

FILED
COURT OF APPEALS

06 JAN -3 PM 12:34

STATE OF WASHINGTON

BY *[Signature]*
CLERK

PERSONAL RESTRAINT PETITION
JEFFERSON COUNTY CAUSE 04-1-00110-8

SUBMITTED BY
PATRICK DRUM #784289
WASHINGTON STATE PENITENTIARY
1313 N. 13th Ave.
WALLA WALLA, WA
99362

34377-1

Cons to 35947-2-II

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(excluding Forma Pauperis Motion and Status Report)

**PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE**

[Signature]
COURT CLERK

1/1/06

County Superior Court. This was by way of CrR 7.8 (9-22-05), 'no action taken' . Also by way of a Petition for a Declaratory Judgment(12-2-05), unlawfully 'denied'.

B.GROUNDS FOR RELIEF

I claim to have 4 Grounds for this Court to grant me relief from my conviction and sentence described in Part A.

FIRST GROUND

RAP 16.4(b)(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.

GROUND: FRAUDULANT CONTRACT

PURPORT: I at no time, in the cause above, relayed to my counsel, nor the Court, that I was guilty of the charge in question[SEE: Attachment 1, 'Letter to Superior Court']. I told my counsel otherwise and I motioned to dismiss on grounds that I did not feel the prosecution had sufficient grounds to proceed with the charge of burglary[SEE: Attachment 2, 'Court Minutes, 10-08-04']. This assertion is further supported by the verbatim report[SEE: Attachment 3, 'Verbatim Report of Proceedings' page 6 lines 14 through 20].

With these facts I object to the fact that my counsel, and the Court, allowed me to enter into a Drug Court Contract in which I unknowingly stipulated, under the guise of a 'Bench Trial', that the evidence in said cause was 'sufficient for the Court to find the defendant guilty'[SEE: Attachment 4, 'Drug Court Contract', clause 19 on page 4].

By stipulating that the evidence was sufficient to find me guilty, I in effect 'pled guilty'. I was not told the consequences of this plea. The nature of the agreement and the reasons for the agreement were not made part of the record[SEE: CrR 4.2 PLEAS(d) voluntariness, and(e) agreements].

I entered said Drug Court Contract on erroneous advice from counsel that I could challenge the charge and under the presumption of a 'Bench Trial'. This contract was clearly, unbeknownst to me, for a defendant agreeing to guilt.

To allow me to enter into a contract where I unknowingly, unwillingly, and involuntarily agreed to a guilty clause is clearly a violation of proper due process and the Court Rules along with contract principles. Furthermore it constitutes both constructive fraud and fraud in the factum.

Plea bargains are governed by contract principles, and if any ambiguities are present, they will be resolved against the drafter [SEE: Criminal Law (west key)273.1(2)], US v. Cerrato-Reyes, 176 F 3d 1253(10th cir.1999).

It is important to note that on page 7 of the Drug Court Contract the Judge did not check necessary boxes verifying that the defendant had relayed to him "the entire contract above and that the defendant understands it in full." On this point "Therefore it is ordered" should be deemed null and void [SEE: Page 7 of Drug Court Contract, line 1 through 7, Attachment 4].

This contract prejudiced me in that I stipulated sufficient evidence, unknowingly, when the facts declared otherwise [SEE: Ground 2].

SECOND GROUND

RAP 16.4(b)(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the State or local government.

GROUND: INSUFFICIENT EVIDENCE

PURPORT: According to RCW 9A.52.025(1), a person is guilty of residential burglary if, **with the intent to commit a crime**, they enter or remain unlawfully inside a dwelling. Proper court procedures require that **all** the elements of that crime be proven, beyond a reasonable doubt, for a guilty verdict to be sustained

upon review. In the present matter there was no intent, nor any indication of intent, to commit a crime. It was a simple matter of criminal trespass due to intoxication, hence the Drug Court remand.

This inquiry does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. "Instead the relevant question is whether, after viewing the evidence in light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, at 319, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (1979).

In the Police Reports the facts list 3 other criminal trespasses that occurred within an hour of the charged burglary with no crime committed:

1) 336 Fillmore; 2) case 04-3500; 3) 728 Walker [SEE: Attachment 5, 'Probable cause statement'].

These three criminal trespasses did not contain any intent to commit a crime. Viewing that fact with Washington State Rule of Evidence 405; Methods of Proving Character (b) specific instances of conduct, AND Rule 406 Habit; Routine Practice you will find that there is a common practice of non-burgularies in this instance.

The report goes on to indicate that I smelled of what appeared to be spray paint [Page 2 of 'Probable Cause Statement']. Inhalation of toxic fumes was the issue of intoxication in this matter. The Judge stated that the Police Reports didn't "adequately set forth the elements of intoxication" [SEE: Attachment 3, 'Verbatim Report of Proceedings, page 3, line 12 and 13']. The Judge disregards defence's assertion of intoxication [Verbatim Report of Proceeding, page 2, line 18 and 19; then page 6, line 8 and 9]. Ironically, it was that same intoxication that made me a candidate for the Drug Court in this cause.

The fact that the same Judge first admitted me into Drug Court on the ground of intoxication and then later denied my intoxication defence in trial is abuse of discretion.

Note that by disregarding the asserted intoxication, the Court unlawfully misplaced the burden of proof by placing it, not on the prosecutor, but on the defendant.

These violations prejudiced me in that my defence was ignored and all the facts were not viewed to make an educated decision. The only facts viewed in this case were those beneficial to the state.

It is important to note that the prosecution has asserted that the Legislature has adopted a permissive inference to establish the requisite intent whenever the evidence shows a person enters or remains unlawfully in a building. State v. Stinton, 121 Wash. App. 569, 89 P. 3d 717 (Wash. App. Div. 2, May 04, 2004) [SEE: Attachment 6, 'Finding of Fact and Conclusions of Law']. What the state has failed to add is that intoxication can negate specific intent. US v. Davis, 183 F3d 231 (3rd cir. 1999). Also, Evidence of defendants' proximity to illegal activity and other suspicious factors are insufficient to prove guilt beyond reasonable doubt. US v. Leos-Quijada, 107 F. 3d 786 (10th cir. 1997).

In moving to the next ground, I will add this: Evidence is unfairly "prejudicial" if it will induce the jury (in this case the Judge) to decide the case on an improper basis rather than on the evidence presented. US v. Miles, 207 F 3d 988 (7th cir. 2000).

THIRD GROUND

RAP 16.4 (b)(7) Other grounds exist to challenge the legality of the restraint of the petitioner.

GROUND: INEFFECTIVE ASSISTANCE OF COUNSEL

PURPORT: My counsel allowed me to enter into a Drug Court Contract without specifying that I was agreeing to guilt. This occurred when he knew that I wished to challenge the charge if it went to bench trial. He did not warn me of this point when I chose to opt out of Drug Court and proceed to 'trial'.

My Arraignment counsel waived the reading of the information/indictment [SEE: Attachment 1, 'Court Minutes, 10-08-04'] without my knowledge nor consent. This is unconstitutional according to the United States Constitution Amendment VI.

After trial, upon a finding of guilt, I requested an appeal in open Court[SEE:Attachment 3,'Verbatim Report of Proceedings' page 6,lines 16 through 22]. My counsel did not file a 'Notice of Appeal' as required by RAP 5.3; therefore my right to appeal was lost[SEE:Attachment 7,'Letter on Appeal'from the Court of Appeals,in reference to me trying to file the Notice after my counsels neglect].

The Court has determined that such a neglect, resulting in the loss of an Appeal,is prejudicial. Herandez v. US, 202 F. 3d 486 (2nd cir. 2000, AND ALSO Ortego v. Roe, 160 F. 3d 534 (9th cir. 1998).

In regards to overall ineffective assistance of counsel and how it has prejudiced this case; Both of the Washington and United States Constitutions guarentees the right to effective assistance of counsel. McMann v. Richardson;397 US 759,771 n. 14, 25 L. Ed. 2d 763, 90 S.Ct. 1441 (1970); US Const., Amends. 5,6,and14; Wash. Const., artI sec.22. This Right has been violated when (1) counsels' performance is deficient. State v. Davis,119 Wn. 2d 657, 664-65, 835 P.2d 1039(1992); Strickland v. Washington, 466 US 668, 80 L.Ed. 2d 674,104 S. Ct.2052 (1984). If there is a reasonable probability that, but for counsels' acts and omissions, the outcome of the proceedings would have been different, the defendant was prejudiced. id at 694. A reasonable probability is a probability sufficient to undermine the confidence in the outcome. id. This standard is less than a preponderance of the evidence.id.

FOURTH GROUND

I attempted to receive remedy from the uncertainty and insecurity revolving around the Drug Court Contract with a 'Petition for Declaratory Relief' pursuant to the Uniform Declaratory Judgments Act, RCW 7.24. According to this act "its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered"(RCW 7.24.120.). My insecurities were declared in affidavit and are those outlined in 'Ground 1' of this Personal Restraint Petition. The Petition for Declaratory Judgment was validated by

RCW 7.24.146. The Right to a trial by jury was due to me pursuant to civil rule 57. My Rights under the Uniformed Declaratory Judgments Act to receive review and relief in regards to the Drug Court Contract in this case were disregarded. I asserted a Constitutional violation in the petition, the attorney general for Washington State was not given the Right to be heard as required by RCW 7.24.110. The petition was denied[SEE: Attachment 8,'Court Minutes,12-02-05'].

This is a further violation of the due process in the case of review as well as an example of Jefferson County Superior Courts inadvertance in regards to their Drug Court.

* END OF GROUNDS *

DEFENDANT CLAIMS

1. I should be given a new trial because:

> There is insufficient evidence for a rational finder of fact to find all the elements necessary to constitute residential burglary beyond a reasonable doubt.

> I entered into a guilty clause in an agreement with the prosecutor. This was done outside of the Rules of the Court(CrR 4.2).

> Several due process procedures were violated, in effect compromising the judicial system we rely on to produce just results.

2. The following facts are important when considering my case:

> I did not ever agree to being guilty, yet I was entered into a contract with a guilty clause tucked in 22 other clauses. This contract is legal term trickery to the layman and to not make it clear to a defendant that they are agreeing to guilt is fraud in the factum[SEE: West's Washington Digest 2d:Contracts -westkey- 94 (1)]

> The Honorable Judge Verser did not verify and make record that I understood the Drug Court Contract in full, inturn nullifying the Order and voiding the contract, as well as the bench trial that stemmed from it[SEE: Attachment 9,'Contract Issue'].

> It is important to note that I did sign to,"My attorney has explained to me, and we have fully discussed all of the above para-

C. ISSUES OF REVIEW

1. Should a court be allowed to enter a defendant into a contract that stipulates: " the facts presented are sufficient for the Court to find the defendant **guilty**"; without first determining that the agreement is made i)voluntarily, ii)competently, iii)with an understanding of the nature of the consequences of the clause[CrR 4.2(d)]?

2. Should a court be able to enter a defendant into the above mentioned clause, without making a part of the record i)the nature of the agreement, and ii) the reasons for the agreement[CrR 4.2(e)]?

3. Were the acts and omissions of counsel extensive enough to constitute ineffective assistance of counsel?

4. Can a court ignore facts that support a defence and disregard a defendants assertions, inturn misplacing the burden of proof and warping proper due process? Was there in fact sufficient evidence to convict?

D. STATEMENT OF FINANCES

1. See attached 'Motion and Affidavit to proceed in Forma Pauperis' and 6 month account statement.

2. I request the Court to appoint counsel for assistance with: "Petitioners' Reply Brief". See 'Motion for assistance of Counsel': attached.

NOTE: I understand there is no Constitutional requirements for assignment of counsel in a collateral attack proceeding. However, due to my loss of a direct appeal(where there is a Right to counsel) it seems proper and just.

E. REQUEST FOR RELIEF

I want this Court to:

1. Vacate my conviction and remand this case to a new trial with the Drug Court Contract Striken.

2. Order a change of Judge in the new trial since the Honorable Judge Verser was a part of the Drug Court Management Team with the Prosecutor.

3. Grant me an appeal with an appeal counsel[SEE:RAP 18.8].

PRP TABLE OF ATTACHMENTS

1. Attachment 1, 'Letter to the Superior Court'
2. Attachment 2, 'Court Minutes, 10-08-04'
3. Attachment 3, 'Verbatim Report of Proceedings'
4. Attachment 4, 'Drug Court Contract'
5. Attachment 5, 'Probable Cause Statement'
6. Attachment 6, 'Findings and Conclusion of Law'
7. Attachment 7, 'Letter on Appeal'
8. Attachment 8, 'Court Minutes, 12-02-05'
9. Attachment 9, 'Contract Issues'
10. Attachment 10, 'Letter From Jeff-Co'
11. 'Memorandum of Law, CrR 4.2'
12. 'Motion and Affidavit to Proceed in Forma Pauperis'
13. 'Motion for Assistance of Counsel'

Jefferson Superior Court.

I am writing in regards to (I believe) PTPD #3505. It is a residential burglary charge from 9/28/05.

There was no intent to commit a crime. Please consider dropping this charge to a criminal trespass. Keep in mind there was a big 4 Sale by owner sign on this house & intoxication is the only reason for this alleged crime.

On 10/11/04 I am facing a criminal trespass for a door I allegedly kicked. I also respectfully ask to combine this charge with the foregoing. I believe it to be the quickest and most intelligent way to handle this case.

May I suggest a deferred prosecution. I have been released and successfully completed DOC supervision twice and county supervision as well.

Last can probation be transferred to Callan County.

Thank You -

Respectfully,

Patrick Flynn

Attachment 1

LETTER TO THE COURT

Filed Prior to Drug Court Contract

Received: 10/5/04 by Court

** PREPARED **
10-07-04 16:55

JEFFERSON COUNTY SUPERIOR COURT
MOTION CALENDAR - CRIMINAL
FRIDAY, OCTOBER 8, 2004
JUDGE CRADDOCK VERSER

FILED PAGE 2

04 OCT -8 AM 9:28

JEFFERSON COUNTY
MARIANNE WALTERS, CLERK

(38-04)

04-1-00105-1 8:54:41 - 9:01:51 BY DW DEPT. CLERK
STATE OF WASHINGTON (8:30 VIDEO) ✓ PROSECUTOR Barnhart
VS ✓ HARRIS, KENNETH EUGENE present ✓ DAVIES, RICHARD LLEWELLYN
ARRAIGNMENT

MR DAVIES waves reading. No plea.
Defendant Provisionally petitions for
Prog court, order amending
conditions - Bail to be struck
10/11/04
Trial NOV 22+23 ✓
pretrial NOV 12
Omnibus / DC Pet. Oct 22

04-1-00106-0 9:01:51 - 9:04:45 ✓ PROSECUTOR Barnhart
STATE OF WASHINGTON (8:30 VIDEO) ✓ DAVIES, RICHARD LLEWELLYN
VS ✓ TYRRELL, EVAN RAY present
ARRAIGNMENT

MR DAVIES waves reading. No plea.
Argument on CR - not modified at
this time. Defendant Trial NOV 22+23 ✓
advises re DC - held pretrial NOV 12
District court matters Omnibus / DC Pet. 10/15/04

04-1-00110-8 9:09:28 - 9:13:37 ✓ PROSECUTOR Barnhart
STATE OF WASHINGTON (8:30 VIDEO) ✓ CHARLTON, SCOTT MONTEGU
VS ✓ DRUM, PATRICK BOYD present by Davies
ARRAIGNMENT

MR DAVIES waves reading. No plea.
Defendants presents motion to dismiss -
denied. Court acknowledges receipt of
letter from defendant, MR DAVIES addresses
Prog court option - Defendant not interested.
Trial NOV 22+30 ✓
pretrial NOV 19
Omnibus 10/22/04

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF JEFFERSON

3 STATE OF WASHINGTON,

)

4 Plaintiff, Jefferson County

)

5 v. No. 04-1-00110-8

)

6 PATRICK BOYD DRUM,

)

7 DEFENDANT,

)

8 Defendant.

)

)

10 VERBATIM REPORT OF PROCEEDINGS

12 BE IT REMEMBERED that on the 21st day of January,

13 2005, Jefferson County Cause No. 04-1-00110-8 came on for

14 Bench Trial before the Honorable Craddock Verser, Judge of

15 the Superior Court, sitting at the Jefferson County

16 Courthouse, City of Port Townsend, State of Washington;

17 and the parties being represented as follows:

18 JUELIANNE DALZELL/SHANE SEAMAN, Prosecuting Attorneys,

19 P.O. Box 1220, Port Townsend, WA 98368, appearing on

20 behalf of plaintiff State of Washington;

21 SCOTT CHARLTON, Attorney at Law, 686 Lake Street

22 #100, Port Townsend, WA 98368, appearing on behalf of

23 defendant Patrick Boyd Drum;

24 WHEREUPON, the following proceedings were had and

25 done to-wit:

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(Motion Calendar in Progress).

THE COURT: State of Washington versus Patrick Drum.
Mr. Drum was remanded from Drug Court at his request, and he wanted to drop out of the Drug Court, and we accommodated that request and was remanded to this Court for a Bench Trial. Arguments on the Bench Trial?

MR. CHARLTON: Your Honor, the - the - I believe, the State would be relying on the inference of an intent.

THE COURT: Correct.

MR. CHARLTON: That, um, - that a person is remained - entered or remained unlawfully in a building may be inferred to act with intent to a crime against a person or property, therein, as I read the - the rep - Police Reports it appears that that inference - sufficient proof of the element of entering with intent to commit a crime. We'd be relying on the fact that Mr. Drum was intoxicated. I believe the Police Reports adequately show that he was - he was extremely intoxicated, and, um, - um, our position is that with Criminal Trespass in the First Degree as a lessor included of Burglary in the First Degree that the most he could be convicted of is Criminal Trespass in the First Degree.

MS. DALZELL: And, Your Honor, um, the State would, um, remind Counsel that once somebody is opted into Drug
///

1 Court there is no argument. It just goes to Bench Trial
2 on the pleadings.

3 THE COURT: Well, I invited argument. It ...

4 MS. DALZELL: But, the statute, just for the
5 Court's ...

6 THE COURT: It is, and I have had the Police Report
7 marked as State's Exhibit One.

8 MS. DALZELL: Thank you, Your Honor.

9 THE COURT: Alright.

10 I was concerned about the intent element, too. The
11 intent to commit a crime. I disagree with you, Mr.
12 Charlton, that I don't think the Police Report does
13 adequately set forth the elements of intoxication. It
14 says, "Immediately smelled a strong odor of what appeared
15 to be spray paint." There's not much discussion about Mr.
16 Drum being intoxicated, although, we believe that he
17 probably was under the influence of spray paint.

18 I did look at the issue though, and I think it's
19 resolved in State v. Cantu, C-A-N-T-U, 98 - excuse me,
20 123 WnApp 404. A Division III case that came out
21 September 2004, which, I believe, doesn't - I mean, it's
22 not a - I believe, that case justifies which - you know,
23 what's he doing in somebody else's house anyway ...

24 THE DEFENDANT: I was ...

25 ///

1 THE COURT: ... unless he's got the intent to commit a
2 crime, and so I will find that - that you can - and I will
3 infer the intent to commit a crime when you entered there
4 because there's no other reason for you to be in there.

5 THE DEFENDANT: No, Sir, I asked - I was asking to use
6 the phone ...

7 THE COURT: Alright.

8 THE DEFENDANT: I know it's too late for that.

9 THE COURT: Well, that's not what the resident says,
10 according to ...

11 THE DEFENDANT: Right.

12 THE COURT: You didn't walk in, and say, "Gee, may I
13 use your phone?"

14 THE DEFENDANT: I was sniffing, Sir. My mind - yeah.

15 THE COURT: And, I'm gonna find that Exhibit One,
16 which is the Police Report, does establish beyond a
17 reasonable doubt that you're guilty of Residential
18 Burglary.

19 Now, what about sentencing in this case?

20 MS. DALZELL: Your Honor, the State would point out
21 that Mr. Drum has an offender score of 2. The crime is a
22 serious level 4. It's 12-plus to 14 months. We would ask
23 to go forward today. There are no complicated issues in
24 regard to sentencing.

25 THE COURT: Mr. Charlton, regarding sentencing?

1 MR. CHARLTON: Your Honor, if I may have one minute?

2 THE COURT: Sure.

3 (Counsel confers with Defendant off record).

4 MR. CHARLTON: We're prepared to go forward.

5 THE COURT: Alright.

6 Mr. Charlton, regarding sentencing?

7 MR. CHARLTON: Your Honor, I'd ask that ...

8 THE COURT: The State indicates that they believe his
9 offender score is 2, and so it's 12-plus/14 month standard
10 range.

11 MR. CHARLTON: And, Mr. Drum agrees that his offender
12 score is a 2. I'd ask that the Court impose the low end
13 of the range. Mr. Drum, while he petitioned for Drug
14 Court, was never able to adequately participate.

15 THE COURT: He didn't.

16 MR. DALZELL: And, Your Honor, we're asking for the
17 top end of the range even though his offender score is
18 only 2. He has one, two, three, four, five, six, seven,
19 eight, nine gross misdemeanor convictions.

20 THE COURT: What happened with the recent Kitsap
21 County ...

22 THE DEFENDANT: It's still going. That one is intent
23 to commit a crime.

24 THE COURT: That's a Burglary pending down there?

25 THE DEFENDANT: It's a - this one here wasn't ...

1 THE COURT: Well, I read the Police Reports, and
2 I ...

3 THE DEFENDANT: I understand, Sir.

4 THE COURT: Yeah. Mr. Drum, you do have the
5 opportunity to speak before you're sentenced. Go ahead.

6 THE DEFENDANT: Um, ...

7 THE COURT: Just say what you want.

8 THE DEFENDANT: I, um, - I was very intoxicated this
9 day, and I was asking this lady to use the phone. I'm not
10 gonna say that my record doesn't show cases where I've
11 entered people's houses high on intoxicants. I definitely
12 got to quit doing that stuff cuz it puts my mind in a
13 state where I just have no respect for property or things.
14 But, at the time when she confronted me, my intent was to
15 ask if I could use the phone cuz I was high and lost. Um,
16 it's too late for that. I just - I don't know if there's
17 an appeal on this because I decided to go to Drug Court.
18 That's kinda my fault. That's the only thing I'd like to
19 say. I think it's too late for an argument, but I think
20 it was just a Criminal Trespass. And, if there's any form
21 of appeal on a Bench Trial after Drug Court I would like
22 to do that. Other than that, Sir, no, there's nothing I
23 can say on this.

24 THE COURT: Okay. I look at this, and I look at
25 what's the mid point of standard range.

1 MS. DALZELL: Correct.

2 THE COURT: Is there reason to go above that? I don't
3 really see it. Although, he's got nine misdemeanor
4 convictions?

5 MS. DALZELL: Yes, Your Honor.

6 THE COURT: There is a reason to go below it. That's
7 possible, too, in that the action - the Burglary at issue
8 didn't result in any loss other than, of course, the
9 victim was ...

10 MS. DALZELL: Terror.

11 THE COURT: ... extremely terrified, and the entire
12 situation of finding a strange person in your home. So,
13 I'm going to impose the mid point of the standard range,
14 which is 13 months.

15 Mr. Drum, I've been handed the Notification of
16 Conviction and Firearm Warning. You cannot own, possess
17 or have under your control a firearm, and that's a - well,
18 it's about the same seriousness level of the crime - well,
19 it might even be more serious than Residential Burglary,
20 so you definitely want to stay away from firearms. Don't
21 put yourself in the situation where you can be found with
22 a firearm. They would use this notice to show that you
23 knew you could not have a firearm, so if you're a gun
24 person make sure that you are no longer a gun person.

25 ///

1 And, you don't want to be hanging out with people with
2 firearms because inevitably it's gonna come back to you.

3 THE DEFENDANT: Right.

4 THE COURT: Mr. Drum, I - you do have the right to
5 appeal, I assume. I'll give you - I'll advise you of your
6 rights to appeal, Mr. Drum. We'll get a form for that.
7 He can - I think he can appeal the - my inference of the
8 intent to commit a crime based on Exhibit One. Maybe,
9 some Court of Appeals will look at that, and say, "Well."

10 MS. DALZELL: I doubt it.

11 THE COURT: I doubt it, too.

12 Good luck.

13 THE CLERK: (Inaudible).

14 THE COURT: Do, what?

15 THE CLERK: (Inaudible).

16 THE COURT: Oh, we probably should.

17 THE CLERK: (Inaudible).

18 THE COURT: We probably should.

19 (Other matter addressed).

20 THE COURT: I think we should, because I do believe,
21 you know, he's gonna appeal it.

22 Mr. Drum, you have the right to appeal. Unless the
23 Notice of Appeal is filed with the Clerk within 30 days of
24 today's date you will have irrevocably waived your right
25 to appeal. If you have no lawyer to file the Notice of

1 Appeal for you the Clerk will, if requested by you, file a
2 Notice of Appeal on your behalf. If you cannot afford the
3 cost of appeal you have the right to have a lawyer to
4 represent you on appeal, and have such parts of the trial
5 record as are necessary for review of the errors assigned
6 transcribed, both at public expense.

7 Now, I'll ask you to sign that you received those
8 rights, that those rights were read to you, and I'll give
9 you a copy of that document as well.

10 Mr. Drum, I've been handed the Judgement and Sentence
11 in this matter, and you've signed - you signed - well, you
12 signed it, your attorney signed it, Ms. Dalzell has signed
13 it. I'm not reviewing it carefully because I believe that
14 if you folks have looked at it, it must comply with my
15 oral order, and so I did sign the Judgement and Sentence
16 as presented.

17 Is there anything further in Mr. Drum's matter?

18 MR. CHARLTON: Your Honor, the Pay or Appear Program,
19 Mr. - once Mr. Drum is released from prison he would like
20 to participate in the Pay or Appear at \$25.00 a month. I
21 am asking that it commence two months following his
22 release.

23 THE COURT: Alright.

24 Mr. Drum, that's particularly important. If you make
25 that \$25.00 a month payment this Court will not be issuing

1 warrants for you, but if you don't make it, and you don't
2 appear, we will issue warrants, and you'll be picked up,
3 and you'll be down there on the video telling me that, you
4 know, "Well, gee, I forgot," or whatever.

5 THE DEFENDANT: Right.

6 THE COURT: But, it does disrupt your life, to say the
7 least.

8 THE DEFENDANT: Right.

9 UNIDENTIFIED MALE: I forgot to ... (inaudible) ...
10 Plea Agreement as well ...

11 THE COURT: Okay.

12 UNIDENTIFIED MALE: ... (inaudible) ... this case is
13 decided.

14 THE COURT: Alright, we'll mark that as an exhibit.
15 We'll also make that part of the file. Mark that as
16 Exhibit Two.

17 THE CLERK: You want it to be filed?

18 THE COURT: Defendant's Exhibit Two, and that will
19 become a part of the record.

20 I'm signing the order placing you on the Pay or
21 Appear Program, Mr. Drum, and it's two months after your
22 release you have to start making that \$25.00 a month
23 payment. And, once again, it's - if you make that payment
24 you won't be inconvenienced, by this Court anyway. If you
25 don't, it - you will be.

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Anything further in Mr. Drum's matter for this Court?
MR. CHARLTON: Nothing further, Your Honor.
MS. DALZELL: Nothing. Thank you, Your Honor.
(Court calls next case).

1 CERTIFICATE OF DESIGNATED ELECTRONIC COURT REPORTER

2

3 STATE OF WASHINGTON)

4 COUNTY OF JEFFERSON) ss.

5

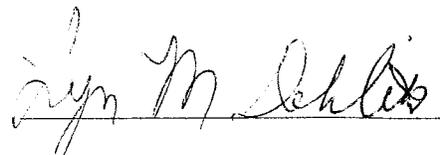
6 I, LYN M. DeWITT, Designated Electronic Court
7 Reporter of the Superior Court of the State of Washington,
8 in and for Jefferson County, do hereby certify as follows:

9 That the foregoing VERBATIM REPORT OF PROCEEDINGS,
10 numbered from page 1 and including page 12, is a true and
11 correct transcript of the proceeding held January 21st,
12 2005, in the matter of State of Washington v. Patrick Boyd
13 Drum, Cause No. 04-1-00110-8, before the Honorable
14 Craddock Verser, Judge of the Superior Court, Jefferson
15 County Courthouse, Port Townsend, Washington, on the date
16 hereinbefore mentioned.

17 DATED this 8th day of September, 2005.

18

19



20

LYN M. DeWITT

21

Designated Electronic

22

Court Reporter

23

24 CERTIFICATE

FILED

04 OCT 29 AM 8:47

JEFFERSON COUNTY
MARIANNE WALTERS, CLERK

BY _____ DEPT. CLERK

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

STATE OF WASHINGTON,

Plaintiff,

vs.

Pamela Drom

Defendant.

Case No.: 04-1-110-2

DRUG COURT CONTRACT

COMES NOW the Defendant and enters into the following Drug Court contract whereby
this Court and Defendant agree to the following terms:

Defendant agrees:

1. To satisfactorily complete an assessment evaluation administered by the Treatment Provider for the development of a Program Treatment Plan.
2. To report to the Case Manager within 24 hours of signing this agreement.
3. To complete all required Program services as ordered and to the satisfaction of the Court and Treatment Provider.

DRUG COURT CONTRACT
Page 1
(Rev. 9/16/04)

JUELANNE DALZELL
PROSECUTING ATTORNEY
FOR JEFFERSON COUNTY
Courthouse - P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

Attachment 4, 'Drug Court Contract'

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1 4. To abide by all rules and regulations ordered by the Court as well as those
2 conditions and requirements set by the Treatment Provider.

3 5. To not use or possess any alcohol or controlled substance and to not associate
4 with or be in the proximity of any person using or possessing alcohol or any controlled
5 substance.

6 6. To request that any medication prescribed by a licensed physician be non-narcotic
7 and to seek approval from the Court or Treatment Provider for any over-the-counter or
8 prescribed medications prior to using such medication.

9 7. To submit to witnessed urinalysis and Breathalyzer testing as required by the
10 Court or the Treatment Provider and agrees that the verified results of urinalysis may be relied
11 upon for sanction purposes without supporting testimony of the toxicology laboratory.

12 8. To keep the Court and the Treatment Provider advised of my address and place of
13 employment at all times during the Program, including written notice of any change of address or
14 employment within 72 hours of the change.

15 9. To appear at all Drug Court hearings pursuant to proper notice of the date and
16 time of such hearings.

17 10. To obey all laws while participating in the Drug Court Program.

18 11. Shall not own or possess firearms while in the program.

19 12. To sign any and all releases of confidentiality necessary to further the treatment
20 goals of the Drug Court Program, including any and all releases necessary to allow the Court and
21

22
23
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27 DRUG COURT CONTRACT
Page 2
(Rev. 9/16/04)

28
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FOR JEFFERSON COUNTY
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1 counsel complete access to my diagnostic and treatment information and to my medical, mental
2 health and other counseling records.

3 13. To make weekly payments in the amount of \$ _____ towards the cost
4 of treatment.
5

6 14. To make monthly payments set by the Court for my representation if I am
7 determined to be able to contribute to my attorney costs if at any time I am represented by a staff
8 attorney appointed by the Jefferson County Public Defenders Office while participating in the
9 Drug Court Program.
10

11 15. To pay full restitution to the victim, if any is owed, as a condition of graduation
12 from the Program.

13 16. That it is the Judge's decision to determine when the defendant has earned the
14 ability to graduate from the Program and to determine when termination from the Program will
15 occur.
16

17 17. That if the defendant chooses to leave the Program within the first two weeks
18 after signing the Drug Court Contract, withdrawal will be allowed, this contract will be declared
19 null and void, and the defendant will assume prosecution under the pending charge(s) as if this
20 contract had never been agreed to. The defendant agrees that this ability to withdraw from the
21 terms of this contract will cease after the period of two weeks following the effective date of this
22 contract and thereafter the defendant shall remain in the Program until graduation unless his/her
23 participation is terminated by the Court. The defendant further agrees that the ability to
24 withdraw from the terms of this contract will cease within the first two weeks, if he/she has
25

26 DRUG COURT CONTRACT
27 Page 3
28 (Rev. 9/16/04)

Attachment 4

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FOR JEFFERSON COUNTY
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Port Townsend, WA 98368
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1 committed a willful violation of this contract for which, in the judgment of the Court, he/she may
2 be terminated from the program.

3 18. That failure to abide by any Program rule, any positive urinalysis/breath test, any
4 missed treatment session or Court hearing, any new violation of the law, or any failure to abide
5 by any other terms or conditions of this contract will subject the defendant to a sanction ordered
6 by the Court, which may consist of work release, confinement in the Jefferson County Jail and/or
7 Day Reporting, an increase in Treatment Services or any other sanction up to and including
8 termination from the Program.
9

10 19. If the defendant is terminated from the Program, the defendant agrees and
11 stipulates that the Court will determine the issue of guilt on the pending charge(s) solely upon the
12 enforcement/investigative agency reports or declarations, witness statements, field test results,
13 lab test results, or other expert testing or examinations such as fingerprint or handwriting
14 comparisons, which constitutes the basis for the prosecution of the pending charge(s). The
15 defendant further agrees and stipulates that the facts presented by such reports, declarations,
16 statements and/or expert examinations are sufficient for the Court to find the defendant guilty of
17 the pending charge(s).
18

19 20. Defendant waives the right to challenge the legality of any investigative or
20 custodial detention, or the legality of any search or seizure, or the sufficiency of Miranda
21 warnings or voluntariness of any statement made, pertaining to any evidence which forms part of
22 the basis for the prosecution of the pending charge(s).
23
24

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26 DRUG COURT CONTRACT
27 Page 4
28 (Rev. 9/16/04)

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1 21. Any statement made by the defendant while a participant in the Drug Court
2 Program which pertains to evaluation or treatment and which is made in open Court or to the
3 Drug Court Program Administrator in the course of treatment, may be used by the Drug Court
4 Judge to evaluate the defendant's participation in the Program or as the basis for any sanction up
5 to and including termination from the Program.
6

7 The defendant understands and agrees that the restriction on the use of a defendant's
8 statement does not include any statement made by the defendant in open Court or during the
9 course of treatment concerning criminal activity other than illegal drug use or possession and
10 unrelated to the charge(s) which constitute the basis for the defendant's participation in the Drug
11 Court Program.
12

13 Urinalysis results obtained for Program purposes shall not be used as evidence of a new
14 crime, a violation of probation or any other manner not consistent with Program goals.
15

16 22. That upon the defendant's successful completion of all treatment components and
17 satisfaction of all other requirements for graduation, the Court will dismiss the pending charge(s)
18 with prejudice and the Prosecuting Attorney will not be able to prosecute those charges in the
19 future.
20

21 Defendant acknowledges an understanding of, and agrees to waive the following
22 rights:

- 23 1. The right to a speedy trial;
24 2. The right to a public trial by an impartial jury in the county where the crime is
25 alleged to have been committed;
26

27 DRUG COURT CONTRACT
28 Page 5
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1 3. The right to hear and question any witness testifying against the defendant;

2 4. The right at trial to have witnesses testify for the defense, and for such witnesses
3 to be made to appear at no expense to the defendant; and
4

5 5. The right to testify at trial.

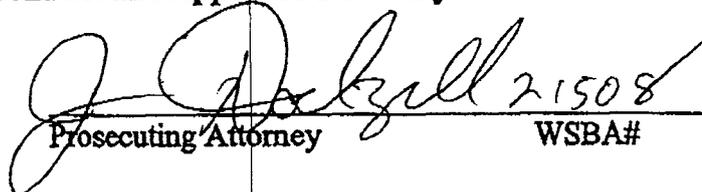
6 My attorney has explained to me, and we have fully discussed all of the above
7 paragraphs. I understand them all and wish to enter into this Drug Court Contract. I have no
8 further questions to ask the Judge.
9

10 
11 Defendant

12 I have read and discussed this Drug Court Contract with the defendant and believe that
13 the defendant is competent and fully understands the contract terms.
14

15 
16 Attorney for Defendant WSBA# 282

17
18 Agreement to the terms of this contract and Approved for Entry:

19 
20 Prosecuting Attorney WSBA# 21508
21

22 The foregoing Drug Court Contract was signed by the defendant in open Court in the
23 presence of the defendant's attorney and the undersigned Judge. The defendant asserted that
24
25

1 (Check the appropriate box)

2 The defendant had previously read; or

3 The defendant's attorney had previously read to him/her; or

4 An interpreter had previously read to the defendant;

5 the entire contract above and that the defendant understood it in full.

6
7 **THEREFORE IT IS ORDERED** that this Drug Court Contract is now in full force and
8 effect. This case will remain in Drug Court for all further proceedings. Effective TBA,

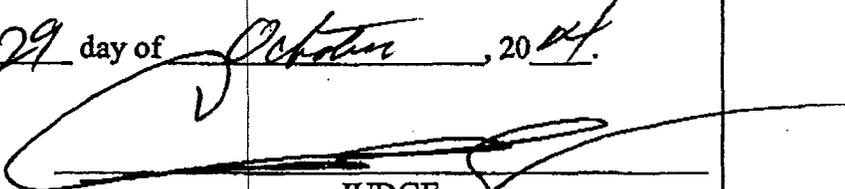
9 **the defendant shall appear each and every Friday at 8:30 a.m. in the Jefferson County**

10 **Superior Court Courtroom until further ordered by this Court.** Defendant shall pay

11 participation fee of \$ TBD per week. Defendant shall continue Program

12 Services with the Drug Court Treatment Provider until further order of the Court.

13
14 DONE IN OPEN COURT this 29 day of October, 2004.

15
16
17 
18 JUDGE

19
20
21
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23
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25
26 DRUG COURT CONTRACT

27 Page 7

28 (Rev. 9/16/04)

JUELANNE DALZELL
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PORT TOWNSEND POLICE DEPARTMENT INFORMATION & PROBABLE CAUSE SHEET

Case #: 2004-3403 CSF: Felony XX Misd. Citation Issued: Yes No

Offense Date: 9-28-2004 Time: 1450 Arrest Date: 9-28-2004 Time: 1456 Book Date: 9-28-2004 Time: 1545 hours

ARRESTEE IDENTIFICATION

Name: Patrick B. DRUM DOB: 3-2-1978
AKA: _____ SID: _____
Address: 1204 S. Cedar, Unit #1, Port Angeles, WA 98363 Phone: (360) 681-5750

PROBABLE CAUSE STATEMENT (S)

NOTE: Except for warrant bookings/arrests, you must state Probable Cause for each new felony, misdemeanor, or traffic offense. Include the types and approximate value of property damage or taken property in property offenses and the type and amount of controlled substance in drug cases. For citation cases, attach a citation copy in addition to stating probable cause. Failure to provide a statement of probable cause herein may result in prisoner's automatic release. Attach extra sheet if necessary.

We were dispatched to a report of a male subject in the kitchen of a woman's home at 1115 Jefferson. The description of the person matched that of a male Ofc. Sewell had cited for Malicious Mischief and Criminal Trespass about two hours earlier.

As I arrived on scene Ofc. Huynh was placing an individual into custody. The individual, Patrick B. DRUM was later identified by the victim as the man she found in her house. I contacted a witness, Louis L. EGNEW, who stated that the victim, May L. SANELLI, came running over to his home next door and reported that there was a strange man in her kitchen. He advised her to call 911 while he went outside to see if he if he could "shoo" the man away. EGNEW stated that as he approached SANELLI's residence he saw DRUM coming out of the yard on the concrete walkway that led to the kitchen door. EGNEW said he told DRUM to leave but DRUM walked to the next yard gate and walked into the yard at 336 Fillmore and started toward the back door before EGNEW told him to leave the area. EGNEW to me that DRUM turned around and came out of the yard just as officers arrived.

In her statement SANELLI stated that she was in her office working and heard the screen door close that leads from the kitchen to the outside. At first she thought it was her

The facts of the alleged criminal activity took place in Port Townsend, WA at : 1115 Jefferson St.

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing statement(s) of Probable Cause is (are) true and correct.

Date: September 29, 2004 City : Port Townsend, WA Officer's Signature: *William R. Corrigan*

Officer's Printed Name: WILLIAM R. CORRIGAN_ Officer's No.: 745 Agency: Port Townsend Police Department

TELEPHONIC NOTIFICATION

I certify under penalty of perjury under the Laws of the State of Washington that I read the foregoing affidavit of officer _____ Verbatim telephonically to Judge / Judge Pro Tem _____ on _____ at _____ (a.m.) (p.m.). I further certify that said Judge / Judge Pro Tem has authorized me to check the box as checked below

Prosecutor / Officer Signature: _____ Printed Name: _____ At: _____

- THE FOREGOING DECLARATION ESTABLISHES PROBABLE CAUSE SUFFICIENT TO DETAIN THE ABOVE NAMED ARRESTEE
- THE FOREGOING DECLARATION DOES NOT ESTABLISH PROBABLE CAUSE SUFFICIENT TO DETAIN THE ABOVE NAMED ARRESTEE

I certify that the above checked box was authorized telephonically by me on the date shown above.

Date Signed: _____

ATTACHMENT 5

PORT TOWNSEND POLICE DEPARTMENT INFORMATION & PROBABLE CAUSE SHEET

Case #: 2004-3403 CSF: Felony XX Misd. Citation Issued: Yes No

Offense Date: 9-28-2004 Time: 1450 Arrest Date: 9-28-2004 Time: 1456 Book Date: 9-28-2004 Time: 1545 hours

ARRESTEE IDENTIFICATION

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AKA: _____ SID: _____
Address: 1204 S. Cedar, Unit #1, Port Angeles, WA 98363 Phone: (360) 681-5750

PROBABLE CAUSE STATEMENT (S)

NOTE: Except for warrant bookings/arrests, you must state Probable Cause for each new felony, misdemeanor, or traffic offense. Include the types and approximate value of property damage or taken property in property offenses and the type and amount of controlled substance in drug cases. For citation cases, attach a citation copy in addition to stating probable cause. Failure to provide a statement of probable cause herein may result in prisoner's automatic release. Attach extra sheet if necessary.

husband but he generally says hello when he comes in. SANELLI stated that she came out of her office and saw DRUM standing in her kitchen, about six feet from the door to the outside. She stated that she turned and ran out the back door of the house to her neighbor's and called the police. When I first contacted SANELLI she was crying and shaking. SANELLI told me that nothing appeared to be taken but that she felt DRUM was in the residence to take things.

Ofc. Huynh provided a supplement to this report. In that supplement he stated that when he placed DRUM into custody he noted a strong odor of what appeared to be spray paint.

DRUM was a suspect in an earlier case of Ofc. Sewell's (04-3500) where he smashed a doorframe and entered a laundry room where pay washers and dryer were located DRUM also matched the description of a person I had searched for that had entered, through a gate, into a yard at 728 Walker, but had left when confronted by the owner.

The facts of the alleged criminal activity took place in Port Townsend, WA at : 1115 Jefferson St.

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing statement(s) of Probable Cause is (are) true and correct.

Date: September 29, 2004 City : Port Townsend, WA Officer's Signature: *William R. Corrigan*

Officer's Printed Name: WILLIAM R. CORRIGAN_ Officer's No.: 745 Agency: Port Townsend Police Department

TELEPHONIC NOTIFICATION

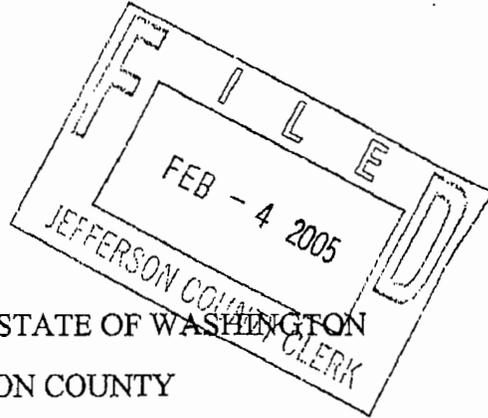
I certify under penalty of perjury under the Laws of the State of Washington that I read the foregoing affidavit of officer _____ Verbatim telephonically to Judge / Judge Pro Tem _____ on _____ at _____ (a.m.) (p.m.). I further certify that said Judge / Judge Pro Tem has authorized me to check the box as checked below

Prosecutor / Officer Signature: _____ Printed Name: _____ At: _____

- THE FOREGOING DECLARATION ESTABLISHES PROBABLE CAUSE SUFFICIENT TO DETAIN THE ABOVE NAMED ARRESTEE
- THE FOREGOING DECLARATION DOES NOT ESTABLISH PROBABLE CAUSE SUFFICIENT TO DETAIN THE ABOVE NAMED ARRESTEE

I certify that the above checked box was authorized telephonically by me on the date shown above.

Date Signed: _____ JUDGE / JUDGE PRO TEM



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

STATE OF WASHINGTON,

Plaintiff,

vs.

PATRICK BOYD DRUM, aka
TIM JONES,

Defendant.

Case No.: 04-1-00110-8

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came on to be heard for bench trial on January 21, 2005, before the Honorable Craddock Verser, on the police reports; the State being represented by Juelanne Dalzell, Prosecuting Attorney for Jefferson County, and the Defendant being present in person and being represented by his attorney, Scott Charlton, and the court having heard the witnesses, reviewed the pleadings and heard arguments of counsel, now, makes the following.

Procedural History

Patrick Drum was admitted to drug court on October 16, 2004. Mr. Drum on several previous occasions had told the Court he no longer wished to remain in drug court. He also testified on January 21st, 2005, that he no longer wished to remain in drug court. His case was

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
Page 1

JUELANNE DALZELL
PROSECUTING ATTORNEY
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1 remanded from drug court back to Superior Court. The matter proceeded to Bench Trial. After
2 the Court marked and admitted police reports in the matter as Exhibit #1 Defense argued that
3 there was not a prima facie case for Residential Burglary because the State couldn't prove that
4 the defendant intended to commit a crime inside the victim's residence.
5

6 **Findings of Fact**

7 The Court in citing State v. Stinton, 121 Wash.App 569, 89 P.3rd 717 (Wash. App. Div. 2,
8 May 04, 2004) concluded that the Legislature has adopted a permissive inference to establish the
9 requisite intent whenever the evidence shows a person enters or remains unlawfully in a
10 building.
11

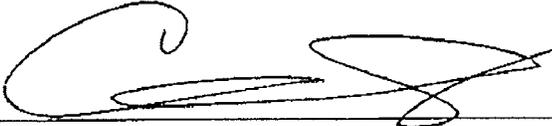
12 The Court held that Mr. Drum had entered the residence of Mary Lou Sanelli.
13 Mr. Drum did not have permission to be in the residence of Mrs. Sanelli. He in fact entered and
14 remained unlawfully in Mrs. Sanelli's residence on September, 29, 2004.

15 *Defendant entered with intent to commit a crime in the residence.*
16 The defendant's acts occurred in Jefferson County, Washington.

17 **Conclusions of Law**

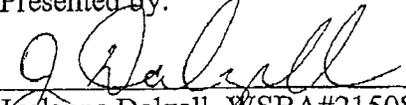
18 The Court found the defendant guilty as charged on one count of Residential Burglary.

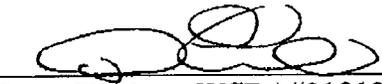
19 Dated this 4 day of ^{February} ~~January~~, 2005.

20 

21 Judge of the Superior Court

22 Presented by:

23 
24 Juelanne Dalzell, WSBA#21508
25 Prosecuting Attorney

26 
27 Scott Charlton, WSBA#21812
28 Attorney for Defendant