

No. 34847-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROSCOE K. JORDAN,

Appellant/Defendant.

PIERCE COUNTY SUPERIOR COURT

CAUSE NOs. 04-1-05986-2 and 04-1-06016-0

THE HONORABLE FREDERICK W. FLEMING,

Presiding at the Trial Court.

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court committed reversible error by failing to appoint counsel to represent Mr. Jordan in his pre-judgment motion to withdraw his guilty plea to second degree child rape.

2. Mr. Jordan's remedy is vacation of his judgment and sentence and remand to the trial court for a new hearing at which Mr. Jordan is fully represented by counsel, and where the appropriate factual findings and legal conclusions are made.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the trial court required to appoint counsel to represent Mr. Jordan in his pre-judgment motion to withdraw his guilty plea where Mr. Jordan made substantial and supported claims that he had been denied the effective assistance of counsel and that his guilty plea was not made voluntarily, knowingly, and intelligently? (Assignment of Error Number One.)

2. Where substantial issues of fact exist, and where Mr. Jordan was denied counsel at his hearing on his motion to withdraw his guilty

plea, is his remedy the vacation of his judgment and sentence and remand to the trial court to appoint counsel for a new hearing? (Assignment of Error Number Two.)

III. STATEMENT OF THE CASE

1. Procedural History

a) **Pierce County Cause No. 04-1-06016-0/ Court of Appeals No. 34857-8-II**

On December 29, 2004, appellant/defendant Roscoe K. Jordan, was charged by Information with three counts of Rape of a Child in the Second Degree, in violation of RCW 9A.44.076. The alleged victim in all counts was T.P. CP 2 1-3.¹ On January 19, 2006, Mr. Jordan entered a plea of guilty to the amended charged of Assault in the Third Degree.² CP 2 7-10; RP 3 52-56.

On March 17, 2006, the trial court entered an Agreed Order

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Clerks Papers for Pierce County No.04-1-06016-0 are designated as CP 2; the Clerks Papers for Pierce County No.04-1-05986-2 will hereinafter be referred to as CP 1.

2

RCW 9A.36.031(1)(f).

Withdrawing Guilty Plea to Assault in the Third Degree.³ CP 2 11-13.

On the same date Mr. Jordan pled guilty to the amended gross misdemeanor charge of communicating with a Minor for Immoral Purposes.⁴ CP 2 17-22; 14. RP 4 68-71.

On April 18, 2006, Mr. Jordan filed a letter to Judge Fleming requesting that he be allowed to withdraw his guilty plea based on ineffective assistance of counsel. CP 2 38-40. Mr. Jordan withdrew that request, however, and on May 5, 2006 was sentenced to 365 days to run concurrent with Pierce County No. 04-1-05986-2. CP 2 41-46; RP 5 95. A timely Notice of Appeal was filed on May 16, 2006. CP 2 47-53.⁵ Court of Appeals No. 34857-8-II was assigned. On June 9, 2006, this Court consolidated Court of Appeals No. 34857-8-II to

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The Agreed Order Withdrawing Guilty Plea to Assault in the Third Degree is attached as Appendix A and incorporated by reference herein.

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RCW 9.68A.080.

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Although Notices of Appeal were filed under both Superior Court cause numbers, appellant is not challenging his judgment and sentence under Superior Court No. 04-1-06016-0, because he withdrew the motion at the May 5, 2006 hearing.

Court of Appeals No. 34847-1-II.

**b) Pierce County Cause No. 04-1-05986-2/
Court of Appeals No. 34847-1-II.**

On December 29, 2004, the appellant/defendant, Roscoe K. Jordan, was charged by Information with one count of Rape of a Child in the Second Degree. The alleged victim was TP. CP 1 1-2. On January 18, 2006, during the State's case in chief, Mr. Jordan entered a guilty plea to the original charge. CP 1 10-17.⁶

On May 5, 2006 a hearing was held on Mr. Jordan's pro se motion to appoint counsel and for relief from judgment/withdrawal of plea. RP 5 78-84. The trial court denied Mr. Jordan's motion to withdraw his plea and his motion to appoint counsel to represent him in the motion.⁷

Also on May 5, 2006, the trial court imposed a low end standard

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Statement of Defendant on Plea of Guilty is attached as Appendix B and incorporated by reference herein.

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See Appendix C and D - Motion and Order for Appointment of Counsel and Relief from Judgment.

Jordan, Roscoe K. - Opening Brief COA No. 34847-1-II

range sentence of 120 months in the Department of Corrections. CP 1 18-29.⁸ On May 16, 2006, a timely Notice of Appeal was filed. CP 1 33-45. Court of Appeals No. 34847-1-II was assigned. On June 21, 2006, a pro se Motion to Modify or Correct Sentence and Judgment was filed. CP 1 50-52. No action has been taken on that motion.

2. Plea Withdrawal Hearings

On **March 17, 2006**, a hearing was held for the withdrawal of Mr. Jordan's guilty plea to the third degree assault charge, Pierce County No. **04-1-06016-0**. Based on a mutual mistake by the parties as to Mr. Jordan's correct offender score and standard range sentence, in which Mr. Jordan's offender score was miscalculated as 3 points rather than 5 at the time he entered his pleas, the parties agreed to allow Mr. Jordan to withdraw his plea to the third degree assault charge. RP 4 61-68. See Appendix A - Agreed Order Withdrawing Guilty Plea to Assault in the Third Degree. That charge was negotiated down to the

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Judgment and Sentence is attached as Appendix E and incorporated by reference herein.

gross misdemeanor charge of communicating with a minor for immoral purposes, to which Mr. Jordan pleaded guilty. CP 2 17-22; RP 4 69-71.

Also included in the agreement was the stipulation that Mr. Jordan would waive any challenges to the validity of his the guilty plea(s) based on a mistaken offender score.⁹ CP 2 23-25. The mutual mistake as to Mr. Jordan's offender score and standard range was made in Pierce County No. 04-1-05986-2 as well as Pierce County No. 04-1-06016-0. See Appendix B - Statement of Defendant on Plea of Guilty.

On **May 5, 2006**, a hearing was held on Mr. Jordan's pro se Motion to Appoint Counsel and Relief from Judgment in Pierce County No. **04-1-05986-2**. The motion was based on ineffective assistance of counsel as well as Mr. Jordan's overall confusion about the proceedings and his legal rights. RP 5 78-84. The trial court concluded that Mr. Jordan's plea was "freely and voluntarily, and intelligently made with the assistance of [counsel]." RP 5 82. Mr.

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Stipulation on Prior Record and Offender Score is attached as Appendix F and incorporated by reference herein.

Jordan's motions were denied. The trial court denied the motions under CrR 7.8 (c)(2), and RCW 10.73.100,140 rather than under CrR 4.2(f). Additionally, the court based its decision in part on Toliver v. Olsen, 109 Wn.2 D 607,746 P.2d 809 (1987).¹⁰

V. ARGUMENT

MR. JORDAN WAS DENIED THE ASSISTANCE OF COUNSEL AT THE HEARING ON HIS PRE-JUDGMENT MOTION TO WITHDRAW HIS GUILTY PLEA TO FIRST DEGREE CHILD RAPE.

The United States Constitution, Sixth Amendment, and Washington Constitution, Article I, § 22 guarantee the right to assistance of counsel at any critical stage in an original criminal prosecution. State v. Valentine, 132 Wn.2d 1,16, 935 P.2d 1294 (1997); Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970). A pre-sentencing motion to withdraw a guilty plea is a "critical stage" of a prosecution. State v. Harrell, 80 Wn.App. 802,911 P.2d 1034 (1996).

¹⁰

See Appendix D. Order on Defendant's Motion for Hearing and Appointment of Counsel in Consideration of Defendant's Motion for Relief from Judgment/Order.

State v. Harrell, *Supra*, is directly on point. In that case the defendant sought to withdraw his guilty pleas prior to sentencing alleging that his counsel was ineffective during the plea stage. At the hearing on the motion to withdraw defense counsel declined to assist Harrell. The trial court denied Harrell's motion to withdraw his guilty pleas. Division One reversed, holding that where a defendant is outright denied counsel in a motion to withdraw a guilty plea the "denial of the right to counsel is presumed prejudicial and warrants reversal without a harmless error analysis." *Supra* a 803. The Harrell Court rejected the State's argument that the defendant had waived his right to counsel by electing to proceed pro se stating: "The waiver of the right to counsel must be knowingly, voluntarily, and intelligently made, and the demand to defend must be unequivocal." (See also State v. Sims, 84 Wash.App. 1082 (1997), right to counsel violated where defendant was denied effective assistance of counsel at motion to withdraw guilty plea.)

Denial of the constitutional right to appointed counsel is

structural error requiring reversal. See State v. Robinson, 153 Wn.2d 689, 705, 107 P.3d 90 (2005) (Sanders, J. dissenting) (citing Arizona V. Fulminante, 499 U.S. 279, 309-10, 111 S. Ct. 1246 113 L.Ed. 2d 302 (1991)). “While almost all courts require a showing of prejudice when a defendant claims ineffective assistance of counsel, an outright denial of counsel is conclusively presumed to be prejudicial.” City of Seattle v. Ratliff, 100 Wn.2d 212, 219, 667 P.2d 630 (1983).

CrR 4.2 (f) provides for motions to withdraw guilty pleas prior to judgment, while CrR 7.8 provides for post-judgment motions to withdraw guilty plea by collateral attack. Judgment does not occur under CrR 4.2 (f) until the written judgment and sentence are filed and entered in the court records by the Clerk of the Court. State v. Davis, 125 Wash.App.59, 104 P.3d 11 (2004). The case at bar involves a motion to withdraw a guilty plea prior to entry of judgment. CrR 4.2 is, therefore, controlling.

Under CrR 4.2(f), the trial court shall allow a defendant to withdraw his plea of guilty whenever it appears that withdrawal is

necessary to correct a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure. *State v. Taylor*, 83 Wn.2d 594,598,521 P.2d 699 (1974). In *Taylor*, the Court set forth four indicia of manifest injustice which would allow withdrawal of a guilty plea: (1) the denial of effective assistance of counsel, 2) the plea was not ratified by the defendant, (3) the plea was involuntary, and (4) the plea agreement was not honored by the prosecution. Any of the four indicia listed above would independently establish “manifest injustice” and would require a trial court to allow a defendant to withdraw his plea. *State v. Taylor*, 83 Wn.2d at 597; see also *State v. Wakefield*, 130 Wn.2d 464,472,925 P.2d 183 (1996).

In Mr. Jordan’s case, multiple reasons existed to cause the trial court to appoint counsel and conduct a full evidentiary hearing to determine whether vacation of the guilty plea to the second degree child rape charge was warranted. Firstly, Mr. Jordan’s claim of ineffective assistance of counsel necessitated a closer look and rulings on questions of fact and law. Not only did Mr. Jordan allege that his

counsel was not assisting him in his defense, but he also claimed that counsel was not assisting him in properly explaining his rights to him, or in negotiating a plea.

That counsel was ineffective is evidenced in the fact that counsel plainly misadvised Mr. Jordan of his offender score and standard range. As discussed in the record, defense counsel had merely relied on the State's representations as to Mr. Jordan's correct offender score and standard range sentence. Those representations turned out to be wrong. RP 4 62-65. Additionally, the lower court record suggests that Mr. Jordan was not advised he was entitled to withdraw *both* pleas, as a matter of law, based on his miscalculated offender score. *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390(2004), *State v. Mendoza*, No. 775877, Wn. Supreme Court (2006).

Furthermore, although defense counsel refused to represent Mr. Jordan in his motion to withdraw his guilty plea to the first degree child rape charge, counsel improperly provided Mr. Jordan with paperwork that concerned a CrR 7.8 motion for relief from judgment,

where no judgment had yet been entered. Counsel's effectiveness was a serious question of fact and law to be determined by the trial court.

Secondly, serious questions of fact existed as to Mr. Jordan's understanding of the charge, possible defenses, and his possible sentence. Mr. Jordan's confusion was justified given that his counsel, the State, and the Court had misadvised him as to his correct sentencing range. The erroneous legal information did not end with Mr. Jordan's miscalculated offender score. At Mr. Jordan's motion to withdraw his plea on May 5, 2006, the prosecutor advised the court that sentencing Mr. Jordan before considering his motion to withdraw his plea would not "affect the defendant's ability to file a motion for relief of judgment." RP 5 79. That representation was misleading to say the least. Whether a motion to withdraw plea is made prior to or following sentencing is critical as a matter of law. As noted previously, a post-judgment motion constitutes a collateral attack whereby the right to counsel is severely diminished. *State v. Davis*, *Supra*, *State v. Robinson*, 153 Wash.2d 689,107 P.3d 90 (2005). The

prosecutor's misunderstanding of the applicable law was shared by defense counsel as demonstrated by the Order on Defendant's Motion, prepared by defense counsel, where the denial of the motion is predicated upon CrR 7.8, RCW 10.73.100 and *Toliver v. Olsen*, 109 Wn.2d 607,746, P.2d 809 (1987) (a case that has no relevance whatsoever to Mr. Jordan's motion). Unfortunately, the trial court shared counsels' lack of familiarity with the applicable law, and signed the erroneous Order.

Thirdly, substantial questions of fact existed as to Mr. Jordan's possible waiver of the miscalculated offender score and standard range issue in Pierce County No. 04-1-06016-0, and the impact, if any, of such waiver in Pierce County No. 04-1-05986-2.

Mr. Jordan's denial of counsel for his motion to withdraw his guilty plea was complete. At the May 5, 2006 hearing Mr. Jordan's counsel advised the court that he could not assist his client at all. RP 5 78. Mr. Jordan advised the trial court that he needed and wanted help, but that his counsel refused. RP 5 79. As in *Harrell* and *Davis*, the

remedy in this case is to vacate the judgment and sentence and remand for a new hearing at which Mr. Jordan is fully represented by counsel. At the new hearing, counsel can address the merits of Mr. Jordan's claims, and the trial court can make the appropriate factual and legal determinations as to Mr. Jordan's claims as well as the State's likely waiver arguments.

V. CONCLUSION

The Court erred in denying appellant's right to counsel at the motion to withdraw guilty plea. The Court's failure to do so requires a new hearing at which Mr. Jordan's constitutional and statutory rights are fully protected.

RESPECTFULLY SUBMITTED this 23rd day of October,
2006.



Sheri L. Arnold
WSBA # 18760
Attorney for Appellant

FILED
COURT CLERK
JAN 11 2007
TACOMA, WA
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CERTIFICATE OF SERVICE

The undersigned certifies that on October 23, 2006, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave. South, Tacoma, WA. 98402, and by the U.S. Post Office to appellant, Roscoe K. Jordan, DOC # 868211, Monroe Corrections Center, Washington State Reformatory Unit, Post Office Box 777, Monroe, WA. 98272, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on October 23, 2006.

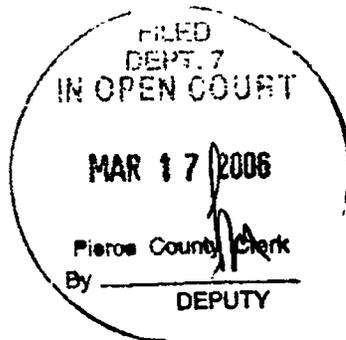

Norma Kinter

APPENDIX A

**Agreed Order Withdrawing Guilty
Plea to Assault in the Third Degree:
Pierce County Cause No. 04-1-06016-0.**



04-1-06016-0 25153211 ORWP 03-21-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-06016-0

vs.

ROSCOE KENDRICK JORDAN,

**AGREED ORDER WITHDRAWING
GUILTY PLEA TO ASSAULT IN THE
THIRD DEGREE**

Defendant.

THIS MATTER having come before the Court on the joint motion of the parties to withdraw defendant's guilty plea to assault in the third degree, entered on January 19, 2006, and the court having heard the presentation of counsel and being familiar with the records and files herein, as well as the records and files in Pierce County 04-1-05986-2, the Court hereby enters the following **FINDINGS:**

1. On January 18, 2006, the defendant entered a plea of guilty to one count of rape of a child in the second degree in Pierce Co. Cause #04-1-05986-2.
2. The defendant pled guilty as charged in 04-1-05986-2 during the middle of a jury trial, while the child victim was testifying, and the State made no promises or agreements with the defendant.
3. The parties had attempted to negotiate 0-4-1-05986-2 prior to trial with an understanding that the defendant's prior criminal history counted 5 points toward

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1
2 the offender score, which included 2 points for a prior juvenile conviction for
3 attempted robbery in the second degree.
4

5 4. While the defense was preparing the statement of defendant on plea of guilty for
6 04-1-05986-2, the prosecutor mistakenly informed the defense that the prior
7 attempted robbery in the second degree was not a "violent" offense and therefore
8 counted only ½ point and not 2 points, with a resulting offender score of "3."
9 This was erroneous, as convictions for attempts to commit violent offenses do
10 count two points to the offender score for subsequent "violent" offense such as
11 rape of a child in the second degree. Defendant's prior criminal history actually
12 totaled 5 points for 04-1-05986-2.
13

14 5. The next day, January 19, 2006, the defendant entered a plea of guilty in this case
15 to one count of assault in the third degree, believing that the present case would
16 contribute one point to his offender score on 04-1-05986-2, resulting in an
17 offender score of "4" for 04-1-05986-2, which would allow the defendant to
18 request the Special Sex Offender Sentencing Alternative (SSOSA).
19

20 6. Subsequent to the pleas of guilty in 04-1-05986-2 and this case, the parties
21 realized that a juvenile conviction for attempted robbery in the second degree
22 counts two points towards the offender score for rape of a child in the second
23 degree in 04-1-015986-2, resulting in an offender score of "6" for that case and
24 making the defendant ineligible to request SSOSA.

25 7. The parties have agreed to allow the defendant to withdraw the guilty plea to
26 Assault 3 in this case on condition that the defendant enter a plea of guilty to one
27 count of Communicating With a Minor For Immoral Purposes. The agreement
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between the parties is intended to rectify the misunderstanding of offender score on 04-1-05986-2.

8. The court finds that allowing the withdrawal of guilty plea to Assault 3 pursuant to the agreement of the parties is necessary to correct a manifest injustice (CrR 4.2(d)).

ORDER

NOW, THEREFORE, it is

HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant's plea of guilty to one count of Assault in the Third Degree, entered on January 19, 2006, is hereby vacated and withdrawn.

DONE IN OPEN COURT this 17th day of March 2006.

[Handwritten Signature]
JUDGE

Presented by:

[Handwritten Signature]
JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB# 25071

FILED
DEPT. 7
IN OPEN COURT
MAR 17 2006
Pierce County Clerk
By *[Handwritten Signature]*
DEPUTY

Approved as to Form:

[Handwritten Signature]
DAVID SHAW
Attorney for Defendant
WSB# 13994

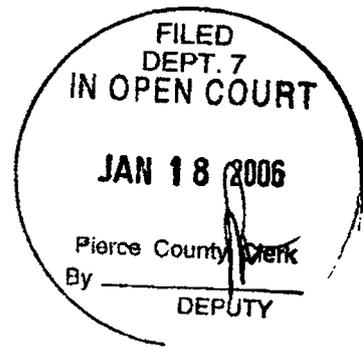
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APPENDIX B

**Statement of Defendant on Plea of Guilty:
Pierce County No. 04-1-05986-2.**



04-1-05986-2 24407847 STDFG 01-18-06



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

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. D4-1-05986-2

vs.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

Roscoe K Jordan

Defendant.

1. My true name is: Roscoe Kendrick Jordan
2. My age is: 19 DOB 2-27-86
3. I went through the 10th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is David S Shaw

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

Count I: Rape of a child in Second Degree
 The elements are: In State of Washington on June 29th 2004 defendant, being at least 36 months older than T.P., did engage in sexual intercourse with T.P., who was at least 12 years old but less than 14

This crime carries a maximum sentence of life years imprisonment and a \$ 50,000 fine. The standard range is from 102 months to 136 to life months based upon the attached stipulation as to my criminal history.

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

Count II: _____
 Elements: _____

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - I

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

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

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

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.

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

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

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide. See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	102-136/life	N/A	102-136/life	life	life \$50,000
2					

_____ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT
 ON PLEA OF GUILTY - 2

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For Crimes Committed Prior to July 1, 2000:**
 In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

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

STATEMENT OF DEFENDANT
 ON PLEA OF GUILTY - 3

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

SEE APPENDIX APPENDIX S

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
* Sex Offenses (Not sentenced under RCW 9.94A.712 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer LIFE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge: *Standard range sentence (102 mos - 136 mos to life), defense to seek SSOA state want name to SSOA community custody for life, register as sex offender, NO CONTACT WITH TERTY PETERSON for life, \$500 crime victim fund, \$1100 filing fee, \$100 DNA fee, \$4500 DAC attorney fee*
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 4

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- (k) This offense is a most serious offense, or strike, as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (l) ~~The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or two years of community custody of 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.~~ RJ
- (m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.
- (n) Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.
- (o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.
- (p) ~~If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~ RJ

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 5

- (q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- (r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. RJ
- (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. RJ
- (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). RJ
- (u) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge. RJ
- (v) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8). RJ
- (w) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility or parole described in paragraph 6(k). RJ
- (x) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. RJ
- (y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements. RJ
- (z) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The RJ

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 6

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

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

- 7. I plead guilty to count I in the original Information. I have received a copy of that information.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: ON JUNE 29, 2004, in Pierce County, WA I had sexual intercourse with T.P. a 13-year old girl and over 36 months younger than I was at the time and not married to me. RJ
I plead guilty to Rape of a child in Second Degree.
I apologize to everybody for this mistaken act.

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

[Signature]
Defendant

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

D S Shaw
Defendant's Lawyer
WSBA # 65994

Approved for entry:

[Signature]
Prosecuting Attorney
WSBA# 25071

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

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

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

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

Dated this 18TH day of JAN, 2006

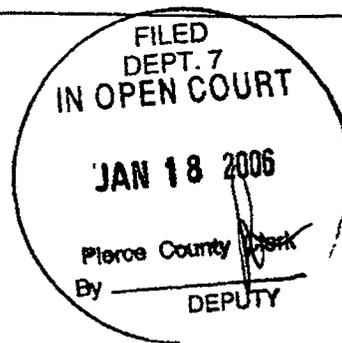
[Signature]
Judge

***INTERPRETER'S DECLARATION**

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated _____ for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, _____

Interpreter



APPENDIX C

**Motion and Declaration in Support of
Hearing for Appointment of Counsel
and for Hearing on Defendant's Motion
for Relief from Judgment/Order.**

DECLARATION

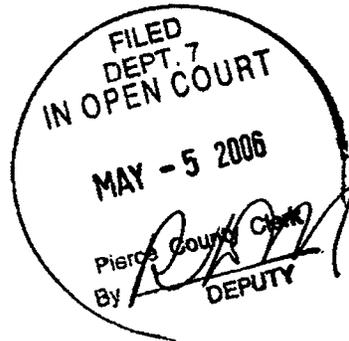
Defendant, Roscoe Jordan, DECLARES UNDER PENALTY OF PERJURY

THAT THE FOREGOING FACTS ARE TRUE AND ACCURATE TO THE BEST OF HIS/HER KNOWLEDGE:

1. I feel that I was misled by David Shaw into taking a deal in the middle of my trial, because he told me that he ~~I was~~ couldn't help me and that I was guilty and it would be best if I sign some papers that I knew nothing about and when I asked him what that was about he told me for I could get the low end I would not have ^{done so} if he didn't tell me
2. It was best for me. I tried to get a new lawyer and was told I couldn't. I think if I had someone who was trying to help me in stead of someone who tells me I can't I would have a better out come. I don't understand what's going on, besides looking at 10 or 15 years for something that wasn't meant to hurt anyone. I would please like to take my deal back and get a new lawyer. I could tell you better if I can talk

05-05-06
DATE/PLACE OF SIGNING

Roscoe Jordan
DEFENDANT



MOTION FOR HEARING ...FOR RELIEF FROM JUDGMENT/ORDER - 2

APPENDIX D

**Order on Defendant's Motion for Hearing
and Appointment of Counsel in Consider-
ation of Defendant's Motion for Relief
from Judgment/Order.**



04-1-05986-2 25419540 ORDY 05-08-06

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

FILED
DEPT. 7
IN OPEN COURT
MAY - 5 2006
Pierce County Clerk
By *[Signature]*
DEPUTY

STATE OF WASHINGTON,)
) NO. 04-1-05986-2
Plaintiff,)
) ORDER ON DEFENDANT'S MOTION
vs.) FOR HEARING & APPOINTMENT
) OF COUNSEL IN CONSIDERATION
ROSCOE JORDAN,) OF DEFENDANT'S MOTION
) FOR RELIEF FROM
Defendant.) JUDGMENT/ORDER

THIS MATTER having come on regularly for hearing before the above entitled court on motion of the defendant pro se, for an order appointing counsel to represent defendant in his/her motion for relief from judgment or order; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. ~~_____~~ The motion for a hearing and appointment of counsel is denied

because the defendant has not presented sufficient facts to justify a hearing on his/her motion for relief from judgment or order pursuant to CrR 7.8.(c)(2); RCW 10.73.100, 140. State v. Harell, 80

ORDER FOR HEARING ... FOR
RELIEF FROM JUDGMENT/ORDER - 1

1 Wn. App 802, 911 P.2d 1034 (1996) (without initial showing by defendant in pleadings that she\he
2 is entitled to a hearing, there is no right to appointed counsel); Toliver v. Olsen, 109 Wn.2d 607, 746
3 P.2d 809 (1987).

4
5 2. _____ The motion for a hearing and appointment of counsel is granted because
6 the defendant has asserted sufficient facts to justify further consideration of defendant's motion for
7 relief from judgment or order. The Department of Assigned Counsel is directed to appoint counsel
8 to represent defendant in his/her motion for relief from judgment or order. The Department of
9 Assigned Counsel is directed to appoint counsel to represent the defendant in his\her motion for
10 relief from judgment or order. The hearing is to be scheduled by defense counsel.

11
12 3. _____ The motion to withdraw the guilty plea under CrR 4.2(f) is hereby denied
13 because a Court can only permit withdrawal of a plea to correct a manifest injustice or for a violation
14 of prosecuting standards set forth in RCW 9.94A.430 - 460. A manifest injustice is "an injustice that
15 is obvious, directly observable, overt, and not obscure." State v. Branch, 129 Wn.2d, 635, 919 P.2d
16 1228 (1996) quoting State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). The information
17 presented by defendant does not support a finding of manifest injustice, nor does it support a finding
18 that RCW 9.94A.430 -460 has been violated. Accord, State v. Harell, 80 Wn. App. 802, 911 P.2d
19 1034 (1996) (without initial showing by defendant in pleadings that she\he is entitled to a hearing,
20 there is no right to appointed counsel).

21
22 DONE IN OPEN COURT on May 5, 2006.

[Handwritten signature]

FILED JUDGE
DEPT. 7
IN OPEN COURT

MAY - 5 2006

Pierce County Clerk
By *[Signature]*
DEPUTY

27 ORDER FOR HEARING ... FOR
28 RELIEF FROM JUDGMENT/ORDER - 2

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062

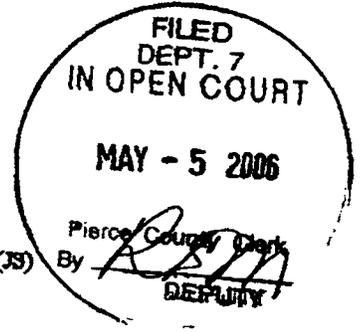
APPENDIX E

Judgment and Sentence

04-1-05986-2

MAY 08 2006

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05986-2

vs.

JUDGMENT AND SENTENCE (JS) By

ROSCOE KENDRICK JORDAN

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

SID: 20197893
DOB: 06/29/04

I. HEARING

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

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on January 18, 2006 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	Rape of a Child in the Second Degree	9A.44.076	N/A	06/29/04	043150441 (TPD)

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

as charged in the Original Information

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):

JUDGMENT AND SENTENCE (JS)
(Felony) (6/19/2003) Page 1 of 10

06-9-05422-0

Office of Prosecuting Attorney
946 County City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-05986-2

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	Unlawful Possession of a Firearm Second Degree	02/27/04	Pierce Co., WA	12/01/02	Adult	NV
2	Assault Third Degree	02/27/04	Pierce Co., WA	12/01/02	Adult	NV
3	Assault Third Degree	02/27/04	Pierce Co., WA	12/01/02	Adult	NV
4	Attempted Robbery in the Second Degree	02/13/01	Pierce Co., WA	11/27/00	Juvenile	NV
5	Communicating With a Minor for Immoral Purposes	Pending	Pierce Co., WA	06/01/04 - 09/15/04	Adult	Gross Misd.
6	Malicious Mischief 3	02/13/01	Pierce Co., WA	10/24/00	Juvenile	GM
7	Possession Marijuana		Cook Co., Illinois	09/15/03	Adult	Misd.

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	5	XI	120-158 months to life	N/A	120-158 months to life	LIFE

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

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: NO PLEA AGREEMENT

III. JUDGMENT

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

3.2 The court DISMISSES Courts _____ The defendant is found NOT GUILTY of Courts _____

04-1-05986-2

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RIN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 2,000.00 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 118.00 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 2,710.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered RCW 9.94A.753. A restitution hearing:
 [] shall be set by the prosecutor.
 [] is scheduled for _____
 [] defendant waives any right to be present at any restitution hearing (defendant's initials): _____
 [] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

04-1-05986-2

4.5 **INTEREST**

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

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 **HIV TESTING**

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 **DNA TESTING**

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

4.9 **NO CONTACT**

The defendant shall not have contact with T.P. (d.o.b. 9/10/90) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for **THE REMAINDER OF THE DEFENDANT'S LIFE** (not to exceed the maximum statutory sentence).

Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 **OTHER:**

4.11 **BOND IS HEREBY EXONERATED**

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

(a) **CONFINEMENT.** RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 120 Months Maximum Term: LIFE

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: 120 months to life

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. 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

04-1-05986-2

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 to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) 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: _____

395 days

4.13 COMMUNITY CUSTODY is ordered as follows:

Court _____ for a range from: _____ to _____ Months;

COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Court I until _____ years from today's date for the remainder of the Defendant's life.

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 for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

The defendant shall not consume any alcohol.

Defendant shall have no contact with: T.P. (d.o.b. 9/10/90) or her child unless approved in advance by CCO

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: Appendix H

04-1-05986-2

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

4.14 [] 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 4.13.

4.15 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: _____

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Court I Minimum Term: 120 Months Maximum Term: LIFE

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. [] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Court I until years from today's date [X] for the remainder of the Defendant's life.

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.

5.3 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 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

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amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

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

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

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

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

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

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

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

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5.7 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 5-5-06

JUDGE
Print name

[Handwritten signature]

[Handwritten signature]

Deputy Prosecuting Attorney

Print name: JOHN HILLMAN
WSB # 25071

Attorney for Defendant

Print name: David S Shaw
WSB # 13994

[Handwritten signature]

Defendant

Print name: Roscoe Jordan

FILED
DEPT. 7
IN OPEN COURT

MAY - 5 2006

Pierce County Clerk
By *[Signature]*
DEPUTY

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-05986-2

I, KEVIN STOCK 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 said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Court Reporter

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IDENTIFICATION OF DEFENDANT

SID No. 20197893 Date of Birth 06/29/04
(If no SID take fingerprint card for State Patrol)

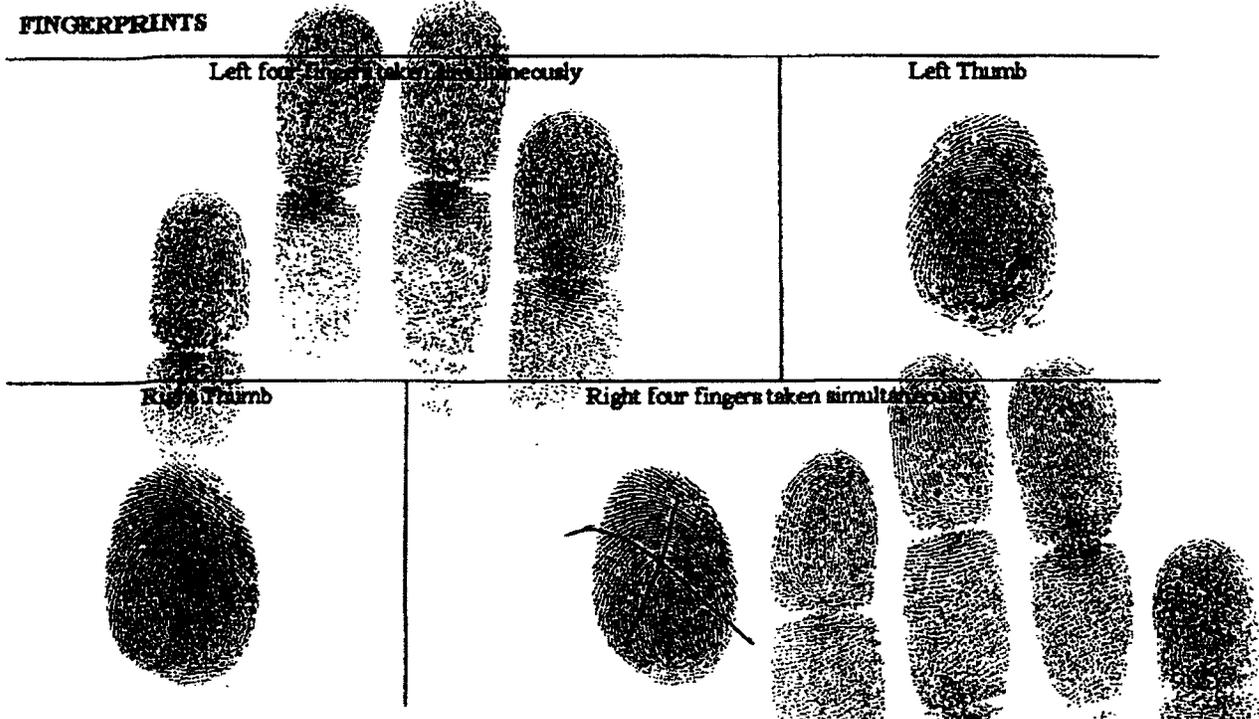
FBI No. 686264CC9 Local ID No. UNK

PCN No. UNK Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS



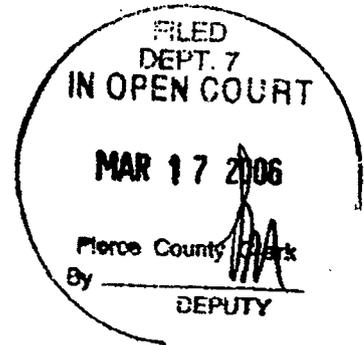
I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, R.D. McEnnaman Dated: 05.05.06

DEFENDANT'S SIGNATURE: Rose Jordan

DEFENDANT'S ADDRESS: DOC

APPENDIX F

Stipulation on Prior Record and Offender Score



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05986-2

vs.

ROSCOE KENDRICK JORDAN,

**STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty)**

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge **RAPE OF A CHILD IN THE SECOND DEGREE**, the defendant **ROSCOE KENDRICK JORDAN**, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
Unlawful Possession of a Firearm in the Second Degree	02/27/04	Pierce Co.	12/01/02	Adult	NV	C	1	FELONY
Assault in the Third Degree	02/27/04	Pierce Co.	12/01/02	Adult	NV	C	1	FELONY
Assault in the Third Degree	02/27/04	Pierce Co.	12/01/02	Adult	NV	C	1	FELONY
Attempted Robbery Second Degree	02/13/01	Pierce Co.	11/27/00	Juvenile	Violent	C	2	FELONY
Communicating With a Minor for Immoral Purposes	Pending	Pierce Co.	6/1/04 - 9/15/04	Adult	---	---	---	Gross Misdemeanor
Malicious Mischief Third Degree	02/13/01	Pierce Co.	10/24/00	Juvenile	---	---	---	Misdemeanor

Concurrent conviction scoring: N/A

STIPULATION ON PRIOR RECORD -1
jsprior.dot

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
Possess Marijuana		Cook Co., Illinois	09/15/03	Adult	---	---	---	Misdemeanor

Concurrent conviction scoring: N/A

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	5	XI	120-158 months to life	N/A	120-158 months to life	LIFE

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

The defendant further stipulates:

- 1) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty,
- 2) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.
- 3) That the parties knew at all times that the defendant had a prior juvenile conviction for attempted robbery in the second degree. The parties attempted to negotiate the case prior to trial with an understanding that the prior conviction counted 2 points towards the offender score for rape of a child in the second degree.
- 4) That the defendant initially determined to plead guilty believing that his offender score was "5", but while filling out the plea form the prosecutor mistakenly informed the defendant that the score was "3" instead of "5." The defendant acknowledges that this misunderstanding of offender score did not affect his decision to plead guilty. The defendant determined to plead guilty because he wanted to acknowledge his guilt and he did not want the child victim to have to continue her testimony. The defendant further acknowledges that his attorney has explained to him and he understands that the offender score of "3" set forth in the Statement of Defendant on Plea of Guilty was incorrect. The

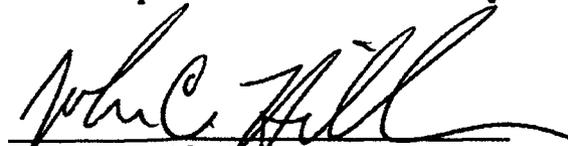
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defendant understands that there was no plea agreement at the time of the plea in this case and the State remains free to recommend any sentence within the standard range. The defendant by stipulating to the offender score set forth in this document acknowledges his decision to maintain his plea of guilty in this case and he waives any motion he may have to withdraw his guilty plea based upon a mistaken offender score.

- 5) That the day after the guilty plea in this case, the defendant entered a plea of guilty to one count of Assault 3 in Pierce Co. Cause 04-1-06016-0. The defendant pled guilty to Assault 3 in 04-1-06016-0 believing that it would increase his offender score by one point in this case, from 3 to 4, and he could still request the Special Sex Offender Sentencing Alternative (SSOSA). The defendant would not have pled guilty in 04-1-06016-0 had he know that it would result in an offender score of "6," thus making him ineligible for SSOSA (defendant can request SSOSA with an offender score of 5 or less).
- 6) That the defendant has withdrawn his plea of guilty to Assault 3 in 04-1-06016-0, and reentered a plea of guilty to a gross misdemeanor, thus reducing his offender score to "5" in this case. The defendant has determined to maintain his plea of guilty in this case and proceed to sentencing with an offender score of "5".

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 17th day of March, 2006.


 JOHN HILLMAN
 Deputy Prosecuting Attorney
 WSB # 25071


 ROSCÓE KENDRICK JORDAN


 DAVID S. SHAW
 WSB # 13994

jch