DICTIONARY 582, 1375 (8th ed. 1999). They are not errors of judicial reasoning or determination. Id. CrR 7.8(a) provides that clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party. The remedy for a scrivener's error is to remand to the trial court for correction of the error. Mayer, 128 Wn. App. at 701.

In this case, the record shows that defendant was informed of and understood the correct standard range and maximum sentences for the charges against him. CP 31-44. Yet, on appeal defendant alleges that he was not advised of the standard range for Counts VI-VIII. Appellant's Brief at 15. The standard range for the counts in dispute was sixty months with a maximum penalty of five years and a \$10,000 fine. RCW 9.94A.510, 515. Although the sentencing court mistakenly stated during the plea hearing that "a violation of the protection order is at 12 months," (RPII 10) defendant had already signed his plea statement, which had been corrected three times to show the standard range of 60 months. CP 31-44 (ATTACHMENT "B" 2-3).

Defense counsel had originally listed an incorrect standard range (0-12 months), maximum sentence (12 months) and fine amount (\$5000) for Counts VI-VIII in defendant's plea statement. CP 31-44

(ATTACHMENT “B” 2-3).² The incorrect information was listed at the bottom and top of each count. CP 31-44 (ATTACHMENT “B” 2-3). Defense counsel crossed out the incorrect information at the bottom of each count and listed the correct standard range (0-12 months), maximum sentence (12 months), and fine amount (\$5000). CP 31-44 (ATTACHMENT “B” 2-3). This still left the incorrect information listed once above the crossed out portions.

However, defendant’s plea statement as a whole and the surrounding circumstances indicate that this clerical error did not affect his understanding of the plea statement. Defendant’s attorney signed that he had read and discussed the plea statement with defendant and that he believed defendant was competent and fully understood the statement. CP 31-44 (paragraph 12). Defendant also signed that he had fully discussed all of the plea statement’s paragraphs with his lawyer. CP 31-44 (paragraph 12). Defendant signed that he had received a copy of the statement and had no further questions for the judge. CP 31-44 (paragraph 12). Defendant signed that his lawyer had explained the paragraphs to him and that he understood them all. CP 31-44 (paragraph 12). In sum, defendant’s plea statement shows that he was informed of and understood the correct standard range and maximum sentences for the charges against him.

² Attached as “Appendix A.”

Defendant's actions during the plea hearing also show that he understood his plea agreement. During the plea hearing, defendant affirmed that he had reviewed the plea statement and had discussed it with his attorney. RPII 7. Defendant affirmed that he understood the various charges and did not have any questions about what he was pleading to. RPII 8. The court confirmed that the sentences would be concurrent and that defendant's standard sentencing range with the enhancement for use of a weapon was 75 to 96 months. RPII 9. Defendant affirmed that he understood his standard range sentence. RPII 9. Defendant's plea hearing shows he understood what he was pleading to.

There is also no merit to the argument that defendant did not understand Counts VI-VIII were felonies. On January 27, 2006, the court rejected defendant's contention that he thought the no-contact order counts were going to be misdemeanors. RPIV 11. The court found that during the plea hearing defendant clearly knew they were felonies. RPIV 11. The court's finding is supported by substantial evidence in the record. During the plea hearing, the State confirmed that there were "a total of nine felony counts that defendant will be pleading to." RPII 3. Defendant confirmed that he had received a copy of the Amended Information. RPII 3, 12. The Amended Information stated for Counts VI-VIII that defendant had "unlawfully and feloniously" violated the terms of a court order. CP 25-29. During the hearing on December 30, 2005, defendant's attorney recalled previously correcting the paperwork and informing defendant that

he was pleading to felonies. RPIII 8-9. Defendant's letter from December 30, 2005, also shows that he knew he was pleading to felonies. CP 96-98. Defendant's letter stated that, "[I] was told by Mr. Krupa that all were felonies. *After signing my agreement* I find out that count 6, 7, 8 are misdemeanors." CP 96-98 (emphasis added). The letter indicates that defendant knew he was pleading to felonies and was unhappy after the plea when he found out the felonies might have counted as misdemeanors.

In sum, the entire record shows that defendant knew he was pleading guilty to felonies for Counts VI-VIII, and that he understood the correct standard range and maximum sentences for those charges against him. Because his plea was knowing, voluntary, and intelligent, the court did not abuse its discretion by denying defendant's motion to withdraw the plea. The court should remand to the trial court for correction of the clerical errors in defendant's plea statement. Mayer, 128 Wn. App. at 701.

2. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

A defendant who raises a claim of ineffective assistance of counsel must show: (1) that his or her attorney's performance was deficient, and (2) that he or she was prejudiced by the deficiency. Strickland v. Washington, 466 U.S. 668, 688-89, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Under the first prong, deficient performance is not shown by matters that

go to trial strategy or tactics. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). The first prong of the test requires proof of "errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Strickland, at 687; State v. Ray, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991).

Under the second prong, the defendant must show counsel's deficient performance prejudiced the defendant, i.e., that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). Courts engage in a strong presumption that counsel's representation was effective. McFarland, 127 Wn.2d at 335.

In a plea bargaining context, effective assistance of counsel merely requires that counsel actually and substantially assist his client in deciding whether to plead guilty. State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1994)(quoting State v. Cameron, 30 Wn. App. 229, 232, 633 P.2d 901 (1981)). If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest. State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Defendant claims his defense counsel, Steve Krupa, delivered a deficient performance because of the incorrect information listed in the plea statement. The oversight of not correcting this information cannot be considered an error "so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Strickland, at 687.

Despite the clerical error, defendant confirmed both in his plea statement and at the plea hearing that his lawyer had explained the paragraphs in detail and that he understood them all. CP 31-44 (paragraph 12); RPII 4-9. Defendant also confirmed that he understood his counts would run concurrently and that his standard sentencing range would be up to 96 months. RPII 9. Defendant knew the plea was a “packaged negotiation” and has failed to show how minor errors regarding three counts with lower sentences (60 months) would have affected the outcome. RPII 8.

Defendant also claims that Krupa delivered a deficient performance because he failed to disclose exculpatory information. There is no record of when counsel reviewed the evidence with defendant, nor is there a record of what the statements actually said, that is if they were in fact exculpatory. Accordingly, on this record defendant is unable to show that counsel's representation was deficient and that he was prejudiced as a result. See McFarland, 127 Wn.2d at 335-38. Moreover, defendant cannot show that the failure to go over this discovery material with him affected his decision to enter a plea where defendant did not make this material part of the record.

3. DEFENDANT WAS AFFORDED THE ASSISTANCE OF COUNSEL IN REVIEWING HIS MOTION TO WITHDRAW HIS GUILTY PLEA.

Defendant argues that he was denied the assistance of counsel in his motion to withdraw his guilty plea. Defendant relies principally on State v. Harell, 80 Wn. App. 802, 911 P.2d 1034 (1996). In Harell, before sentencing, the defendant moved to withdraw his plea of guilty, alleging ineffective assistance. The trial court granted an evidentiary hearing. During the hearing, defense counsel testified as a witness for the State and the defendant was otherwise unrepresented. The trial court denied the motion. On appeal, the issue was whether the defendant was entitled to counsel at the plea withdrawal hearing. Applying the rule that a defendant has a constitutional right to appointed counsel at all critical stages of a criminal prosecution, the court reversed. Harell, 80 Wn. App. at 804. Defendant overlooks the crucial difference between the facts in Harell and the proceedings below. In Harell, the trial court erred because it failed to appoint new counsel for an evidentiary hearing concerning a defendant's motion to withdraw his plea.

Unlike Harell, the trial court in this case appointed a defense attorney to review whether defendant had grounds to withdraw his plea. On November 4, 2005, the court ordered the Department of Assigned Counsel to represent defendant with respect to his motion to withdraw his plea of guilty. CP 94. Sverre Staurset, a Department of Assigned Counsel

attorney, met with defendant and reviewed the items he initially wanted to bring up. RPIII 4. On December 30, 2005, Staurset appeared before the court and stated that defendant's motion to withdraw did not have a legal basis for withdrawal, except for the issue in regards to the incorrect information in his plea statement for counts VI-VIII. RPIII 4-6.

Staurset argued that the court should order up the transcript of the plea to see if it illuminated whether defendant understood he was pleading to felonies and not misdemeanors. RPIII 7. The State argued that defendant was aware of the recommended sentence for those counts and that they were felonies. RPIII 11. The court indicated that if the State was correct, it would simply affirm the plea. RPIII 12. The court set the hearing over until it could get a transcript of the plea hearing so it would know exactly what was said. RPIII 18. Staurset asked if he would have to appear for the next hearing and the court implied that he would not. RPIII 18.

Staurset did not attend the sentencing hearing on January 27, 2006, but Krupa did. RPIV 3. At the beginning of the hearing Krupa suggested to the court that it should rule on defendant's motion regarding withdrawal of his plea. RPIV 3. Krupa referred the court to a letter he had received from defendant on January 4, 2006.³ CP 96-98; RPIV 5. The court

³ This was the same letter defendant filed with the court on December 30, 2005, and referred to at the December 30, 2005 hearing. CP 96-98; RPIII 16, 17.

indicated that the letter was not in the file and asked for a minute to review defendant's letter. RPIV 5. The State then reminded the court of the issue regarding whether defendant knew he was signing onto misdemeanors or felonies. RPIV 6. The court recalled that was specifically mentioned at the time of the plea. RPIV 6. The court then heard from the State and denied defendant's motion to withdraw, indicating that defendant had not submitted a valid legal ground. RPIV 8.

This court should find that defendant was not denied the assistance of counsel in his motion to withdraw his guilty plea. Staurset appeared for defendant and presented the court with defendant's only legal ground for withdrawing his plea, which hinged on whether defendant understood Counts VI-VIII to be misdemeanors or felonies. This was a narrow factual determination that the court implied it could make after reviewing the plea hearing transcripts. RPIII 12, 18. Because the valid legal arguments for withdrawing had already been made on December 30, 2005, defendant was not prejudiced in having Krupa and not Staurset represent him at the sentencing hearing on January 27, 2006.

D. CONCLUSION.

For the foregoing reasons, the State asks this court to affirm the conviction below and remand only for correction of the clerical errors in defendant's plea statement.

DATED: November 20, 2006.

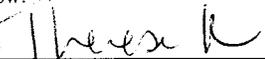
GERALD A. HORNE
Pierce County
Prosecuting Attorney

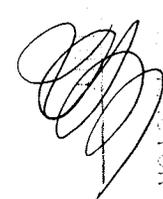


ALICIA BURTON
Deputy Prosecuting Attorney
WSB # 29285

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.

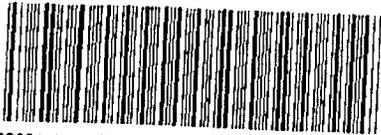
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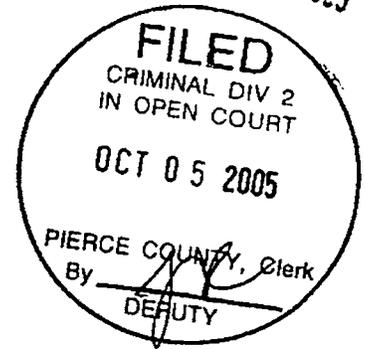
APPENDIX "A"

Statement of Defendant on Plea of Guilty

OCT 05 2005



05-1-02201-1 23829927 STTDFG 10-05-05



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

STATE OF WASHINGTON,

Plaintiff,

vs.

Daniel Silva

Defendant.

CAUSE NO. 05-1-02201-1

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

- 1. My true name is: Daniel Silva
- 2. My age is: 26
- 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. My lawyer's name is

Steven J. Kruga

(b) I am charged with the crime(s) of:

Count I: residential burglary (w/ sexual mot & deadly weapon enhancement)

The elements are: did unlawfully and feloniously with intent to commit a crime against a person therein enter or remain unlawfully into the dwelling of another, with sexual motivation (9A.94A.030) a domestic incident (10.99.020) and in the commission thereof was armed with a deadly weapon (glass bottle) (9.94A.125) (9.94A.602)

This crime carries a maximum sentence of 10 years imprisonment and a \$ 20K fine. The standard range is from 63 months to 84 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense Serious Violent Violent
Non-Violent Sex Drug Traffic Check all that apply.

Count II: attempted assault second degree

Elements: did unlawfully and feloniously with intent to commit the crime of assault in the second degree (intentionally assault another under circumstances not amounting to assault in the first degree and thereby inflict recklessly substantial bodily harm) take a substantial step toward commission of that crime (a DV incident as defined in 10.99.020)

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" I

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 3: unlawful imprisonment

Elements: did unlawfully, feloniously and knowingly restrain another person contrary to 9A.40.040 a d.v. incident as defined by 10.99.020

This crime carries a maximum sentence of 5 years imprisonment and a \$ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

Count 4: tampering with a witness

Elements: did unlawfully and feloniously attempt to induce a witness or a person he knows is about to be called to be a witness, to withhold testimony (9A.72.120 (1)(a) a d.v. incident (10.99.020

This crime carries a maximum sentence of 5 years imprisonment and a \$ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

5. (b) (continued) Defendant is pleading guilty to these additional counts:

5/26
DS

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
<u>3</u>	<u>51-60M</u>		<u>51-60M</u>	<u>9-18</u>	<u>5 years/10k</u>
<u>4</u>	<u>51-60M</u>		<u>51-60M</u>	<u>9-18</u>	<u>5 years/10k</u>

ATTACHMENT "B"

Case Name: State v Silva Cause No: 05-1-03801-1

ATTACHMENT "B" 2 (continued)

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 5: felony harassment

Elements: did unlawfully, knowingly threaten to cause bodily injury immediately or in the future to another, and by words or conduct placed that person in reasonable fear that the threat would be carried out and further that the threat was a threat to kill, (RA. 46.020 (2)(b) and (1)(a)(1)(b))

This crime carries a maximum sentence of 5 years imprisonment and a \$ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

Count 6: violation of court order (protection/other)

Elements: did unlawfully and knowingly violate the terms of a court order issued per (10.09, 20.09, 26.10, 26.26, 26.50 or 74.34)

by willfully having contact when such contact was prohibited by court order and after having actual notice of the existence of that order and that further the conduct which constituted said violation was an assault (not of the 1st or 2nd degree) involving 26.50.110(4) and increasing the class of the crime contrary to 26.50.110

This crime carries a maximum sentence of 0-12 ~~month~~ years imprisonment and a \$ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
<u>5</u>	<u>51-60 m</u>		<u>51-60 m</u>	<u>9-18</u>	<u>5 years / 10k</u>
<u>6</u>	0-12 months <u>60 m</u>		0-12 months <u>60 m</u>	<u>9-18</u>	12 months <u>5 years 10k</u>

ATTACHMENT "B"

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" (3)

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 7: violation of a court order (protection/other)

Elements: See elements to count 6

This crime carries a maximum sentence of 12 months years imprisonment and a \$ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

Count 8: violation of a ~~statute~~ court order (protection/other)

Elements: See element to count 6

This crime carries a maximum sentence of 12 months years imprisonment and a \$ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
<u>7</u>	<u>60M</u> 0-12M		<u>60M</u> 0-12M	<u>9-18</u>	<u>5 years 10K</u> 12M 5K
<u>8</u>	<u>60M</u> 0-12M		<u>60M</u> 0-12	<u>4-18</u>	<u>5 years 10K</u> 12M 5K

ATTACHMENT "B"

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" (4)

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 9: felony harassment
 Elements: see count 5

This crime carries a maximum sentence of 5 years imprisonment and a \$ 10000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.
 Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent Sex[] Drug[] Traffic[] (check all that apply)

~~Count _____
 Elements: _____~~

~~This crime carries a maximum sentence of _____ years imprisonment and a \$ _____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.
 Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)~~

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
<u>9</u>	<u>51-60</u>		<u>51-60</u>	<u>9-18</u>	<u>5 year / \$ 10K</u>

ATTACHMENT "B"

This crime carries a maximum sentence of 10 years imprisonment and a \$ 20K fine. The standard range is from 63 months to 84 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense Serious Violent Violent Non-Violent Sex Drug Traffic (check all that apply)

(c) Additional counts are addressed in Attachment "B".

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

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to 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) 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 as well as other pretrial motions such as speedy trial challenges and suppression issues.

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.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	63-84 m	12 months	75 months to 96 months	36 to 48 m	10y / 20K
2	63-84 m		63-84 m	18-36	10y / 20K

Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 2

- (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 is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement 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 upon 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 less 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. If this crime is a sex offense, the court will order me to serve at least three years of community custody. 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. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

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 less than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, 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

STATEMENT OF DEFENDANT
 ON PLEA OF GUILTY - 3

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.



OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
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 as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	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.

Ch. II = 63 mos^(g)
 Chs III - IX = 60 mos
 concurrent

The prosecuting attorney will make the following recommendation to the judge: 36 months
 Dept of Corrections; + 12 months ^{consecutive} weapons enhancement; 36 to 48 m COMM custody; total
 confinement 96 mos; NCO w/V; restitution; registers sex offender;
 \$500 CIPA; \$110 filing; \$100 DNA; HIV test

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, 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.

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.

- (k) 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.
In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes 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.
- ~~(l) The judge may sentence me as a first-time offender instead of giving me 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 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.~~
- (m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.
- (n) Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.
- (o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.
- (p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 5

- (q) If this crime involves a sexual offense, 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 RCW 9.94A.120(6). 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 (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 for which I am pleading guilty.
- ~~(t) If this crime involves the manufacture, delivery, or possession with the intent to deliver, methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).~~
- ~~(u) 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.~~
- (v) 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).
- ~~(w) 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. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(k).~~
- ~~(x) 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.~~
- (y) 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.
- ~~(z) 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~~

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 6

sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

- 7. I plead guilty to count 1 through 9 in the amended info 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:

On May 5, 2005 in Pierce County WA, with intent to commit a crime, I entered the dwelling of Rancee Brown, with sexual motivation, while armed with a deadly weapon (bottle); I also attempted to recklessly inflict substantial bodily harm against Ms. Brown; Ms. Brown was my girlfriend; I knowingly restrained Ms. Brown against her will; a week or two later I attempted to get her to witness in an official proceeding I attempted to get her to witness testimony; I also harassed Ms. Brown with threats to commit bodily injury immediately and put her in reasonable fear that the threat would be carried out the threat was a threat to kill I would agree that I did this harassment twice. Once about the same time in the same place I had contact with Ms. Brown, knowing that an officer existed in this case preventing such conduct and that the conduct of the violation was an assault. I agree that each of those offenses is separate and distinct criminal actions.

[] 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.

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

Daniel Silva
 Defendant

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

Steven J. Kruga
 Defendant's Lawyer
 WSBA # 23997

Approved for entry:

[Signature]
 Prosecuting Attorney
 WSBA# 2449

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

Case Name: State v. Daniel SilvaCause No: 05-1-02201-1

ATTACHMENT "A"

(If required, attach to Statement of Defendant on Plea of Guilty.)

Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

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

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

If I move to another state, or if I work, carry on a vocation, or attend school in another state I 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. I 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 I last registered in Washington State.

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

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay

ATTACHMENT "A" - 1

there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level II or III, or on a monthly basis if I 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.

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 the appropriate box]:

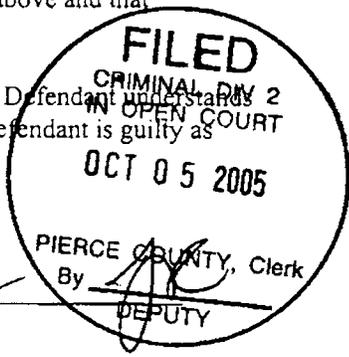
- (a) The defendant had previously read the entire statement above and the defendant understood it in full; or
- (b) the defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- * (c) An interpreter had previously read to the defendant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

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 this 4th day of October, 2005

[Signature]
Judge

By [Signature]
PIERCE COUNTY, Clerk
DEPUTY



***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 _____ 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 this _____ day of _____, _____.

Interpreter