

ORIGINAL

No. 34488-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT OF

MICHAEL J. GONZALES,

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable James B. Sawyer, II Judge
Cause No. 02-1-00415-6

BRIEF OF RESPONDENT
RESPONSE TO PERSONAL RESTRAINT PETITION

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A. PETITIONER’S ASSIGNMENT OF ERROR

- 1.) Gonzales asserts that counsel was ineffective for failing to file a Notice of Appeal.
- 2.) Gonzales asserts that counsel was ineffective due to a conflict of interest since Gonzales had previously “fired” this attorney and asserted ineffective assistance in his original appeal.
- 3.) Gonzales asserts that counsel was ineffective for not ensuring a “complete” re-sentencing.
- 4.) Gonzales asserts that the re-sentencing court erred by not advising him of his right to appeal following his re-sentencing hearing.
- 5.) Gonzales asserts that he should be allowed to withdraw his plea claiming the re-sentencing court erred by failing to advise at the re-sentencing of the possibility of the “no-contact” provision imposed. This is based on a claim that Gonzales could not enter a knowing plea if he was not advised of this possibility.
- 6.) Gonzales asserts that the re-sentencing court erred by not holding a full resentencing and erred by only addressing the offender score on remand from the Court of Appeals.
- 7.) Gonzales asserts that the re-sentencing court erred by including his juvenile offenses in violation of *Apprendi* and *Blakely*.
- 8.) Gonzales asserts that the trial court erred by including his juvenile offenses as they would have washed under *Cruz*.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- 1.) Whether the attorney at the re-sentencing provided ineffective assistance of counsel. [Assignment of Error 1, 2, 3].
- 2.) Whether the re-sentencing court erred by not advising Gonzales of the potential for a no-contact order. [Assignment of Error 5].
- 3.) Whether the trial court erred by failing to re-advise Gonzales of his limited appeal right after he was re-sentenced. [Assignment of Error 4].

- 4.) Whether the trial court complied with the Court of Appeals direction in the manner and content of the re-sentencing. [Assignment of Error 6].
- 5.) Whether the use of juvenile convictions in calculating an offender score under the SRA is prohibited by *Apprendi* and *Blakely*. [Assignment of Error 7].
- 6.) Whether Gonzales' juvenile convictions were properly included in his offender score when the date of the current offense is after the cut-off date for the application of *Cruz/Vargas*. [Assignment of Error 8]

C. STATEMENT OF THE CASE

Michael Gonzales was charged in Mason County Superior Court with Murder in the First Degree with a firearm enhancement. The information was amended prior to trial with the charges at the time of trial being: Count I, Murder in the First Degree with a firearm enhancement with Count II being the alternative of Murder in the Second Degree also with a firearm enhancement; Count III, Robbery in the First Degree with a firearm enhancement; Count IV, Unlawful Possession of Controlled Substance; and Count V, Conspiracy to commit Robbery in the First Degree. These events occurred on June 14, 2002. [Appendix A, Second Amended Information]

During trial, an agreement was reached and Gonzales entered a plea of guilty to one count of Murder in the Second Degree. The remaining charges were dismissed. Sentence was imposed on June 13,

2003 and received a sentence of 265 months which was top end of the standard range as calculated with an offender score of 4.

Gonzales appealed, asserting that the State violated the plea agreement and that his offender score had been miscalculated. In a Statement of Additional Grounds, Gonzales also asserted ineffective assistance of counsel.

The Court of Appeals remanded for recalculation of offender score based on the State's concession that two adult offenses had washed, resulting a an offender score of 2 rather than 4. The Court of Appeals declined to address Gonzales's arguments about same criminal conduct (which was based on the two washed-out offenses) and the plea agreement violation. The Court of Appeals did address the assertion of ineffective assistance of counsel, finding that Gonzales had not met his burden in proving the assertion. [Appendix B, COA opinion 30756-1-II].

Gonzales was resentenced on January 15, 2005 with an offender score of 2 and received a standard range sentence of 242 months. [Appendix C, Judgment and Sentence]. Gonzales was present and was represented by Adrian Pimentel at the hearing. The Court considered argument of counsel as well as the written transcript, including the victim impact statements, from the original hearing. No appeal was initiated.

This Personal Restraint Petition was filed January 11, 2006.

D. ARGUMENT

1. GONZALES HAS NOT SHOWN THAT COUNSEL AT RESENTENCING WAS INEFFECTIVE OR THAT HE WAS PREJUDICED IN ANY WAY.

An appellate court will presume the defendant was properly represented. *Strickland v. Washington*, 466 U.S. 668, 688-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); A criminal defendant's must overcome this strong presumption of effectiveness of his trial counsel by proof that counsel's representation fell below an objective standard of reasonableness, i.e. that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Strickland*, 466 U.S. at 687. .

Washington courts use a two-prong test to overcome the strong presumption of effectiveness that courts apply to counsel's performance. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *State v. Bennett*, 87 Wn.App. 73, 77, 940 P.2d 299 (1997). The defendant must meet both prongs of the test to merit relief. *Bennett* at 77.

A defendant must first demonstrate that defense counsel's representation was deficient. *McFarland* at 334-335.

The test of incompetence is after considering the entire record, can it be said that the accused was not afforded effective representation and a

fair and impartial trial. *State v. Johnson*, 92 Wn.2d 671, 682, 600 P.2d 1249 (1979), *cert. dismissed*, 446 U.S. 948 (1980).

For the second part, the defendant must show prejudice such that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *McFarland* at 334-335; *Bennett* at 77.

1. A. The record does not show any indication of an intent to appeal.

The transcript of the re-sentencing hearing contains no reference to Gonzales desiring an appeal of the sentence.

RPC 1.6 states that a lawyer may reveal confidences to the extent deemed necessary by the attorney to respond to allegations concerning the lawyer's representations of the client. Gonzales's attorney has no recollection of Gonzales asking him to file an appeal following the re-sentencing. See Appendix D, Declaration of Adrian Pimentel.

The US Supreme Court has spelled out the proper review process for examining a claim of ineffective assistance of counsel when a petitioner claims the attorney failed to file an appeal. Maintaining the basic review structure laid out in *Strickland*, the US Supreme Court stated in *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) page 480 that:

We instead hold that counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to

think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known.

The Court applied this duty to consult as the first step in reviewing for ineffective assistance, that is, has the attorney's performance fallen below an objective standard of reasonableness. In this case, there is no proof that Gonzales specifically directed that he wanted to appeal nor can Gonzales show he demonstrated to his attorney that he had any interest in appealing. Further, there are no non-frivolous bases for appeal, as the argument below demonstrates.

The Court in *Roe* also requires the second step, that is, a finding of prejudice as a result of the attorney actions or omissions, before a finding of ineffective assistance is made. *Roe* at 481. In a circumstance, such as here, where the alleged actions of the attorney result in the deprivation of an appeal, the Court applied a "presumption of prejudice" rather than the "presumption of reliability" required by *Strickland*. *Roe* at 483.

Even in light of the "presumption of prejudice" the *Roe* court still found that there is a:

critical requirement that counsel's deficient performance must actually cause the forfeiture of the defendant's appeal. If the defendant cannot demonstrate that, but for counsel's deficient performance, he would have appealed, counsel's deficient

performance has not deprived him of anything, and he is not entitled to relief. Cf. *Peguero v. United States*, 526 U.S. 23, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999) (defendant not prejudiced by court's failure to advise him of his appeal rights, where he had full knowledge of his right to appeal and chose not to do so). Accordingly, we hold that, to show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed.

Roe at 484. As the Court went on to note: “evidence that there were non-frivolous grounds for appeal or that the defendant in question promptly expressed a desire to appeal will often be highly relevant in making this determination.” *Roe* at 485.

There simply is no proof here of a prompt expression of the desire to appeal. The only expression of a desire to appeal is made nearly one year after the re-sentencing in the context of this personal restraint petition. Further, as argued below, there are no non-frivolous bases for appeal.

Gonzales cannot meet his burden of proof in asserting ineffective assistance based on no notice of appeal being filed.

1. B. Gonzales does not show any “conflict of interest” nor does he point to any specific prejudice arising from a “conflict of interest.”

Gonzales asserts that his counsel was ineffective because of a “conflict of interest” but does not specify what conflict existed. Gonzales argues that since he had asserted ineffective assistance in his original appeal (which was found insufficient by the Court of Appeals) and that

counsel did not object to the “summary “ nature of the hearing that he has shown a conflict of interest.

Any assertion of a “conflict of interest” based on the prior claim of ineffective assistance of counsel is specious in light of counsel’s declaration that he and Gonzales discussed representation and Gonzales agreed to having his original counsel argue on his behalf. See Appendix D. The record itself is clear that counsel argued extensively with multiple reference to the underlying factual proceedings and co-defendants in support of the agreed-upon recommendation of 180 months. Appendix E, Transcript of Re-Sentencing, at 7-8, 10-11. That is particularly significant in light of the court’s previous decision to exceed the agreed-upon recommendation.

Gonzales shows no conflict nor any prejudice arising from the alleged conflict. Gonzales agreed to the representation. The recommendation was an agreed recommendation [App D at 7, App B at 1]. Defense counsel argued on his behalf. Gonzales had the opportunity to state his position. Gonzales received a standard range sentence. There simply is no conflict and no prejudice to show.

1. C. Gonzales does not show that the sentencing hearing was in any way insufficient or that he suffered any prejudice due to the procedure of the hearing

The only aspect of the re-sentencing which could even remotely be argued as “summary” was the prosecution’s offering of and court’s acceptance of the transcript of the previous hearing into the record. No objection was raised. As the prosecutor noted, many of the victim’s family as well as Gonzales’s family were present [App D at 5] and that the transcript was offered to perpetuate the victim statements given at the first sentencing without undue use of time at this sentencing.

All costs and conditions remained as previously ordered and there was no evidence or argument to alter any of the previously-ordered costs or conditions. The only change in costs and conditions was to include a court-ordered minimum monthly payment, which the court noted had been DOC’s responsibility at the time of the first sentencing, but was now the court’s responsibility. [App D at 15].

Gonzales asserts that the Court of Appeals decision required a “full” sentencing but he does not say what he believes that to be. The Court of Appeals opinion [App B] “[R]emanded for recalculation of Gonzales’ offender score and re-sentencing.” The re-sentencing hearing did just that.

1. D. The record does not support Gonzales’ assertion that counsel made any representations regarding an Alford plea.

Gonzales mentions, almost in passing, he was “not allowed to accept and ‘Alford’ plea which counsel agreed to coordinate, and specifically said he would be able to plea to.” Brief of Petitioner at 21. This argument was not raised in the direct appeal and there is no basis in the record to suggest that an Alford plea was ever offered or promised. The record supports only a plea of guilty made by the defendant with an assertion that no other promises or representations were made. See App. E and Appendix F, Statement on Plea.

2. FAILURE TO ADVISE GONZALES OF THE POSSIBILITY OF A NO-CONTACT ORDER WITH THE VICTIM’S FAMILY IS NOT A BASIS TO ALLOW WITHDRAWAL OF HIS GUILTY PLEA

A criminal defendant must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea. *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). On the other hand, a defendant need not be advised of all possible *collateral* consequences of his plea. *Barton* at 305; *State v. Mace*, 97 Wn.2d 840, 841, 650 P.2d 217 (1982). "The distinction between direct and collateral consequences of a plea 'turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment'." *Barton* at 305.

The *Barton* court held that an habitual criminal proceeding is a collateral, and not a direct, consequence of a guilty plea because it is not automatically imposed by the court in which the defendant has entered a plea of guilty, and it cannot automatically enhance a defendant's sentence. For example, mandatory DNA testing of sex offenders is a collateral consequence of the defendant's guilty plea. *State v. Olivas*, 122 Wn.2d 73, 98, 856 P.2d 1076 (1993).

Applying the *Barton* analysis to this case, there was no constitutional requirement to advise Gonzales of the potential for an order precluding him from contact with the victim's family. Although the no-contact provision flows from Gonzales's conviction for murder, it does not enhance Gonzales's sentence or punishment any more or any differently than DNA testing. "A defendant must understand the *sentencing* consequences for a guilty plea to be valid." (Italics added) *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988).

Further, this same prohibition was included in the first sentence and no appeal was taken on this issue in his direct appeal. As a result, Gonzales cannot claim any surprise by the inclusion of this provision in the second sentencing.

3. THE COURT ADVISED GONZALES OF THE LIMITED RIGHT TO APPEAL FOLLOWING HIS PLEA AND ANY ERROR FOR NOT RE-ADVISING OF THAT RIGHT FOLLOWING RE-SENTENCING IS HARMLESS ERROR

At the time of his guilty plea, the trial court advised Gonzales of his limited appeal rights following a guilty plea. [App. E, pages 1444-1448 of transcript from May 2003 trial]. This is consistent with RCW 9.94A.585. Gonzales did appeal his first sentence, as evidenced by opinion attached as Appendix B.

Peguero v. U.S., 526 U.S.23, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999) is instructive in addressing Gonzales' claim of error. In that case, the Supreme Court found that the failure to advise a defendant of his appeal rights, as required by federal rule of procedure, was error but not a basis for relief unless the defendant was prejudiced by the failure to advise of the appeal right. The *Peguero* court denied relief since there was no demonstration of prejudice, specifically noting the defendant there had full knowledge of his appeal right. *Peguero* at 28.

In this case, Gonzales was advised of his appeal rights at the time of his plea and he exercised that right. In this petition, Gonzales asserts that he requested his attorney file a notice of appeal at the time of the re-sentencing. It simply cannot be doubted that Gonzales knew full well of his appeal rights, limited though they may be. Any error the court

committed by not specifically advising Gonzales of his right to appeal the second sentence is harmless. Constitutional errors may be so insignificant as to be harmless. *State v. Guloy* 104 Wash.2d 412, 425, 705 P.2d 1182 (1985).

4. THE INCLUSION OF PRIOR JUVENILE OFFENSES IN CALCULATION OF AN ADULT OFFENDER SCORE DOES NOT VIOLATE THE HOLDING IN *BLAKELY*

The Fifth Amendment's due process clause and the Sixth Amendment's right to a jury trial require any fact other than the fact of a prior conviction that increases the maximum statutory penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

Prior convictions are an exception to the rule that any fact that may increase the maximum statutory penalty must be proven to a jury. The prior convictions exception has also been recognized by the Supreme Court in *Blakely v. Washington*, 542 U.S. 296, 301, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

The *Blakely* decision clarified what is meant by the 'maximum statutory penalty.' It is the maximum sentence or penalty that a judge

may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. *Blakely*, 542 U.S. at 303. This is not the maximum sentence that a judge may impose after finding any additional facts, but is the maximum that may be imposed without any additional findings. *Id.* at 303-04.

There is no Sixth Amendment right to a jury trial for juveniles. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971). The SRA allows consideration of prior juvenile adjudications in sentencing an adult because the SRA is primarily concerned with punishing adult offenders similarly. *State v. Johnson*, 118 Wn.App. 259, 263-64, 76 P.3d 265 (2003).

Gonzales relies on a Ninth Circuit Courts decision, *United States v. Tighe*, 266 F.3d 1187, 1194-95 (9th Cir.2001), for his position that the inclusion of his prior juvenile convictions violate *Blakely*. *Tighe* held that the exception for prior convictions did not include juvenile convictions because these convictions did not result from proceedings that afforded the right to jury trial or proof beyond a reasonable doubt. Washington does require proof beyond a reasonable doubt in juvenile offender cases. The *Tighe* court emphasized that the prior convictions exception was premised on the convictions being the product of proceedings that afforded such crucial procedural

protections. *Id.* at 1194. In Washington, those crucial procedural protections are in place.

The Ninth Circuit has expressed doubts at the validity of its own holding in *Tighe*. In *Boyd v. Newland*, 393 F.3d 1008, 1017 (9th Cir.2004) the court stated that its decision in *Tighe* “does not represent clearly established federal law as determined by the Supreme Court of the United States.”

The majority of courts have found that juvenile offenses are included in the prior convictions exception. This is due to the fact that they comport with due process and include sufficient procedural protections other than the right to jury trial. In Washington, the protections provided to juvenile offenders in delinquency proceedings include proof beyond a reasonable doubt, and rights to counsel, to notice of the charges, to confront and cross-examine witnesses, and against self-incrimination. *State v. Weber*, 127 Wn.App. 879, 889-90, 112 P.3d 1287 (2005), review granted (Wash. Jan. 31, 2006) (No. 77395-5).

Weber appears to be the first time that a published decision from a Washington court has addressed this issue. This Division One decision rejected the conclusion made by the Ninth Circuit in *Tighe*, based largely on the fact that the procedural protections that are in

place for juvenile offenders ensure the accuracy of fact finding without the need of a jury. *Weber* at 890. It found the procedural protections in juvenile adjudications to be more than sufficient to ensure the reliability that *Apprendi* requires. Therefore, juvenile adjudications fall under the prior convictions exception and can be used to determine the proper sentencing range. *Id.* at 893.

Three other federal circuits came to the same conclusion, finding the ultimate issue as to whether juvenile adjudications fall under the prior convictions exception is whether the convictions included sufficient procedural safeguards. *United States v. Burge*, 407 F.3d 1183, 1190-91 (11th Cir.), *cert. denied*, 126 S.Ct. 551 (2005); *United States v. Jones*, 332 F.3d 688, 696 (3d Cir.2003); *United States v. Smalley*, 294 F.3d 1030, 1033 (8th Cir.2002). Numerous cases reach this result. See, e.g., *State v. Hitt*, 273 Kan. 224, 235-36, 42 P.3d 732 (2002); *People v. Lee*, 111 Cal.App. 4th 1310, 1315, 4 Cal.Rptr.3d 642 (2003); *Ryle v. State*, 819 N.E.2d 119, 122-23 (Ind.Ct.App.2004).

The emerging consensus is that the prior crimes exception from *Apprendi* and *Blakely* is based on the overall procedural protections in place for both adult and juvenile offenses. Because Washington has established a wide range of procedural protections that ensure reliability of fact finding and results in juvenile adjudications, prior

juvenile adjudications fall under the prior crimes exception. These adjudications do not need to be proved to a jury beyond a reasonable doubt in order to be used in determining a sentencing range that may be higher than what the maximum statutory penalty would otherwise be.

The SRA's system of calculating offender scores is entirely permissible under *Blakely* due to the prior crimes exception. Juvenile offenses carry with them sufficient procedural safeguards to satisfy the requirements of the prior crimes exception. The trial court did not err at re-sentencing in including Gonzales's prior juvenile convictions.

5. THE TRIAL COURT DID NOT ERR BY INCLUDING THE JUVENILE OFFENSES AS THEY HAVE NOT WASHED.

Gonzales claims his two juvenile offenses have washed under *State v. Cruz*, 139 Wn.2d 186, 985 P.2d 384 (1999) and *State v. Varga*, 151 Wn.2d 179, 86 P.3d 139 (2004).

Division II succinctly summarized when to include various juvenile offenses in an adults offender score:

Combining the 1997 amendments and the 2002 amendments with *Rodney Smith*, *Varga*, *Dean*, *Perry*, and *Jesse Smith*, we conclude that whether a prior juvenile adjudication is properly included in the SRA offender score for a current adult offense depends primarily on the date of the current adult offense. In some cases, however, it will also depend on the nature of the prior juvenile

offense, on the defendant's age when he or she committed the prior juvenile offense, and on the defendant's age on July 1, 1997. Thus, we summarize as follows:

1. If the current adult offense occurred on or after June 13, 2002, the prior juvenile adjudication counts.

...

In re Jones 121 Wn.App. 859, 870-871, 88 P.3d 424, (2004), footnotes omitted.

Since Gonzales's current conviction arises out of an incident which occurred on June 14, 2002, his prior juvenile convictions count under *Jones*. Since the two juvenile offenses were both Class B felonies, they are subject to ten (10) year wash out periods. RCW 9.94A.525(2). The sentence date for the Assault Second Degree (which accounts for both of Gonzales' offender points due to the SRA multiplier) was February 10, 1993. [App. C at 2]. That is less than 10 years crime free, in the community before the violation date of June 14, 2002 for the murder in this case.¹ The two juvenile offenses would not wash under RCW 9.94A.525 either.²

Gonzales also argues in connection with this portion of his brief (page 30 of his brief) that the second judgment and sentence has the same dates for the prior offense violation and sentencing dates and that this

¹ This does not even take into account the fact that the ten year washout period would be calculated from his last release date on the Assault 2 conviction and the ten year period would also have re-started in 1994 when the now-washed adult offenses were prosecuted.

² As noted on the second Judgment and Sentence the prior Burglary results in ½ point and the Assault Second Degree is 2 points because of the SRA multiplier.

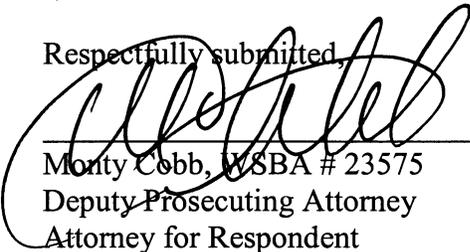
“jeopardized the process.” As can be seen from the judgment and sentence [Appendix C] that is incorrect.

E. CONCLUSION

Based on the foregoing, the personal restraint petition should be dismissed. There are no meritorious issues presented.

DATED this 23 day of March 2005.

Respectfully submitted,



Monty Cobb, WSBA # 23575
Deputy Prosecuting Attorney
Attorney for Respondent

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

STATE OF WASHINGTON,)
)
 Respondent,) No. 34488-2-II
)
 vs.) DECLARATION OF
) FILING/MAILING
) PROOF OF SERVICE
 MICHAEL J. GONZALES,)
)
 Appellant,)
 _____)

I, TRICIA KEALY, declare and state as follows:

On March 23, 2006, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (BRIEF OF RESPONDENT/RESPONSE TO PERSONAL RESTRAINT PETITION), to:

Michael Jesse Gonzales
#724909
Airway Heights Corr Ctr
P.O. Box 1809
Airway Heights, WA 99001

I, Tricia Kealy, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 23rd day of March, 2006, at Shelton, Washington.


Tricia Kealy

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COURT OF APPEALS
DIVISION II
06 MAR 27 AM 10:21
STATE OF WASHINGTON
BY _____
DEPUTY

Mason County Prosecutor's Office
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ATTACHMENT

“A”

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 23rd day of March 2006

PAT SWARTOS

County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Mason.

By Sharon Dago Deputy

RECEIVED & FILED IN
CO. CLERK'S OFFICE

2003 MAY 12 P 2:51

MASON CO. WA.
PAT SWARTOS, CO. CLERK

BY Sharon Dago DEPUTY

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

STATE OF WASHINGTON,)	
	)	NO. 02-1-00415-6
Plaintiff,)	
)	
vs.)	
	)	SECOND AMENDED INFORMATION
MICHAEL JESSE GONZALES,)	
HM122575)	
HT:5'05" WT:170 HAIR:BLK EYES:BRO	)	SPD 02-05496
SID: WA14896056 DOC: 724909	)	RCW 9A.32.030
FBI: 732042VA9	)	RCW 9A.56.200
Defendant.	)	RCW 69.50.401
	)	RCW 9A.28.040

I, Gary P. Burleson, Prosecuting Attorney for the County of Mason, State of Washington, by this Second Amended Information accuse the above-mentioned defendant: **MICHAEL JESSE GONZALES** with the crimes of:

- COUNT I: MURDER IN THE FIRST DEGREE (WITH FIREARM ENHANCEMENT)
- COUNT II: MURDER IN THE SECOND DEGREE (charged in the alternative as to Count I) (WITH FIREARM ENHANCEMENT)
- COUNT III: ROBBERY IN THE FIRST DEGREE (WITH FIREARM ENHANCEMENT)
- COUNT IV: UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE
- COUNT V: CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE

committed as follows, to wit:

COUNT I:

That the Defendant, MICHAEL JESSE GONZALES, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit MURDER IN THE FIRST DEGREE, a Class A felony, in that said defendant did commit or attempt to commit the crime of robbery in either first or second degree or kidnapping in either the first or second degree, and in the course of or in

51

furtherance of such crimes or in immediate flight therefrom, he or another participant caused the death of a person other than one of the participants, to-wit: Oscar L. Abundiz, Jr., and/or was an accomplice in the commission of said crime, contrary to RCW 9A.32.030(1)(c) and 9A28.020 and against the peace and dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT II:

That the Defendant, MICHAEL JESSE GONZALES, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit MURDER IN THE SECOND DEGREE, a Class A felony, in that said defendant did commit or attempt to commit a felony, to-wit: Theft in the Second Degree and/or Unlawful Possession of a Controlled Substance (Marijuana over 40 grams), and in the course of or in furtherance of such crime or in immediate flight therefrom he or another participant caused the death of a person other than one of the participants, to-wit: Oscar L. Abundiz Jr., and/or the defendant was an accomplice in the commission of said crime(s), contrary to RCW 9A.32.050(1a)(b) and 9A.28.020 and against the peace and dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT III:

That the Defendant, MICHAEL JESSE GONZALES, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit ROBBERY IN THE FIRST DEGREE, a Class A felony, in that said defendant did unlawfully take personal property, to-wit: marijuana, from the person or in the presence of another, to-wit: Oscar L. Abundiz Jr., against such person's will, by use or threatened use of immediate force, violence, or fear of injury to that person or his property, or the person or property of anyone, and did use such force or fear to obtain or retain possession of the property or to prevent or overcome resistance to the taking of said property, with the intent to commit theft of the property, and during such taking or in the immediate flight therefrom, the defendant was armed with a deadly weapon and/or displayed what appears to be a firearm or other deadly weapon and/or inflicted bodily injury, and/or was an accomplice in the commission of said crime, contrary to RCW 9A.56.200(1)(c) and RCW 9A.08.020 and against the peace and

dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT IV:

That the Defendant, MICHAEL JESSE GONZALES, in the County of Mason, State of Washington, on or about the 14th and/or the 15th day(s) of June, 2002, did commit UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, a Class C felony, in that said defendant did unlawfully possess a controlled substance, to-wit: over forty (40) grams of Marijuana, contrary to RCW 69.50.401(d) and against the peace and dignity of the State of Washington.

COUNT V:

That the Defendant, MICHAEL JESSE GONZALES, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE, a Class B felony, in that said defendant, with intent that conduct constituting the crime of ROBBERY IN THE FIRST DEGREE be performed, did agree with one or more persons to engage in or cause the performance of such conduct, to-wit: to unlawfully take personal property, to-wit: marijuana, from the person or in the presence of another, to-wit: Oscar L. Abundiz Jr., against such person's will, by use or threatened use of immediate force, violence, or fear of injury to that person or his property, or the person or property of anyone, and did use such force or fear to obtain or retain possession of the property or to prevent or overcome resistance to the taking of said property, with the intent to commit theft of the property, and during such taking or in the immediate flight therefrom, one or more participants would be armed with a deadly weapon and/or would display what appeared to be a firearm or other deadly weapon and/or would inflict bodily injury, and any one of them did take a substantial step in pursuance of such agreement, contrary to RCW 9A.56.200 and RCW 9A.28.040 and against the peace and dignity of the State of Washington.

Dated: May 12, 2003 GARY P. BURLERSON,
Prosecuting Attorney

By: 
GARY P. BURLERSON, #4632
Mason County Prosecutor

ATTACHMENT

“B”

Washington State Court of Appeals
Division Two



950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

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September 28, 2004

SEP 29 2004

Monty Dale Cobb
Mason County Prosecutors Office
521 N 4th Ave Ste A
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Patricia Anne Pethick
Attorney at Law
PO Box 7269
Tacoma, WA, 98406-0269

**MASON COUNTY
PROSECUTOR**

CASE #: 30756-1-II

State of Washington, Respondent v. Michael Jesse Gonzales, Appellant

Counsel:

An opinion was filed by the court today in the above case. A copy of the opinion is enclosed.

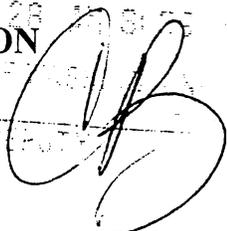
Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cjb
Enclosure

cc: Judge James Sawyer
Indeterminate Sentence Review Board
Defendant Michael Jesse Gonzales

COURT OF APPEALS
DIVISION II

04 SEP 28 11 01 AM '05
STATE OF WASH.
BY 

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 30756-1-II

Respondent,

v.

MICHAEL JESSE GONZALES,

UNPUBLISHED OPINION

Appellant.

HUNT, J. – Michael Gonzales appeals his standard range sentence for second degree murder. He argues that (1) his offender score incorrectly included two prior convictions, which may have washed out; or (2) in the alternative, two of his prior convictions arose from the same criminal conduct and should count as a single offense. The State concedes that two of Gonzales’s prior convictions have washed out and that Gonzales should be resentenced.

Gonzales also argues the prosecutor undercut the agreed sentencing recommendation of 180 months. In a statement of additional grounds, Gonzales claims that he received ineffective assistance of counsel. We remand for resentencing.

FACTS

Michael Gonzalez pleaded guilty to second degree murder committed during the commission of burglary. Gonzales was involved in the burglary, but he claims to have neither planned nor committed the murder or the arson.

In exchange for Gonzales’s guilty plea, the prosecutor agreed to recommend a sentence of 180 months, which he did. According to Gonzales, however, the prosecutor undercut the recommendation during the sentencing hearing when he (the prosecutor) (1) introduced 14 of the

victim's family members, who spoke of their grief and anger; and (2) remarked that even though Gonzales did not pull the trigger, he was responsible for the victim's death. Nonetheless, the prosecutor stressed his intent to recommend the 180-month sentence as appropriate considering Gonzales' level of involvement.

The sentencing court calculated Gonzales' offender score based on four prior convictions: a 1992 residential burglary (juvenile), a 1993 second degree assault (juvenile), and two 1994 drug convictions. The offender score resulted in a standard sentencing range of 165 to 265 months. The sentencing court did not follow the prosecutor's recommendation and, instead sentenced Gonzales to 265 months confinement. Gonzales appeals.

ANALYSIS

I. PRIOR CONVICTIONS

The State concedes error in Gonzales' offender score, agreeing that his two prior drug convictions washed out because Gonzales had been crime free for five years after his release. RCW 9.94A.525(2). We accept the State's concession and remand to the trial court for resentencing without regard to these two prior drug convictions.¹

¹ In light of the State's concession, Gonzales' alternative argument that the two drug convictions arose from the same criminal conduct is moot. Therefore, we do not address this issue. Similarly, because Gonzales will be resentenced, the State will present anew its sentencing recommendation. Therefore, we do not address the State's actions during the sentencing hearing that is the subject of this appeal.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

In his statement of additional grounds, Gonzales contends his trial attorney's lack of preparedness rendered his counsel ineffective. But Gonzales fails to point to any specific instance where his counsel provided deficient performance; nor does he set forth any prejudice resulting from that allegedly deficient performance. Accordingly, he does not meet the burden of proving ineffective counsel² and we do not consider this argument further.

Remanded for recalculation of Gonzales' offender score and resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

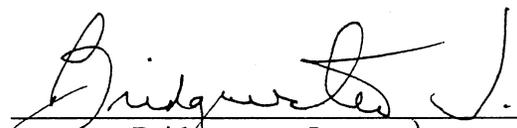


Hunt, J.

We concur:



Houghton, P.J.



Bridgewater, J.

² A defendant has the burden of proving ineffective assistance of counsel. To do so, the defendant must illustrate (1) deficient performance by counsel which, (2) resulted in prejudice. *State v. Horton*, 116 Wn. App. 909, 912, 68 P.3d 1145 (2003) (citing *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)). In general, performance is deficient where it does not meet an objective standard of reasonableness. *Id.* Prejudice occurs where there is a reasonable probability that but for the counsel's error; the result of the proceedings would have been different. *Id.* at 921, 922 (citing *Strickland v. Washington*, 466 U.S. 688, 694, 104 S. Ct 2052, 80 L. Ed. 2d 674 (1984)).

ATTACHMENT

“C”

the document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 23rd day of March 2006

RECEIVED & FILED

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PAT SWARTOS, Clerk of the Superior Court Mason Co. Wash

PAT SWARTOS

County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Mason
By Sharon [Signature] Deputy



SUPERIOR COURT OF WASHINGTON
COUNTY OF MASON

STATE OF WASHINGTON, Plaintiff,

No. 02-1-00415-6

vs.

JUDGMENT AND SENTENCE (JS)
(RESENTENCED PER COA II MANDATE)

MICHAEL JESSE GONZALES,
Defendant.

Prison

SID: WA148960056
If no SID, use DOB: 12-25-1975

Clerk's Action Required, para 4.15.2, 5.3, 5.6 and 5.8

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present. This is a resentencing with a corrected offender score pursuant to a mandate from COA II.

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 MAY 27, 2003 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
II	MURDER IN THE SECOND DEGREE	9A.32.050	06-14-2002

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the (_____ Amended) Information.

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under **RCW 9.94A.712.**

A special verdict/finding for use of **firearm** was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.

A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.

A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.835.

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2004))

SG
3x find
DOB

105

- 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, 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 governing 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.605, RCW 69.50.401, 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.607.
- 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.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 RESIDENTIAL BURGLARY <i>1/2 pt</i>	02-27-92	YAKIMA, WA	01-13-92	J	NV
2 ASSAULT SECOND DEGREE <i>2 pt</i>	02-10-93	YAKIMA, WA	04-19-93	J	V
3					
4					
5					

- Additional prior convictions which have washed and are no longer counted in offender score: 2 counts VUCSA (marijuana) 03-1994 Yakima WA.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
II	2	XIV	144-244 months	N/A	144-244 months	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, see RCW 46.61.520, (JP) Juvenile present.

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within 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.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: 1. Recommend 180 months. 2. Dismiss all other charges and weapon enhancements. 3. Truthful testimony against Patrick Calfrobe.

III. JUDGMENT

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

3.2 The court DISMISSES Counts I, III, IV AND V and strikes the firearm enhancement in Count II.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (as previously ordered):

JASS CODE

RTN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's Office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment Laws of 2004, ch. 15 § 2

CRC \$ 8271.95 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ reserved WFR

Sheriff service fees \$ 456.15 SFR/SFS/SFW/WRF

Jury demand fee \$100.00 JFR

investigator costs \$ 7557.80 EXT

Other \$ 48.00 (warrant)

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCI NTF/SAD/SDI \$ _____ Drug enforcement fund of _____ RCW 9.94A.760

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541

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

\$ _____ Other costs for: Dr. Lacsina reserved _____

\$ 8871.95 TOTAL RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. Any order regarding additional legal financial obligations entered subsequent to the first judgment and sentence and prior to the entry of this order is hereby incorporated by reference. Copy of Restitution Order is Attached and incorporated.

An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] RESTITUTION. Schedule attached.

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

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602. RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 160⁰⁰ per month commencing 60 days after release RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

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.760.

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 10.73.160.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with Mr. Abundiz's family (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: Court specifically finds that State
complied with plea agreement.

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

- (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

242 months on Count II

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

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

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

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **CONFINEMENT.** RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____	minimum term _____	maximum term _____
Count _____	minimum term _____	maximum term _____

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. 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: _____

- 4.6 **COMMUNITY PLACEMENT** is ordered as follows: Count _____ for _____ months;
Count _____ for _____ months; Count _____ for _____ months.

COMMUNITY CUSTODY for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered as follows:

Count II for a range from **24 to 48 months** or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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 restitution (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 not sentenced under RCW 9.94A.712 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: CONDITIONS IMPOSED ARE ATTACHED AND INCORPORATED BY REFERENCE.

For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the 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 above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, 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.

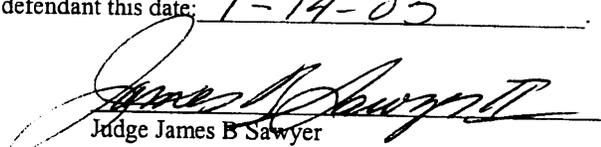
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure 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 purpose 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.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of 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.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 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 clerk of the court 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.

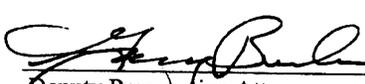
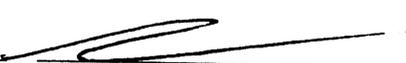
Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION	NOT APPLICABLE
-----------------------------------------------------	----------------

- 5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. Laws of 2004, ch. 166 § 11.
- 5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 1-14-05


 Judge James B Sawyer

 Deputy Prosecuting Attorney WSBA No. <u>4632</u> Print name: _____	 Attorney for Defendant WSBA No. <u>23584</u> Print name: <u>PIMENTEL</u>	 Defendant Print name: _____
-----------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------

CAUSE NUMBER of this case: 02-1-00415-6

I, PAT SWARTOS, 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 this date: _____.

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

IDENTIFICATION OF DEFENDANT

SID No. WA14896056 Date of Birth: 12-25-1975
(If no SID take fingerprint card for State Patrol)

FBI No. 732042VA9 Local ID No. _____

PCN No. _____ Other _____

Alias name, DOB: _____

Race:
 Asian/Pacific Islander Black/African-American Caucasian
 Native American Other: _____
Ethnicity: Hispanic Non-Hispanic
Sex: Male Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Carolyn Heibig Dated: 1-14-05

DEFENDANT'S SIGNATURE: X

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
			

RECEIVED & FILED

JAN 14 2005

CLERK OF THE
Superior Court Mason Co. Wash

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

STATE OF WASHINGTON,)	
Plaintiff,	)	NO. 03-1-00425-5
)	
vs.	)	CONDITIONS OF
	)	COMMUNITY CUSTODY
MICHAEL JESSE GONZALES,)	
<u>Defendant.</u>)	

Upon release from total confinement in the Department of Corrections, the defendant shall be on Community Custody for the period specified in the Judgment and Sentence, upon the following conditions:

- [X] The defendant shall report to and be available for contact with the assigned Community Corrections Officer as directed;
- [X] The defendant shall reside at a location and under living arrangements that have been approved in advance by the CCO, and shall not change such arrangements/location without prior approval;
- [X] The defendant shall remain within, or outside of, geographic boundaries specified by the CCO;
- [X] The defendant shall work at a Department of Corrections-approved education, employment and/or community service program;

- The defendant shall not own, use, possess, transport, or receive firearms or ammunition;
 - The defendant shall not possess or consume any mind or mood-altering substances, to include the drug alcohol, or any controlled substances, except pursuant to lawfully issued prescriptions;
 - The defendant shall not go into bars, taverns, lounges, or other places whose primary business is the sale of liquor;
 - The defendant shall have a [chemical dependency] [mental health] evaluation within 30 days of release from custody, provide a copy of the evaluation to the CCO, successfully participate in and complete all recommended treatment, and sign all releases necessary to ensure that the CCO can consult with the treatment provider to monitor progress and compliance;
 - The defendant shall, at his/her own expense, submit to urinalysis and/or breathalyzer testing at the request of the CCO or treatment provider to verify compliance;
 - The defendant shall not associate with any known drug users or sellers, except in the context of a chemical dependency treatment program approved by the CCO;
 - Defendant shall pay a community placement fee as determined by the Department of Corrections;
 - A notice of payroll deduction may be issued or other income withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed;
 - Legal financial obligation payments are to be made on a schedule established by D.O.C. to begin as directed by the D.O.C.
 - Other: The defendant shall participate in the MRT +/-or Victim Awareness Education Program
- Judgement & Sentence 4.6 Conditions, Page 2 of 4

at the direction of his Community Corrections Officer.

Other: The defendant shall participate in and successfully complete a certified Domestic Violence counseling program.

Other: The defendant shall have no contact, either direct or indirect, with the victim, _____, or members of the victim's immediate family, including but not limited to contact in person, by mail, telephonically or through third parties. Any such contact may be reinitiated only upon the joint recommendation of the defendant's Domestic Violence counselor and PO/CCO and upon the written approval of this court.

Other: The defendant shall enroll in and successfully complete a high school Equivalency Diploma Program.

Other: The defendant shall obey all laws.

Other: The defendant shall participate in mental health counseling or treatment at the direction of the CCO.

Other: The defendant shall not operate a motor vehicle without a valid license to drive and proof of financial responsibility for the future.

Other: The defendant shall not refuse to submit to a breath or blood test to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe that the defendant was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs.

Other: The defendant may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device during the period of probationary supervision.

Other:

DONE IN OPEN COURT THIS 14th DAY OF January, 2005


Judge of the Superior Court


Deputy Prosecuting Attorney
WSBA 4632


Attorney for Defendant
WSBA 23564


Defendant

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JAN 14 2005

PAI SWANSON, Clerk of the
Superior Court Mason Co. Wash

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON**

STATE OF WASHINGTON,)	
)	
)	
Plaintiff,	)	NO. 00-1-00415-6
)	
vs.	)	WARRANT OF COMMITMENT
	)	(WC)
)	
MICHAEL JESSE GONZALES)	
Defendant.)	

THE STATE OF WASHINGTON

TO: The Sheriff of Mason County.

The defendant: **MICHAEL JESSE GONZALES** has been convicted in the Superior Court of the State of Washington of the crime(s) of:

COUNT II: MURDER IN THE SECOND DEGREE

and the Court has ordered that the defendant be punished by serving the determined sentence of:

[XX] 242 Months **PRISON** on Count No. II

DEFENDANT shall receive credit for time served prior to this date:

[XX] To be calculated by the staff of the Mason County Jail
[] In the amount of _____ Days.

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery to the proper officers of the Secretary of the Department of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

Dated this 14 Day of January, 2005.

By Direction of the HONORABLE

JAMES B. SAWYER II

Judge

PAT SWARTOS

Mason County Clerk

Carolyn Herbig
By Deputy Clerk

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

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 SEP 18 2003
 PAT SWARTOS, Clerk of the
 Superior Court Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL J. GONZALES,)
 Defendant.)

03-9-631-8
 NO. 02-1-00415-6
 ORDER OF RESTITUTION
 AND ORDER FOR WITNESS FEES

This matter having come before the Court for a restitution hearing, the court having found that the amount of restitution set forth below should be paid by the defendant, and that the persons named below are entitled to the amount of restitution stated, now, therefore, it is hereby

ORDERED that the defendant shall pay restitution to the clerk of the court in the amount of \$ 7,378.¹⁶, to be dispersed as follows:

<u>Name</u>	<u>Address</u>	<u>Amount</u>
Richard A. Quirke	1430 SE Arcadia Rd Shelton, WA 98584	\$ 1,230. ⁰⁰
Dept of Labor & Industries Crime Victim's Compensation #VJ56816	P.O. Box 44520 Olympia, WA 98504-4520	\$ 6,148. ¹⁶

88

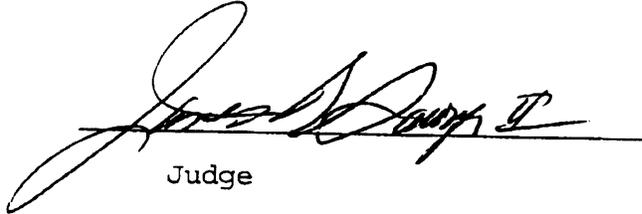
Pros
Doc

[X] IT IS FURTHER ORDERED that the restitution ordered above shall
be paid jointly and severally with:

WALTER J. BARBEE	NO. 02-1-00232-3
PATRICK M. CALFROBE	NO. 02-1-00224-2
DUSTIN D. JEFFERY	NO. 02-1-00223-4
ANTONIO C. MORENO	NO. 02-1-00227-7
RICHARD M. WIES	NO. 02-1-00225-1

*and it is further order that witness fees previously reserved are
imposed in the amount of \$636.⁰⁵*

DONE IN OPEN COURT THIS 18th DAY OF Sept, 2003


Judge

Presented by:

Approved for Entry


REINHOLD P. SCHUETZ, #9070
Chief Criminal Deputy

(withdrawn)

ADRIAN PIMENTEL, #23564
Attorney for Defendant

*(Defendant previously waived presence
on the record.)*

ATTACHMENT

“D”

RECEIVED

MAR 17 2006

MASON COUNTY PROSECUTOR

COURT OF APPEALS, DIVISION II STATE OF WASHINGTON	NO. 34488-2
In Re Personal Restraint of MICHAEL J. GONZALES	DECLARATION of ADRIAN PIMENTEL

COMES NOW, ADRIAN PIMENTEL, and declares as follows:

I am the attorney who represented Michael Gonzales in Mason County Cause #02-1-00415-6. I also appeared at Gonzales's re-sentencing on January 14, 2005.

I have been provided a copy of the personal restraint petition filed by Gonzales wherein he asserts that I provided ineffective assistance of counsel by failing to file a notice of appeal, by representing him at the re-sentencing without his approval, and by failing to object to the "summary" nature of the hearing and therefor not ensuring what Gonzales describes as a "full sentencing hearing."

I make this declaration as allowed by RPC 1.6(b)(2) and *State v. Chervenell*, 99 Wn.2d 309, 316, 662 P.2d 836 (1983).

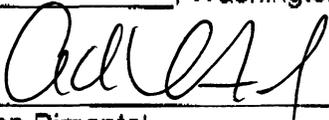
I do not recall any discussion wherein Gonzales requested that I file a Notice of Appeal following his re-sentencing pursuant to the original Court of Appeals mandate. I believe that had such a conversation occurred, I would remember it.

Prior to the re-sentencing hearing, I discussed with Gonzales, and he agreed to, my appearing on his behalf.

Finally, as for failing to object to the "summary" nature of the hearing, I believe the record speaks for itself that the hearing was not of a summary nature.

I CERTIFY OR DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ABOVE IS TRUE AND CORRECT.

DATED this 15th day of March, 2006 at TACOMA, Washington.



Adrian Pimentel

DECLARATION in RESPONSE
PRP of GONZALES

ATTACHMENT

“E”

P.O. Box 30
Allyn, Washington 98524
(360)275-3044
March 16, 2006

RECEIVED

MAR 20 2006

MASON COUNTY
PROSECUTOR

Mr. Monty Cobb
Deputy Prosecuting Attorney
Mason County Prosecutor's Office
P.O. Box 639
Shelton, Washington 98584

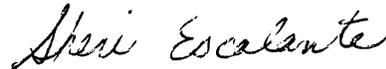
RE: State of Washington vs. Michael J. Gonzales
Mason County Cause No. 02-1-00415-6
Court of Appeals No. 30756-1-II

Dear Mr. Cobb:

As requested, you will find a certified copy of the transcript in the re-sentencing hearing held on January 14, 2005 in the above-referenced matter enclosed.

Should you have any questions concerning the above, please contact me.

Sincerely,



Sheri K. Escalante
Court Approved Transcriber

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MAR 20 2006
MASON COUNTY
PROSECUTOR

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

STATE OF WASHINGTON,)
Plaintiff,) NO. 30756-1-II
vs.) VOLUME XXIII
MICHAEL JESSE GONZALES,) NO. 02-1-00415-6
Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 14th day of January, 2005, Mason County Cause No. 02-1-00415-6 came on for re-sentencing hearing before the Honorable James B. Sawyer, II, Judge of the Superior Court sitting at the Mason County Courthouse, in the City of Shelton, County of Mason; and the parties being represented by their respective attorneys as follows:

GARY P. BURLESON, Prosecuting Attorney, and MONTY COBB, Deputy Prosecuting Attorney, 521 N. 4th Street, Shelton, Washington 98584, appearing on behalf of the Plaintiff;

ADRIAN B. PIMENTEL, Attorney at Law, 707 Pacific Avenue, Tacoma, Washington 98402, appearing on behalf of the Defendant Michael Gonzales;

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Court convened with all parties present on Friday, January 14, 2005, at 1:32 p.m.

THE COURT: The matter before the Court is Mason County Cause Number 02-1-00415-6. The matter comes on for re-sentencing. Do the parties need a moment off the record?

MR. PIMENTEL: Just very briefly.

THE COURT: We'll go off the record.

Court adjourns for a brief recess.

RECESS/COURT RECONVENES

Court reconvenes on the same date and the following is heard in the presence of all parties:

THE COURT: Counsel, we're here for re-sentencing based on a recalculation of offender score.

MR. BURLESON: Your Honor, that's -- the matter comes on for re-sentencing. It's been remanded by the Court of Appeals for that specific purpose.

THE COURT: Right.

MR. BURLESON: Did you want to comment on that?

MR. PIMENTEL: On? No.

MR. BURLESON: Did you want to comment on that?

MR. PIMENTEL: I -- I don't. I wanted to add one thing in the record. Mr. Gonzales believes that there's a new case that recently came out that would give him the right to

1 withdraw his plea. I'm not aware of that case. Based on the
2 appeal that --

3 THE COURT: Nor am I, given that this is a
4 reduction, rather than an increase in the sentence.

5 MR. PIMENTEL: Right. If it was an increase, that
6 would be different. But this is a reduction.

7 THE COURT: I agree.

8 MR. PIMENTEL: And so I'm not aware of it, but I do
9 want to raise it on his behalf.

10 THE COURT: I'll make a note on the record.

11 MR. BURLESON: Further, your Honor, that --

12 THE COURT: I'm not aware of anything that shows
13 where there's a reduction in potential sentence that it allows
14 a withdrawal of plea.

15 MR. BURLESON: Further, your Honor, that -- that
16 specific issue was also raised at the Court of Appeals. The
17 Court of Appeals remanded this for re-sentence, and for no
18 other purpose. At least not that I'm aware of. Is that
19 correct?

20 THE COURT: That's consistent with my reading of
21 the remand.

22 MR. BURLESON: Of the opinion.

23 THE COURT: And I have read it.

24 MR. BURLESON: Yeah. And the reason for the
25 remand, your Honor, was that at the time of sentencing, all

1 parties were of the opinion that Mr. Gonzales had an offender
2 score of 4.

3 THE COURT: Correct.

4 MR. BURLESON: There was no dispute between the
5 State, or the Defendant, or I think the Court at that time.

6 THE COURT: Right.

7 MR. BURLESON: We've since become aware that the
8 information that we have at that time wasn't accurate. And
9 that he in fact had the convictions that were represented to
10 the Court.

11 THE COURT: Two washed.

12 MR. BURLESON: But two of the convictions have
13 washed.

14 THE COURT: Right.

15 MR. BURLESON: Which we were unaware of at that
16 particular time. So his history was correct, but the
17 consideration of the history was incorrect. Do you agree with
18 that, Mr. Pimentel?

19 MR. PIMENTEL: Correct.

20 MR. BURLESON: And he's back here with an offender
21 score of 2 instead of 4.

22 THE COURT: Right.

23 MR. BURLESON: He's back here for sentencing for
24 the crime of Murder in the Second Degree. The Court sat
25 through a trial that -- I think the trial ran eight or nine

1 days. It ultimately culminated in that plea. We went to
2 sentencing. The victim's family is here today. And I know
3 full well from that earlier sentencing and the trial that many
4 of the Defendant's family are here as well.

5 What I would propose at this particular time, and
6 Mr. Pimentel and I talked about this. He has no objection to
7 it. Is the presentation of the Verbatim Report of Proceedings
8 which we presented and are in the court file for the Court's
9 review.

10 THE COURT: I have that.

11 MR. BURLESON: I would indicate to the Court and by
12 doing that, hopefully a lot of time will be saved because that
13 would be presented to the Court. That -- that is a lot of
14 testimony from the family and friends of the -- of the
15 victim -- of the victim. And they spoke because they wanted
16 to speak. They wanted the Court to know their position. And
17 their position, as I can recall in many respects, was not the
18 same position of the State.

19 The State was that there was an agreement reached that
20 Mr. Gonzales would plead to Murder in the Second Degree; that
21 the State would recommend 15 years, or 180 months in exchange
22 for that plea. That was the recommendation of the State at
23 that time. I indicated comments with respect to it and why I
24 felt it was appropriate. My position has not changed one bit.
25 I want it clear on the record that it's still the position of

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the State -- that we recommend 180 months, which is consistent with the agreement -- the agreement between the State and Mr. Gonzales. And to the extent that that deviates from the family or friends of either the Defendant or the victim, that is not the recommendation of the State. And I wanted to be clear.

That was an issue that was raised on appeal as well. And the Court sent it back for sentencing. It basically rejected that by implication that that position that was raised that there was somehow a violation of the agreement.

Further I want the Court -- I'll say it for the third time. My recommendation is 180 months, or 15 years. I would ask that this Court make a specific finding that the Court -- that the State has complied with its -- with its agreement in terms of the recommendation.

I would further indicate to the Court that Mr. Gonzales was originally sentenced to 265 months. The standard range, I believe for that --

THE COURT: That was the top end of the standard range under that calculation.

MR. BURLESON: Was 165 - 265. The standard range for an offender score of 2, I believe, is 134 - 244, or is it 144 - 244?

MR. PIMENTEL: 144 - 244.

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MR. BURLESON: 144 - 244, for the Court's information. The State continues to stand by its agreement with the defense. And our recommendation is for 180 months.

THE COURT: 180 months, very well. And counsel, you agree with the calculation of 144 - 244 for standard range?

MR. PIMENTEL: I do.

THE COURT: Okay.

MR. PIMENTEL: And it is an agreed recommendation, your Honor.

THE COURT: At 180 months?

MR. PIMENTEL: 180 months.

THE COURT: That is correct.

MR. PIMENTEL: And Mr. Gonzales stands by it. We want it, we're asking for it. The -- we believe that -- and I know that at the time the Court didn't agree that that was a fair agreement. But we believed at the time it was. But we believe it's even more fair today than it was two years ago.

And part of the reason is that Mr. Gonzales was instrumental in bringing Mr. Barbee to justice. His testimony and the people that he brought to this case as far as witnesses, were critical to the conviction of Mr. Barbee. And as the Court recalls, we, from the beginning, distanced ourselves from Mr. Barbee.

1 In addition to that, the -- in our position, the main
2 culprit aside from Mr. Barbee was Mr. Calfrobe. He was the
3 individual that lured Mr. Abundiz across the state, tricked
4 him into this deal, and -- and was the one that had built the
5 trust of Mr. Abundiz, was the one that Mr. Abundiz knew, was
6 the one that he was acquainted with. And -- and in our mind,
7 he was the main culprit. Without Mr. Calfrobe, none of this
8 would have happened. And Mr. Calfrobe ended up with -- I'm
9 not sure. I think it was 11 years. I think Mr. Calfrobe
10 struck a deal that bound the Court at a high end that was like
11 11 or 13 years.

12 And Mr. Gonzales is prepared to take responsibility for
13 this. He -- he insists and maintains that he really was a
14 peripheral figure. That while he was there, and while he was
15 watching this stuff go on, and while he did do a lot of
16 assisting after the fact, he really -- it really wasn't his
17 deal. Nevertheless, he's not saying he's not responsible.
18 But he was not a central figure. And we are asking that you
19 would go with the agreement of 180 months.

20 THE COURT: Anything you'd like to say,
21 Mr. Gonzales?

22 MR. BURLESON: Your Honor, if I could just --
23 before Mr. Gonzales speaks, correct Mr. Pimentel with respect
24 to Mr. Calfrobe. Mr. Calfrobe received 162 months; 60 of
25

1 those months which were firearm enhancement, which as the
2 Court well knows, there is no --

3 THE COURT: No good time whatsoever.

4 MR. BURLESON: -- good time whatsoever. And so
5 that computes out to 13½ years with respect to Mr. Calfrobe.
6 If the Court wants to know, I have the other amounts that
7 Defendants -- because there were many people convicted of the
8 murders and of different degrees. And I can -- if the Court
9 wants me to bring it up to date, I can do that as well.

10 THE COURT: Would you please. Mr. Calfrobe was a
11 hundred and what?

12 MR. BURLESON: Calfrobe was 162 months.

13 THE COURT: With 60 --

14 MR. BURLESON: 60 of which was firearm enhancement.
15 Mr. Barbee was 304 months, plus 60, so 364 months, 60 of which
16 was firearm enhancement.

17 THE COURT: Straight time.

18 MR. BURLESON: Dustin Jeffery was 220 months. And
19 Mr. Barbee was convicted of First Degree Murder.
20 Mr. Calfrobe, First Degree Manslaughter. Dustin Jeffery,
21 Second Degree Murder without -- as I recall, without criminal
22 history.

23 UNKNOWN: Or a weapon.

24 MR. BURLESON: Or weapon. Mr. Moreno, Second
25 Degree Murder and Arson, 228 months plus 14; 242 months based

1 on my calculations. And there's Mr. Wies, but Mr. Wies was an
2 accessory after the fact. And I didn't compute that out. I
3 can get it if the Court wants it.

4 THE COURT: No, that's all right.

5 MR. PIMENTEL: If I may in light of that.

6 THE COURT: Surely.

7 MR. PIMENTEL: Going through that list, Mr. Moreno
8 was involved in the arson and was centrally involved in the --
9 in the whole scheme itself. Mr. Jeffery was also centrally
10 involved. Mr. Jeffery, I believe, was the individual that met
11 at like the mini golf place with Mr. Barbee. And if the Court
12 remembers, Mr. Gonzales was nowhere to be found the two weeks
13 of planning and all the things that took place. He wasn't
14 involved in any of it, he had no part of it. There was no
15 evidence that indicated that he was any part of that.

16 The evidence that was -- that was damning to Mr. Gonzales
17 was the fact that -- that he sat around that night and was
18 either involved in or failed to remove himself from all the
19 planning that was going on that night. But prior to that, he
20 wasn't involved in this. There was no evidence that he was.
21 But yet with all of those other individuals there was evidence
22 that they were involved in the luring, they were involved in
23 the planning, they were involved. They didn't assist in
24 bringing Mr. Barbee to justice.

25

1 And -- and Mr. Calfrobe also was the primary culprit.
2 Mr. Jeffery, if the Court remembers, was arguing over the
3 decedent's shoes. So with all of these individuals, there
4 just is -- there is a much greater level of culpability.

5 And in addition to that, and I don't think Mister -- I just
6 forgot your name again. Mr. Burleson -- I talk to him like
7 weekly -- I don't think Mr. Burleson will deny that
8 Mr. Gonzales was instrumental in bringing the David
9 gentleman -- I even forget his name now. The gentleman that
10 drove him over, who was -- who saw the gun being thrown out
11 after the shooting. All of those things, I think, go into
12 this. The fact that he assisted the State, that he cooperated
13 with the State, that he was less culpable than all of the
14 other people. I'm just imploring the Court to -- to give the
15 180 months. Thank you.

16 MR. BURLESON: Your Honor, I hate to interrupt.
17 Mr. Jeffery is the individual that lured Mr. Abundiz over.
18 Mr. Calfrobe came over -- if the Court -- I don't want to --

19 MR. PIMENTEL: Oh, okay. No, I do. I want it
20 correct.

21 MR. BURLESON: I don't want to retry the case.

22 MR. PIMENTEL: No, no.

23 MR. BURLESON: Mr. Calfrobe, among many other
24 things, indicated that the taser that he got was
25 Mr. Gonzales's taser. And once again not to -- not to -- the

1 Court remembers the facts of this case as much as I do, or as
2 well as I do. But if we're going to talk about culpability
3 and not what the recommendation is, there is tons of
4 culpability that attaches to each and every one of these
5 particular defendants.

6 MR. COBB: Your Honor, if I can take care of some
7 housekeeping matters which are kind of peripheral to the
8 facts, but I think are important for the purposes of
9 sentencing. The offender score is based on two prior felony
10 convictions, both of which are juvenile; one a residential
11 burglary in Yakima in 1992, that's a half point. Assault in
12 the Second Degree, which because of the multipliers under the
13 SRA is 2 points which results rounding down to a score of 2.
14 The standard range is as related.

15 At the previous hearing the Court imposed \$8,871.95 in
16 costs. That includes the filing fee, sheriff service fees of
17 \$456.15, jury demand fee, and investigator costs of \$7,557.80,
18 warrant cost of \$48, victim's assessment of \$500 and felony
19 DNA fee. Reserve restitution at that time. And there was a
20 subsequent restitution order entered in September of
21 \$7,378.16. And I believe it would be appropriate to order
22 those same fees and incorporate that restitution order. It's
23 just housekeeping matters which I know counsel is focusing on
24 the more significant things, but appropriate for sentencing.

25

1 THE COURT: Appreciate it. Mr. Gonzales, anything
2 you'd like to say?

3 MR. GONZALES: At the time really I just -- you
4 know, I want to say sorry to the family once again. I don't
5 want to open up old wounds, you know. But I felt that -- that
6 there was a consequence about the 2 points that, you know, I
7 thought that did wash out and everything.

8 But I was under the understanding that if I had pled to a
9 certain guidelines that I could correct the manifest injustice
10 because I wasn't adequately informed of my sentencing. So
11 maybe I was under some misunderstanding and everything.

12 But really my heart goes out to the family again, you know,
13 because like I said I don't -- you know, I feel their pain.
14 You know, my family lost a son, they lost a son. And
15 regardless if I had anything to do with that or not, I know I
16 didn't. I'll sit here and maintain my innocence. Never once
17 was my intention to kill anybody, or even to harm anybody.

18 And I wish this Second Degree Murder charge would have been
19 explained to me before I took the deal because now I
20 understand that it's -- it's an intentional murder. I never
21 intended to kill anybody, or do harm, or anything like that.
22 You know what I mean? I was there and that is my fault. But
23 I'm not going to sit here and go against the facts again. But
24 I would like to apologize to everybody in the courtroom, your
25 Honor.

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THE COURT: Thank you, Mr. Gonzales.

MR. GONZALES: Uh huh.

THE COURT: We had a lengthy sentencing hearing last time around. We took a lot of testimony. There was a lot of input from everybody on both sides in this particular case. At the conclusion of all of the input I was not comfortable. I did not agree with the recommendation. And of course, that's something that is explained to a defendant. And that is that ultimately, the decision has to rest here. It has to come to bear some place. And the judge is the one that has to bear that decision.

I can understand the argument made by Mr. Pimentel, strongly made by Mr. Pimentel. Some very good points presented in your behalf in this particular case with respect to relative culpability and so forth.

I will specifically find that the Prosecutor has done nothing to undercut his recommendation of 180 months. The Prosecutor can't stuff a sock in the victim's family's mouth and tell them they can't testify. They have a right. And very frankly, I know that I'm not capable of imposing an adequate sentence to make them feel that reparation has been done. Nothing that I can say, nothing that I can do, would ever make them feel right for the loss of their son. But that's not what I'm here for anyway. I am here in an attempt

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to create and impose a just sentence under the facts of this particular case.

And what I will impose at this time is 242 months. All other aspects of the Judgment and Sentence remain exactly the same. The reduction is from 265 to 242. And that's based on an appropriate offender score. The Court can take into consideration prior convictions that don't count when you move within the standard range. That's one of the considerations, of course, that I am taking in here. That is that you have 2 points that are not points but prior criminal history. Once again, rubbing elbows with the system, given an opportunity to learn a lesson. The lesson wasn't obviously learned. And that does factor into the decision making process.

I think you can probably appreciate that as a rationale. Maybe not the result, but I think you can probably appreciate the rationale of that. Where are you being currently housed?

MR. GONZALES: Fairway Heights.

THE COURT: Fairway?

MR. GONZALES: Yeah.

THE COURT: In Spokane?

MR. GONZALES: Yeah.

MR. PIMENTEL: Your Honor, Mr. Gonzales wants me to request that you defer payment of the restitution and fines until his release.

1 THE COURT: Well, I can't do that frankly. There's
2 a Statute that provides that there's a requirement for payment
3 and imposition of interest. And we can't suspend that. There
4 are some conditions that allow us to suspend interest, and in
5 fact even come back and credit interest. But you can't meet
6 those conditions.

7 The conditions are one, you can get that accomplished if
8 you pay the restitution in full. Then you can get a
9 recalculation of interest on the remaining portion. Or if
10 you've made 24 consecutive payments against the legal
11 financial obligation, then you can come back -- because that
12 shows a good faith -- and ask for recalculation. But your
13 situation is that you don't have the ability to meet those.

14 Judges typically would do what you're asking until here a
15 few years ago Division III out of Spokane said it's time you
16 guys read the Statute. It's real clear.

17 MR. GONZALES: Okay.

18 THE COURT: And we did, and it is. And I don't
19 think anybody questioned but that they were absolutely right
20 under the legislation.

21 MR. COBB: In the previous Judgment the Court did
22 not set a minimum payment upon release.

23 THE COURT: That was because of DOC's role in
24 setting minimum payments at that time. However total legal
25 financial obligation is what, \$15,000?

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MR. COBB: About \$16,000 approximately.

THE COURT: Minimum payment will need to be set. \$160 beginning 60 days from date of release. DOC does have the right to withhold from your wages if you're working a job. And they do that regularly and make a portion of payment against it. Right now your Judgment is bearing interest at the rate of 1% per month. So you're losing ground fairly rapidly with about \$160 a month in interest that gets added to it. And that has been argued, and the Legislature spoke on what their intention was.

The amended Judgment and Sentence has been signed in the presence of the Defendant.

MR. COBB: Thank you, your Honor.

THE COURT: Mr. Pimentel, did you want to sign this?

MR. PIMENTEL: I thought I did sign it.

THE COURT: Hang on just one minute. We've got one more piece of paper that he didn't get his signature on; conditions.

MR. PIMENTEL: Oh.

THE COURT: Not a problem. No reason that you would have anticipated that. Thank you. Thank you, Mr. Burleson.

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MR. BURLESON: It was nice to see you again.

THE COURT: Thank you.

* * * * *

ATTACHMENT

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Court adjourns for a brief recess.

RECESS/COURT RECONVENES

Court reconvenes on the same date and the following is heard in the absence of the jury:

THE COURT: Please be seated. We're back on the record, counsel.

MR. PIMENTEL: Yes.

MR. BURLESON: Your Honor, we've reached a resolution whereas Mr. Gonzales will enter a plea of guilty to Count II, Murder in the Second Degree in this case.

THE COURT: The alternative.

MR. BURLESON: With the striking of any firearm enhancement allegations.

MR. PIMENTEL: I think the agreement, your Honor, is that all other counts are dismissed. The striking of the firearm enhancement on the Murder 2 is dismissed -- or it's stricken. And he's pleading to Murder 2 straight up.

MR. BURLESON: And this is an agreement, your Honor, based on the acceptance of the plea by the Court. If for any reason that does not occur, we will proceed to trial on the Information.

THE COURT: Proceed with the trial, all right.

MR. PIMENTEL: I have the -- I have the Amended. Do you want it, your Honor?

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THE COURT: Please.

MR. BURLESON: We show it as filed on our conformed copy on May 12th. May 12th.

MR. PIMENTEL: I have extra copies.

THE COURT: Okay, we've got it. Just didn't go in deep enough. Thank you, counsel. Your name is Michael Jesse Gonzales?

MR. MICHAEL J. GONZALES: Yes, sir.

THE COURT: Mr. Gonzales, you've been on trial for a number of days here. Do you understand the charges against you, you're represented by Mr. Pimentel. I'm now handed a Statement of Defendant on Plea of Guilty to a non-sex offense, Murder in the Second Degree. Have you read this form in its entirety with your attorney, Mr. Pimentel?

MR. MICHAEL J. GONZALES: Yes, I have.

THE COURT: You understand that you don't have to plead guilty to anything? You've entered your pleas of not guilty. This matter is in the middle of a trial. We've got our 14 jurors sitting back there waiting to come in and continue taking testimony. You're presumed innocent. The State's burden of proof is proof beyond a reasonable doubt.

Now this is a negotiated plea, is that your understanding?

MR. MICHAEL J. GONZALES: Yes.

THE COURT: Is it your desire to proceed with the taking of this plea?

1 MR. MICHAEL J. GONZALES: Yes.

2 THE COURT: You understand that if at any time you
3 have a hesitation, all you have to do is look to me and say,
4 "Judge, I want to continue on to trial." I'll simply hand
5 this back to your attorney, we'll move right back on to
6 trial. Do you understand that?

7 MR. MICHAEL J. GONZALES: Yes, I do.

8 THE COURT: Indicates here that your highest grade
9 of completion is ninth grade?

10 MR. MICHAEL J. GONZALES: Yes.

11 THE COURT: Do you read and write the English
12 language?

13 MR. MICHAEL J. GONZALES: Yes, I do.

14 THE COURT: Once again, have you read this
15 Statement of Defendant on Plea of Guilty in its entirety with
16 the assistance of your attorney, Mr. Pimentel?

17 MR. MICHAEL J. GONZALES: Yes.

18 THE COURT: At section 5, (a) through (f) of this
19 Statement it indicates your constitutionally guaranteed trial
20 rights. I assume you understand them, since we're in the
21 middle of a trial. But you do understand also that if I
22 accept your plea here today, you're going to lose all of
23 these rights?

24 MR. MICHAEL J. GONZALES: Yes, I do.

25

1 THE COURT: The charge which you would be pleading
2 to, Count II of the Information, the alternative charge of
3 Murder in the Second Degree without a firearms enhancement,
4 is a Class A felony punishable by life in prison and/or
5 \$50,000.00 in fine. Do you understand that?

6 MR. MICHAEL J. GONZALES: Yes.

7 THE COURT: Given a personal offender score of 4,
8 you would be looking at a standard range sentence in this
9 case of 165 - 265 months of incarceration. Do you understand
10 that?

11 MR. MICHAEL J. GONZALES: Yes.

12 THE COURT: The indication is the Prosecuting
13 Attorney's Office has agreed that they would recommend 180
14 months of incarceration; that they would dismiss all other
15 charges, and the weapons enhancement. Is that your
16 understanding of the negotiation?

17 MR. MICHAEL J. GONZALES: Yes, it is.

18 THE COURT: Are there any other agreements reached
19 between you and the Prosecutor, or you and anybody else to
20 get you to plead in this matter?

21 MR. MICHAEL J. GONZALES: No.

22 MR. PIMENTEL: There is actually one other
23 agreement. And that is truthful testimony against Patrick
24 Calfrobe.

25

1 THE COURT: Okay. Is that your understanding as
2 well?

3 MR. MICHAEL J. GONZALES: Yes, it is now.

4 THE COURT: And was that your understanding at the
5 time that we went through this form?

6 MR. MICHAEL J. GONZALES: Yes.

7 THE COURT: Okay. You understand too, that as
8 indicated, you're looking at 165 - 265 months. That's the
9 standard range. So you enter a plea, you come back to
10 sentencing, and the judge at sentence imposes 265 months in
11 prison. You don't have the right to appeal that because that
12 is the presumptively correct sentence. Do you understand
13 that?

14 MR. MICHAEL J. GONZALES: Yes, sir.

15 THE COURT: Okay. The Judge will listen to the
16 recommendations of the parties and make a determination based
17 on those recommendations and on the facts of the case. But
18 you need to understand that the judge is not bound by the
19 recommendation of the parties, right?

20 MR. MICHAEL J. GONZALES: Right.

21 THE COURT: Additionally, of course, we're looking
22 at a standard range where it is presumptively correct. The
23 judge may also elect to impose an exceptional sentence. If
24 the judge were to do that, the judge has to support the basis
25 for the exceptional sentence; has to be able to demonstrate

1 that for one reason or another, this case is not what you
2 would expect out of a Murder 2 case, it's aggravated in some
3 way, shape, or form. And it has to be a compelling reason.
4 It can't just be the judge doesn't like 265 months as the top
5 end of the standard range and thinks it should be more.
6 There has to be a compelling reason to exceed the standard
7 range.

8 If the judge were to find that, the judge could impose an
9 exceptional sentence. However, you would have the right to
10 appeal the exceptional sentence to the Court of Appeals. Do
11 you understand that?

12 MR. MICHAEL J. GONZALES: Yes, I do.

13 THE COURT: Are you prepared at this time to enter
14 a plea to the Second Amended Information, Count II?

15 MR. MICHAEL J. GONZALES: Yes, I am.

16 THE COURT: Charge is Murder in the Second Degree
17 alleged to have occurred in the County of Mason, State of
18 Washington, on or about the 14th day of June, 2002. Are you
19 guilty or not guilty?

20 MR. PIMENTEL: You're entering --

21 MR. MICHAEL J. GONZALES: Guilty.

22 THE COURT: You're guilty or not guilty?

23 MR. MICHAEL J. GONZALES: I am pleading guilty.

24 THE COURT: Okay. I need you to speak up so that
25 I keep a decent record.

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MR. MICHAEL J. GONZALES: Guilty.

THE COURT: The indication is that you're not wanting to make a statement in support of your plea, but instead of making a statement you agree that the Court may review the police reports and/or statements of probable cause supplied by the Prosecuting Attorney to establish the plea. Is that your statement?

MR. MICHAEL J. GONZALES: Yeah.

THE COURT: Does the prosecution wish to make any statement in support of this plea?

MR. BURLESON: Your Honor, in addition to that I would ask that the complete record of this trial be a basis as well.

MR. PIMENTEL: I have no objection to that.

THE COURT: And Mr. Gonzales, is this your signature in support of your plea?

MR. MICHAEL J. GONZALES: Yes, it is.

THE COURT: Has anybody threatened you in any way to get you to plead?

MR. MICHAEL J. GONZALES: No.

THE COURT: Has anybody promised you anything that I'm not being told about?

MR. MICHAEL J. GONZALES: No, sir.

THE COURT: The Court in considering the trial record and the probable cause statements in this case, will

1 find that there are facts sufficient to support a plea of
2 guilty to the charge of Murder in the Second Degree by
3 Michael Gonzales. Based upon that, the statements of the
4 Defendant in this dialogue, I find that he is guilty of the
5 crime of Murder in the Second Degree. And would hear from
6 the State for their motion.

7 MR. BURLESON: Your Honor, at this time I would
8 move to dismiss Count I, III, IV, and V, in accordance with
9 the plea agreement.

10 THE COURT: And the firearms enhancement of II?

11 MR. BURLESON: And all of the firearm
12 enhancements.

13 MR. PIMENTEL: No objection.

14 MR. BURLESON: With respect to all counts.

15 THE COURT: The Court will grant the State's oral
16 motion. Count I, III, IV, and V dismissed, and the firearms
17 enhancement in II is dismissed. Sentencing will be scheduled
18 for the 19th of June.

19 MR. BURLESON: Your Honor, Mr. Calfrobe's trial is
20 scheduled in September, I believe.

21 THE COURT: Correct.

22 MR. BURLESON: And that is basically a condition
23 of all the co-Defendants pleas in this case is the truthful
24 testimony in other co-Defendants trials. Mr. Calfrobe's
25 trial is still -- still awaits.

ATTACHMENT

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the document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 23rd day of March 20 06

PAT SWARTOS

County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Mason.

By Shawn Gogo Deputy

RECEIVED & FILED

MAY 27 2003

PAT SWARTOS, Clerk of the Superior Court Mason Co. Wash.

SUPERIOR COURT OF WASHINGTON FOR MASON COUNTY

STATE OF WASHINGTON

Plaintiff

vs.

MICHAEL JESSE Gonzales
Defendant.

NO. 02-1-00415-6

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE (STDFG)

1. My true name is: MICHAEL JESSE Gonzales

2. My age is: 27

3. I went through the 9th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

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

(b) I am charged with: 2^o MURDER

The elements are: Causing the death of another person while in the commission of Theft in the 2^o deg

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

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

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- (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.

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

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

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	4	165-265	∅	165-265	24-48 mo	Life
2						
3						

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

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

- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons 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 and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge:
180 months; dismiss all other charges
+ weapons ~~enhancements~~ enhancements

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.
- (l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100 DNA collection fee.

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.

- [m] 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.
- [n] The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- [o] If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- [p] If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [q] If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.

- [r] The judge may sentence me under the special drug offender sentencing alternative (DOSAs) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.
- [s] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime 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 violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- [v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- [w] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).
- [x] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[m].
- [y] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- [z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

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

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

7. I plead guilty to:

count II

count _____

count _____

in the 2nd Amended 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: _____

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 and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Michael Gonzalez
Defendant

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

Adrian Pimentel
Defendant's Lawyer Bar # 23564
ADRIAN PIMENTEL
Print Name

Gary Burleson #4632
Prosecuting Attorney Bar #
Gary Burleson
Print Name

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

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

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 5-27-23

[Signature]
Judge