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COURT OF APPEALS
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STATE OF WASHINGTON
BY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION-II

STATE OF WASHINGTON, **PLAINTIFF/RESPONDENT** **V.** **RONALD D. DAVIS,** **DEFENDANT/APPELLANT**	**No. 34426-2-II** **APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW PURSUANT TO RAP 10.10**

A. IDENTITY OF PARTY

Comes Now, the appellant Ronald D. Davis, by and through Pro Se, in this Statement of Additional Grounds, who is an incarcerated inmate at the McNeil Island Correction Center, P.O.BOX-88-1000, Steilacoom, Washington 98388, and hereby submits this Statement of Additional Grounds for review to this court.

B. ADDITIONAL ISSUE PRESENTED FOR REVIEW

The Kitsap County Superior Court exceeded its authority when the Superior Court imposed the appellant's community custody term in excess of the appellant's statutory maximum sentence in violation to the ruling in **Blakely v.Washington**, ____U.S.____,124 S.CT. 2531, 159 L.Ed.2d 403(2004), and **Apprendi v.New Jersey**,530 U.S. 466, 120 S.CT. 2348, 147 L.Ed.2d 435(2000).

C. ARGUMENT IN SUPPORT OF ADDITIONAL GROUND

On February 10, 2006, the Kitsap County Superior Court resentenced the appellant Ronald D. Davis to a sentence of 168-months total confinement pursuant to crimes that Davis was convicted of under cause number **02-1-00861-3**.

On page-2 of Davis' [first amended judgment and sentence], the State has listed under Davis' (Sentencing Data) that [Count-V] has the highest standard range sentence that Davis can be exposed too. The maximum standard range sentence that Davis could have been exposed to was "120-months total confinement."

The superior court however, imposed a term of confinement of 168-months confinement, thus exceeding Davis' statutory maximum sentence by 48 additional months confinement based on the imposition of "uncharged deadly weapon enhancements."

Because Davis' appellant counsel has briefed this issue already for review by this court, Davis challenges the excessive term of community custody that the superior court has imposed.

The superior court imposed a term of community custody of 18-36 months supervision pursuant to mandatory Washington State law. [**RCW 9.94A.505, .545** and **WAC 437-20-010**].

When the Kitsap County Superior Court imposed an additional 18-36 months community custody in excess of Davis' statutory maximum sentence of 120-months confinement, the court violated Davis' right to trial by jury pursuant to **Blakely v.Washington**, and **Apprendi v.New Jersey**.

Blakely v.Washington states in relevant part:

> "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be alleged in the defendant's indictment, submitted to a jury, and proved beyond a reasonable doubt.
>
> The relevant statutory maximum for **Apprendi** purposes is the maximum a judge may impose based solely on the facts reflected in the jury verdict or admitted by the defendant.

The Washington State community custody laws are listed as mandatory by the Washington State Legislature. **RCW 9.94A. 505, .545** and **WAC 437-20-010.**

Absent a new jury finding allowing for Davis' excessive sentence, the Kitsap County Superior Court had no authority to impose the 18-36 months term of community custody against Davis pursuant to the rulings in **Blakely** and **Apprendi**.

Davis was additionally denied "notice" in his charging document to an enhanced sentence of the additional stigma of 36-months community custody. This too violates the rulings of **Blakely** and **Apprendi**.

Because Davis does qualify for the benefits of the decisions in **Blakely** and **Apprendi**, his term of community custody either had to be resubmitted to a new jury, or his mandatory term of community custody had to be fitted into his statutory maximum sentence of 120-months confinement.

Because the superior court did violate the rulings in **Blakely** and **Apprendi** when that court resentenced Davis to his term of community custody without submitting that to a new jury, as is required by **Blakely**, the court violated **Article 1§22** of the Washington State Constitution, and the **SIXTH AMENDMENT** of the United States Constitution when Davis was denied his right to trial by jury.

The superior court is in violation to the community custody laws of Washington State as well.
The laws governing community custody (**RCW 9.94A.505-545**), states that "no community custody may exceed the statutory maximum of the crime."

When the superior court imposed community custody outside of Davis' statutory maximum range of 120-months, the court exceeded its proper authority pursuant to community custody laws.

CONCLUSION

Because the superior court lacked authority to sentence Davis to a term of community custody outside of his maximum statutory range of 120-months confinement, Davis' sentence is invalid pursuant to the rulings in **Blakely** and **Apprendi**.

Davis therefore requests this court to remand him back to the superior court for the imposition of a sentence of a term not greater than his 120-month statutory maximum sentencing range.

Dated This 28th Day of May, 2006

Ronald D. Davis #757650
McNeil Island Corr.Center
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CERTIFICATE OF SERVICE BY MAILING

The appellant Ronald Davis swears under penalty of perjury that he deposited in the McNeil Island Correction Center mail system the following:

Parties served

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ITEMS SENT TO EACH PARTY

1. Appellant's statement of additional grounds.

2. Certificate of Service by mailing.

Dated This 28th Day of May, 2006

Ronald P. Davis

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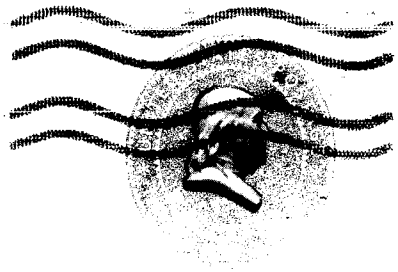

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