No. 36104-3-II

COURT OF APPEALS, DIVISION II

FOR THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

STATE OF WASHINGTON,

Respondent,

vs.

FORREST EUGENE AMOS

Appellant.

On Appeal from the Lewis County Superior Court

CORRECTED RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

On January 16, 2000, at about 1:49 a.m. a Lewis County Sheriff's deputy was dispatched to 118 Urqhart Road regarding a home-invasion robbery. 2d Supp. CP 157-162. *The following information is also taken from the of Probable Cause (*2d Supp. CP 157-162.). Upon arrival at Mr. Hull's home the deputy spoke with Mr. Hull, who said that at about 12:30 a.m.he heard a knock at his front door. 2d Supp. CP 157-162. Hull answered the door and saw four young males who asked to speak to Mr. Hull's son Brian. One of the males was Forrest Amos. Mr. Hull told the four males that his son no longer lived there and the four youths said they had driven all the way there and had been dropped off and did not have a ride back. The youths asked to use Mr. Hull's phone which Mr. Hull allowed. A couple of the males also used Mr. Hull's restroom. At some point one of the males handed another male a receipt and then three of the males got out "clubs" (later learned to be a walkie talkie) and began beating Mr. Hull with the object, hitting Mr. Hull in the head area. Mr. Hull said the males kept asking him where his guns and pot were. Mr. Hull said the males just kept hitting him. Mr. Hull said he brought the males into his bedroom and showed them where he kept his marijuana under his bed and also showed

them his handgun which was in a night stand next to this bed. 2d Supp. CP 157-152.

Mr. Hull said that the males asked him where the rest was and he said he did not have any more. Id.. The males hit Mr. Hull again and asked where the other handgun and marijuana were because they knew he had more. Id. Mr. Hull then showed them where his marijuana grow was in his closet and the males took a large marijuana plant. Mr. Hull said as a result of the beating he was going in and out of consciousness and was bleeding severely from the back of his head. Mr. Hull said he thought the males were going to kill him. After beating Mr. Hull and stealing his gun and marijuana, the four males left the residence. 2d Supp. CP 157-162.

Mr. Hull's son Brian Hull arrived at the residence and told deputies that his friend Forrest Amos might be involved, as well as some other males. Id. Brian said that Forrest Amos had been to his dad's house before and he and his friends knew that his dad had marijuana. Id. When Forrest Amos' parents were contacted they told deputies that Amos carried a club around with him and that they believed Amos was capable of that kind of an assault. 2D SUPP. CP 157-162.

Amos was arrested on an outstanding warrant. Id. After being advised of his rights Amos agreed to speak with police and Amos and his parents agreed that Amos would submit to a polygraph. The polygraph showed deception. 2d Supp. CP 157-162. Amos finally admitted to going to Mr. Hull's house to steal his marijuana. Amos told deputies who else went with him. When deputies spoke with another codefendant, Mr. Steele, Steele said that Amos had "came up with a plan to have the group of young males go to Chehalis and steal some weed from a guy Mr. Amos knew." 2d Supp. CP 157-162.

Amos was charged with burglary in the first degree, robbery in the first degree, assault in the first degree, theft of a firearm, possession of a stolen firearm, and unlawful possession of a firearm, by an information filed January 26, 2000. 2d. Supp CP 152-156. On February 16, 2000, Amos pleaded guilty as charged pursuant to a plea agreement. CP 140-150; 2/16/00 RP 1-26 (and explaining details of plea agreement).[1] On April 25, 2000, another plea agreement was reached in which Amos pleaded guilty to the

[1] The State is not altogether certain *which* Verbatim Reports have been sent to the Court of Appeals in this matter. Therefore, the State is including as appendices to this brief the copies of the transcripts of proceedings for the following dates: 2/16/00 RP (Appendix C); 4/25/00 RP (Appendix D); 7/19/05 RP (Appendix E); 9/12/05 RP (Appendix F); and, because Collette requested it, the transcript of the sentencing hearing of Amos's codefendant Matthew Collett 8/17/05 (Appendix G).

reduced charge of assault in the second degree with a firearm enhancement, and Amos' original plea to the assault in the first degree charge would be allowed to be withdrawn and that charge dismissed, and the possession of a stolen firearm dismissed together with dismissal of the firearm enhancements originally attached to the burglary and robbery counts. CP 135-138; 4/25/00 RP at 4-8. On April 25, 2000, Forrest Amos appeared in Lewis County Superior Court for the second plea hearing in which he was allowed to withdraw his plea to the Assault in the First Degree with a firearm enhancement and enter a plea to the lesser charge of assault in the second degree with a firearm enhancement. See 4/25/00 RP and CP 135-138; CP 140-150; CP 128-134.

Among the charges that Amos pleaded guilty to are the robbery in the first degree charge, which was charged in the Amended Information as being committed, in pertinent part, as follows: "in the commission of and immediate flight therefrom, the defendant was armed with a deadly weapon, to wit: a walkie talkie, and in the commission thereof, the defendant was armed with a firearm, to wit: a Rugar pistol. . ." 2d Supp. CP 163-167; CP 152-156; CP 135-138; RCW 9A.56.200(1)(a)(i); (2nd Amended Information Appendix A). Then, in another plea hearing, Amos

pleaded guilty at a later date to a reduced charge of assault in the second degree in exchange for dismissal of the assault in the first degree. ; CP 128-134; 4/25/00 RP 2-17 (Appendix D). The second degree assault that Amos pled to was charged via alternative language under RCW 9A.36.021(1)(c)(e), stating, in pertinent part, that Amos "then and there intentionally assaulted Joe Hull with a deadly weapon or with the intent to commit a felony, Robbery in the First Degree or Burglary in the First Degree. . ." CP 128-134; CP 14-22; CP 120-127; 4/25/00 RP 11. The trial court then sentenced Amos by following the parties' agreed recommendation of 120 months in prison. CP 14-22; CP 120--127l and see 4/25/00 RP 20, 21 (Appendix D) and Judgment and Sentence (Appendix B).

After Forrest Amos was sent to prison on the instant case but before his resentencing hearing (after remand) in Lewis County, Amos committed another violent offense while in prison and he pleaded guilty to that assault in the second degree on June 20, 2005, in Walla Walla Superior Court. CP 104-114; 7/19/05 RP 10, 29, 32. On July 19, 2005, upon remand for resentencing in the instant case due to an improperly-computed offender score pursuant to In re LaChappelle, defendant Amos appeared before the Lewis County Superior Court for his resentencing hearing.

7/19/05 RP. During that hearing, the former elected prosecutor, Jeremy Randolph, told the court that Amos had previously entered into two plea agreements in this case:

> PROSECUTOR: Mr. Amos entered into two plea agreements to be exact. Number one, he entered into a plea agreement that would have resulted in substantially less prison time if he testified truthfully involving his co-participants. He was unable to pass a polygraph examination. . . the plea agreement provided that if he didn't comply with that plea agreement, he would be facing actually more time than what the state recommended in this case. . . . He entered into a second plea agreement in which he agreed to plead to the charges before your Honor today in exchange for an agreed recommendation of 120 months. . . . Mr. Amos made a deal. He doesn't like the deal. He is trying to renege on the deal.

7/19/05 RP 4,5. The Prosecutor then went on to summarize the State's understanding of the crimes committed by Amos in this case:

> PROSECUTOR: Four young men made a decision to go in and break into an older gentleman's house to obtain some medical marijuana from him. They went inside, beat the heck out of him, used walkie-talkies as clubs. During the course of that --and that was the purpose of the robbery, is to get to the marijuana --they used the walkie talkies as their instruments of force. After they obtained the marijuana, they then located and stole a pistol. One of --either Mr. Amos or one of his cohorts then assaulted, in a separate act, the

> victim in an attempt to steal other items with that firearm. . . . . Asking [sic] to make it clear there's a distinction between the weapon and methodology used in the assault with a firearm, obviously, and the assaultive conduct in counts one and two, which involve beating on the man with the walkie-talkie.

7/19/05 RP 8.

At the resentencing hearing Mr. Amos presented his merger argument pertaining to the robbery in the first degree and assault in the second degree with a deadly weapon convictions, and also argued that his plea to the Walla Walla assault second degree charge in June 2005 should not count as a "conviction" in his offender score. 7/19/05 RP 20-22;27-29. The trial court denied Amos' motion to merge the Lewis County assault in the second degree conviction into the robbery in the first degree conviction, and also found that Amos' June 2005 plea to the Walla Walla assault in the second degree counted as a prior conviction, stating:

> COURT With respect to the . . . assault two as reflected in court three, I do not find that that's the same criminal conduct as the robbery or the burglary. . . . I think this was a gratuitous assault on Mr. Hull. It was not necessary to facilitate the robbery that was already in progress. There was, from my perspective, no need and necessity to actually hit Mr. Hull with the walkie-talkies. . . and

> accordingly I reject the idea that count three constitutes the same criminal conduct or somehow merges into counts one and two. . . . There was no reason, and it was simply a gratuitous assault, as far as I'm concerned, to actually hit Mr. Hull with the walkie-talkie.
> * * * Taking the gun was kind of like a - - not exactly sure how to phrase it, but it was an inadvertent discovery, the end result of which is they took the gun, and subsequently, as I recall the state's argument, Mr. Hull was subsequently assaulted with the gun to induce him to disclose the location of the additional marijuana, which was growing in the closet. * * * I'm accepting the state's claim with respect to the conviction out of Walla Walla County, that a plea is a conviction.
>
> * * *

7/19/05 RP 35, 36, 37. The trial court then resentenced Amos to a total of 120 months, which represented an exceptional sentence *downward* on Count II. 7/19/05 RP 39, 40. Amos objected to the exceptional sentence downward. Id. Amos also requested that he be allowed to withdraw his plea. CP 36-99; CP 24-35.

At the September 12, 2005, hearing on Amos' motion to withdraw his guilty plea because he disagreed with the trial court's denial of his motion to merge the assault in the second degree into the robbery first degree conviction, the trial court clarified its reasons for denying Amos' merger motion:

> COURT: You pled guilty to one assault in front of me, but you pled guilty to a different

> assault in front of Judge Hall.. . . So what I ruled previously was that there were two separate incidents here, not one but two, and that's why there was no merger. (9/12/05 RP 13, 14).
>
> COURT: So the assault on Mr. Hull when you hit him with the walky-talky elevates it [the crime] to robbery in the first degree. The assault in the second degree with a firearm, which is what you admitted to when you pled guilty to the amended charge in front of me, as far as I'm concerned, is entirely a separate assault. That's what I've already ruled. That's why I said there was no merger.

9/12/05 RP 14, 15 (Appendix F). Also at the September 12, 2005, hearing, while explaining to Amos what happened at the prior April 24, 2000, plea hearing the following exchange took place:

> COURT: Sounds to me like you admitted right there [referring to the "firearm and a walky-talky" admission by Amos previously] that you assaulted him with a firearm.
>
> MR. AMOS: If you look lower, the actual plea statement was that on -- it says on page 11 and 12, it says: The Court: "Paragraph 11, he says on 1/16/2000, in Lewis County, I assaulted an individual with a deadly weapon. I was in possession of a firearm at the time of the assault." Is that your statement? The Defendant: "Yes."
> AMOS: That--I mean, that's what I'm trying to say. I committed an assault.
>
> COURT: Do you understand what [the elected prosecutor] is saying?

> AMOS: Yeah, I understand what Mr. Randolph is saying, but I don't agree. If it is withdrawn, the whole plea statement is out the door and I should be able to have a trial on the whole thing whether I'm facing the original charges or not. . . . .
> COURT: Well, that's what you pled to, what you pled to initially. You pled guilty to six individual counts in front of Judge Hall.
>
> AMOS: Pursuant to a plea agreement.
> COURT: Which you didn't keep. Then you came back before me, and the prosecutor's office still allowed you to withdraw your plea to two counts and that substituted one count of assault in the second degree for assault in the first degree and you pled guilty to that. And you told me in your own words that you assaulted Joe Hull with a deadly weapon. I asked you what that was, and you said a firearm and a walky-talky. So as far as I'm concerned, you admitted that you assaulted him with a firearm.

9/12/05 RP 11,12. The trial court then denied Amos's motion to withdraw his guilty plea, stating:

> COURT: The motion to withdraw the plea, which was taken before me on April 25th, 2000, is denied. There is no manifest injustice here in adhering to the plea agreement here as made, and the mere fact that the Court does not, at least at this level, does not accept your argument of merger as to the robbery one and the assault second with a firearm, the mere fact that I don't accept that, because I think there were in fact two distinct incidents here that gave rise to both the conviction for robbery in the first degree and assault second while armed with a firearm, is not a reason or a basis

> justifying the withdrawal of a plea. (9/12/05 RP 17)
>
> And I also don't accept the state's argument that if in fact we were to allow that, that we'd necessarily go back to where we were prior to the time that I allowed you to withdraw the plea to assault in the first degree as taken in front of Judge Hall, because I think that plea in fact has gone away by the fact that it was allowed to be withdrawn. But in any event, I'm not granting the motion to withdraw the plea. There's no manifest injustice here, there's no reason why. . . you're harmed by the mere fact that I don't accept your argument of merger.

9/12/05 RP 17. Amos's sentence at his resentencing resulted in an exceptional sentence downward of three months, which Amos objected to. 9/12/05 RP 18. This appeal followed, with the Court of Appeals consolidating this appeal with Amos' personal restraint petition from case number 34375-4-II in which Amos claimed his convictions of both first degree robbery and second degree assault violated double jeopardy.

This Honorable Court has also requested that the parties brief the following issues: 1) whether Amos's double jeopardy claim is barred by his guilty plea; 2) whether Amos's double jeopardy claim is barred because he received the benefit of his bargain, and 3) whether State v.

Ermels, 156 Wn.2d 528, 131 P.3d 299 (2006), bars the claim. The Court of Appeals did not limit the appeal to just those issues.

The State now files this brief in response to the order of this Court, the Appellant's brief, and in response to Amos's statement of additional grounds..

A. AMOS'S DOUBLE JEOPARDY CLAIM IS BARRED BECAUSE HE PLED GUILTY AND BECAUSE HE RECEIVED THE BENEFIT OF HIS BARGAIN.

Amos asserts a double jeopardy claim regarding the robbery first degree and assault in the second degree convictions. This argument should not succeed in this case because Amos pleaded guilty pursuant to a plea agreement, he received a below-standard range sentence, and he received the benefit of his bargain by being allowed to withdraw his plea to a more serious offense with dismissal of other charges.

It is well-settled law that, "a plea of guilty constitutes a waiver by the defendant of his right to appeal, regardless of the existence of a plea bargain. " State v. Majors 94 Wash.2d 354, 356, 616 P.2d 1237,(1980), citing Young v. Konz, 88 Wash.2d 276, 283, 558 P.2d 791 (1977); State ex rel. Fisher v. Bowman, 57

Wash.2d 535, 536, 358 P.2d 316 (1961); State v. Johnson, 104 Wn.2d 338, 341, 705 P.2d 773 (1985) (quoting State v. Wiley, 26 Wn.App. 422, 613 P.2d 549 (1980)); State v. Gaut, 111 Wn.App. 875, 880, 46 P.3d 832 (2002); see also State v. Majors, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980); State v. Phelps, 113 Wn.App. 347, 352, 57 P.3d 624 (2002). A guilty plea does not, however, preclude appeal of collateral questions, such as the validity of the statute, the sufficiency of the information, the jurisdiction of the court, or the circumstances under which the plea was made.' Gaut, 111 Wn.App. at 880 (emphasis omitted); see also Phelps, 113 Wn.App. at 352. In the present case, Amos pleaded guilty, he received a standard range sentence and furthermore he received the benefit of his bargain so his claimed double jeopardy challenge is barred.

Furthermore, as the Majors Court also noted , "even if petitioner in this case had not agreed to waive his right to appeal the conviction and sentence, that right would have been waived." However, it is also true that, "we have held that a guilty plea in Washington does not usually preclude a defendant from raising collateral questions such as the validity of the statute, sufficiency of the information, jurisdiction of the court, or the circumstances in

which the plea was made." Id. , citing Young, at 283, 558 P.2d at 794-95; Bowman, at 536, 358 P.2d at 317; and see In re Vensel, 88 Wash.2d 552, 564 P.2d 326 (1977); See also State v. Moten, 95 Wn.App. 927, 976 P.2d 1286 (1999); United States v. Pratt, 657 F.2d 218 (8th Cir. 1981). Applying the reasoning of the foregoing cases and the cases each court cited therein, Amos's guilty plea waived his right to bring a double jeopardy claim now.

One court's analysis of a very similar situation is instructive for deciding the issue here, and the court's analysis is worth quoting at length. See e.g., State v. Moten 95 Wash.App. 927, 976 P.2d 1286(1999), where that court analyzed a similar double jeopardy complaint by a defendant who had, like Amos, pleaded guilty. Among other things, the Moten court discussed some Federal cases that had dealt with waiver of the right to appeal upon a plea of guilty when it explained:

> [t]he case before us closely resembles, in all relevant respects, the Eighth Circuit's opinion in United States v. Pratt [657 F.2d 218 (8th Cir.1981)] where the court found that the defendant actually waived a double jeopardy claim. Pratt pleaded guilty to two counts of distributing a controlled substance. The court then imposed consecutive sentences. Pratt challenged his sentence, arguing that the two counts resulted from only one criminal act, and consequently, the consecutive sentence

violated his double jeopardy rights. He argued, under *Menna,* that he could assert a double jeopardy claim notwithstanding his guilty plea.

The Eighth Circuit disagreed, stating that *Menna,* unlike *Pratt*, "did not explicitly and voluntarily expose himself to the very event (here, consecutive terms of imprisonment) that he later claimed was a violation of the Double Jeopardy Clause." The court held that Pratt "had no right to be surprised at the sentence that was imposed. He received the benefit of his bargain, dismissal of the other four counts."

In United States v. Fritsch, [891 F.2d 667 (8th Cir.1989)] the same court distinguished but reaffirmed the logic in Pratt. Fritsch challenged the validity of the sentencing guidelines. The court held that Fritsch, "by accepting the benefits of the plea agreement (the dismissal of two counts of the indictment) and by agreeing that the guidelines should be applied (including a possible five-month sentence), waived any objection to the validity of the Sentencing Guidelines, [891 F.2d at 668].The court stated: "[A] defendant who explicitly and voluntarily exposes himself to a specific sentence may not challenge that punishment on appeal." Fritsch, 891 F.2d at 668.

The Eighth Circuit reiterated the *Fritsch* rule in an equal protection case, United States v. Severe [29 F.3d 444 (8th Cir.1994)]. One of the defendants in Severe argued that the 100-to-1 disparity between sentences involving cocaine base and cocaine denied him due process and equal protection. The court held that the defendant waived those claims when he acknowledged in his plea agreement that the charge to which he had pleaded guilty had

> a minimum penalty of ten years' imprisonment. [Severe 29 F.3d at 448].
>
> We also are persuaded by the reasoning of the California Supreme Court, which has treated these types of claims as attacks on the validity of the plea agreement based on events predating entry of the plea and waiver. In People v. Panizzon,[13 Cal.4th 68, 51 Cal. Rptr.2d 851, 913 P.2d 1061 (1996)]. Panizzon appealed his life sentence, which was imposed under a plea agreement that specifically provided for the imposition of the sentence. The court stated:
>
> Not only did the plea agreement in this case specify the sentence to be imposed, but by its very terms the waiver of appellate rights also specifically extended to any right to appeal such sentence. Thus, what defendant seeks here is appellate review of an integral element of the negotiated plea agreement, as opposed to a matter left open or unaddressed by the deal....
> * * *
> The court held, as a result, that appellate review of a sentence disproportionality claim, where the sentence was negotiated as part of a plea agreement and was not in excess of the maximum statutory penalty, was waived Panizzon, 51 Cal.Rptr.2d 851, 913 P.2d at 1073-74.

State v.Moten, 95 Wash.App. at 932-935, 976 P.2d 1286 (1999) (all emphasis added, some citations omitted).

The reasoning and logic of the above-referenced cases set out in Moten, supra , should be applied to Amos's challenges and

this Court should decide that it is "persuaded by the foregoing authorities that . . . [the defendant's] claims are not reviewable. Indeed, like the Moten court explained in that case, Amos here likewise "specifically negotiated his standard range sentence as part of a plea agreement and cannot now choose to argue that the sentence is unconstitutional as applied to him." Moten, supra (emphasis added; 2/16/2000 RP 1-27 (1st plea hearing) 4/25/2000 RP 3-23 (2nd Plea Hearing)).9 Indeed, in the present case, Amos was "a defendant who explicitly and voluntarily expose[d] himself to a specific sentence [and] may not challenge that punishment on appeal." Mote, supra ; Fritsch, 891 F.2d at 668 (emphasis added); 4/25/2000 RP 3-23; 2/16/2000 RP 1-27.

The record here shows that Amos originally pleaded guilty as charged, which included the assault in the first degree charge (2/16/2000 RP 2-15) but through further negotiations on Amos's part, he bargained for a plea to the lesser assault in the second degree charge in exchange for dismissal/vacation of the assault first degree charge and unlawful possession of a firearm charge. See e.g., 4/25/00 RP 3-23 . For instance, at page three of the April 25, 2000, report of the proceedings Mr. Amos's attorney told the court, "[The Prosecutor] and I have come to something that all

three of us agree to in terms of sentencing recommendation and what will go on Mr. Amos's record. This is the result of a lot of negotiations." 4/25/00 RP 3-7 (emphasis added). The prosecutor then explained to the court that "the end result is we're trying to get to [sic] is an agreed recommendation of a total of 120 months." 4/25/2000 RP 6 (emphasis added). The judge also inquired about Mr. Amos: "What he's pleading to is a new Count III on the second amended information?" The prosecutor answered, "yes." 4/25/00 RP 6. The court also noted, "Count III as re-written is charging him with assault in the second degree, which is a reduction from the original plea of Count III, which was assault in the first degree." 4/25/2000 RP 7,8(emphasis added). Amos's attorney also said, "[t]his is a total joint agreement between Mr. Amos, myself and [the prosecutor]." 4/25/2000 RP 5 (emphasis added). Amos's attorney further informed the court, "as we both indicated several times, the goal of the manipulations we have gone through is to get to 120 months. He was looking at upwards of 22 years." 4/25/2000 RP 13 (emphasis added). And, the trial judge reiterated the bargain Amos was getting when he said, "I think you're the beneficiary here of some very good work by your attorney because, frankly, given the gravity of the offense, you could have been looking at far more

time." 4/25/2000 RP 20. In other words, Amos got exactly what he bargained for: dismissal/vacation of his plea to the assault first degree charge and dismissal of the firearms charge, along with a sentencing recommendation of 120 months --far less than he was facing originally--and a sentence that the judge followed. 2/16/2000 RP and 4/25/2000 RP 5-8; 20, 21. Given the fact that Amos got *exactly what he bargained for* in the plea agreement, this court should follow the reasoning of Majors, Moten, Pratt and the other cases cited in Moten, and should agree that Amos's guilty plea waived his right to appeal the very sentence he bargained for. In other words, Amos is,"a defendant who explicitly and voluntarily expose[d] himself to a specific sentence" and he may not now challenge the very sentence that he bargained for." Fritsch, 891 F.2d at 668 (emphasis added). In short, Amos made his own bed with this plea agreement, and now he should have to lie in it.

1. State v. Ermels Does Not Apply Here Because Amos Entered his Plea on Two Different Dates in Two Different Documents.

This Court directed the parties to address the issue of whether the ruling of State v. Ermels, 156 Wn.2d 528, 131 P.3d 299 (2006) applies in this case. Ermels dealt with several issues, including indivisibility of plea agreements and waiver of the right to

appeal, but the State does not believe that the reasoning of Ermels applies in this case because here there were *two* plea hearings, held on separate days. See generally 2/16/2000 RP and 4/25/2000 RP; See also, In re Shale, 160 Wn.2d 489, 493, 153 P.3d 588 (2007) where the Supreme Court discusses "previous holdings where we have held indivisible plea bargains involving multiple charges are found where pleas were made at the same time, described in one document, and accepted in a single proceeding." Id. citing State v. Turley, 149 Wn.2d 395, 398, 69 P.3d 338 (2003) (emphasis added) and State v. Ermels, 156 Wn.2d 528, 541, 131 P.3d 299 (2006); State v. Bisson, 156 Wn.2d 507, 519, 130 P.3d 820 (2006). "In State v. Ermels, the state supreme court held that Ermels could not challenge either his stipulation to facts supporting his exceptional sentence or his waiver to the right of appeal in a plea agreement without challenging the entire agreement." State v. Poston 138 Wash.App. 898, 905, 158 P.3d 1286, 1290 (2007). That is not what happened here, because Amos was allowed to withdraw his plea to the more serious offense of assault in the first degree (with a weapons enhancement) and "re-enter" a guilty plea to the "substitute," lesser charge of assault in the second degree with a weapons enhancement. RP 4/25/00 2-17. Accordingly, the

State does not believe that the ruling in Ermels regarding the indivisibility of a plea agreement applies here. Nonetheless, as previously discussed, the State still maintains that Amos's guilty plea waived his right to challenge the very sentence that he bargained for.

But Amos also urges this Court to apply the ruling in State v. Freeman, 153 Wn.2d 765, (2005). The State disagrees, as more fully discussed below..

B. AMOS'S CASE IS DISTINGUISHABLE FROM *FREEMAN* SO THE TRIAL COURT DID NOT ERR IN DENYING AMOS'S MOTION TO MERGE THE ASSAULT AND ROBBERY CONVICTIONS Under *FREEMAN.*

Amos relies upon State v. Freeman for his claim that his robbery in the first degree conviction and his assault in the second degree conviction should merge. State v. Freeman, 153 Wn.2d 765, (2005). But Amos's reliance upon Freeman is misplaced because the facts here distinguish Amos's case from Freeman. Freeman does not stand for the proposition that an assault and a robbery first degree conviction will *always* merge. Instead Freeman notes that such cases must be reviewed on a case-by-case basis.

Claims of a merger violation are reviewed *de novo*. Freeman, 153 WN.2d at 770. Merger is a doctrine of statutory interpretation that examines whether the legislature intended to impose multiple punishments for a single act that violates more than one statutory provision. State v. Fletcher, 113 Wn.2d 551. The merger doctrine prevents the State from "pyramiding the charges" faced by the defendant. State v. Saunders, 120 Wn.App. 800, 820, 86 P.3d 232 (2003). Merger applies when a crime is elevated to a higher degree by proof that the defendant committed an additional crime. Saunders, 120 Wn. App. at 821; State v. Parmelee, 108 Wn.App. 702, 710, 32 p.3d 1029 (2001). If the crimes have different purposes or effects, then they may be punished separately. Fletcher, 113 WN.2d at 52. The reviewing court must also examine the elements of the crime to see if the legislature intended the crimes to be punished separately. Id.

In the present case, as shown by the charging document CP 135-138)(Appendix A) the assault in the second degree as charged in the alternative here did *not* elevate the robbery to robbery in the first degree, because the robbery in the first degree was already "elevated" by the assault with a separate weapon: the walkie talkie. CP 135-138; CP 157-162; CP 152-156; CP 163-167. But the

assault in the second degree that Amos pleaded guilty to here was accomplished either with the handgun or while in commission of a felony. CP 135-138. Accordingly, the facts here are distinquishable from the situation in Freeman so Freeman does not apply here. The question in Freeman was "whether and, if so, when, the legislature intended to punish separately both a robbery elevated to first degree by an assault, and the assault itself." Freeman, 153 Wn.2d at 771 (emphasis added). This question arose because the defendants in Freeman had been charged with robbery under RCW 9A.56.200(1)(a)(iii)--the "inflicts bodily injury prong." See 153 Wn.2d at 769. "When an assault elevates the degree of robbery, courts have regularly concluded that the two offenses are the same for double jeopardy purposes." Freeman, 153 Wn2d at 774 (emphasis added). So, again, Freeman did not hold that robbery and assault will *always* merge. Freeman, 153 Wn.2d at 780. Indeed, far from making a bright-line rule that robbery and assault convictions must always merge, the Freeman Court explained that, ""a case by case approach is required to determine whether first degree robbery and second degree assault are the same for double jeopardy purposes. Generally, it appears that these two crimes will merge *unless they have an independent*

purpose or effect." Freeman, 153 Wn.2d at 780 (emphasis added). The Freeman Court gave an example of when assault in the second degree would not merge: "when the defendant struck a victim *after* completing a robbery, there was a separate injury and intent justifying a separate assault conviction, especially since the assault did not forward the robbery." Freeman, at 779, citing State v. Prater, 30 Wn.App. 512, 516 635 P.2d 1104 (1982). The Court in Freeman went on to explain the "independent purpose or effect" exception to the merger doctrine:

> These offenses [robbery in the first degree and second degree assault] may in fact be separate when there is a separate injury to the "person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element." Frohs, 83 Wn.App. at 807 (citing Johnson, 92 Wn.2d at 680). This exception is less focused on abstract legislative intent and more focused on the facts of the individual case. . . . The test is not whether the defendant used the least amount of force to accomplish the crime. The test is whether the unnecessary force had a purpose or effect independent of the crime.
>
> State v. Freeman, 153 Wn.2d at 779 (emphasis added).

And, in State v. Esparza, 135 Wn.App. 54, 65-66, 143 P.3d. 612 (2006) the court also addressed Freeman but distinguished its ruling, stating:

> In contrast, in the case at bar, the State was not required to prove . . .[defendant] committed the crime of second degree assault in order to elevate the attempted robbery to attempted first degree robbery. Because the robbery involved the alleged use of a firearm, the State only had to prove that Beaver was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon. Here, it was charged and proved that Beaver was armed with a deadly weapon, therefore elevating the attempted robbery to first degree attempted robbery. Since it was unnecessary under the facts of this case for the State to prove that [the defendant] engaged in conduct amounting to second degree assault in order to elevate his robbery conviction, and because the State did prove conduct not amounting to second degree assault that elevated [the defendant's attempted robbery conviction, the merger doctrine does not prohibit [the defendant's] conviction for both attempted first degree robbery and second degree assault.

State v. Esparza 135 Wash.App. 54, 65-66, 143 P.3d 612 (2006) (all emphasis added; citations omitted). This reasoning applies here and this case, like the Esparza case can be distinguished from Freeman.

In the present case, Amos pleaded guilty to robbery in the first degree under the "armed with a deadly weapon" prong of the statute. See RCW 9A.56.200(1)(a)(i). Here, unlike in Freeman, the assault in the second degree charge which Amos pled to in the Second Amended Information was charged, in the alternative, as

assault in the second degree by which Amos "there intentionally assaulted Joe Hull with a deadly weapon or with intent to commit a felony, Robbery in the First Degree or Burglary in the First Degree, did assault Joe Hull. . ." under RCW 9A.36.021(1)(c)(e) (See 2nd Amended Information, (CP 135-138, Appendix A).Thus, here, unlike in Freeman we are not dealing with the situation where Amos's robbery was charged under the "inflicts bodily injury" prong where the robbery was elevated to first degree by an assault. Instead the robbery here was first degree robbery because it was committed with a deadly weapon (walkie talkies). RCW 9A.56.200(1)(a)(i); Second Amended Information. CP 135-138. And here, unlike in Freeman , the assault in the second degree was charged as being committed either with a deadly weapon " or with the intent to commit a felony. . ." (emphasis added)(Second Amended Information--CP 135-138, Appendix A. Accordingly, because the assault second degree in the present case--as shown by the charging language in the Second Amended Information--was not relied upon to elevate the degree of the robbery charge (because the robbery was already raised to the higher degree because it was committed with a deadly weapon (walkie talkie), Freeman does not apply here and Amos is properly punished for

both the assault and the robbery. See State v. Esparza, 135 Wn.App. 54, 65-66, 143 P.3d 612 (2006); State v. Cole, 117 Wn.App. 870, 73 P.3d 411 (2003), review denied, 151 Wn.2d 1005 (2004).)

In sum, because the robbery in the first degree in Amos's case was charged under the deadly weapon prong, and the assault in the second degree was charged under alternative means--one of which was "with intent to commit a felony," the assault had an independent purpose or effect, and this did not elevate the robbery to a higher degree. Denial of merger in this case was not error and Amos's double jeopardy claim fails.

1. The Trial Court Specifically Found that the Assault here was "Gratuitous" and Further Found There had Been Two Separate and Distinct Assaults, Thus There Was No Error in Denying Amos's Motion to Merge.

In the present case there is yet another reason that it was not error for the trial court to deny Amos's motion to merge the assault and the robbery. That is because in denying Amos's motion to merge, the trial court found that the force used in the assault was "gratuitous." 7/19/05 RP 35, 36. In Freeman, the Court inferred that an exception to the merger rule can occur if the violence used is gratuitous: "[t]here is no evidence in the record to

support a conclusion that the violence used by Freeman to complete the robbery was "gratuitous," or done to impress Freeman's friends, or had some other and independent purpose or effect." Freeman, 153 Wn.2d at 779. In the present case, however, the trial court specifically noted that the violence used was gratuitous. 7/19/05 RP 35, 36. Additionally, when the trial court denied Amos's motion to merge it stated further grounds for denying merger of the robbery and the assault when the judge found that two separate and distinct assaults occurred here--one with the walkie-talkie (which comprised the robbery first degree count) and another assault with the firearm (comprising one of the alternative ways the assault second degree was accomplished). 7/19/05 RP 35, 36. Thus, in its oral ruling in this case the trial court in essence concluded that the assault in Amos's case had an "independent purpose or effect" and accordingly would not merge with the robbery. 7/19/05 RP 35, 36; Freeman 153 Wn.2d at 780.

Again, because the assault in the second degree as charged in this case did not elevate the robbery to a higher degree, the two crimes do not merge. Esparza, supra. Furthermore, the trial court stated on the record that the force used in the assault was "gratuitous" and further noted that there had been two separate,

distinct, assaults here--one with the walkie talkie (comprising the robbery count) and another assault with the firearm (one of the alternative ways the assault was charged). In other words, Amos's robbery was not elevated to first degree robbery by the assault as it was charged and pled to in this case. Therefore, the trial court did not err in refusing to merge the assault and the robbery.

C. THE TRIAL COURT PROPERLY INCLUDED AMOS'S JUNE, 2005, CONVICTION FOR ASSAULT IN THE SECOND DEGREE BECAUSE HE PLED GUILTY TO THAT CRIME BEFORE HE WAS RESENTENCED ON THIS MATTER ON JULY 19, 2005.

Amos also claims that the trial court erred when it included his June, 2005 guilty plea to assault in the second degree in his offender score when Amos was resentenced in this matter in July of 2005. Amos is wrong.

RCW 9.94A.360(1)(12) states "'Conviction' means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." (Emphasis added.) And, according to former RCW 9.94A.360(1) (2000), a "prior conviction" is "a conviction which exists before the date of sentencing for the offense for which the offender score is being computed." (Recodified at 9.94A.525(1).

In the present case, Amos' case was remanded for resentencing . The resentencing date thus became "the date of sentencing for the offense for which the offender score is being computed." Id. Our Courts have addressed the issue of computing the offender score upon resentencing when there has been an intervening conviction. For example, in State v. Clark, 123 Wn.App. 515, 519 (2004), the court addressed the identical issue raised by Amos in this passage:

> In Collicott, the court held that a conviction entered after the original sentencing but before resentencing on remand was a prior conviction for purposes of determining the defendant's offender score at resentencing. Collicott, 118 Wn.2d at 665. Clark's appeal presents the same issue.
>
> As Division One recently stated in Shilling, "[t]he offender score includes all prior convictions (as defined by [former] RCW 9.94A.030(9)) existing at the time of that particular sentencing, without regard to when the underlying incidents occurred, the chronological relationship among the convictions, or the sentencing or resentencing chronology." Shilling, 77 Wn.App. at 175. Accordingly, the trial court properly included Clark's Skagit County convictions when it determined his offender score at his resentencing.

State v. Clark, 123 Wn.App. 515, 519 (2004) (emphasis added).

Amos's situation is the same as the defendant's in Clark and the

trial court properly counted Amos's June, 2005, guilty plea to assault in the second degree as a conviction when it computed his offender score at Amos's July 25, 2005, resentencing. [2] Amos's contrary argument has no legal basis, and his 2005 conviction for assault in the second degree is properly included in his offender score.

D. AMOS'S EQUAL PROTECTION CHALLENGE FAILS IN THE FIRST INSTANCE BECAUSE AMOS IS NOT IN THE SAME "CLASS" AS HIS CODEFENDANT COLLETTE BUT, EVEN IF HE WERE, THERE HAS BEEN NO ERROR BECAUSE THERE IS A RATIONAL BASIS TO IMPOSE DISPARATE SENTENCES.

Amos claims in his supplemental grounds for review that his Equal Protection rights were violated because he received a longer sentence than his codefendant Matthew Collett.[3] But Amos is wrong because he cannot show that he is similarly situated or in the same "class" as his codefendant because their degrees of participation in these crimes were not "nearly identical."

Even a standard range sentence may be challenged on equal protection grounds. State v. Conners, 90 Wn.App. 48, 52, 950 P.2d 519 (1998). Mail, 121 Wn.2d at 712-13; State v. Herzog,

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[2] It is also the State's opinion that *if* this case were remanded for resentencing again, that Amos's 2005 conviction for Assault in the Second Degree will properly be *included* in his offender score.

112 Wn.2d 419, 423, 771 P.2d 739 (1989); State v. McNeair, 88 Wn.App. 331, 336, 944 P.2d 1099(1997). Where trial courts have discretion to establish sentence duration, they necessarily have discretion to impose disparate sentences upon defendants. See State v. Handley, 115 Wn.2d at 287 (statute vesting court with discretion to establish length of sentence does not violate equal protection when codefendants sentenced to different sentences); Jansen v. Morris, 87 Wn.2d 258, 261-62, 551 P.2d 743 (1976) (statute giving trial judge authority to order sentences to run concurrently or consecutively, thus permitting variation in punishment, does not violate equal protection). Moreover, the possibility of different sentences alone does not implicate equal protection. Handley, 115 Wn.2d at 288.

Federal courts have generally rejected equal protection claims based on disparate sentencing so long as the sentences imposed are within statutory guidelines. See, e.g., Williams v. Illinois, 399 U.S. 235, 243 (1970) ("Sentencing judges are vested with wide discretion in the exceedingly difficult task of determining the appropriate punishment in the countless variety of situations that appear. The Constitution permits qualitative differences in

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[3] The sentencing transcript for Matthew Collette is enclosed as an exibit --the State also

meting out punishment and there is no requirement that two persons convicted of the same offense receive identical sentences."); United States v. Bokun, 73 F.3d 8, 12 (2d Cir. 1995) ("Absent extraordinary circumstances, a defendant has no constitutional or otherwise fundamental interest in whether a sentence reflects his or her relative culpability with respect to his or her codefendants."); United States v. Perez, 904 F.2d 142, 147 (2d Cir. 1990) ("[D]disparities in sentences among co-defendants are generally not reviewable."); United States v. DiStefano, 555 F.2d 1094, 1102 (2d Cir. 1977) (disparity in sentences of co-conspirators generally not reviewable when sentence imposed is within statutory limitations). The majority of state courts interpreting the federal right to equal protection have reached the same conclusion: that disparate sentences are not reviewable for equal protection violations as long as they fall within statutory limitations. See, e.g., People v. Bruebaker, 539 P.2d 1277,1279 (Colo. 1975) ("Due to the individualized nature of sentencing, there is no rule that confederates in crime must receive equal sentences, nor that failure to impose equal sentences violates equal protection of the law under the

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had previously sent Mr. Amos this transcript.

Colorado or United States Constitutions."); State v. Candito, 493 A.2d 250, 253 (Conn. App. Ct. 1985) ("Co-defendants are not without variance, and need not, in terms of punishment, be treated similarly because they are rarely, if ever, exactly similar."); State v. Hansen, 877 P.2d 898, 904 (Idaho 1994) (requirements of equal protection not violated merely because disparate sentences are imposed on co-defendants); State v. Baker, 636 A.2d 553, 565 (N.J. Super. Ct. App. Div. 1994) (disparate sentences do not offend equal protection where defendant's sentence was within statutory limitations and there was no evidence of invidious or arbitrary action by the prosecutor or the court).

Equal protection rights can be implicated, however, if a defendant demonstrates "that he or she is similarly situated [to a codefendant] by virtue of near identical participation in the same set of criminal circumstances." State v. Handley, 115 Wn.2d 275, 290, 796 P.2d 1266 (1990)(emphasis added). By such "near identical participation," Handley states, a "class" is thereby created amongst codefendants for sentencing purposes. Id. Then, "[o]nly after membership in such a class is established will equal protection scrutiny be invoked." Id; State v. Manussier, 129 Wn.2d 652, 672, 921 P.2d 473 (1996)(emphasis added, citation omitted);

State v. Sanchez, 69 Wn.App. 195, 208-209, 848 P.2d 735 (1993) (equal protection analysis does not apply because codefendants not similarly situated); State v. Veazie, 123 Wn.App. 392, 402-403, 98 P.3d 100 (2004) (equal protection analysis not appropriate because defendant could not show he was similarly situated with codefendant whose offenses were joined); see alsoState v. Sanchez, 69 Wn.App. 195, 208-209, 848 P.2d 735 (1993), where the reviewing court rejected such an equal protection challenge because the two codefendants did not have "near identical participation" in the crimes, so were not in the same "class," thus an equal protection analysis was not appropriate. Id. The same is true here because Amos, unlike Collette, was said to have been the "ringleader" in this case because Amos actually planned the crime. See Affidavit of Probable Cause (attached). This difference in participation in the crimes in this case removes Amos from the same "class" as his codefendant Collette and thus we do not even reach the "rational basis" test and his equal protection claim fails.

But even if Amos were found to be in the same class as his codefendant Collette, his equal protection challenge fails because there is a rational basis for the trial court to have imposed disparate sentences. State v. Conners, 90 Wn.App. 48, 52, 950 P.2d 519

(1998). A trial court is justified in imposing disparate sentences to codefendants based on any number of factors including relative culpability, criminal record, and rehabilitation potential. Handley, 115 Wn.2d at 292 (citing People v. Centanni, 164 Ill. App.3d 480, 493 517 N.E.2d 1207 (1987)). "'The rational relationship test is the most relaxed and tolerant for of judicial scrutiny under the equal protection clause." In re Boot 130 Wn.2d 553, 573, 925 P.2d 964 (1996) (quoting State v. Shawn P., 122 Wn.2d 663, 561, 859 P.2d 1220 (1993)). Moreover, "even where codefendants are convicted of the same or similar crimes, a trial court is justified in imposing disparate sentences based on relative culpability, criminal record, rehabilitation potential, cooperation with law enforcement, and differences in pleas." Musgrave , 117 Wn.App. 470, 481, 68 P.3d 1078 (2002). Additionally, "'[r]elevant distinctions need not pertain only to the codefendants' relative culpability or to the pleas to which they agreed, but may pertain to anything which provides a rational basis for the disparate sentences.'" State v. Musgrave 117 Wn.App. 470, 481, 68 P.3d 1078 (2002)(citations omitted). For example, in State v. Turner, one defendant in a robbery received only a suspended sentence of one year in jail but the second defendant got multiple consecutive 25-year terms--but a rational

basis for the difference in treatment was found because the first defendant pleaded guilty to charges in exchange for trial testimony while the other defendant was convicted of more serious charges by a jury, had previous convictions and acted more aggressively during the crime. State v. Turner, 31 Wn. App. 843, 846-48, 644 P.2d 1224 (1982); See also, State v. Hurst, 5 Wn.App. 146, 149, 486 P.2d 1136 (1971) (prior felony conviction is a rational basis for differentiation in maximum sentences); see also, State v. Portnoy, 43 Wn.App. 455, 465, 718 P.2d 804, review denied, 106 Wn.2d 1013 (1986) the court found that a rational basis existed for disparate sentences between codefendants where one codefendant could have rationally been found to be less dangerous and less deserving of imprisonment than his codefendant who had provided the pistol and ordered that the pistol be raised. See also State v. Hurst, 5 Wn.App. at 149-150(difference in degree of prior criminal involvement is a rational basis for difference in sentences); State v. Conners, 90 Wn. App. at 53 (equal protection challenge denied because codefendant's exceptional sentence downward was based on a finding that codefendant was not the "kingpin" in the drug operation, that codefendant had been directed by Conners and that the codefendant had cooperated with the prosecution and

had pleaded guilty; the Court agreed that such factors constituted a rational basis for imposing different sentences for the codefendants).

In the present case, the trial court had a rational basis for treating Amos differently than his codefendant Matthew Collett because 1)Amos could rationally be found to have orchestrated the robbery, 2) Amos committed another violent offense while in prison on these charges and thus had a very recent violent conviction in his criminal history, 3) Amos's assault in the second degree offense in the present case included a deadly weapon enhancement and Collette's did not and, 4) Amos initially agreed to provide testimony against others in the case, but then failed a polygraph and thus could no longer be relied upon for his cooperation with authorities. CP 157-162; CP 14-22; CP 14-22.

So, even if we assume that Amos was "similarly situated" to Collette, Amos's equal protection claim fails because the trial court had a rational basis for imposing disparate sentences for Amos and his codefendant Collette. Accordingly, Amos's equal protection argument fails as further explained below.

1. Assuming, *Arguendo*, that Amos and his codefendant Collette are in the same class, it Appears that Mr. Collette Was Sentenced *Too Leniently* when the State Erroneously Conceded the Merger Issue in Collette's case, But That Should *Not* Mean that We Must Now Compound that Sentencing Error Here.

Even assuming, for the sake of argument, that Amos's codefendant, Mr. Collette, *was* "equally involved" and "equally charged"[4] and that the State erroneously conceded the merger issue in Collette's case, this does not mean that we must now compound that error by making the same error in Amos's case. See e.g., In re PRP of Goodwin, 146 Wn.2d 861, 875, 50 P.3d 618 (2002)(a court is not bound by an erroneous concession related to a matter of law, citing State v. Knighten, 109 Wash.2d 896, 902, 748 P.2d 1118 (1988); State v. Harrison, 143 Wn.2d 550, 61 P.3d 1104 (2003) (discussing collateral estoppel in sentencing). Additionally, it is instructive to examine how the Minnesota appellate courts have handled such equal protection claims in

[4] Amos and Collette were *not* "equally charged" because Collette's sentence did *not* include a firearm enhancement. See enclosed sentencing transcript for Matthew Collette.

sentencing. [5] Professor Boerner indicates that the Minnesota Supreme Court has been presented with the claim by one defendant that his sentence should be reduced because it is more severe than the sentence received by his codefendant. The Minnesota Supreme Court has considered such claims and equalized the sentences when it found no justification for the disparity and refusing to do so when it found the different sentences justified. But the Court has refused to equalize sentences when it believed the difference in sentences was created because one sentence was too lenient. The Court has recognized that the principle of commensurateness applies not only between codefendants but also between all those who commit similar offenses. To reduce the sentence of the codefendant (here, Amos) below what is deserved would be to impose a second unjust sentence (Collette's sentence--assuming he was sentenced on the same, exact charges which he was not), and while the two sentences would be commensurate with each other, *both would be unjust* when compared to all others who have committed the same crime. As the Minnesota Court said:

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[5] Minnesota cases on sentencing are persuasive authority in Washington. State v. Crutchfield, 53 Wn.App. 916, 927, 771 P.2d 746 (1989); State v. Falling, 50 Wn.App. 47, 55, 747 P.2d 1119 (1987).

> we are left with a choice between affirming defendant's sentence, which is not a relatively harsh sentence when compared with those given other offenders who have committed similar misconduct, and reducing defendant's sentence to that given his equally culpable accomplice, who received a sentence that we believe was too lenient. Reducing defendant's sentence would be to *compound the error rather than to limit it.*

[Footnotes omitted and all emphasis added.] D. Boerner, Sentencing in Washington § 9.10, at 9-18 (1985), quoting State v. Vasquez. 330 N.W.2d 110, 112-13 (Minn. 1983) (court refused to reduce defendant's exceptional sentence upward which was almost twice that of his more culpable accomplice). See also State v. Williams 337 N.W.2d 387 (Minn. 1983) (court refused to reduce the defendant's standard range consecutive sentence to match accomplice's standard range concurrent sentence); State v. Davis. 324 N.W.2d 802 (Minn. 1982) (court refused to reduce the defendant's exceptional sentence upward on the ground that the charges against his co-participant were dismissed). Professor Boerner indicates that not reducing a defendant's sentence solely because s/he claims that the sentence is unduly harsh when compared with that meted out to a co-participant *is sound* because it isolates the too lenient sentence instead of compounding the

error by extending it to a second. Id., at 9-18 to 9-19. Professor Boerner opines that application of this principle in Washington "would further the purpose that punishment be 'commensurate with the punishment imposed on others committing similar offenses.'"[1] Id., at 9-19, quoting RCW 9.94 A.010 (3).

This court should follow the reasoning of the majority of other jurisdictions and should find that even if Amos's codefendant was erroneously sentenced too leniently, this Court should not compound that error here by ordering that Amos should also receive a sentence that is too lenient for the crimes committed.

E. THE PROSECUTOR DID NOT VIOLATE THE PLEA AGREEMENT BY INCLUDING ALL OF AMOS'S "COUNTABLE" CRIMINAL HISTORY AS OF THE DATE OF HIS RESENTENCING.

In his statement of additional grounds Amos claims that because the State included in his offender score his assault in the second degree conviction that he committed while in prison for this case and which he pled to just prior to his resentencing in this case, that the State therefore violated the plea agreement. This is not correct.

The language in the Statement of Defendant on plea of guilty contemplates that there may be additional criminal history

discovered later. Amos himself sets out this language in footnote 22 which quotes from the Statement of Defendant on Plea of Guilty, in pertinent part:

> If I am convicted of any additional ***crimes between now and the time I am sentenced***, I am obligated to tell the sentencing just about those convictions. . . . 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."

Statement of Defendant on Plea of Guilty, (d), page 2; Defendant's Statement of Additional Grounds at 22, note 22 (all emphasis added). It is certainly no fault of the State that Amos decided to commit another violent crime while he was in prison for the crimes in the present case. (See generally 7/19/2005 RP.) But the fact remains that Amos *did* commit another violent felony *after* the present crimes had been committed, but *before* the resentencing date for the present case. Accordingly, Amos's offender score properly included the assault in the second degree offense that Amos committed after the offenses in this case were committed, but before the resentencing date in this case. This is the rule pursuant to statute and such an occurrence is contemplated by the very language set out in the Statement of Defendant on Plea of

Guilty, page 2, paragraph (d), CP 128-134; CP 140-150; Appendix A1 and A2.. Therefore, Amos's felony assault in the second degree conviction was properly included in Amos's offender score and his argument to the contrary is without merit.

CONCLUSION

Because Amos entered his pleas to burglary in the first degree, robbery in the first degree, assault in the second degree, theft of a firearm and unlawful possession of a firearm in the first degree pursuant to a plea bargain with the State, in which the State dismissed a more serious charge in exchange for his guilty plea, and where Amos entered the plea knowingly and voluntarily, with full knowledge of the consequences, and because he received a sentence within the standard range, Amos received the benefit of his bargain, and his double jeopardy challenge to the crimes and sentenced that he bargained for is barred. But even if Amos can appeal on the basis of double jeopardy, his reliance on State v. Freeman is misplaced because the robbery first degree and assault second degree that Amos pleaded guilty to were charged under different prongs of the statutes than those in Freeman, and Amos's assault charge did not elevate the robbery to a higher degree. Amos's robbery first degree offense was already elevated to the

higher degree because Amos committed it while armed with a deadly weapon (the walkie talkie). Thus, Amos's convictions do not present the same issues present in Freeman. Moreover, the assault and the robbery do not merge here because the trial court found the force used in the assault was "gratuitous" and further found that there had been two separate and distinct assaults in this case-- one with the walkie talkie (comprising the robbery count) and one with the firearm (comprising the assault count). Consequently, the record adequately supports the trial court's denial of Amos's merger motion.

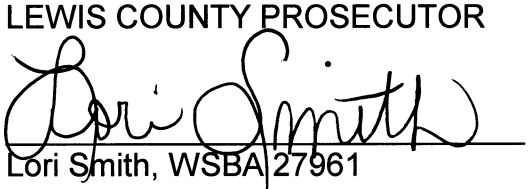
Moreover, the trial court properly included Amos's 2005 felony assault conviction in his offender score at his resentencing because Amos committed that new offense after he was in prison for these crimes but before his resentencing hearing. Furthermore, because Amos is not in the same class as his codefendant since he is not similarly situated, his equal protection analysis does not apply. But, even if Amos were in the same class as his codefendant Collette, equal protection is not violated because the trial court had a rational basis for imposing disparate sentences between Amos and Collette. Even if we assume the trial court erred in sentencing Amos's codefendant too leniently, that should

not mean that we must compound that error here and circumvent justice by resentencing Amos contrary to law and contrary to principles of justice.

In sum, the trial court did not err in its resentencing of Amos in this case. Accordingly, Amos's convictions and sentence should be affirmed in all respects.

RESPECTFULLY SUBMITTED this 2nd day of January, 2008.

L. MICHAEL GOLDEN
LEWIS COUNTY PROSECUTOR

by: 

Lori Smith, WSBA 27961
Deputy Prosecutor

APPENDIX

A

Received & Filed
LEWIS COUNTY
APR 25 2000
By Nettie Jungers, Clerk
Deputy

21

SCANNED

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

STATE OF WASHINGTON, Plaintiff, vs. FORREST EUGENE AMOS, DOB: 05/16/1983, Defendant, LANCE MARTIN KAPSH, LANE PATRICK BELL STEELE, MATHEW (NMN) COLLETT, CO-Defendants.	No. 00-1-00033-7 2nd AMENDED INFORMATION (as to Count III only)

Certified

COUNT I - BURGLARY IN THE FIRST DEGREE

By this Information the Prosecuting Attorney for Lewis County accuses the defendant of the crime of BURGLARY IN THE FIRST DEGREE, which is a violation of RCW 9A.52.020(a), the maximum penalty for which is life in prison and a $50,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, then and there with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building and, in entering or while in the building or in immediate flight therefrom, the defendant was armed with a deadly weapon; and in the commission thereof, the defendant was armed with a firearm, to wit: a Rugar pistol, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370; against the peace and dignity of the State of Washington.

COUNT II - ROBBERY IN THE FIRST DEGREE

And I, the Prosecuting Attorney aforesaid, further do accuse the defendant of the crime of ROBBERY IN THE FIRST DEGREE, which is a violation of RCW 9A.56.200(1)(a), the maximum penalty for which is life in prison and a $50,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, then and there did unlawfully take personal property from the person or in the presence of Joe Hull,

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APPENDIX A

against such person's will, by use or threatened use of immediate force, violence and fear of injury to such person or his property and in the commission of and immediate flight therefrom, the defendant was armed with a deadly weapon, to-wit: a walkie talkie; and in the commission thereof, the defendant was armed with a firearm, to wit: a Rugar pistol, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370; against the peace and dignity of the State of Washington.

COUNT III - ASSAULT IN THE SECOND DEGREE

And I, the Prosecuting Attorney aforesaid, further do accuse the defendant of the crime of ASSAULT IN THE SECOND DEGREE, which is a violation of RCW 9A.36.021(1)(c)(e), the maximum penalty for which is 10 years in prison and a $20,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, then and there intentionally assaulted Joe Hull with a deadly weapon or with the intent to commit a felony, Robbery in the First Degree or Burglary in the First Degree, did assault Joe Hull; and in the commission thereof, the defendant was armed with a firearm, to wit: a Rugar pistol, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370; against the peace and dignity of the State of Washington.

COUNT IV - POSSESSION OF STOLEN FIREARM

And I, the Prosecuting Attorney aforesaid, further do accuse the defendant of the crime of POSSESSION OF STOLEN FIREARM, which is a violation of RCW 9A.56.310, the maximum penalty for which is 10 years in prison and a $20,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, then and there willfully and feloniously did possess, carry or was in control of a stolen firearm, to-wit: a Ruger pistol; against the peace and dignity of the State of Washington.

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COUNT V - THEFT OF A FIREARM

And I, the Prosecuting Attorney aforesaid, further do accuse the defendant of the crime of THEFT OF A FIREARM, which is a violation of RCW 9A.56.300, the maximum penalty for which is 10 years in prison and a $20,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, in Lewis County, Washington, then and there did commit the crime of theft of a firearm; against the peace and dignity of the State of Washington.

COUNT VI - UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE

And I, the Prosecuting Attorney aforesaid, further do accuse the defendant of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, which is a violation of RCW 9.41.040(1)(a), the maximum penalty for which is 10 years in prison and a $20,000 fine, in that defendant on or about January 16, 2000, in Lewis County, Washington, then and there after having been convicted of a serious offense did own or have in his possession and control a firearm, to-wit: a Rugar pistol; against the peace and dignity of the State of Washington.

Dated: 4/25/2000

JEREMY RANDOLPH
Prosecuting Attorney

By: _____
DONALD A. BLAIR, WSBA# 24637
Deputy Prosecuting Attorney

LEWIS COUNTY
PROSECUTING ATTORNEY
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APPENDIX A

DEFENDANT INFORMATION							
NAME: FORREST EUGENE AMOS					DOB: 05/16/1983		
ADDRESS: 323 WEST VINE					CITY: NAPAVINE		
STATE: WA		ZIP CODE: 98565			PHONE #(s):		
SSN:	SID: WA18562708		FBI:		LEA#: 00C-590		
DRIV. LIC. NO.	DL ST	SEX: M	RACE:	HGT:	WGT: 0	EYES:	HAIR:
OTHER IDENTIFYING INFORMATION:							

I, Kathy A. Brack, Clerk of the Superior Court for Lewis County, do certify the foregoing is a true copy of the original on file and of record in my office November 29, 2007

Kathy A. Brack, Lewis County Clerk
By Michele A. Stoner Deputy

APPENDIX A

APPENDIX

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CERTIFIED

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

NO. 00.1.33.7

STATE OF WASHINGTON,
Plaintiff

vs.

Forest Amos,
Defendant.

STATEMENT OF DEFENDANT ON PLEA OF GUILTY (STTDFG)

Filed
LEWIS COUNTY, WASH
Superior Court
FEB 16 2000
By Nettie Jungers, Clerk
Deputy

1. My true name is: Forest E. Amos

2. My age is: 16. 3. I went through the _____ 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 wil be provided at no expense to me. My lawyer's name is Jodi R Backlund

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

Count I:.
The elements of this crime are: See attached

Count II:
The elements of this crime are:

Count III:
The elements of this crime are:

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

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

APPENDIX A-1

APPENDIX A-1

LEWIS COUNTY
PROSECUTING ATTORNEY
[illegible] NW NORTH ST MS PROS
CHEHALIS, WASHINGTON [illegible]
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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. 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).

(g) The prosecuting attorney will make the following recommendation to the judge: _____

See attached

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is a grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040

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

[k] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

[l] The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, two years community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

[m] The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater, I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

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

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

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

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

LEWIS COUNTY
PROSECUTING ATTORNEY
[illegible] NW NORTH ST MS PROSI
CHEHALIS, WASHINGTON [illegible]
[illegible]
FAX [illegible]

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level III or on a monthly basis if I have been classified as a risk level I or II. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

[o] If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes 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.

[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 outpatient treatment, a condition not to use illegal controlled substances, and requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could require me to devote time to a specific employment or training, to stay out of certain areas, and to pay thirty dollars per month to offset the cost of monitoring.

[s] 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 69.50.40(a)(l)(ii)

[t] 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.

[u] 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).

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[w] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[k].

[w] 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.

[x] 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.

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

[z] This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count(s) 1-6 in the amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

See attached

[ ] 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 theplea.

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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.

X Forrest Amos
Defendant

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

Prosecuting Attorney Bar # 15557

Deputy
DAVID R ARCURI
Print Name

Defendant's Lawyer Bar # 22917

Print Name

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

☐ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;

☒ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ *(c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

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: February 16, 2000

Judge

LEWIS COUNTY
PROSECUTING ATTORNEY
345 NW NORTH ST MS PROS1
CHEHALIS, WASHINGTON 98532 1999
(360) 748 1245

Forrest E. Amos

00-1-00033-7

Addendum to Plea Statement

Paragraph 4b:

Count I: Burglary 1, with firearm enhancement – with intent to commit a crime against a person or property therein, did unlawfully enter or remain in the building of another while armed with a firearm.

Count II: Robbery 1 with firearm enhancement – unlawfully take personal property away from the person of another against their will, by use of threat or force, while armed with a firearm.

Count III: Assault 1, with firearm enhancement – unlawfully assault another while armed with a firearm with intent to inflict great bodily harm, with force or means likely to produce great bodily harm or death. while possessing a deadly weapon. JRB

Count IV: Possession of a Stolen Firearm – unlawfully possess firearm of another, knowing it to be stolen. FA

Count V: Theft of a Firearm – unlawfully take firearm of another with intent to deprive.

Count VI: Unlawful Possession of a Firearm 1 – having been convicted of a serious offense, unlawfully possess a firearm.

Paragraph 6a:

Count	Standard Range	Enhancement	Total	Maximum
1	87-116m.	60m.	147-176m.	life
2	129-171m.	60m.	179-231m.	life
3	240-[illegible]m.	84[illegible]m.	344-402	life
4	[illegible]m. 33-43m.	—	33-43 [illegible]m.	5 years
5	36-48m.	—	36-48m.	10 years
6	41-54m.	—	41-54m.	10 years

4, 5, 6 must be consecutive. JRB FA

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Paragraph 11:

On January 16, 2000, in Lewis County, I was in a person's building, I had permission to go in but not to remain as long as I did. I went in with the intent to help my friends take some marijuana. While we were there, we assaulted Mr. Hull and caused great bodily injury, with a deadly weapon (walkie-talkie). JE we stole the marijuana, and a gun. I have been convicted of a serious felony in the past, and I cannot possess a gun.

Signed this 16th day of February, 2000.

Forrest E. Amos
Defendant

Jodi R. Backlund, WSBA #22917
Attorney for Defendant

ORIGINAL

AGREEMENT BETWEEN
LEWIS COUNTY PROSECUTOR'S OFFICE AND FORREST EUGENE AMOS

This agreement outlines an understanding of the parties by which FORREST AMOS, defendant in Lewis County Superior Court cause # 00-1-33-7, will provide truthful information, and testify truthfully in any trial in STATE OF WASHINGTON v. LANE STEELE, LANCE KAPSH, AND MATHEW COLLETT.

FORREST AMOS hereby promises to:

(1) Plead guilty, as charged in the ~~original~~ Amended information, in Lewis County Superior Court Cause # ~~00-1-31-1,~~ 00-1-33-7 to:

Count I: Burglary in the First Degree w/fae
Count II: Robbery in the First Degree w/fae
Count III: Assault in the First Degree w/fae and dwe
Count IV: Possession of a Stolen Firearm
Count V: Theft of a Firearm
Count VI: Unlawful Possession of a Firearm in the First Degree

(2) Provide truthful information and testify truthfully as to any other charges which may be filed against Lane Steele, Lance Kapsh, and Mathew Collett, arising from the evidence in the possession of law enforcement.

(3) Waive all rights in regards to speedy trial and speedy sentencing for whatever time period it takes to complete the trial of Lane Steele, Lance Kapsh, and Mathew Collett.

(4) Reside in Lewis County at all times from the date of entry of plea of guilty until the trial of Lane Steele, Lance Kapsh, and Mathew Collett, and be available at all times for trial testimony.

(5) Refrain from violating any County, Municipal, State, or Federal law(s).

APPENDIX A-1

(6) Have no contact with Lane Steele, Lance Kapsh, or Mathew Collett between the date of Forrest Amos's entry of plea of guilty until the trial of Lane Steele, Lance Kapsh, and Mathew Collett.

(7) Submit to and successfully pass a polygraph examination prior to testimony against Lane Steele, Lance Kapsh, and Mathew Collett.

Upon the condition that Forrest Amos has performed all the promises enumerated above in entirety and good faith, the Lewis County Prosecutor's Office agrees to recommend to the sentencing court that he be sentenced to Burglary in the First Degree, Robbery in the First Degree, Assault in the First Degree, Possession of a Stolen Firearm, Theft of a Firearm, and Unlawful Possession of a Firearm in the First Degree without any enhancements with the following recommendation:

12 months (total) in the Lewis County Jail, court costs, attorney fee recoupment, CVA, LCJFR for his entire stay at the Lewis County Jail, restitution, no contact with the victim or co-participants, 12 months of community supervision with standard conditions of supervision

If Lane Steele, Lance Kapsh, or Mathew Collett pleads guilty, pursuant to a plea agreement acceptable to the State of Washington in the case of State of Washington v. Lane Steele, Lance Kapsh, or Mathew Collett, and thereby negates the need for trial testimony from Forrest Amos in any of those cases, the Lewis County Prosecutor's Office will make the above recommendation at the sentencing of Forrest Amos.

I, Forrest Amos, understand that any failure to perform any of my above mentioned promises or obligations truthfully or honestly, relieves the Lewis County Prosecutor's Office from any performance arising from this agreement, and the prosecution retains the right to prosecute me to the full, maximum extent allowed by law. I also understand that the State may recommend any lawful sentence at the time of my sentencing.

Furthermore, if I violate the terms of this agreement, and thereby lose the benefit of the above State's recommendation at sentencing, I understand that I may not withdraw my plea of guilty.

I, Forrest Amos, hereby freely and voluntarily enter into this agreement. I have not be threatened or coerced into pleading guilty in any way or pursuant to this plea agreement.

Dated this 16th day of February, 2000.

FORREST AMOS

Reviewed by:

Jody Backlund
Attorney for FORREST AMOS

for Donald Blair
Deputy Prosecuting Attorney

APPENDIX

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Received & Filed
LEWIS COUNTY, WASH
Superior Court
APR 25 2000
Nettie Jungers, Clerk
By Deputy

CERTIFIED TRUE COPY

SCANNED

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

NO. 00-1-337

STATE OF WASHINGTON,
Plaintiff

vs.

Forrest Amos,
Defendant.

STATEMENT OF DEFENDANT ON PLEA OF GUILTY (STTDFG)

Supplemental

1. My true name is: Forrest Amos
2. My age is: 16. 3. I went through the 8th 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 Jon Backlund.

(b) I ~~am~~ charged with the following crime (s):

Count III Asslt 2

The elements of this crime are:

unlawfully assault another with a deadly weapon, while armed w/a firearm.

Count II:

The elements of this crime are:

Count III:

The elements of this crime are:

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

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

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

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

(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;

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(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

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

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

COUNT NO	STANDARD RANGE (not including enhancements)	PLUS Enhancement for Firearm (F), other deadly weapon (D) or VUCSA (V) in protected zone	TOTAL (standard range including enhancements)	MAXIMUM TERM AND FINE
B	33-43	36	69-79	life
2				
3				

(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 as follows: _____

See orig. plea

Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, **my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered** even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay $500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) 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 and community custody or community placement is not required due to the nature of the crime. 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. 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).

(g) The prosecuting attorney will make the following recommendation to the judge: _____

120 months total on all counts

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is a grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040

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

[k] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

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[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, two years community supervision, plus all of the conditions described in paragraph (c). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

[m] The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater, I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (c). Additionally, the judge could require me to devote time to a specific occupa tion 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 kidnapping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custodyu, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

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

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

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

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level III or on a monthly basis if I have been classified as a risk level I or II. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

[o] If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes 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.

[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 outpatient treatment, a condition not to use illegal controlled substances, and requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could require me to devote time to a specific employment or training, to stay out of certain areas, and to pay thirty dollars per month to offset the cost of monitoring.

[s] 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 69.50.40(a)(l)(ii)

[t] 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.

[u] 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).

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[v] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[k].

[w] 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.

[x] 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.

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

[z] This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count(s) II in the amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

On 1.16.00 in Lewis Co I assaulted another with a deadly weapon, + I was in possession of a firearm (Armed) [illegible] THE ASSAULT FA

[ ] 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 theplea.

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.

Forrest Amos
Defendant

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

[signature] 24637
Prosecuting Attorney Bar #

DONALD BLAIR
Print Name

[signature] 22917
Defendant's Lawyer Bar #

Print Name

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

☑ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;

☑ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ *(c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

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: April 25, 2000

[signature]
Judge

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Superior Court
SEP 12 2005
By Kathy A. Brack, Clerk
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS

STATE OF WASHINGTON, Plaintiff, v. FORREST EUGENE AMOS, Defendant. SID#: WA 18562708 DOC#: 809903	No. 00-1-00033-7 **JUDGMENT AND SENTENCE** (JS) **PRISON** **Clerk's Action Required, para 4.1, 5.6 & 5.7**

I. HEARING

1.1 A sentencing hearing was held and the defendant appearing pro se and the Prosecuting Attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSES: The defendant was found guilty of Counts I,II,V&VI on 16 February 2000 and Count III on 25 April 2000 by guilty pleas to the following crimes:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(a)	01.16.00
II	ROBBERY IN THE FIRST DEGREE	9A.56.200(1)(a)	01.16.00
III	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	01.16.00
V	THEFT OF A FIREARM	9A.56.300	01.16.00
VI	UNLAWFUL POSSESSION OF A FIREARM 1st	9.41.040(1)(a)	01.16.00

as charged in the 2nd Amended Information.

[X] A special verdict/finding for use of **firearm** was returned on Count III RCW 9.94A.602, .510.
[ ] The court finds that the offender has **a chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

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[X] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): Counts I & II. The court further finds that the conduct in Count III (w/firearm) is separate and distinct from the assaultive conduct (w/walkie-talkie) underlying Counts I & II. The court also finds that under RCW 9A.52.050 the crimes in Counts III, V, and VI may be punished separately from the crime in Count I and that the crimes in Counts III, V, and VI are not the same criminal conduct as Counts I or II. The court further finds that only Counts I & II merge for sentence purposes and that under the facts of this case, conviction of Count I – Robbery in the First Degree and Count III – Assault in the Second Degree is not barred by double jeopardy.

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	Assault in the Second Degree	*	Walla Walla Co., WA 04-1-00201-7		A	V
2	Burglary in the Second Degree	03.02.99	Lewis Co., WA 99-8-00079-0	02.25.99	J	NV
3	Malicious Mischief 2nd	09.01.98	Lewis Co., WA 98-8-00271-9	05.24.98	J	NV
4	Burglary in the Second Degree	05.16.97	Lewis Co., Wa ** 97-8-00215-0	05.02.97	J	NV
5	Possession of Stolen Property 2nd	05.16.97	Lewis Co., WA ** 97-8-00230-3	05.02.97	J	NV

* Defendant entered and the court accepted a guilty plea on 20 June 2005. RCW9.94A.030(11).

** These convictions were deemed "washed" at the time of the commission of the instant offenses and have not been counted in the offender score for these offenses. *In re La Chappell*, 153 Wn.2d 1 (2004) holding Laws of 2002, Chapt. 107 applies to crimes committed after 13 June 2002; *State v. Varga*, 151 Wn.2d 179 (2004).

[X] The court finds that NONE of the prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525).

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7.5	VII	67-89 mos	None	67-89 months	Life
II	7.0	IX	87-116 mos	None	87-116 months	Life
III	7.0	IV	43-57 mos	+ 36 months	79-93 months	10 years
V	++ 4.0	VI	31-41 mos	None	31-41 months	10 years
VI	++ 4.0	VII	36-48 mos	None	36-48 months	

\+ Firearm enhancement must run consecutively to to the total period of confinement for all offenses, regardless of which underlying offense is subject to the firearm enhancement. RCW 9.94A.533(3).

++ Theft of Firearm and UPF1 not counted against each other as they are to be served consecutively. RCW 9.94A.5891)(a).

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2.4 [X]EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence below the standard range for Count II. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

_____ .

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows: 120 months DOC.

III. JUDGMENT

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

3.2 The court DISMISSES Count IV.

_____ .

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE			
	$ 600.00	Restitution to: Joe Hull, 118 Urquhart Road, Chehalis, WA _____	
RTN/RJN			
	$_____	Restitution to:_____	
	$_____	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk's Office)	
PCV	$ 500.00	Victim assessment	RCW 7.68.035
CRC	$ 110.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee $ 110.00	FRC
		Witness costs $_____	WFR
		Sheriff service fees $_____	SFR/SFS/SFW/WRF
		Jury demand fee $_____	JFR
		Extradition costs $_____	EXT
		Other $_____	
PUB	$_____	Fees for court appointed attorney	RCW 9.94A.760
WFR	$_____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	$_____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	

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CDF/LDI/FCD NTF/SAD/SDI	$_____	Drug enforcement fund of _____	RCW 9.94A.760
CLF	$_____	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
	$_____	Felony DNA collection fee ☐ not imposed due to hardship	RCW 43.43.(Ch. 289 L 2002 § 4)
RTN/RJN	$_____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1000 maximum)	RCW 38.52.430
	$ 1,000.00	Other costs for: Incarceration in the Lewis County Jail	RCW 9.94A.145
	$_____	TOTAL	RCW 9.94A.760

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

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-$)
RJN	Lane Patrick Steele	00-1-00032-9	Joe Hull	$600.00
	Lance Martin Kapsh	00-1-00031-9	Joe Hull	$600.00

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____per month commencing _____. RCW 9.94A.760.

[X] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

[X] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with Joe Hull including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life.

4.4 **OTHER**: refrain from the use of controlled substance not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO, no possession or consumption of alcohol, submit to random BAC/PBT's as directed by CCO. Prohibition against use of unlawfull controlled substances is an express condition of this Judgment and Sentence.

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

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

71	months on Count I	38	months on Count V
84	months on Count II	48	months on Count VI
57	months on Count III		months on Count

Actual number of months of total confinement ordered is : **84 + 36 = 120 months**.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Count V shall be served consecutively to Count VI.

Confinement shall commence immediately.

(b) The defndant shall receive credit for time served since 21 January 2000.

4.6 **[X] COMMUNITY PLACEMENT** is ordered as follows: Count I for 12 months; Count II for 12 months; Count III for 12 months; or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 commited before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses commited on or after July 1, 2000. 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 restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.
[X]The defendant shall not consume any alcohol.
[ ] Defendant shall have no contact with: _____.
[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit:_____
_____.
[ ] The defendant shall participate in the following crime-related treatment or counseling services:_____
_____.
[ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.
[ ] The defendant shall comply with the following crime-related prohibitions:_____
_____.
[ ] Other conditions:

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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).

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 amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**
[ ] Defendant waives any right to be present at any restitution hearing (sign initials):_____.

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The 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.

5.7 **VOTING RIGHTS.** Your right to vote in the State of Washington is forfeited until lawfully restored. The Clerk is directed to notify the Auditor of these felony convictions.

5.8 **OTHER:**_____

DONE in Open Court and in the presence of the defendant on the 12 day of ~~July~~ September 2005.

JUDGE RICHARD L. BROSEY

Prosecuting Attorney WSBA # 2248 JEREMY RANDOLPH	WAIVED Attorney for Defendant WSBA # Print name:	Defendant Pro Se FORREST EUGENE AMOS

APPENDIX B

CAUSE NUMBER of this case: 00-1-00033-7

I, Kathy Brack, 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 DEFENDANT

SID No. WA18562708 Date of Birth 05.16.83

FBI No. 498830NB6 Local ID No. _____

PCN No. _____ DOC No. 809903

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other:_____		[X] Non-Hispanic	[ ] 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, B. Tyler Dated: 9/12/05

DEFENDANT'S SIGNATURE: Joseph E. Anderson

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

APPENDIX B

IN THE SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON, Plaintiff, v. FORREST EUGENE AMOS, Defendant.	No. 00-1-00033-7 **FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF EXCEPTIONAL SENTENCE** **APPENDIX 2.4 TO JUDGMENT AND SENTENCE**

An exceptional sentence below the standard range should be imposed based upon the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1.1 The defendant and the state entered into a plea agreement wherein the state agreed to recommend a sentenced of 120 months in the Department of Corrections (DOC).

1.2 Based on the defendant's criminal history at the time of re-sentencing, the minimum sentence that may imposed without an exceptional sentence below the standard range is 123 months. The state requested the court to impose an exceptional sentence 3 months below the standard range to comport with its original plea offer.

LEWIS COUNTY
PROSECUTING ATTORNEY
360 NW NORTH ST MSPRO01
CHEHALIS, WA 98532-1900
(360) 740-1240
FAX (360) 740-1497

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the defendant and the subject matter of this action.

2.2 There are substantial and compelling reasons justifying the imposition of an exceptional sentence below the standard range pursuant to RCW 9.94A.535.

DONE in open court this 12 day of ~~July~~ September, 2005

SUPERIOR COURT JUDGE
RICHARD J BROSEY

Jeremy Randolph, WSBA# 2248
Prosecuting Attorney

Forrest E. Amos, Pro Se

LEWIS COUNTY
PROSECUTING ATTORNEY
360 NW NORTH ST MSPRO01
CHEHALIS, WA 98532-1900
(360) 740-1240
FAX (360) 740-1497

APPENDIX

C

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF LEWIS

3

4 STATE OF WASHINGTON,)
5 Plaintiff,)
6 vs.) NO. 00-1-00033-7
) COA. 36104-3-II
7 FORREST E. AMOS,)
8 Defendant.)
9

COPY

10 VERBATIM REPORT OF PROCEEDINGS
February 16, 2000
11 (Change of Plea)

12

13 A P P E A R A N C E S

14

15 For the Plaintiff: MR. DAVID ARCURI
CHIEF DEPUTY PROSECUTOR
16 Chehalis, Washington

17

For the Defendant: MS. JODI BACKLUND
18 ATTORNEY AT LAW
Centralia, Washington

19

20 Presiding Judge: H. JOHN HALL
DEPARTMENT 2

21

22

23 Kathleen M. Mahr, CSR NO. 2311
Official Court Reporter
24 Lewis County Superior Court
Chehalis, Washington 98532
25 (360)740-1173

RECEIVED
SEP 25 2007
LEWIS CO. PROS. ATTY.

APPENDIX C

1 February 16, 2000

2 * * * * * * * * *

3 THE COURT: Please be seated.

4 MR. ARCURI: Good morning, your Honor. David
5 Arcuri for the State of Washington. Next case is State
6 of Washington versus Forrest Eugene Amos, Lewis County
7 Superior Court cause number 00-1-00033-7. The defendant
8 is present in court, he's in custody, he's accompanied
9 by his attorney, Ms. Jodi Backlund. He's here for
10 change of plea only. There's an agreement between the
11 parties, written agreement, in addition to the statement
12 of defendant on plea of guilty. And, basically, he's
13 pleading as charged with certain recommendations if he
14 follows through with certain conduct, specifically,
15 polygraph examination, passing, and complying completely
16 with the agreement which includes testifying against
17 co-defendants which are charged as co-defendants in this
18 case. I reviewed the plea form. I've gone over the
19 original written agreement and there are some changes to
20 that and I believe it is in proper format.

21 THE COURT: Mr. Amos is a juvenile?

22 MS. BACKLUND: That's correct.

23 THE COURT: Does the plea agreement
24 contemplate the reduction of any charges that would not
25 have been charged as an adult offense?

APPENDIX C

1 MS. BACKLUND: No, regardless if he would be
2 charged as juvenile even if all the recommendations and
3 dismissals contemplated are done.
4 MR. ARCURI: In adult court?
5 MS. BACKLUND: I'm sorry?
6 THE COURT: In adult court, regardless?
7 MS. BACKLUND: I misspoke, your Honor, yes.
8 MR. ARCURI: That's correct, your Honor.
9 THE COURT: So we don't have to worry about
10 the declination issues?
11 MR. ARCURI: No, your Honor.
12
13 EXAMINATION
14 BY THE COURT:
15 Q Mr. Amos, is Forrest Eugene Amos your true name?
16 A Yes.
17 Q Have you received a copy of the amended information
18 filed on January 27, 2000?
19 A Yes.
20 MS. BACKLUND: Your Honor, if I may interject,
21 at this point I have -- I read to him a statement of
22 defendant on plea of guilty. I'm going to hand that
23 forward. There are two different addendums that I'm
24 handing forward. One is -- he's charged with six crimes
25 some having enhancements. I wasn't able to fit them all

APPENDIX C

1 on so the element portion as well his standard range as
2 it's stated on plea of guilty are all in an attachment.
3 Both Mr. Amos and I have signed those attachments.
4 There is also the second attachment of the written
5 agreement between Mr. Amos and the prosecutor's office
6 that Mr. Arcuri alluded to. As I'm handing those
7 forward, I want to note for the court this deal was
8 reached without my assistance. There is a huge upside
9 and a huge downside. I'm not -- I haven't necessarily
10 recommended to Mr. Amos that he accept this deal, but I
11 do believe firmly that this is what he wishes to do,
12 that he and I have talked at length and he understands
13 the consequences of the proceeding and wishes to
14 continue with it, that is his decision.
15 THE COURT: What do you mean it wasn't reached
16 with your assistance?
17 MS. BACKLUND: Before I was appointed to the
18 case Mr. Amos on his own reached an agreement with Mr.
19 Randolph.
20 MR. ARCURI: I can explain how that occurred,
21 your Honor. It is my understanding that after his
22 arrest on this charge, Mr. Amos, before talking -- after
23 waiving his rights, but before giving a statement to the
24 Lewis County Sheriff's Office, requested to speak with
25 the prosecuting attorney. Mr. Randolph responded and he

1 asked Mr. Randolph -- he and Mr. Randolph had some
2 discussion, I was not privy to nor was I there, but it's
3 my understanding that during that conversation Mr. Amos
4 said that he would cooperate fully with law enforcement
5 if he could avoid going to prison. Mr. Randolph made
6 that promise and is that Mr. Amos's understanding of
7 what the deal was at that time?
8 THE DEFENDANT: Yes.
9 MR. ARCURI: And this deal -- however, the
10 charging, or the appropriate charging which is the
11 charge the state filed against three individuals here,
12 it is a huge benefit for Mr. Amos, but given where the
13 state was at the time, given that Mr. Amos was the first
14 person arrested, we had very little information other
15 than a victim and Mr. Amos in custody and a victim who
16 was injured in this matter. And without Mr. Amos's
17 cooperation we were certain, and the sheriff's office as
18 well agreed, that we probably would not be able to solve
19 this crime as effectively as we have. In fact, two of
20 the defendants at least are from Tacoma. One of them is
21 in custody now as a result of Mr. Amos's help. The
22 other one has been identified based upon leads derived
23 from Mr. Amos's help. So that is how Mr. Amos got a
24 deal he would not go to prison if he cooperated fully
25 and that's what this deal contemplated. And I would

1 agree with counsel that there's a huge upside but huge
2 downside, but in the eyes of the state the state
3 believes he is getting a bargain, but it is a fairly
4 bargained for and fairly reached agreement.
5 MS. BACKLUND: I agree with everything that
6 Mr. Arcuri is saying.
7 MR. ARCURI: I would ask the court to inquire
8 of Mr. Amos to ensure that a record is made of this
9 prior arrangement made with the prosecutor to make sure
10 that comports with law, but I'm confident that it does.
11 MS. BACKLUND: As am I.
12 Q (By the Court) Mr. Amos, given how this has been
13 presented, do you feel that the proposed agreement
14 reflects your understanding of any representations made
15 to you by Mr. Randolph?
16 A No.
17 MS. BACKLUND: I'm not sure he understood the
18 question. The agreement that you and I reviewed that we
19 signed today and gave to the judge, is that the same
20 agreement that you made with Mr. Randolph?
21 THE DEFENDANT: Yes.
22 MS. BACKLUND: Do you think there is anything
23 that you agreed with Mr. Randolph that's not in there?
24 THE DEFENDANT: No.
25 THE COURT: And are you fully aware that if

APPENDIX C

1 you do not agree with the terms of the agreement that
2 you're looking at periods of confinement for Counts IV,
3 V, and VI will be consecutive from approximately three
4 and a half years to four and a half years each?
5 MS. BACKLUND: And consecutive means one
6 finishes off before the other one starts?
7 THE DEFENDANT: Yes.
8 Q (By the Court) So you're looking at roughly 14 years
9 just for these three offenses plus whatever period of
10 time the court can impose up to 176 months and 231
11 months and 402 months on the other counts?
12 A Yes.
13 Q Do you understand that 402 months is over 30 years?
14 A Yes.
15 Q In prison?
16 A Yes.
17 Q Okay.
18 A Yes.
19 MS. BACKLUND: Understanding that you're
20 looking at all of this if this agreement falls apart, is
21 this what you want to do?
22 THE DEFENDANT: Yes.
23 MS. BACKLUND: And I fully believe it is what
24 he wants to do, your Honor.
25 Q (By the Court) Mr. Amos, do you feel that you have

APPENDIX C

1 fully and to your satisfaction discussed the charge of
2 Burglary in the First Degree, Robbery in the First
3 Degree, Assault in the First Degree, Possession of a
4 Stolen Firearm, Theft of a Firearm, and Unlawful
5 Possession of a Firearm in the First Degree with Ms.
6 Backlund?
7 A Yes.
8 Q Do you fully understand what each charge means?
9 A Yes.
10 Q Do you understand the elements of each charge and by
11 elements I mean the things each of which the state has
12 to prove beyond a reasonable doubt at a trial in order
13 to convict you of each charge?
14 A Yes.
15 Q Do you understand that if you plead guilty to the crime
16 of Burglary in the First Degree you submit yourself to a
17 maximum possible penalty of life imprisonment?
18 A Yes.
19 Q Do you understand that if you plead guilty to the charge
20 of Robbery in the First Degree you submit yourself to a
21 maximum possible penalty of life imprisonment?
22 A Yes.
23 Q Do you understand that if you plead guilty to the charge
24 of Assault in the First Degree you submit yourself to a
25 maximum possible penalty of life imprisonment?

1 A Yes.
2 Q Do you understand that if you plead guilty to the charge
3 of Unlawful Possession -- excuse me, Possession of a
4 Stolen Firearm, you submit yourself to a maximum
5 possible penalty of 10 years in prison and a $20,000
6 fine?
7 A Yes.
8 Q Do you understand that if you plead guilty to the charge
9 of Theft of a Firearm you submit yourself to a maximum
10 possible penalty of 10 years in prison and a $20,000
11 fine?
12 A Yes.
13 Q And do you understand that if you plead guilty to the
14 charge of Unlawful Possession of a Firearm in the First
15 Degree, that you submit yourself to a maximum possible
16 penalty of 10 years in prison and a $20,000 fine?
17 A Yes.
18 Q Do you understand that if you plead guilty to these
19 charges you would also be required to pay various court
20 costs, attorney fee recoupment and any restitution to a
21 victim?
22 A Yes.
23 Q Do you understand that if you plead guilty to these
24 charges your right to own or possess a firearm will be
25 revoked until restored by a court of record?

1 A Yes.

2 Q You have the right to be represented by an attorney. If
3 you're not able to hire your own attorney with your own
4 money, the court will appoint an attorney to represent
5 you at public expense. You do have other rights that
6 you will give up if you plead guilty to these charges.
7 First, you have the right to a speedy public trial
8 by an impartial jury of people from Lewis County.
9 Second, you have the right at all times before and
10 during trial to remain silent and to refuse to testify
11 against yourself. If you choose to remain silent at a
12 trial that cannot be held against you and a jury would
13 be so instructed. Third, at a trial you have the right
14 to see and through your attorney question witnesses who
15 are called to testify against you. Fourth, at a trial
16 you have the right to have witnesses testify for you.
17 These witnesses can be made to appear at the trial at no
18 expense to you. Fifth, you are presumed innocent. The
19 presumption of innocence continues unless and until the
20 state proves each and every element of the crimes
21 charged beyond a reasonable doubt at a trial or you
22 enter pleas of guilty to the crimes charged. And, last,
23 if you are found guilty after a trial you have the right
24 to appeal the finding of guilt and certain pretrial
25 court decisions.

1 Do you understand these rights?
2 A Yes.
3 Q Do you understand that if you plead guilty that you'll
4 give these rights up except your right to an attorney?
5 A Yes.
6 Q Do you understand if you plead guilty there will be no
7 trial and no appeal of the finding of guilt and the only
8 thing left to do will be sentencing?
9 A Yes.
10 Q Have you been advised of the recommendation the
11 prosecuting attorney will make to the court?
12 A Yes.
13 Q Are you relying on that recommendation in entering pleas
14 of guilty to these charges?
15 A Yes.
16 Q Do you understand that the court at sentencing does not
17 have to accept the prosecutor's recommendation and may
18 impose a different sentence?
19 A Yes.
20 Q Even with that understanding do you intend to plead
21 guilty to the charges?
22 A Yes.
23 Q I might inquire, in cooperating with the prosecutor on
24 this matter before you were charged, were you fully
25 aware that you had the right to remain silent?

APPENDIX C

1 A Yes.
2 Q And had you been advised of your Miranda rights by a
3 police officer or the prosecutor reading your rights
4 from a card?
5 A Yes.
6 Q And did you at that time voluntarily waive any rights
7 that you may have with regard to right to counsel, and
8 right to not make statements to police officers?
9 A No.
10 MS. BACKLUND: I think he has some confusion.
11 After they read you your rights, you had the right to
12 remain silent, you had the right to talk to an attorney,
13 did you voluntarily waive those or did they make you
14 waive them?
15 THE DEFENDANT: I voluntarily waived them.
16 Q (By the Court) You did that on your own free will and at
17 your request?
18 A Yes.
19 Q Do you have any questions about anything we have covered
20 so far?
21 A No.
22 Q And do you wish to proceed with the proposed agreement?
23 A Yes.
24 Q Then as to the amended information filed on January 27,
25 2000, under Count I, the crime of Burglary in the First

1 Degree, what is your plea, guilty or not guilty?
2 A Guilty.
3 Q And do you admit that at the time of committing that
4 crime you were possessed with a firearm?
5 A Yes.
6 Q Under Count II, the charge of Robbery in the First
7 Degree, what is your plea, guilty or not guilty?
8 A Guilty.
9 Q And do you also admit that at the time of the commission
10 of that crime you were possessed with a firearm?
11 A Yes.
12 Q Under Count III, on the charge of Assault in the First
13 Degree, what is your plea, guilty or not guilty?
14 A Guilty.
15 Q And do you also admit that at the time of the commission
16 of that crime you possessed a firearm?
17 A Yes.
18 Q Under Count IV, the charge of Possession of a Stolen
19 Firearm, what is your plea, guilty or not guilty?
20 A Guilty.
21 Q Under Count V, on the charge of Theft of a Firearm, what
22 is your plea, guilty or not guilty?
23 A Guilty.
24 Q Under Count VI, in the charge of Unlawful Possession of
25 a Firearm in the First Degree, what is your plea, guilty

1 or not guilty?
2 A Guilty.
3 Q Are you making each of these pleas freely and
4 voluntarily?
5 A Yes.
6 Q Has anyone in any way threatened you with any kind of
7 harm to force you to plead guilty?
8 A No.
9 Q Other than the recommendation the prosecuting attorney
10 will make to the court pursuant to the plea agreement,
11 has anyone made any promise to cause you to plead
12 guilty?
13 A No.
14 Q Would you tell me in your own words what you did to be
15 charged with the crime of Burglary in the First Degree?
16 A I remained unlawfully in a residence and took some stuff
17 out of it from them.
18 MS. BACKLUND: Was one of the things you took
19 a gun?
20 THE DEFENDANT: Yes, a firearm.
21 Q (By the Court) Did that occur in Lewis County?
22 A Yes.
23 Q Did that occur on or about January 16, 2000?
24 A Yes.
25 Q And were you armed with a deadly weapon at the time you

APPENDIX C

1 were unlawfully in the building?
2 A Yes.
3 THE COURT: Does the state accept the
4 statement as sufficient for the plea under that count?
5 MR. ARCURI: I think the only other thing I
6 would ask the court to inquire, or if I could inquire
7 briefly based upon the affidavit of probable cause of
8 the defendant, just ask how he got in the house. I
9 think they used a route to get into the house that was
10 -- the intent when they entered the house originally was
11 to commit a theft. They used a route to get in and then
12 stayed longer than the permission that they used to get
13 in.
14 MS. BACKLUND: Was that a question?
15 MR. ARCURI: I think there is a question.
16 THE COURT: As to whether or not they were
17 unlawfully in the premises?
18 MR. ARCURI: Right. He indicated he was there
19 with some permission, but I think he got permission by
20 way of a ruse and had the intent when he did that to
21 steal items from the house.
22 MS. BACKLUND: So how did you get into the
23 house?
24 THE DEFENDANT: We knocked on the door and
25 talked to them and asked them if we could use the phone.

1 MS. BACKLUND: Did you need to use the phone?
2 THE DEFENDANT: No.
3 MS. BACKLUND: Was that your way to get into
4 the house?
5 THE DEFENDANT: Yes.
6 MS. BACKLUND: The reason you wanted to go in
7 the house was to steal some stuff?
8 THE DEFENDANT: Yes.
9 MR. ARCURI: I believe that's sufficient.
10 Q (By the Court) With regard to the charge of Robbery in
11 the First Degree, what did you do, Mr. Amos?
12 A We hit him and took his gun and marijuana without his
13 permission.
14 Q Did that occur in Lewis County?
15 A Yes.
16 Q Did that occur on or about January 16, 2000?
17 A Yes.
18 THE COURT: Does the state accept the
19 statement as sufficient for the plea on that count?
20 MR. ARCURI: Yes, your Honor.
21 Q (By the Court) Under Count III, the charge of Assault
22 in the First Degree, would you tell me in your own words
23 what you did?
24 A Hit Joe Hull over the head with a walkie-talkie that
25 caused bodily injury.

APPENDIX C

1 Q And do you agree that the instrument used or force used
2 would likely produce great bodily harm or death?
3 A Yes.
4 Q And were you also armed with a firearm?
5 A Yes.
6 Q Did that occur in Lewis County?
7 A Yes.
8 Q And did that occur on or about January 16, 2000?
9 A Yes.
10 Q And did you commit the assault with the intent to
11 inflict great bodily harm?
12 A Yes.
13 THE COURT: Does the state accept the
14 statement as sufficient for the plea on that count?
15 MR. ARCURI: It may be redundant, he's already
16 stated that they had used a deadly weapon, but there is
17 also a deadly weapon enhancement. So I ask --
18 obviously, he admits that while they were committing the
19 assault they were armed with a firearm, but a deadly
20 weapon.
21 MS. BACKLUND: I thought he already said that.
22 THE DEFENDANT: Yes.
23 Q (By the Court) Then with regard to Count V, Possession
24 of a Stolen Firearm, Mr. Amos, what did you do?
25 MR. ARCURI: I believe that's Count IV, your

1 Honor.
2 Q (By the Court) Excuse me, Count IV.
3 A We stole a firearm that didn't belong to us.
4 Q And did that occur in Lewis County?
5 A Yes.
6 Q And were you in possession of the firearm?
7 A Yes.
8 Q Did that occur on or about January 16, 2000?
9 A Yes.
10 THE COURT: Does the state accept the
11 statement as sufficient for the plea?
12 MR. ARCURI: For both Counts IV and V, your
13 Honor.
14 Q (By the Court) And Count VI, what did you do to be
15 charged with the crime of Unlawful Possession of a
16 Firearm in the First Degree?
17 A I wasn't supposed to have a firearm and I possessed a
18 stolen firearm.
19 Q Had you previously been convicted of a serious offense
20 or felony as a juvenile?
21 A Of Burglary Second Degree.
22 Q And did you possess the firearm in Lewis County on or
23 about January 16th, 2000?
24 A Yes.
25 THE COURT: And do you accept the statement as

1 sufficient for the plea on that count, Mr. Arcuri?
2 MR. ARCURI: Yes, your Honor.
3 THE COURT: Burglary in the Second Degree is a
4 serious offense?
5 MR. ARCURI: It is, your Honor, as defined
6 under 9.41 RCW.
7 THE COURT: What is LCJFR?
8 MR. ARCURI: Lewis County Jail, probably be
9 recoupment.
10 MS. BACKLUND: Where's that, Lewis County Jail
11 fund recoupment?
12 THE COURT: On the $1,000 assessment
13 reimbursement?
14 MR. ARCURI: Yes, your Honor, I believe in
15 this case it's for the entire stay.
16 MS. BACKLUND: That is news to me, if I could
17 confer with Mr. Amos. I have explained the import of
18 that phrase to Mr. Amos and that is irrelevant to him.
19 He does not wish to rescind the agreement given that's
20 the state's recommendation.
21 THE COURT: He understands that's about
22 $18,000 worth of restitution to the jail? Having in
23 mind, Mr. Amos, that the Class A offenses that you pled
24 guilty to do have a maximum possible fine of $50,000
25 each, you understand that the jail recoupment for a year

1 in jail would exceed $18,000?
2 THE DEFENDANT: Yes.
3 MS. BACKLUND: Do you still want to do this
4 knowing you're going to be saddled with all that once
5 you get out?
6 THE DEFENDANT: Yes.
7 THE COURT: I understand Mr. Kapsh has already
8 pled guilty.
9 MR. ARCURI: That is my understanding.
10 THE COURT: And has Mr. Collett been arrested
11 yet?
12 MR. ARCURI: Has not yet, your Honor.
13 THE COURT: I guess my only other inquiry is
14 should he not be apprehended within a reasonable period
15 of time, where does that leave Mr. Amos?
16 MR. ARCURI: It's the state's, obviously,
17 desire to obtain Mr. Kapsh -- not Kapsh, Mr. Collett in
18 confinement as soon as we can apprehend him through law
19 enforcement means. I would anticipate that within a
20 reasonable amount of time. If we were unsuccessful in
21 doing so, upon discussion with counsel, that we would
22 probably have to bring Mr. Amos and Mr. Kapsh and/or Mr.
23 Steele, make some more arrangements at least with
24 respect to testimony that we will have to do the best we
25 can in the way of getting them possibly sentenced before

1 we have Mr. Collett in confinement and we will have to
2 deal with their testimony and their honor at a later
3 date. I don't know that we can hold him here for more
4 than a reasonable period of time to obtain Mr. Collett.
5 That certainly is not going to be our desire to delay.
6 We haven't got Mr. Collett yet, it's been 5 months. I
7 am certain we will have him in a reasonable time. I
8 know they're exercising efforts yet to find Mr. Collett.
9 MS. BACKLUND: Your Honor, I think it's pretty
10 clear from both Mr. Arcuri and I, this is not something
11 that I have worked out with Mr. Blair, Mr. Amos is
12 willing to sign a waiver of speedy sentencing for
13 four months or 120 days and I think that should meet
14 with the court's concern. Does that seem appropriate to
15 you?
16 MR. ARCURI: Paragraph 3 talks about waiving
17 speedy sentencing, and if they wish to say they want to
18 do that for four months, we have Mr. Steele, and Mr.
19 Kapsh already pled, I am sure that Mr. Amos is not going
20 to want to run in and say it's been four months and got
21 trial next week on Mr. Collett, I want to be sentenced
22 before trial. I mean it is certainly part of his deal
23 is that he testify.
24 THE COURT: My only concern was if Mr. Collett
25 does not get apprehended within a reasonable period of

1 time.

2 MS. BACKLUND: Do you understand what we're

3 talking about? You have the right to be sentenced.

4 They're not going to hang this over your head -- he is

5 asking what's the plan. I have let the prosecutor know

6 that four months is reasonable to us and kind of what we

7 contemplated as part of this agreement, but that neither

8 Mr. Arcuri or I think that this is going to be a

9 problem. So is that your understanding?

10 THE DEFENDANT: Yes.

11 Q (By the Court) Mr. Amos, have you reviewed the statement

12 of defendant on plea of guilty with Ms. Backlund?

13 A Yes.

14 Q Have you read the statement yourself and the contract?

15 A No.

16 MS. BACKLUND: I read it to him.

17 THE DEFENDANT: She read it to me.

18 Q (By the Court) Do you fully understand each statement

19 contained on this document?

20 A Yes.

21 Q Do you have any questions about any statements in the

22 agreement or in the plea statement or in any of your

23 discussions here today?

24 A No.

25 Q Any questions at all?

1 A No.
2 Q Do you feel that you fully understand what the
3 consequences are?
4 A Yes.
5 Q Does your signature appear on page 7 of the plea
6 statement above Ms. Backlund?
7 A Yes.
8 THE COURT: Does either counsel wish to make a
9 statement as to the legal sufficiency of the plea
10 statement?
11 MR. ARCURI: No, except I think I should talk
12 briefly again about the speedy sentencing. I don't want
13 to have problems with this if Mr. Collett is not
14 apprehended for 90 days or so. The deal by its very
15 nature results in, even upon full compliance, of Mr.
16 Amos being confined in the Lewis County Jail for 12
17 months. So it is the state's position that that is
18 where reasonableness becomes an issue is when it's going
19 to interfere with the benefit of the deal. And I don't
20 believe that even 5 months from now if we're still
21 trying to make efforts to apprehend Mr. Collett that we
22 should necessarily bring Mr. Amos in and sentence him.
23 The reason I say that, your Honor, is because there is a
24 huge benefit for Mr. Amos to testify truthfully and he
25 is an absolutely critical witness should Mr. Collett

1 decide to go to trial as are the other two. And I
2 certainly don't want to forfeit our right to hold Mr.
3 Amos in custody for maybe 6 months while we're still
4 trying to find Mr. Collett because the deal involved 12
5 months and with good time that's about 9 months. I
6 don't want to hinder him. I'm certainly not trying to
7 influence his rights. I'm certainly trying to make sure
8 we obtain all four people and seek justice on all four.
9 And I don't know what Mr. Amos is going to think
10 three months from now about testifying against Mr.
11 Collett. I know what he says right now. I'm willing to
12 hold him to that. But I think when it starts to
13 interfere with the deal that he has with compliance,
14 that's when the state feels it's appropriate that maybe
15 a court should consider sentencing. But I'm really
16 thinking four months is going to be out there in the
17 9 months range is not unreasonable in the state's eyes
18 that Mr. Amos sits in the county jail while we're still
19 trying to find Mr. Collett. I think that's fair.
20 MS. BACKLUND: Your Honor, Mr. Amos is not
21 intending in the future, and I'm not intending to help
22 him, play any games. He has an understanding with the
23 state, he fully intends to follow through with that or
24 we would not have gone through all we have gone through
25 to get this on the record. I did not understand Mr.

APPENDIX C

1 Arcuri to be making any kind of a commitment. I was
2 hoping he would respect to the 4 months but he said
3 reasonable, if reasonable becomes an issue that Mr.
4 Blair or Mr. Arcuri and I can't agree on, then I see
5 that I can note it before the court and we can argue
6 that. That's appropriate.
7 THE COURT: Well --
8 MS. BACKLUND: We don't have any specific deal
9 with him about the time.
10 THE COURT: I was going to make that inquiry
11 at the time we addressed the waiver of speedy
12 sentencing. The only concern I have as to an extended
13 period of time pre-sentence is whether or not it affects
14 services, knowing that Mr. Amos is a juvenile, that
15 would affect any service he might be otherwise entitled
16 to post sentencing within the jail's rules and
17 regulations.
18 MS. BACKLUND: My understanding is that it
19 doesn't -- the fact of his age is what screws him up.
20 THE COURT: Well, if there are some programs
21 in the jail that he could take advantage of post
22 sentencing that he wants pre-sentencing, I would hope he
23 would get pre-sentence. I believe those are issues if
24 he raises them with counsel we can probably convince the
25 jail to somehow make arrangements to allow him to have

1 post-sentencing privileges if that becomes a serious
2 issue. I can't interfere with the jail inner workings,
3 but you can certainly ask.
4 Does either counsel wish to address the plea
5 statement anymore?
6 MR. ARCURI: No, your Honor.
7 MS. BACKLUND: Nothing further.
8 THE COURT: I find that Mr. Amos's statements
9 have been made freely and voluntarily with a full
10 understanding of the nature of the charges and the
11 consequences of the plea to each charge including the
12 enhancements attendant to each charge and that the plea
13 statement is in compliance with the law along with the
14 agreement for the ultimate disposition on sentencing.
15 Therefore, Mr. Amos, I will accept your pleas of guilty
16 and find you guilty of having committed the crime of
17 Burglary in the First Degree under Count I, Robbery in
18 the First Degree under Count II, Assault in the First
19 Degree under Count III, Possession of Stolen Firearm in
20 the First Degree, Possession of Stolen Firearm under
21 Count IV, Theft of a Firearm under Count V, and Unlawful
22 Possession of a Firearm in the First Degree under Count
23 VI. And as I read those, I'm reminded now of the strike
24 issues for the first three.
25 MR. ARCURI: That's correct, your Honor.

1 THE COURT: How do we address those?
2 MR. ARCURI: They count as one strike as he's
3 being convicted as an adult offender, he's not juvenile
4 he's being convicted as adult offender. This is will be
5 his first strike.
6 THE COURT: And that's agreed under the law?
7 MS. BACKLUND: Yes.
8 MR. ARCURI: Yes, your Honor.
9 THE COURT: You understand, Mr. Amos, that
10 Burglary in the First Degree, Robbery in the First
11 Degree, and Assault in the First Degree are what we call
12 strike offenses under the three strikes and you're out
13 law. If you get two more convictions for what would
14 qualify as a strike offense, after that you're looking
15 at a life term?
16 THE DEFENDANT: Yes.
17 THE COURT: This matter is set for trial for
18 the week of March 27th. The trial date will be
19 stricken. As we told you previously, Mr. Amos, you do
20 have the right to be sentenced within 40 judicial days
21 of today's date. It is my understanding that you're
22 waiving your right to be sentenced within 40 days, is
23 that correct?
24 THE DEFENDANT: Yes.
25 THE COURT: Are you doing this freely and

1 voluntarily?

2 THE DEFENDANT: Yes.

3 THE COURT: The other issue would be

4 readdressing conditions of release.

5 MR. ARCURI: Bail right now is $250,000 cash.

6 I would ask the court to just amend that to a no bail

7 hold.

8 THE COURT: I think we'll need the order for

9 the jail. That would complete the matter for today.

10 MS. BACKLUND: Thank you.

11 (Conclusion of Proceeding)

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APPENDIX C

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss
3 COUNTY OF THURSTON)

4 I, Kathleen Mahr, Notary Public, in and for the
5 State of Washington, residing at Olympia, do hereby
6 certify:

7 That the foregoing Verbatim Report of Proceedings
8 consisting of 27 pages was reported by me and reduced to
9 typewriting by means of computer-aided transcription;

10 That said transcript is a full, true, and correct
11 transcript of my shorthand notes of the proceedings
12 heard before Judge H. John Hall on the 16th day of
13 February 2000, at the Lewis County Superior Court,
14 Chehalis, Washington;

15 That I am not a relative or employee of counsel or
16 to either of the parties herein or otherwise interested
17 in said proceedings.

18 WITNESS MY HAND AND OFFICIAL SEAL this 12th day of
19 July, 2007.

20

21 KATHLEEN MAHR

22 Notary Public in and for the
23 State of Washington, residing
24 at Olympia.

25

KATHLEEN M MAHR
MY COMMISSION EXPIRES
NOTARY
PUBLIC
AUG 20, 2010
STATE OF WASHINGTON

APPENDIX C

APPENDIX

D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON, PLAINTIFF, VS. FORREST E. AMOS, DEFENDANT.	NO. 00-1-00033-7 #36104-3

COPY

VERBATIM REPORT OF PROCEEDINGS

APRIL 25, 2000

FOR THE PLAINTIFF: DON BLAIR
DEPUTY PROSECUTING ATTORNEY
CHEHALIS, WASHINGTON 98532

FOR THE DEFENDANT: JODI BACKLUND
ATTORNEY AT LAW
CHEHALIS, WASHINGTON 98532

PRESIDING JUDGE: RICHARD BROSEY
DEPARTMENT III

TRACY STEELE DYRNESS
LEWIS COUNTY SUPERIOR COURT
CHEHALIS, WASHINGTON 98532
(951) 963-4943
CSR NO. DY-RN-ET-S389MM

RECEIVED
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APPENDIX D

1 April 25, 2000

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3

4 THE COURT: Be seated.

5 MR. BLAIR: State of Washington versus

6 Forrest Amos, 00-1-000330-7. Mr. Amos is present,

7 in custody of the Lewis County Jail, accompanied

8 by Jodi Backlund. The matter comes on for a number

9 of things. First of all, Mr. Amos originally pled

10 guilty on March 16 as charged in the original

11 information to all six counts with the deadly

12 weapon and firearm enhancements.

13 What is anticipated, first of all, is Mr.

14 Amos will be requesting, and the State would not

15 be objecting, to withdrawal of the guilty pleas to

16 Count III, assault in the first degree, and Count

17 IV, possession of stolen firearm, and then Mr.

18 Amos would be pleading guilty to essentially

19 amended Count III.

20 THE COURT: Wait a minute. Isn't withdrawal

21 of pleas addressed to the judge that took the

22 pleas in the first place? That's our policy.

23 That's always been our policy.

24 MR. BLAIR: I'm not aware of anything that

25 would require that.

1 THE COURT: That's not the point. That's
2 our policy. Any request to withdraw a plea or
3 reconsideration goes back to the judge that made
4 the decision in the first place.
5 MR. BLAIR: I don't know if it would be a
6 revision that was contemplated in the agreement
7 that was entered at the time of the plea. Judge
8 Hall was aware that's the way we would be
9 proceeding when Mr. Amos entered his plea.
10 MS. BACKLUND: We want to go forward today,
11 and there have been plea negotiations in this
12 case. Mr. Blair and I have come to something that
13 all three of us agree to in terms of sentencing
14 recommendation and what will go on Mr. Amos's
15 record. This is the result of a lot of
16 negotiations.
17 Judge Hall was the one that set the
18 sentencing in front of Your Honor last week when
19 he accepted the pleas. I don't know. I
20 understand the court's policy. We all know the
21 court's policy. But when I called to ask this be
22 set up, the court administrator said it was to be
23 in front of Your Honor. I said Judge Hall was the
24 one that accepted the pleas.
25 THE COURT: He pled guilty to the all six in

1 the original?

2 MR. BLAIR: I'm going to correct myself.

3 with the other co-participants, it was anticipated

4 that assault one would be dropped to assault two;

5 that was not anticipated in this case. An

6 exceptional sentence was indicated in this case.

7 THE COURT: What we're talking about is a

8 withdrawal of plea to how many counts?

9 MR. BLAIR: Two counts, Counts III and IV,

10 and then he would be pleading guilty to an amended

11 Count III, from assault one to assault two, and

12 then sentencing on the five counts.

13 THE COURT: That's your true and correct

14 name, Forrest Amos?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Ms. Backlund, is that your

17 understanding of what is happening here?

18 MS. BACKLUND: Yes, Your Honor. We agree

19 with that. My understanding is, in addition to

20 what Mr. Blair indicated, the firearm enhancements

21 on Counts I and II, the enhancements only will be

22 withdrawn by the prosecutor pursuant to the

23 package we agreed on.

24 MR. BLAIR: We're going to ask the Court to

25 find the firearm enhancement on Count III and

1 sentence him.

2 MS. BACKLUND: This is a total joint

3 agreement between Mr. Amos, myself and Mr. Blair.

4 We handed forward the statement of defendant only

5 with respect to the Count III. Mr. Amos pled

6 guilty to Count III as assault one with a firearm

7 enhancement. We reviewed the statement on the

8 amended charge of Count III, assault two.

9 THE COURT: First, you're requesting a

10 withdrawal of pleas as to Counts II and III as

11 originally made?

12 MR. BLAIR: Counts III and IV.

13 THE COURT: Excuse me, Counts III and IV.

14 MS. BACKLUND: Yes.

15 THE COURT: That would be assault in the

16 second degree with a firearm and possession of a

17 firearm, Count IV?

18 MS. BACKLUND: That's correct.

19 THE COURT: The State has no objection to

20 that?

21 MR. BLAIR: No.

22 THE COURT: Do you have an order as to that?

23 MR. BLAIR: The State doesn't. We're not

24 making the request. I will or Ms. Backlund will

25 present the Court with an order to that effect.

1 THE COURT: What he's pleading to is a new
2 Count III on the second amended information?
3 MR. BLAIR: Yes.
4 THE COURT: What about the new Count IV?
5 MR. BLAIR: The State -- the second amended
6 Information still reads as it originally did. The
7 State is going to request -- once he is allowed to
8 withdraw his guilty pleas, we're going to ask to
9 dismiss that count.
10 THE COURT: Mr. Amos, have you had a chance
11 to review this with your attorney, Ms. Backlund?
12 THE DEFENDANT: Yes.
13 THE COURT: Do you understand what is being
14 done here?
15 THE DEFENDANT: Yes.
16 THE COURT: You originally pled guilty to
17 all six counts, as I understand it, in front of
18 Judge Hall. You're now asking the Court to
19 withdraw your pleas as to Count III and Count IV.
20 Count III charged assault in the first degree
21 while armed with a deadly weapon. Count IV
22 charged possession of a stolen firearm. Are you
23 asking the Court to withdraw those pleas?
24 THE DEFENDANT: Yes.
25 THE COURT: The basis is because he has

1 complied with the agreement that was relayed on
2 the record and filed in the Court file?
3 MS. BACKLUND: No. He has in part complied
4 and in part not complied. Mr. Amos was to get an
5 exceptional sentence of one year in local time.
6 Because there was not total compliance or perfect
7 compliance, the State and I have agreed he is not
8 bound to follow that original agreement.
9 However, there was some compliance and
10 some effort on his part. The State has agreed to
11 what Mr. Blair and I have described to the Court.
12 We're seeing it more as the middle ground.
13 THE COURT: The State is not objecting if I
14 allow Mr. Amos to withdraw his pleas to Count III
15 and IV?
16 MR. BLAIR: No, Your Honor.
17 THE COURT: I will allow him then to
18 withdraw his pleas to Counts III and IV of the
19 second amended information. Have you had a chance
20 to review this second amended information with Ms.
21 Backlund?
22 THE DEFENDANT: Yes.
23 THE COURT: Count III as re-written is
24 charging him with assault in the second degree,
25 which is a reduction from the original plea of

1 Count III, which was assault in the first degree.
2 It also takes away the deadly weapon and firearm
3 allegation, except it's alleged that the assault
4 was committed while armed with the firearm.
5 MR. BLAIR: Actually, that's not correct,
6 Your Honor. We're alleging the enhancement with
7 the firearm.
8 THE COURT: You just told me the
9 enhancements were going away.
10 MS. BACKLUND: On the burglary and robbery.
11 MR. BLAIR: What the end result is we're
12 trying to get to is an agreed recommendation of a
13 total of 120 months. That's going to be
14 accomplished by sentencing Mr. Amos to Count I,
15 Burglary in the first degree and robbery in the
16 first degree, neither one with enhancements.
17 Count III is assault in the second degree with a
18 36-month firearm enhancement and Counts V and VI,
19 Theft of a Firearm and Unlawful Possession of a
20 firearm in the first degree. With his offender
21 score, we anticipate 84 months on Count I and
22 Count II; that being of course consecutive, and 36
23 months on Count III for a total of 120 months.
24 That's how we're going to get there.
25 THE COURT: Mr. Amos, has anyone threatened

1 you or made a promise to you to persuade you to do
2 this?
3 THE DEFENDANT: No.
4 THE COURT: You understand I'm not required
5 to accept this recommendation. I'm not required
6 to sentence you in any way, shape or form as
7 requested by the prosecutor. I could sentence you
8 to the maximum provided for in each one of these
9 counts.
10 In the second amended information, you
11 are charged with Count I, Burglary in the first
12 degree, a class A felony, with a maximum of life
13 imprisonment and a $50,000 fine; Count II is
14 robbery in the first degree, a class A felony with
15 a maximum of life imprisonment and a $50,000 fine.
16 Count III, assault in the second degree,
17 is a Class B felony. The maximum is 10 years and
18 a $20,000 fine. The firearm enhancement we're
19 looking at is 36 months on that. Count IV is
20 possession of a stolen firearm. The maximum is
21 10 years and a $20,000 fine.
22 Count V is theft of a firearm. The
23 maximum is 10 years and a $20,000 fine. Count VI
24 is Possession of a stolen Firearm. The maximum is
25 10 years and a $20,000 fine; do you understand

1 that?

2 THE DEFENDANT: Yes.

3 THE COURT: I've been handed a statement of

4 defendant on plea of guilty form which says,

5 supplemental as to Count III only. This form

6 contains a complete listing of your rights. Do

7 you have any questions about your rights?

8 THE DEFENDANT: No.

9 THE COURT: You understand if I accept a

10 plea of guilty, you're going to be giving up

11 certain rights. There will be no trial, no trial

12 by jury. You'll not have the opportunity to

13 challenge, confront, cross-examine and question

14 the prosecutor's witnesses. You'll not have the

15 opportunity to present testimony and evidence on

16 your own behalf.

17 You'll not be presumed innocent. You'll

18 not have the right to remain silent. Most

19 importantly, you'll have no right to appeal. All

20 those rights are waived by a plea of guilty; do

21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you had a chance to review

24 the second amended information with Ms. Backlund?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions about
2 it?
3 THE DEFENDANT: No.
4 THE COURT: How old are you?
5 THE DEFENDANT: 16.
6 THE COURT: What was the last grade you
7 finished in school?
8 THE DEFENDANT: Eighth.
9 THE COURT: Do you have any difficulty
10 reading, writing or understanding English?
11 THE DEFENDANT: No.
12 THE COURT: As to the second amended
13 information, Count III, charging assault in the
14 second degree, where it's claimed that on or about
15 January 16 of 2000 in Lewis County, Washington,
16 you intentionally assaulted Joe Hall with a deadly
17 weapon with the intent to commit a felony, robbery
18 or burglary in the first degree. During the
19 committing of the crime thereof, you were armed
20 with a rugor pistol, that being a firearm as
21 defined in 9.41.010, which invokes the provisions
22 of 9.94A.310 adding the enhancement under hard
23 time or armed crime; what's your plea?
24 THE DEFENDANT: Guilty.
25 THE COURT: Tell me in your own words what

1 you did that makes you think you're guilty of
2 assault in the second degree?
3 THE DEFENDANT: I assaulted Joe Hall with a
4 deadly weapon.
5 THE COURT: That was what?
6 THE DEFENDANT: The firearm and the walkie
7 talkie.
8 THE COURT: And the firearm you had was the
9 rugor pistol?
10 THE DEFENDANT: Yes.
11 THE COURT: You understand the standard
12 range is 33 to 43 months. The recommendation is
13 going to be 36 months plus enhancements. We're
14 looking at a total standard range of 69 to 79
15 months. The recommendation here is going to be
16 120 months on everything. That's 10 years; do you
17 understand that?
18 THE DEFENDANT: Yes.
19 THE COURT: Do you have any question about
20 that?
21 THE DEFENDANT: No.
22 THE COURT: Paragraph 11 says, "On 1-16-00,
23 in Lewis County, Washington, I assaulted another
24 with a deadly weapon. I was in possession of a
25 firearm at the time of the assault." Is that your

1 statement?

2 THE DEFENDANT: Yes.

3 THE COURT: You went over this with Ms.

4 Backlund before you signed it?

5 THE DEFENDANT: Yes.

6 THE COURT: Either counsel have a comment on

7 the sufficiency of this plea, this amended count?

8 MR. BLAIR: No, Your Honor.

9 THE COURT: Ms. Backlund.

10 MS. BACKLUND: Your Honor, with respect to

11 sentencing, as we both indicated several times,

12 the goal of the manipulations we have gone through

13 is to get to 120 months. He was looking at

14 upwards of 22 years, and we agree that 22 years is

15 significantly more.

16 The Court has worked with Mr. Amos

17 before. You are familiar with him and familiar

18 with his family and his childhood. As the Court

19 is aware, Mr. Amos has been the subject of a lot

20 of significant abuse as a child, which frankly

21 legally he still is in many respects.

22 He immediately pled guilty to these

23 crimes as charged, knowing how high his standard

24 range would be. After being apprehended he

25 immediately made a statement to the police that

1 assisted them in solving the crime. He gave them
2 information about who else was involved, according
3 to Mr. Arcuri, at the time the Court accepted the
4 original pleas.
5 They may not have been able to get that
6 information without these statements. He arranged
7 an agreement with an attorney's office before my
8 representation was started that did involve him
9 pleading to every single thing, which he readily
10 did even over my advice that he not do that.
11 These actions tell me that Forrest remains ready
12 and willing to take full responsibility for his
13 actions and behaviors that he knows he did and
14 knows that he will be punished for.
15 This case is very difficult in that it
16 does involve some very serious and disturbing
17 actions on the part of some young teenagers. The
18 victim involved sustained some serious injuries as
19 a result of these behaviors. It's disturbing in
20 the fact that what we're all doing is sitting here
21 sending a 16-year-old to an adult prison for 10
22 years. There is very little upside to this case.
23 Mr. Blair and I have worked very hard and spent a
24 lot of time negotiating what would be an
25 appropriate sanction for Mr. Amos given the

1 position we're in now, and this is what we have
2 come to and agree to. Forrest is in agreement
3 with it as well. He as I stated asked that the
4 sentencing be held early. He knows he's going to
5 prison, and he's ready to go. We urge the Court
6 to follow what has been the subject of a lot of
7 work and effort on both Mr. Blair and my part to
8 come to something fair for Forrest. We ask the
9 Court to follow it.
10 THE COURT: Mr. Amos, you heard the
11 statement of your attorney. Do you have any
12 quarrel with what she tells me?
13 THE DEFENDANT: No.
14 THE COURT: Any disagreement?
15 THE DEFENDANT: No.
16 THE COURT: I find as to count III --
17 MS. BACKLUND: Excuse me. The victim is
18 present. I know Forrest would like --
19 THE COURT: We'll deal with that at
20 sentencing. I find as to Count III, assault in
21 the second degree while armed with a firearm, that
22 there is a factual basis for the plea. It is
23 knowingly and intelligently made with full
24 knowledge of the consequences. The plea is made
25 on the advice of counsel. I find the defendant is

1 competent to knowingly and intelligently, freely
2 and voluntarily enter into the plea. I will
3 accept the plea and find you guilty of assault in
4 the second degree while armed with a firearm as
5 charged in Count III of the second amended
6 information. Does the State have a motion?
7 MR. BLAIR: The State would move to dismiss
8 Count IV.
9 THE COURT: Pursuant to the State's motion,
10 Count IV shall be and is dismissed. The State's
11 recommendation as to the remaining counts, which
12 include Count I, II, III, Count V and IV, is what
13 Mr. Blair?
14 MR. BLAIR: On Count I, we're recommending
15 84 months, given a standard range of 67 to 89. On
16 Count II, the standard range is 77 to 102. We're
17 recommending 84 months. On Count III, the
18 standard range is 33 to 43. We're recommending 36
19 months, plus a 36-month enhancement for a total of
20 72 months.
21 On Count V, the standard range is 21 to
22 27. We're recommending 27 months. On Count VI,
23 the standard range is 26 to 34 months. We're
24 recommending 34 months. Counts V and VI by
25 statute have to be run consecutively. That is

1 lower than the range we're anticipating. We agree
2 Count I and II would encompass the same course of
3 conduct with the 84 months. Combine that with the
4 36-month enhancement, that is where we come up
5 with the total of 120 months.
6 The legal/financial obligations are $500
7 crime/victim, $110 filing fee, attorney fee
8 recoupment in the amount of $2073.50, $1000 jail
9 fee recoupment. These are placement offenses for
10 a period of 12 months. No contact with the victim
11 for life and then standard conditions of
12 placement. That would be all.
13 THE COURT: Restitution?
14 MR. BLAIR: Restitution to be determined. I
15 don't know if we have a figure yet. May I
16 approach?
17 THE COURT: Yes.
18 MR. BLAIR: Mr. Hall, the victim, is
19 present. He actually just happened to be stopping
20 by today to drop off this letter, anticipating
21 sentencing on the third, and I informed him we had
22 the matter for this morning. I asked if he would
23 want to wait. He indicated he would. I don't
24 know if he wants to make a statement other than
25 the letter he has presented.

1 THE COURT: Ms. Backlund.

2 MS. BACKLUND: Your Honor, I apologize. I
3 think the Court is aware. I gave the information
4 that I wish the Court to consider for sentencing.
5 I have nothing further beyond what I have already
6 given with respect to that. I do know that Mr.
7 Amos wants to address the Court.

8 THE COURT: Mr. Amos.

9 THE DEFENDANT: I just want to say I'm sorry
10 for what I did to Joe Hall. That's it.

11 MR. BLAIR: I do have some additional
12 comments. Mr. Amos did supply law enforcement
13 with additional information which was extremely
14 helpful in apprehending two of the remaining three
15 individuals, which resulted in pleas of the two
16 that are currently in custody, and the third one
17 is still being sought.

18 If not for the information given by Mr.
19 Amos I don't know if the -- I know the case
20 would not have been solved as rapidly.
21 Unfortunately, he did not comply with the initial
22 agreement, but we have come to compromise short of
23 20 some years. We have agreed on less than half
24 of that. That's all the State would have.

25 THE COURT: Mr. Hall.

1 MR. HALL: I have no statements, Your
2 Honor. I just submitted the letter.
3 THE COURT: You and I are acquainted; aren't
4 we? You need to be aware that I am acquainted
5 with Mr. Hall. Way back when I was still in
6 practice, I represented him on one occasion. I
7 believe in a dissolution of marriage. Were you
8 aware of that?
9 MS. BACKLUND: We did not. We do not
10 believe it would impact your fairness to Mr. Amos.
11 THE COURT: Mr. Blair.
12 MR. BLAIR: I have no objection.
13 THE COURT: You have nothing else to say,
14 Mr. Hall?
15 MR. HALL: No, sir.
16 THE COURT: The firearm I take it was not
17 recovered?
18 MR. BLAIR: No. Actually, that was sold by
19 the co-participant that hasn't been arrested yet
20 to an unknown individual in Pierce County.
21 THE COURT: Mr. Amos, Ms. Backlund is
22 correct. As you remember, I've seen you many
23 times as a participant in our juvenile system.
24 It's unfortunate that you're here today facing
25 substantial time in adult prison. It's not

1 exactly the best way to start out your young
2 life. I think you're the beneficiary here of some
3 very good work by your attorney because frankly,
4 given the gravity of the offense, you could have
5 been looking at far more time.
6 You could have been looking at --
7 frankly, had the injury to Mr. Hall been more
8 serious, perhaps more long lasting, you would have
9 been looking at the possibility of being locked up
10 for a large part of the rest of your life. This
11 is serious business when you start breaking into
12 someone's house and assaulting them and stealing
13 weapons; that's about as serious as it gets as far
14 as the legislature is concerned.
15 This kind of behavior is not to be
16 tolerated. I can only assume part and partial of
17 the reason that you went along and participated
18 willingly as you did is because you failed to
19 realize the seriousness of your own conduct.
20 Unfortunately, that is one of the by-products of
21 someone who has been through our juvenile system.
22 You don't understand what you do as an
23 assault is serious. Ten years is what you're
24 looking at by the recommendation made by counsel.
25 Ten years is certainly nothing to make light of.

1 Having said that, on Count I, the burglary in the
2 first degree, the judgment of the Court is to
3 sentence you to 84 months at the Department of
4 Corrections. On Count II, 84 months. I find that
5 the activities of the defendant with respect to
6 Count I and Count II encompass the same criminal
7 conduct. On Count III, 36 months at the Department
8 of Corrections and 36 months enhancement for
9 possession of a deadly weapon, a firearm finding
10 total of 72 months.
11 On Count V, 27 months and on Count VI, 34
12 months. Counts V and VI are to be consecutive
13 time. The long and the short of it is a total
14 amount of time imposed of 120 months or 10 years.
15 The legal/financial obligations are $110 filing
16 fee, $500 crime/victim, attorney fee of $2073,
17 $1000 jail fee, and 12 months placement following
18 release. I'm going to order restitution to be
19 determined by separate order.
20 MS. BACKLUND: Thank you, Your Honor.
21 THE COURT: Mr. Amos, did you have a chance
22 to go over this Judgment and Sentence with Ms.
23 Backlund?
24 THE DEFENDANT: Yes.
25 THE COURT: Do you agree it says in writing

1 what I said out loud?
2 THE DEFENDANT: Yes.
3 THE COURT: Do you have any questions about
4 it?
5 THE DEFENDANT: No.
6 THE COURT: The Judgment and Sentence is
7 signed. You need to come forward for
8 fingerprints.
9
10 (A recess is taken.)
11
12 THE COURT: Be seated.
13 MR. BLAIR: Mr. Amos is here. I know the
14 Court wanted to advise him.
15 THE COURT: Mr. Amos, have a seat over here.
16 I had you brought back because I neglected this
17 morning in the confusion of everything going on to
18 advise you of your rights as to firearms. Because
19 you were convicted of a felony offense, under
20 federal law, you may never have a right to possess
21 a firearm, period.
22 However, less there be any
23 misunderstanding, under Washington law, you may
24 not possess a firearm before your right to possess
25 a firearm is restored by Superior Court. For that

1 to happen, you would have to wait out the
2 statutory period. You would have to petition the
3 Court with notice to the prosecutor and the
4 sheriff. The Court would have to approve your
5 request to have your right to possess a firearm
6 restored.
7 Unless that happens, your right to have a
8 firearm remains revoked. The long and the short
9 of it is that means no guns for you. No target
10 shooting. No hunting. Don't be with anyone with
11 a gun. If they put the gun off on you, the
12 chances are pretty good, you're going to be
13 prosecuted given the fact you have been convicted
14 of a class A felony involving the use of a
15 firearm.
16 You may not ever possess a firearm in the
17 state of Washington. If you do, it's a Class B
18 felony. This county vigorously prosecutes that
19 crime. If you do, you're going to end up in state
20 prison again; understood?
21 THE DEFENDANT: Yes.
22 THE COURT: That's all.
23
24 (The hearing is concluded.)
25

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss
3 COUNTY OF PIERCE)

4 I, Tracy Dyrness, Notary Public, in and for the State of
5 Washington, residing at Corona, California, do hereby certify:
6 that the annexed and foregoing Verbatim Report of
7 Proceedings consisting of 24 pages was reported by me and
8 reduced to typewriting by means of computer-aided
9 transcription;
10 that said transcript is a full, true, and correct
11 transcript of my shorthand notes of the proceedings heard
12 before the Honorable Richard Brosey on the 25th day of April,
13 2000, at the Lewis County Superior Court, Chehalis, Washington;
14 that I am not a relative or employee of counsel or to
15 either of the parties herein or otherwise interested in said
16 proceedings.
17 WITNESS MY HAND AND OFFICIAL SEAL this 9th day of July,
18 2007.
19
20 TRACY STEELE DYRNESS
21 Notary Public in and for the
22 State of Washington, residing
23 at Corona, California.
24
25

TRACY DYRNESS
COMMISSION EXPIRES
NOTARY PUBLIC
2-6-06
STATE OF WASHINGTON

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E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

RECEIVED
MAR 15 2006
LEWIS CO. PROS. ATTY.

STATE OF WASHINGTON, Plaintiff,	)
vs.	) SUP. NO. 00-1-00033-7) APPEALS NO. 34375-4-II
FORREST EUGENE AMOS, Defendant.	)

VERBATIM REPORT OF PROCEEDINGS
July 19, 2005
Resentencing

A P P E A R A N C E S

For the State:	JEREMY RANDOLPH Lewis County Prosecuting Attorney Chehalis, Washington
For the Defendant:	PRO SE
Presiding Judge:	RICHARD L. BROSEY Dept No. 3

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Official Court Reporter
Lewis County Superior Court
Chehalis, Washington 98532
(360)740-2658

CCR #SM-IT-HK-A225J5

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1 July 19, 2005

2 * * * * * * * * * * *

3 THE COURT: Be seated.

4 MR. RANDOLPH: Good morning, Your Honor. This

5 is cause number 00-1-00033-7, State versus Forrest

6 Eugene Amos. Mr. Amos is in court this morning for

7 purposes of resentencing. He's represented by himself.

8 He requested and was granted leave to withdraw or to

9 appear pro se. Mr. McConnell was relieved of that

10 duty -- I apologize, Your Honor. I don't have the exact

11 date of that, for some --

12 THE COURT: July 12th.

13 MR. RANDOLPH: Pardon? July 12th? Judge Hall

14 made a record.

15 THE COURT: No, he didn't. Court commissioner

16 did.

17 MR. RANDOLPH: Was that the court

18 commissioner?

19 THE COURT: Yeah, and it --

20 MR. RANDOLPH: Well, it was in Judge Hall's

21 courtroom.

22 THE COURT: It should have been in front of me

23 in the first place and not in front of the court

24 commissioner.

25 MR. RANDOLPH: Well, I'm not going to disagree

1 with that, but I attempted to bring it here and it
2 didn't get down here. If the Court wishes to make a
3 further Faretta Inquiry to make sure the record's clear,
4 I have no objection to that.
5 THE COURT: Is that your true and correct
6 name, Forrest Eugene Amos?
7 THE DEFENDANT: Yes, Your Honor.
8 THE COURT: Mr. Randolph, the state's ready to
9 proceed?
10 MR. RANDOLPH: The state's ready to proceed,
11 yes.
12 THE COURT: Mr. Amos, are you ready to
13 proceed?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: As I understand it, and
16 notwithstanding my hopes to the contrary, the original
17 Mr. Amos's letter/memorandum, dated July 2nd, is not in
18 the court file, but as I understand it, basically
19 Mr. Amos is making two claims. First of all, that
20 there's a merger here and also that there's same
21 criminal conduct. The matter's on for resentencing by
22 virtue of the Court of Appeals disallowing prior
23 juvenile convictions that were committed before he was
24 15 years of age, as I remember.
25 MR. RANDOLPH: That's correct, Your Honor.

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1 THE COURT: All right. What's the state's
2 position?
3 MR. RANDOLPH: The state's position is that
4 the state of record has just succinctly stated our
5 position. The Court of Appeals, in the order partially
6 granting the personal restraint petition, based on the
7 state's concession that two prior juvenile offenses that
8 occurred on May 2nd, 1997, prior to Mr. Amos turning age
9 15, not be counted according to the decision in *in re*
10 *LaChapelle*, which is a companion case to *in re Westfall*
11 of this county, 153 Wn. 2d 1, period. Mr. Amos did
12 present to the Court of Appeals in his initial petition
13 double jeopardy issues. That issue was stayed by the
14 Court of Appeals pending the decision of *State v.*
15 *Freeman*. However, Mr. Amos withdrew or asked the Court
16 to not consider the double jeopardy issues, and Court of
17 Appeals took him up on that offer, and the only issue
18 decided by the Court of Appeals is that the two prior
19 to -- the two offenses that occurred prior to July 1,
20 1997, may not be counted.
21 State's position is that we are here for sentencing
22 on a plea agreement. Mr. Amos entered into two plea
23 agreements to be exact. Number one, he entered into a
24 plea agreement that would have resulted in substantially
25 less prison time if he testified truthfully involving

1 his co-participants. He was unable to pass a polygraph
2 examination, and as the Court knows, the state will not
3 use witnesses who are not truthful. The plea agreement
4 provided that if he didn't comply with that plea
5 agreement, he would be facing actually more time than
6 what the state recommended in this case. My
7 recollection is that it was -- the top end on robbery
8 was 179 months. He entered into a second plea agreement
9 in which he agreed to plead to the charges before Your
10 Honor today in exchange for an agreed recommendation of
11 120 months. For him to sit in this courtroom or to
12 write letters to the Court of which, for the record, we
13 got the brief thing, whatever it's called, letter, dated
14 July 2nd. We received it at 1430 hours, give or take,
15 yesterday afternoon. It's my understanding Your Honor
16 attempted to get that to counsel. However, there wasn't
17 anybody here to copy it. I understand that. If
18 Mr. Amos had complied with the court rules, that
19 wouldn't have been a problem. We would have had it a
20 week ago. It doesn't raise anything particularly except
21 whining.
22 Mr. Amos made a deal. He doesn't like the deal. He
23 is trying to renege on the deal. He's got one of two
24 choices. Either he rolls with the Court the agreement
25 that he made beforehand or the state is going to ask

1 leave of the Court to ask that his guilty pleas be
2 stricken and we go back to ground one where he'd be
3 facing somewhere in the ballpark of 220 months. It's as
4 simple as that. To come in and start whining about same
5 criminal conduct and complaining about double jeopardy
6 issues when he agreed in the calculation of his offender
7 score in open court before Your Honor his breach of the
8 plea agreement.
9 And it cuts both ways. The state is pilloried by
10 the appellate courts if they do anything whatsoever that
11 appears to be going back on the plea agreement. Several
12 members of the Supreme Court have received, almost
13 encouraged, such activity, but the majority of the
14 appellate courts make it very clear that the agreements
15 cut both ways. So the first issue before the Court is
16 whether or not Mr. Amos wants to stand before this Court
17 based upon his guilty pleas.
18 The document -- and I only got through the first
19 couple of pages, but the document that he filed with
20 Your Honor indicates he doesn't want to withdraw his
21 pleas to the charges. So he stands convicted of count
22 one, burglary in the first degree; count two, robbery in
23 the first degree; count three, assault in the second
24 degree with a firearm enhancement; count five, theft of
25 a firearm; and count six, unlawful possession of a

1 firearm. The state withdrew the firearm allegation as
2 relates to the robbery, which, as Your Honor knows, is a
3 five-year enhancement rather than a 36-month
4 enhancement, so we gave up a considerable amount.
5 The Court's decisions are very clear that if a
6 person reneges on their plea agreement and tries to get
7 out of it, the state is given the opportunity to, at the
8 very least, refile the charges with all the appropriate
9 enhancements that appeared prior to the guilty plea
10 process. However, we're prepared to proceed to
11 sentencing on the charges before the Court.
12 The state has calculated Mr. Amos's offender score.
13 First we'd ask the Court to make a finding that count
14 one and count two, as agreed by the state and the
15 defendant at the time of the initial sentencing, were in
16 fact same criminal conduct. We'd ask the Court to make
17 a further finding, as Your Honor has already done, that
18 none of the other crimes are same criminal conduct with
19 burglary or the robbery charge. We're asking the Court,
20 as was done beforehand, to make a special finding that
21 the firearm was used on the class B felony, count three,
22 assault in the second degree. Asking the Court also
23 make a finding that the conduct in count three, that is,
24 assault in the second degree, was with a firearm by
25 either Mr. Amos or by one of his companions.

1 And by way of background, Your Honor, the facts in
2 this case are pretty simple. Four young men made a
3 decision to go in and break into an older gentleman's
4 house to obtain some medical marijuana from him. They
5 went inside, beat the heck out of him, used
6 walkie-talkies as clubs. During the course of that --
7 and that was the purpose of the robbery, is to get to
8 the marijuana -- they used the walkie-talkies as their
9 instruments of force. After they obtained the
10 marijuana, they then located and stole a pistol. One
11 of -- either Mr. Amos or one of his cohorts then
12 assaulted, in a separate act, the victim in an attempt
13 to steal other items with that firearm.
14 Asking the Court to make it clear there's a
15 distinction between the weapon and methodology used in
16 the assault with a firearm, obviously, and the
17 assaultive conduct in counts one and two, which involve
18 beating on the man with the walkie-talkie. Mr. Amos, in
19 his guilty plea form, admits that a walkie-talkie was
20 used in the robbery. Obviously count one, which is a
21 burglary under RCW 9.94A.589, the other crimes may be
22 punished, and this Court has discretion to punish all of
23 the other crimes separately from the burglary offense.
24 I have calculated Mr. Amos's offender score based
25 upon where he stands before Your Honor today. On count

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1 one, burglary in the first degree, he has 7.5 points.
2 That's a seriousness level of seven offense. The
3 standard range for 7.5 is 67 to 89 months. There are no
4 enhancements. Count two, seven points. That's a level
5 nine offense. A sentencing range of 87 to 116 months.
6 There is no enhancement alleged or proven. Count three
7 is seven points. That's a seriousness level four.
8 Standard range is 43 to 57 months, and there is a 36-
9 month enhancement. Count five, four points, and that's
10 a Roman Numeral six seriousness level, with a range of
11 31 to 41 months. No enhancement is possible. And
12 number six is four points with a seriousness level of
13 Roman Numeral seven, 36 to 48 months.
14 To get to how I got to that calculation, I will
15 attempt, without boring the Court to death, to explain.
16 Number one, Mr. Amos was convicted on May 16th, 1997, of
17 two offenses. Those washed as of the time of this
18 offense and cannot be counted under *in re LaChapelle* and
19 are not counted for point purposes. Although,
20 interestingly, they are now countable again, which just
21 deepens the mystery of our sentencing process.
22 He was convicted on March 2nd, 1999, of burglary in
23 the second degree as a juvenile, and September 1st,
24 1998, of malicious mischief in the second degree.
25 Against the burglary, the malicious mischief counts as

1 one half point. The burglary in the second degree
2 juvenile conviction counts as one whole point.
3 Mr. Forrest Amos pled guilty and a guilty plea was
4 accepted by the Walla Walla Superior Court on June 20th,
5 2005, of the violent crime of assault in the second
6 degree. Under RCW 9.94A.030, subsection 11, and I'll
7 quote, "conviction" quote/end quote, "means an
8 adjudication of guilt pursuant to titles 10 and 13, RCW,
9 and includes a verdict of guilty, a finding of guilty
10 and acceptance of the plea of guilty." That gives
11 Mr. Amos seven and a half points on the burglary in the
12 first degree. The burglary conviction as a juvenile
13 only counts as a half point against the robbery, which
14 is why upon both the robbery and the assault second
15 there's only seven points, and of course the 7.5 rounds
16 down to seven.
17 The Court of Appeals noted that there was an error
18 in the scoring on the two nonviolent offenses, count
19 five and count six, in that the other offenses had not
20 been properly counted against it, and although the Court
21 calculated those at two at the time, they actually
22 should have been four. It really doesn't make a lot of
23 difference in the final analysis because the state
24 entered into a deal with -- an agreement with Mr. Amos
25 to recommend to Your Honor 120 months. The state is

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1 recommending 120 months with credit for all time served
2 against these charges.
3 To get to 120 months, the state is going to ask the
4 Court to impose an exceptional sentence downward on
5 count two, robbery in the first degree, of 84 months
6 rather than 87 months.
7 Because under 9.94A.533, sub 3, the firearm
8 enhancement on the assault charge has to be run
9 consecutively to the highest score, and to get to the
10 120 months that we agreed on and dealt for, 84 and 36
11 equals 120, and I do not feel comfortable recommending
12 any more than what we previously recommended to Your
13 Honor because we made a deal. And, of course, on the
14 numbers down below on the theft of a firearm, as Your
15 Honor's aware, the theft of a firearm and UPFs are not
16 counted against each other because they run
17 consecutively.
18 The state would submit that I spent a considerable
19 amount of time doing these calculations, and arguments
20 about same criminal conduct cannot be raised. They were
21 not raised beforehand, there was no objection to these
22 being counted at the initial sentencing. It's very
23 clear, if they're not raised at the initial sentencing,
24 they may not be raised. And then on the double jeopardy
25 issue, he withdrew that from the Court of Appeals

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1 consideration. He could have had possibly some guidance
2 on that. But under the *Freeman* decision -- which this
3 case was momentarily stayed, Mr. Amos withdrew it from
4 the Court of Appeals -- *Freeman* case makes it very clear
5 that if there's an assault in a robbery, that assault is
6 not to be enjoined of the robbery. They may be counted
7 separately. In this case we have a clearer situation
8 where we have the assaultive behavior with
9 walkie-talkies to facilitate the burglary and the
10 robbery, and then later either Mr. Amos or one of his
11 cohorts assaulted the victim with the firearm that they
12 had stolen from the victim.
13 Thank you, Your Honor.
14 THE COURT: Just so there's no
15 misunderstanding of the state's position, first of all,
16 what you're saying is that Mr. Amos may not raise the
17 issues that he's attempting to raise, i.e. merger and
18 same criminal conduct, from the state's perspective.
19 Secondly, even if the Court were to consider those
20 issues as having been raised, assuming that I have the
21 authority to do that, and it doesn't have to be done by
22 a PRP to the Court of Appeals, that the -- as far as the
23 state is concerned, there is no merger, there is no same
24 criminal conduct.
25 MR. RANDOLPH: Right. That's our position.

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1 Even if the Court were to consider -- I don't think the
2 Court is foreclosed from doing it so much as Mr. Amos is
3 foreclosed from being able to bring it up any time he
4 wants to. But if the Court feels that it's appropriate
5 -- because I don't think the Court is foreclosed from
6 considering. The Court has the authority to make a
7 determination on those issues. Although I think there
8 is somewhere in the law of the case issue as it relates
9 to same criminal conduct, Your Honor has already made a
10 finding that they're not same criminal conduct. He's
11 already agreed they're not same criminal conduct. The
12 problem with these are is these people -- and after 30
13 some years now I should know better. I'm not dealing
14 with a banker or gentleman. I'm dealing with a person
15 who's been denominated by society as a criminal, so I
16 should expect on a regular basis, and as Your Honor will
17 see from our guilty plea forms and from our stipulations
18 on prior record, every time we get one of these things
19 from the prison system where they're trying to withdraw
20 all or part of their guilty plea, we try to amend to
21 deal with these in the future. And Mr. Amos's case, he
22 made it clear in his guilty plea that he wasn't
23 objecting to the calculation of the offender score.
24 Neither he nor I could have predicted *in re*
25 *LaChapelle*. In fact, when I was arguing it, I thought I

1 was winning. But obviously it was a five/four decision
2 the other way. That's something that's outside of Your
3 Honor's control, it's outside of Mr. Amos's or our
4 control. All the other matters were clearly within the
5 control of the sentencing coordinating parties at the
6 time of the plea and sentencing. Those issues weren't
7 raised. They shouldn't be considered at this time, and
8 even if considered, I think that there's more than
9 sufficient evidence before this court that the other
10 crimes are not same criminal conduct, there is not a
11 merger issue. The only merger that the state concedes,
12 purely from the standpoint of sentencing process, was
13 that the burglary and robbery were intertwined enough
14 that they should be counted as same criminal conduct.
15 THE COURT: The original sentencing score on
16 the original judgment listed an offender score on count
17 one of seven.
18 MR. RANDOLPH: Yes, Your Honor.
19 THE COURT: You now list it as seven and a
20 half.
21 MR. RANDOLPH: Because he picks up two points
22 for his new assault conviction. Loses one -- loses one,
23 and I think that this was underscored. I think it
24 should have been a 7.5. What the state's argument is is
25 that he's right back to where he was. With the assault

1 second, he picks up two points, and he lost 1.5. That's
2 what it was.
3 THE COURT: All right. Anything else from the
4 state?
5 MR. RANDOLPH: No, Your Honor. Not at this
6 time.
7 THE COURT: Now, Mr. Amos, first and foremost,
8 you had a hearing before the court commissioner back on
9 July the 12th, and at that time Mr. McConnell, who had
10 been appointed as your counsel for this proceeding, was
11 allowed to withdraw and you were allowed to represent
12 yourself.
13 THE DEFENDANT: Yes, Your Honor.
14 THE COURT: Now, there's nothing wrong with
15 representing yourself, but I need to ascertain and make
16 sure that you understand exactly what it is you're
17 doing. It is your wish to continue to represent
18 yourself?
19 THE DEFENDANT: Yes, Your Honor.
20 THE COURT: I'm aware, from what you wrote me,
21 that apparently you and Mr. McConnell had some degree of
22 difficulty.
23 THE DEFENDANT: Yes. Mr. McConnell seemed to
24 be -- seemed to be losing motions that I wanted him to
25 file pursuant to my resentencing on merger and same

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1 criminal conduct. All of a sudden the U.S. Mail, or his
2 office, one of the two, because when I came back from
3 Shelton, I made sure and contacted the person that sends
4 out legal mail. All three legal letters back to back to
5 back sent out on the same date were sent to his office,
6 the same address, so on and so forth, and Mr. McConnell
7 seemed to be at a loss on every issue, not even knowing
8 the facts of the case. Even last week when that
9 occurred, he did not even have my court record or any of
10 the facts of the case with him.
11 THE COURT: Okay. I understand that. What
12 I'm -- I'm not so much concerned with the fact that
13 Mr. McConnell is out as the fact that you're here before
14 me representing yourself, and this is a serious matter,
15 because in your pleadings you've taken the position that
16 there is same criminal conduct, that there is merger,
17 and what you've handed up this morning, suffice it to
18 say, your determination of prior criminal history points
19 and the prosecutor's are, shall we say, at odds.
20 THE DEFENDANT: Yes.
21 THE COURT: So I want to make certain that you
22 do understand that you're representing yourself, and if
23 there's any question about where you stand legally, in
24 as much as the issues that concern the Sentencing Reform
25 Act, some of the interplay of some of the decisions that

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1 have been made by the United States Supreme Court, and
2 the Court of Appeals, those are highly technical issues,
3 and I've had -- for what it's worth, I've had deputy
4 prosecutors and experienced lawyers stand before me and
5 they can't get it right numerous times. So if there's
6 any question in your mind about the interplay of this,
7 and if you want representation, albeit not Don
8 McConnell, but if you want representation to help you
9 out and assist you in any way in respect to your
10 argument on merger and same criminal conduct and for
11 that matter prior criminal history, I will not hesitate
12 if you ask to appoint competent counsel to assist you.
13 That would necessarily probably entail that we would
14 continue the hearing, but you're here anyway, and I'm
15 not opposed to doing that. So I'll give you that option
16 if that's what you want to do. I'm aware from what
17 you've filed that you've done some research yourself,
18 but I think you're probably at somewhat of a
19 disadvantage while you're here because I don't think you
20 have access to the same resources here that you had when
21 you were at Shelton or anywhere else in the state's
22 system.
23 THE DEFENDANT: Your Honor, I think from the
24 letter that I filed, which I did -- I sent the same copy
25 of the letter to Mr. Randolph's office the day I sent

1 your letter out, so he's had ample notice with that
2 letter. I believe in that letter I've explained my
3 point and explained the decisions and the law in
4 accordance with my facts, so I think I can proceed by
5 myself.
6 THE COURT: All right. Do you have any
7 question at all about your right to be represented by
8 counsel?
9 THE DEFENDANT: No, Your Honor.
10 THE COURT: And you're voluntarily waiving
11 that and choosing to proceed yourself?
12 THE DEFENDANT: Yes, Your Honor.
13 THE COURT: And you believe that you have
14 sufficient skill and expertise to be able to do this
15 given what you've done heretofore since your conviction?
16 THE DEFENDANT: Yes, Your Honor.
17 THE COURT: All right. And the court
18 commissioner did go through a long discussion with you,
19 did she not, relative to the issue of representation or
20 self-representation back on July the 12th?
21 THE DEFENDANT: Yes. She made sure that I did
22 all this and got this back on my own legal research and
23 so on and so forth.
24 THE COURT: Okay. All right. Now, the
25 prosecutor, first of all, takes the position that you

1 can't even raise the issue of same criminal conduct and
2 merger because of the fact that you agreed with the 120
3 months that was imposed the first time around. In
4 essence, you didn't raise the issue of same criminal
5 conduct the first time, so you can't raise it now. You
6 didn't raise the issue of merger, so you can't raise it
7 now. Do you have a response to that?
8 THE DEFENDANT: Yes, Your Honor. First off,
9 I'd like to say that when I withdrew my merger claim in
10 my personal restraint petition, I notified court on why
11 I was withdrawing that claim and I sent the same letter
12 to Mr. Randolph's office notifying the Court of why I
13 withdrew that claim, and the only reason was because of
14 my pending charge in Walla Walla County. I was about
15 ready to go to trial, and I wanted to get this finished
16 before then -- beforehand. Plus, I did not know whether
17 *Freeman* was going to be held in my favor or not. I
18 didn't know anything about it. Also, I explained to
19 them that I can obtain the same relief upon resentencing
20 under the state's sentencing procedure at resentencing
21 the invalid judgment and sentence by the same criminal
22 conduct analysis, considering everything same criminal
23 conduct. That was the only reason that I withdrew the
24 claim, and that's noted in the letter, and that's why
25 they allowed me to withdraw the claim.

1 THE COURT: So as far as you're concerned, you
2 are not foreclosed on the issue, and you're not
3 precluded from making the argument?
4 THE DEFENDANT: No. And as far as I'm
5 concerned, too, is the plea agreement does not foreclose
6 me from making the argument as they found in *in re*
7 *Butler*, 24 Wn. App., that you never waive a
8 constitutional claim despite the plea agreement being
9 beneficial to you, because the state should have never
10 constitutionally prosecuted you for that crime in the
11 first place. And also in *in re Call*, they made it clear
12 that if the plea record does not know that you knowingly
13 waived that right, that even though in *in re Call* the
14 respondent was not challenging the validity of the
15 guilty plea, but challenging the length of his sentence,
16 which in -- it can be raised on a first-time appeal or
17 in a PRP if it's in violation of the state sentencing
18 procedure. And there's nothing that elected in
19 Mr. Call's argument that he intended to allow or
20 intended to allow the Court to count his two prior Texas
21 convictions against him even though they washed out
22 under the SRA. Under my argument, there's nothing in
23 the plea deal or the court record that shows that I
24 intended or I knew that the crimes would have been the
25 same criminal conduct if it was brought up. I was --

1 back then I was represented by incompetent counsel in
2 the first place, which sent letters of admission
3 admitting that we're going to juggle -- and this has
4 been not only admitted by her, but other Lewis County
5 public defenders. When they enter into a plea agreement
6 with the state, they juggle their points to equal the
7 number of points necessary to get up to where the
8 state's willing to give you a plea recommendation for.
9 Which isn't even in accordance with the sentencing
10 procedure. As far as I'm concerned, that's the present
11 sentencing practices and a manipulation of the
12 Sentencing Reform Act by Lewis County public defenders
13 and the prosecutors, in my case. As far as I'm
14 concerned, same criminal conduct for theft of a firearm
15 and robbery in the first degree and burglary in the
16 first degree shall be considered.
17 In my co-defendant's case, Mr. Collett, your
18 courtroom found his theft of a firearm and burglary in
19 the first degree on your discretionatory (sic) finding
20 that it was same criminal conduct, so I don't see how a
21 discretionatory (sic) issue can be found in a
22 co-defendant's case and not in the other when it's based
23 on the same facts, same intent, same victim, and so on
24 and so forth. And I believe that there's a number of
25 reasons why I should obtain the same relief and the same

1 criminal -- the same criminal conduct finding found in
2 Mr. Collett's case as he should be able to obtain the
3 same criminal conduct finding that was found in my case
4 of robbery in the first degree and burglary in the first
5 degree tomorrow when he comes forth before you for
6 resentencing. But the reasons are is the nonmutual
7 collateral estoppel doctrine would require that a
8 discretionatory (sic) finding by a judicial officer be
9 found in co-defendants' cases in the same manner as the
10 Supreme Court had said in *State vs. Costen,* 152 Wn. 2d,
11 where they relied on a New Jersey Supreme Court state
12 ruling where one judge found in a co-defendant's case
13 that there was a suppression of evidence based on
14 unlawful search and seizure. Collateral -- nonmutual
15 collateral estoppel barred them from making a different
16 discretionatory (sic) finding in the other
17 co-defendant's case. That's one issue why I should be
18 able to obtain same criminal conduct on the theft of a
19 firearm and robbery in the first degree and burglary in
20 the first degree. Also, equal protection of the law for
21 people similarly situated would require the same
22 finding. There's nobody that's going to be situated --
23 similarly situated pertaining to facts and law other
24 than co-defendants facing the same facts and the same
25 law.

1 THE COURT: All right. Well, let's start by
2 looking at count number three, because Mr. Randolph
3 concedes and I already found that the action in counts
4 one and two was in fact the same criminal conduct. So
5 tell me why assault in the first degree is the same
6 criminal conduct as the burglary first degree and
7 robbery first degree.
8 THE DEFENDANT: It's assault in the second
9 degree, Your Honor. And the reason why is because of
10 the decision in *State vs. Freeman,* which was decided
11 March 17th, '05. The Court concluded saying that
12 assault second degree will always merge into robbery in
13 the first degree for double jeopardy purposes unless the
14 state proves an independent purpose or effect. They
15 can't rely on sparse distinctions between ongoing
16 criminal conduct and so on and so forth. There is
17 nothing -- even in Mr. Randolph's response brief,
18 fighting these issues in my personal restraint petition,
19 he claims that the later -- "In the later stages of the
20 robbery, ongoing robbery, that for further theft of
21 items, Amos or one of his confederates assaulted the
22 person to steal more items from the victim." It's my
23 claim that that is a fictional argument and is not based
24 on sworn statements on his affidavit of probable cause
25 to support the charges in the first place, nor is it

1 based on my plea statement, or the case charged. I pled
2 guilty in my plea statement to assaulting the victims
3 with a deadly weapon, plus I was in possession of a
4 firearm. That's exactly what my -- at the time of the
5 assault. It does not necessarily say that the assault
6 actually was committed by hitting the victim with a
7 firearm. That's not the plea I pled guilty to. And nor
8 is it alleged by the victim in the case, and
9 Mr. Randolph's or whoever was the prosecutor at this
10 time, Mr. Blair back then, in his affidavit of probable
11 cause to support the charges. And even if that
12 argument, as I argued in the letter I sent the Court
13 would suffice the Court, it still wouldn't survive the
14 interpretation on *Freeman's* -- the *Freeman* decision,
15 which requires an independent purpose or effect.
16 THE COURT: Well, I remember taking the plea,
17 because I took -- this was an unusual case because you
18 pled to everything except count three, and then you came
19 back and there was a supplemental plea to count three,
20 and I took that plea.
21 THE DEFENDANT: Yes.
22 THE COURT: And I remember specifically that
23 -- if I'm not mistaken, and I'd have to check the
24 record, but I have a pretty good memory usually, I think
25 Mr. Blair at the time was asserting that it was an

1 assault with a firearm, and you were adamant at the time
2 that the assault two was with a walkie-talkie. And as a
3 matter of fact, that's written into the plea statement,
4 that it was an assault with a walkie-talkie, not an
5 assault with a firearm. So given that the firearm had
6 nothing to do with the assault second, it was a
7 walkie-talkie assault, and it was done to facilitate
8 Mr. Hull, the victim, disclosing to you and your
9 codefendants as to the location of his medical
10 marijuana, which, as I understand the probable cause
11 statement, he subsequently showed you was under his bed.
12 His Ruger pistol, which was subsequently stolen, was in
13 his nightstand, and then thereafter, after being
14 assaulted further, disclosed that there was more
15 marijuana, in fact, growing plants, in the closet, at
16 least one of which was taken. So again, tell me how
17 this assault second is the same criminal conduct or
18 merges into this robbery given that it was not -- given
19 that it was done in the manner it was.
20 THE DEFENDANT: Because it was an ongoing
21 crime of robbery. He's taken two incidents, two
22 assaults, and split -- and split it into two separate --
23 to support two separate crimes basically, which the *Ohio*
24 *vs. Brown*, United States Supreme Court, says that the
25 Fifth Amendment isn't such a fragile guarantee that

1 prosecutors can arbitrarily split up ongoing criminal
2 conduct based on sparse indistinctions between the
3 crimes or the charges, and that's precisely what it is.
4 It's an ongoing crime, which we intended to go there and
5 steal Mr. Hull's marijuana. Because he would not give
6 up -- it says right here, Mr. -- after we first
7 assaulted him and he showed us where he kept marijuana
8 under his bed, which was in -- and his pistol in the
9 nightstand next to his bed, it says that "Mr. Hull
10 stated that the males asked him where the rest was and
11 he told them that he didn't have any more." That right
12 there is grounds to -- under robbery in the first
13 degree, is to use violence or first force necessary to
14 get him to -- I mean, that's what you do when you commit
15 a robbery in the first degree, is you use a force to
16 obtain what you intend to go there for, which is to
17 steal, which was his marijuana, which -- and then he
18 said -- "Mr. Hull stated they hit him again and asked
19 him where the other handgun and marijuana were, because
20 they knew he had had more." That was the whole intent
21 of going there, was to steal his grow operation. And
22 then he said -- "Mr. Hull stated that he showed them
23 where the marijuana grow was in his closet and they took
24 a large marijuana plant." That's all ongoing criminal
25 conduct. There's no separate independent purpose or

1 prosecutors can arbitrarily split up ongoing criminal
2 conduct based on sparse indistinctions between the
3 crimes or the charges, and that's precisely what it is.
4 It's an ongoing crime, which we intended to go there and
5 steal Mr. Hull's marijuana. Because he would not give
6 up -- it says right here, Mr. -- after we first
7 assaulted him and he showed us where he kept marijuana
8 under his bed, which was in -- and his pistol in the
9 nightstand next to his bed, it says that "Mr. Hull
10 stated that the males asked him where the rest was and
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16 obtain what you intend to go there for, which is to
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18 said -- "Mr. Hull stated they hit him again and asked
19 him where the other handgun and marijuana were, because
20 they knew he had had more." That was the whole intent
21 of going there, was to steal his grow operation. And
22 then he said -- "Mr. Hull stated that he showed them
23 where the marijuana grow was in his closet and they took
24 a large marijuana plant." That's all ongoing criminal
25 conduct. There's no separate independent purpose or

1 effect, as the *Freeman* court requires to prove -- I
2 mean, to constitute a separate assault conviction to say
3 that the second assault was done independently from
4 committing the robbery, it furthered the robbery. It
5 furthered everything. And then it says, "the four then
6 left the residence with the marijuana and the Ruger
7 pistol." He was never assaulted after that.
8 THE COURT: Well, tell me how the count five
9 and count six, the theft of a firearm and the unlawful
10 possession of a firearm, somehow merges same criminal
11 conduct?
12 THE DEFENDANT: I'm not alleging that count
13 five or six be same criminal conduct with each other,
14 because the *State vs. Freeman* -- I mean, *State vs.*
15 *Haddock* in 141 Wn. 2d, requires that unlawful possession
16 of a firearm in the first degree cannot be considered
17 same criminal conduct with a theft of a firearm even
18 though the firearm was the same because the public is
19 the victim at large. I'm saying that the theft of a
20 firearm should be same criminal conduct with my burglary
21 in the first degree and robbery in the first degree
22 because it was found in a discretionatory (sic) issue in
23 Mr. Collett's case, which was a co-defendant.
24 THE COURT: Well, given that you went there
25 with the admitted purpose of stealing his growing

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3 that the second assault was done independently from
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18 though the firearm was the same because the public is
19 the victim at large. I'm saying that the theft of a
20 firearm should be same criminal conduct with my burglary
21 in the first degree and robbery in the first degree
22 because it was found in a discretionatory (sic) issue in
23 Mr. Collett's case, which was a co-defendant.
24 THE COURT: Well, given that you went there
25 with the admitted purpose of stealing his growing

1 marijuana, how is it the same criminal conduct?
2 THE DEFENDANT: We went there to steal a
3 firearm and marijuana. There's -- I mean, we went there
4 to commit a robbery against his marijuana and his
5 firearm, and it's the same criminal intent. It occurred
6 at the same time. A theft and a robbery is the same
7 intent. The only difference -- the only essential
8 difference is the use of force to commit the robbery.
9 The theft of a firearm occurred in the midst of the
10 robbery with the robbery of marijuana.
11 THE COURT: All right. Do you want to address
12 the issue of criminal scoring?
13 THE DEFENDANT: Yes. As you see, my offender
14 score, I shall be two points based on all the same
15 criminal conduct and/or merger, and it lists -- and the
16 only current offense in this case that shall be counted
17 against me because of same criminal conduct or merger
18 shall be the unlawful possession of a firearm in the
19 first degree as one point. I don't believe because a
20 judgment and sentence had not been rendered on the
21 postconviction in Walla Walla County that the two
22 additional points for the separate assault conviction
23 that just occurred in prison should not be counted
24 against me because it's a postconviction. Mr. Randolph
25 should not be able to prejudice me because of his

1 manipulative tactics from 2000 to inflate my offender
2 score and use a postconviction. That's -- he should
3 only use prior convictions from when this judgment and
4 sentence was entered, which was April 25th, 2000.
5 There's nothing that gives him the statutory authority.
6 THE COURT: Are you telling me you haven't
7 been sentenced by Walla Walla County?
8 THE DEFENDANT: No. I've only entered a plea.
9 They have not sentenced me on that case yet. There's no
10 reason why the sentence could be pronounced. I mean,
11 there still may be questions why that sentence may not
12 be pronounced, whether it's jurisdictional issues or so
13 on and so forth. Or a deferred sentence. You never
14 know what Mr. Zagelow's going to do to my sentence.
15 THE COURT: A deferred sentence for an
16 assault?
17 THE DEFENDANT: You never know.
18 THE COURT: By somebody who's in the
19 institution?
20 THE DEFENDANT: I mean, all I'm saying is you
21 never know, Your Honor. It's not a valid J&S now. He
22 shouldn't be able to use that postconviction. There's
23 no statutory authority allowing him to use a
24 postconviction.
25 THE COURT: I've read your material obviously.

1 Anything else?
2 THE DEFENDANT: That's about it, Your Honor.
3 THE COURT: Mr. Randolph, rebuttal?
4 MR. RANDOLPH: As I said at the outset, when
5 you deal with a criminal, you should expect criminal
6 conduct. The simple fact is the state manipulated his
7 offender score to cut his sentence to less than half.
8 Let me repeat that. Less than half of what he was
9 facing. Last time I looked at this, and I'll do it
10 again, he was facing 344 to 402 months in prison on his
11 assault one conviction, to which he initially pled,
12 because Your Honor was correct. On February 16th he
13 pled guilty, among other things, to count three, assault
14 in the first degree, and he was facing 402 months. He
15 got a sentence -- and I'm not totally sure why the state
16 was so kind, quite frankly, because he did not fulfill
17 his part of the plea bargain as relates to being
18 available for testimony fruitfully. He's already
19 evidenced some difficulty in the honesty field. The
20 state allowed him to plead to assault second, which I
21 believe would have been an amended charge. I think a
22 third amended information was filed on April 25th, thus
23 lowering his exposure, at least on that assault one, but
24 his exposure on the other cases were still 179 to 231
25 months. And if you crank that down, because again, he

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1 was facing the enhancement on the robbery and/or on the
2 burglary first of 60 months. The state manipulated his
3 offender score down by two years or three years -- or
4 I'm sorry, two years -- down to 36 months for an
5 enhancement. They manipulated his score down from close
6 to 400 months down to a total of 120 months, and yet
7 he's still not happy. But the long and short of it is,
8 a person who has this criminal background -- and the
9 Supreme Court has not said that this court has to close
10 its eyes and pretend like those convictions that are
11 quote/unquote, "washed," don't exist if this person
12 comes to court like pure driven snow. The simple fact
13 is a person with his criminal background that engaged in
14 the kind of criminal conduct he engaged in is dealt with
15 differently than someone who, a first offense, goes out
16 in the darkness of night and steals some marijuana and
17 walks back out without assaulting anybody or -- even
18 with a walkie-talkie or with a gun. There is a purpose
19 to this Sentencing Reform Act, that people who do more
20 grievous offenses with more grievous backgrounds should
21 be punished more grievously. We're submitting that the
22 Court's going to have to impose an exceptional sentence
23 downward of 120 months to get to our original plea.
24 Now, addressing the Walla Walla conviction -- and I
25 don't know. He seems to think he knows everything there

1 is to know about that law. RCW 9.94A.030, sub 11,
2 although it may have been numbered differently, has been
3 on the books from the get-go, from 1984, July, when this
4 became effective. And it has always provided that a
5 conviction includes an acceptance of plea of guilty just
6 to beat or avoid his game playing that he's trying to
7 do, balance between the two jurisdictions in trying to
8 get as little a sentence as he can for some very serious
9 conduct. He shanked a prisoner on video. Why they
10 reduced it down to assault second, I don't know. I'm
11 going to file with the Court a certified copy of the
12 statement of defendant upon plea of guilty, and may we
13 use this? Yes, we may use this. Supreme Court of this
14 state on numerous occasions has held that a conviction
15 that occurs after the guilty plea -- and we submit that
16 the statutory definition is pretty clear -- has to be --
17 not may be -- has to be counted in the offender score.
18 The most recent decision I came across, *State v. Clark*,
19 which is 123 Wn. App. 515, which reaffirmed the
20 *Collicott* decision, which I believe is 118 Wn. 2d 649.
21 That's a 1992 State Supreme Court decision.
22 Interestingly, that's the State Supreme Court decision
23 that's been on the books and hasn't been changed by the
24 Supreme Court for 13 years, and was a unanimous
25 decision, and it's expected that that will probably stay

1 on the books for a little bit longer at least. But they
2 cite with approval both *Collicott* and *Schilling*, both of
3 which are clearly on point, and the *Schilling* case
4 actually was a case where it was a guilty plea in
5 another jurisdiction. The person came back on a
6 resentencing, and this involves a resentencing issue.
7 We've had to deal with this issue.
8 Your Honor will recall when we went through the wave
9 of *State v. Thomas*, inflicted trafficking in stolen
10 property, because some of the people that come back had
11 actually been convicted of more crimes since their
12 sentencing in Lewis County. And under *State vs.*
13 *Collicott*, those had to be counted. And as far as, I
14 think, Your Honor's reaction, it could be made a matter
15 of the record, people do not get deferred sentences in
16 the State of Washington and haven't gotten deferred
17 sentences for felony convictions since July 1 of 1984.
18 Mr. Amos is not in juvenile court and he's not in some
19 other state. Walla Walla is in the State of Washington,
20 and he is facing the standard range of 22 to -- I think
21 it showed as 22 to 29 months. Yeah, 22 to 29 months,
22 plus the usual community custody, and that, of course,
23 sentence has to run consecutive to whatever's imposed in
24 this case because that offense was committed after the
25 judgment in this case while he was, quote, serving time.

1 We submit that our calculation of the offender score
2 is A) generous to Mr. Amos. The alternative, Mr. Amos
3 persists that the state move to set aside his guilty
4 plea and then he can be facing assault one again. He
5 can be facing 403 months.
6 THE COURT: Anything else?
7 MR. RANDOLPH: No, Your Honor.
8 THE COURT: As I stated already a couple of
9 times, I have read Mr. Amos's materials. The original
10 plea that was accepted by Judge Hall in this matter back
11 on February 16th, 2000, was to different charges than
12 ultimately Mr. Amos was sentenced on because there was a
13 subsequent plea as to count three, a replea, as it were.
14 I'm not sure that's a proper phrase. But there was a
15 supplemental as to count three, which reduced the charge
16 from assault first degree to assault second while armed
17 with a firearm, and of course that led to the 36 months
18 enhancement. The information charged in count one and
19 count two, burglary first degree, in each instance, the
20 allegation was that he was armed with a deadly weapon.
21 In count one, the deadly weapon is not identified. It
22 just says "deadly weapon," and then it goes on and makes
23 the firearm allegation. In the robbery count, robbery
24 two, it says that the defendant was armed with a deadly
25 weapon, a walky-talky. Then the assault second, the

1 amended information charges -- well, the amended
2 information still charges assault first, but it was a
3 plea to assault second.
4 The statement that was made, "It was on January
5 16th, 2000. I was in a person's building. I had
6 permission to go in, but not to remain as long as I did.
7 I went in with the intent to help my friend's take some
8 marijuana. While we were there we assaulted Mr. Hull
9 and caused great bodily injury," and it says, "with a
10 deadly weapon, a walkie-talkie." And that's initialed
11 by his then attorney Jody Backlund. "Stole marijuana
12 and a gun. I've been convicted of a serious felony in
13 the past and I cannot possess a gun."
14 I've already made a finding, and I will make again a
15 finding as requested by the state, that counts one and
16 two encompassed the same criminal conduct. With respect
17 to the assault three in count number -- excuse me --
18 assault two as reflected in count three, I do not find
19 that that's the same criminal conduct as the robbery or
20 the burglary. I am mindful of Mr. Amos's argument that
21 it was basically just one continuous criminal
22 enterprise, so to speak, but I don't think so. I think
23 this was a gratuitous assault on Mr. Hull. It was not
24 necessary to facilitate the robbery that was already in
25 progress. There was, from my perspective, no need and

1 necessity to actually hit Mr. Hull with the
2 walkie-talkies, specifically, to induce him to disclose
3 the location of his medical marijuana. And accordingly,
4 I reject the idea that count three constitutes the same
5 criminal conduct or somehow merges into counts one and
6 two. Simply put, it's quite conceivable to me that
7 having decided to enter and/or remain unlawfully in
8 Mr. Hull's residence with the intent to commit a crime
9 and being armed with a deadly weapon, the -- and having,
10 in essence, threatened or used to -- or attempted to
11 threaten Mr. Hull with the use of immediate force, fear
12 of violence or injury to obtain his property, that
13 encompasses the robbery and that encompasses the
14 burglary. That does not encompass the assault in the
15 second degree. There was no reason, and it was simply a
16 gratuitous assault, as far as I'm concerned, to actually
17 hit Mr. Hull with the walkie-talkie.
18 With respect to the firearm, again, the plea here
19 was to count five. Count five was theft of a firearm.
20 The theft of the firearm does not merge into the
21 burglary or the robbery. Again, there was no need or
22 necessity, as far as I can determine, to take the gun.
23 It was not done with the intent to -- the robbery and
24 the burglary were not done, according to Mr. Amos, with
25 the intent, at least initially, he said, to steal the

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1 gun. It was done to take the marijuana grow, his grow,
2 because they knew he had marijuana that he was growing
3 for his medical use. I seem to recall in the back of my
4 mind that there was some statement made by perhaps the
5 prosecutor at the time that the medical marijuana was
6 being used because Mr. Hull had had a stroke or a heart
7 attack or something that necessitated that he use that
8 stuff. In any event, they knew he had it. That's what
9 they went in there to take. They didn't go in there to
10 take the gun. Taking the gun was kind of like a -- not
11 exactly sure how to phrase it, but it was an inadvertent
12 discovery, the end result of which is they took the gun,
13 and subsequently, as I recall the state's argument,
14 Mr. Hull was subsequently assaulted with the gun to
15 induce him to disclose the location of the additional
16 marijuana, which was growing in the closet. And of
17 course, count six, unlawful possession of a firearm in
18 the second degree, Mr. Amos, having been previously
19 convicted in juvenile court of the offenses he'd been
20 convicted of, could not lawfully possess a gun, so that
21 one doesn't merge with anything and it's not the same
22 criminal conduct.
23 So having said that -- and further, not having been
24 provided with any authority to the contrary, I'm
25 accepting the state's claim with respect to the

1 conviction out of Walla Walla County, that a plea is a
2 conviction. Notwithstanding the fact that someone
3 hasn't been sentenced, I can see all kinds of problems
4 if in fact we get to the point where somebody says --
5 the Court of Appeals, for example, or the Supreme Court
6 starts saying, "Well, he hadn't been sentenced on this
7 one, so therefore you can't count that." We're going to
8 have all kinds of problems between counties as far as,
9 "Okay, you sentence him first." "No, you sentence him
10 first." Or perhaps even some collusion between counties
11 to the effect that you sentence him first, because if
12 you sentence him first, and then the other county
13 sentences him first, perhaps you'll get higher time from
14 the second county than the first. That leads to all
15 kinds of problems, and I think Mr. Randolph's argument
16 has merit. That's the reason that the statute is
17 written the way it's written, which is basically a
18 conviction is a conviction, notwithstanding the fact
19 that the judgment and sentence has not been entered. So
20 I will accept for the purpose of argument that the
21 offender score as to count one is seven and a half;
22 count two, seven; count three, seven; count five, four;
23 and count six, four. And that includes the assault two
24 conviction out of Walla Walla County. And that
25 conviction out of Walla Walla County looks to me like

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1 simply assault two, was not an assault two with a deadly
2 weapon. There was no enhancement apparently.
3 In any event, the state's calculation with a --
4 given that offender score and a seriousness level, their
5 calculations as to count one was a standard range of 67
6 to 89 months; count two, 87 to 116; count three, 43 to
7 57, plus 36-month enhancement; count five, as I
8 understood it, was 31 to 41; and count six was 36 to 48.
9 Are those correct, Mr. Randolph?
10 MR. RANDOLPH: Yes, Your Honor.
11 THE COURT: Be it the judgment of the Court
12 Mr. Amos on count one will be sentenced to -- let's see
13 here. 71 months on count one, 84 months on count two,
14 and that's an exceptional sentence below standard range.
15 THE DEFENDANT: I object to that, Your Honor.
16 THE COURT: Well --
17 THE DEFENDANT: *Blakely vs. Washington* --
18 THE COURT: I have the authority to go below
19 standard range. Even under *Blakely*.
20 On count three, the Court sentences Mr. Amos to 57
21 months plus 36 months enhancement as required by law,
22 which has to be served first. On count five, 38 months,
23 and on count six, 48 months. The time on counts one,
24 two, three, five and six is concurrent, and the 36-month
25 enhancement will be served consecutive to and actually

1 prior to the balance of the time imposed, but it's
2 specifically consecutive to the highest standard range,
3 which is count two, which is 84 months, which gets us to
4 120 months. And the reason for the Court imposing the
5 exceptional sentence below standard range -- which, as
6 far as I'm concerned, under all of the cases, including
7 *Blakely vs. Washington,* I do have the authority to
8 impose -- is to facilitate the plea bargain that the
9 prosecuting attorney's office made with Mr. Amos back
10 when the original sentence in this matter was pronounced
11 by the Court back on April 25th of 2000. And of course,
12 Mr. Amos gets credit for time served.
13 So as far as I'm concerned, Mr. Amos, at this
14 juncture, you can, as I'm sure you will, make your
15 arguments with respect to merger and same criminal
16 conduct and anything else that you want to raise in the
17 Court of Appeals.
18 THE DEFENDANT: All right.
19 MR. RANDOLPH: Thank you, Your Honor. Ask
20 that the formal entry be set over, and I apologize, I
21 don't have my calendar with me, but I think, except for
22 today, just about any time between now and Thursday at 5
23 o'clock.
24 THE COURT: Are you due to go back to Walla
25 Walla? Is that where you're going?

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1 THE DEFENDANT: Yes.
2 THE COURT: So you probably want to get back
3 there as soon as you can, I imagine?
4 THE DEFENDANT: Doesn't matter.
5 THE COURT: Well, the reason I'm asking is
6 because if we can do formal entry between now and
7 Thursday, then you'll go on Friday.
8 THE DEFENDANT: Yeah. They haven't even
9 did -- set a sentencing date. It don't matter.
10 MR. RANDOLPH: To delay any fears of
11 collusion, I've not spoken with the deputy prosecutor
12 that handled this case over in Walla Walla for about a
13 month. I was under the impression it was still pending
14 trial on assault one with a deadly weapon --
15 THE COURT: Are they housing you in a Walla
16 Walla County Jail, or were you still at the institution?
17 THE DEFENDANT: No. Still at the institution.
18 MR. RANDOLPH: He'd written a letter to Judge
19 Zagelow complaining about the fact that he was being
20 detained unlawfully at Walla Walla State Penitentiary
21 pending this trial in that county. That's how I met him
22 over the telephone, because he was claiming that Walla
23 Walla was refusing to ship him to Lewis County, which,
24 of course, was obviously not the case.
25 THE COURT: They were holding you just in

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1 general population of max security? Not IMU?
2 THE DEFENDANT: Max in IMU.
3 THE COURT: Oh, you're in IMU?
4 THE DEFENDANT: Yeah.
5 THE COURT: Okay. I had a tour of that
6 institution two years ago. That's not a pleasant place
7 to be.
8 THE DEFENDANT: No, it's not.
9 MR. RANDOLPH: So do you want me to set this
10 with the court --
11 THE COURT: I have time -- I have time
12 tomorrow, I have time today, I have time tomorrow, I
13 have time Thursday. Thursday, however, we have
14 transport problems because --
15 MR. RANDOLPH: Tomorrow --
16 THE COURT: -- these officers have to
17 transport to the calendar on Thursday, so I'd like --
18 MR. RANDOLPH: Should I set that with Susie
19 then?
20 THE COURT: Get the paperwork done and set it
21 with the court administrator. I'd like to get
22 Mr. Amos's amended judgment and sentence done so he can
23 be on his way and he can be dealing with the Court of
24 Appeals.
25 THE DEFENDANT: Your Honor, how can I get a

APPENDIX E

1 copy of the court record, this proceeding right here?
2 THE COURT: First of all, when I do the actual
3 signing, I will advise you of your appellate rights.
4 That also will include, if you wish, appointment of
5 counsel to assist you in appealing those portions of the
6 decision that I just made that you feel are in error.
7 There is a procedure that I'll explain to you when I go
8 through your appellate rights as far as how you do that.
9 All right?
10 THE DEFENDANT: All right.
11 THE COURT: So, Mr. Randolph, get that set up,
12 and if at all possible, I'd like to do it other than on
13 Thursday so we don't have problems with transport.
14 THE DEFENDANT: I think I can -- the
15 paperwork's about 97 percent done. I just didn't want
16 to --
17 THE COURT: Okay.
18 (Conclusion of proceedings.)
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APPENDIX E

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss
3 COUNTY OF PIERCE)

4

5 I, Kellie A. Smith, Notary Public, in and for the
6 State of Washington, County of Pierce, residing at
7 Tacoma, do hereby certify:
8 That the annexed and foregoing Verbatim Report of
9 Proceedings, Ruling of the Court, was reported by me and
10 reduced to typewriting by computer-aided transcription;
11 That said transcript is a full, true, and correct
12 transcript of the ^ proceedings heard before ^ ruling
13 announced by Judge Richard L. Brosey on the ^ DAY day of
14 ^ MONTH, 2005, at the Lewis County Courthouse, Chehalis,
15 Washington;
16 That I am not a relative or employee of counsel or
17 to either of the parties herein or otherwise interested
18 in said proceedings.
19 WITNESS MY HAND AND OFFICIAL SEAL THIS _____ day of
20 _____, 2005.
21
22
23 _____
24 Notary Public, in and for
the State of Washington,
residing at Tacoma.
25

APPENDIX

F

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF LEWIS

3

4 STATE OF WASHINGTON,)
5 Plaintiff,) NO. 00-1-00033-7
6 vs.)
7 FORREST EUGENE AMOS,)
8 Defendant.)

9

10 VERBATIM REPORT OF PROCEEDINGS
September 12, 2005
11 Formal Entry of Judgment and Sentence

12

13 A P P E A R A N C E S

14

15 For the State: JEREMY RANDOLPH
Lewis County Prosecuting
16 Attorney
Chehalis, Washington

17 For the Defendant: PRO SE

18

19 Presiding Judge: RICHARD L. BROSEY
Dept No. 3

20

21

22 Kellie A. Smith
Official Court Reporter
23 Lewis County Superior Court
Chehalis, Washington 98532
24 (360)740-2658

25

CCR #1950

APPENDIX F

1 September 12, 2005

2 * * * * * * * * * * * * *

3 MR. RANDOLPH: Your Honor, this is cause
4 number 00-1-00033-7. State's represented by Jeremy
5 Randolph. The defendant, Forrest Eugene Amos, is
6 present in court, representing himself. Mr. Michael
7 Underwood, licensed attorney, is his standby counsel.
8 Matter comes on for consideration, I believe, of
9 Mr. Amos's motion to withdraw his guilty plea. State
10 has the file right now because I had to double check,
11 make sure the copy of the agreement, the original
12 agreement, was the same as the one that's in my file.

13 **THE COURT:** Record will reflect that Mr. Amos
14 is present with standby counsel Mr. Underwood.

15 Mr. Amos, it's your motion.

16 MR. AMOS: Yes, Your Honor. I put in a motion
17 to withdraw a plea of guilty on count III, assault in
18 the second degree, based on the ruling given and the
19 argument given for my mergers, my motion to merge count
20 II, assault in the second degree, into count -- or count
21 III, assault second degree, into count II, robbery in
22 the first degree. Randolph claimed that this assault
23 was based on a second or later-in-time assault from the
24 first assault to commit a robbery one. The Court
25 accepted that one -- that theory by rejecting my merger

1 argument, and I put in a motion to show that the court
2 record, as dated for the first plea, is I pled guilty to
3 one assault, and that assault was never assault with a
4 firearm after the first assault to commit a robbery.
5 That was -- the assault that I pled guilty to says on
6 page 10 of the court record that as to second -- as to
7 the second amended information, count III, "charging you
8 with assault in the second degree, where it is claimed
9 that on or about January 16th of 2000, in Lewis County,
10 you intentionally assaulted Joe Hull with a deadly
11 weapon with intent to commit a felony, robbery or
12 burglary in the first degree, to commit thereof you were
13 armed with a Ruger pistol, that being a firearm, and as
14 RCW 9.94.110, which invokes provisions of 9.94.310,
15 adding, as provided in 9.94.370, hard time for armed
16 crimes. What is your plea?" And I pled guilty. That's
17 in the court record on page 10 of our hearing. This was
18 with you back in 2000. But Mr. Randolph's claim was
19 this was a second or later-in-time assault done with the
20 firearm, I assaulted Mr. Hull with a firearm. That is
21 not what I pled guilty to when I pled guilty to count
22 III. And, I mean, that's basically it. I've -- my
23 theory is I should be able to withdraw this plea if the
24 Court is going to accept Mr. Randolph's claim that I
25 committed a second or later-in-time assault, because the

1 record doesn't support that I committed such an assault,
2 nor did I plead guilty to such an assault.
3 **THE COURT:** Mr. Randolph?
4 MR. RANDOLPH: I've had an awful lot of time
5 to think about this, Your Honor, and I don't think
6 Mr. Amos has. I'm going to ask the Court to set this
7 over one week for Mr. Amos to deal with reality. The
8 reality is this: If I withdraw any objection to his
9 withdrawing his guilty plea to count III in the second
10 amended information, we go back to assault I with a
11 firearm, which under the case he likes to cite, *State v.*
12 *Freeman*, doesn't merge. He freely and voluntarily in
13 February pled guilty to assault in the first degree
14 while armed with a firearm before Judge Hall, and he's
15 going to get out of the frying pan and he's going to be
16 right in the middle of the fire. Quite frankly -- I
17 think the record should be very clear on this -- a deal
18 was struck with Mr. Amos, and the fact is, the initial
19 deal that was struck by me is that he would not even be
20 facing prison if he cooperated fully and he was in a
21 position to testify truthfully. And as Your Honor is
22 aware, when the state makes a deal for a person to
23 testify, we have them placed on a polygraph or have a
24 polygraph exam because we want to make sure that the
25 testimony that they're presenting is in fact the truth.

1 We're not just trying to get somebody convicted. We
2 want truthful testimony. And Mr. Amos blew that
3 polygraph, lied on two important issues. One was the
4 issue of whether or not he personally took the gun, and
5 the other was whether or not he personally struck
6 Mr. Hull. I think the comment of Mr. Underwood is most
7 important. Mr. Amos, although very polite, doesn't seem
8 to have any concept of truth. I don't think I've ever
9 seen that from a polygraph operator. But the deal was
10 struck, he pled guilty on February 16th, the year 2000,
11 to six counts, one of which was assault in the first
12 degree with a firearm. And he was facing on that
13 charge, with a recalculation of his offender score, he
14 was facing four times what he's facing today on assault
15 with a firearm. Assault second with a firearm. If he
16 withdraws his guilty plea -- and quite frankly, I don't
17 object. If he wants to go ahead and withdraw his guilty
18 plea, the firearm enhancements, as part of the deal we
19 will withdraw our request to strike the firearm
20 enhancements of count I, II, and as he pled guilty to
21 the assault first, on the assault first. The firearm
22 enhancement alone on those three crimes is going to be
23 more time straight than he's got straight based upon a
24 plea deal. Now, what happened is -- this is not --
25 Mr. Blair was not reputed to be the most level person

APPENDIX F

1 and the most charitable person, but the plea was to
2 those very serious offenses with firearm enhancements,
3 and my recollection is it was going to be three times
4 five years, 15 years just on firearm enhancements, flat
5 time. He's looking at 10 with credit for good time
6 scenario as a present. If he wants the 15 flat time,
7 we'll withdraw our objection to his withdrawing the
8 guilty plea and we'll go back to where we were and ask
9 the Court to sentence him on his guilty pleas made on
10 February 16th, but what happened is he flunked those
11 polygraphs. We could not use him if we had to for trial
12 purposes because he was not truthful. And the usual
13 situation in our office, if a person fails to completely
14 comply with the plea agreement, is that they're at
15 square one, they're right at the beginning, which is
16 facing all of the things that he pled to. In this
17 specific case, I think Mr. Blair -- and I don't think --
18 I know Mr. Blair talked to me, and because the initial
19 cooperation by Mr. Amos got us the other three
20 participants, we were in a position to prosecute those
21 other three participants, and quite frankly, we didn't
22 really know and we didn't have much of a lead on who did
23 what until we captured Mr. Amos. And we didn't know who
24 the other three were. So the long and the short of it
25 was we felt he should get part credit for the first

1 steps, but we couldn't give him full credit because he
2 was nonusable as a witness because he was not truthful.
3 The long and the short of it is, if he wants to
4 withdraw his guilty plea, we will withdraw our
5 objection, we'll move to put the enhancements back on
6 and have him sentenced for burglary in the first degree
7 while armed with a firearm, robbery in the first degree
8 while armed with a firearm, assault in the second degree
9 while armed with a firearm, and I think we also let him
10 withdraw his guilty plea or did not object to his
11 withdrawing his guilty plea to count IV, possession of a
12 stolen firearm, theft of a firearm, unlawful possession
13 of a firearm.
14 The only reason we're back here is because of a
15 state supreme court decision, not related to Mr. Amos's
16 case per se, that dealt with juvenile -- or the
17 sentencing and how you count juvenile offenses. And it
18 doesn't do me a lot of good to agree with the sentence.
19 It was a five/four decision. Simple fact is we're here,
20 we've already done the resentencing, but if he wants to
21 withdraw his guilty plea to the assault second, we won't
22 object and he'll be looking at -- I don't know. Even if
23 the Court were to give him zero days on each of the
24 offenses, the enhancements alone, by my calculation,
25 would be the five times three. But if Your Honor -- and

1 I did provide to Mr. Amos and to Your Honor copies of
2 the transcript. The transcript is replete with the fact
3 that Mr. Amos was anxiously trying to get down to 120
4 months. And we face this constantly with these type of
5 people. They then go -- once they've made a deal, once
6 they've gotten the benefit of the deal, then they want
7 to even chip at the deal even more. Simple fact is that
8 the sentence was -- the offender score was correctly
9 calculated the second time around by Your Honor, based
10 upon the *Smith, Varga* and -- I can't even remember the
11 other ones -- the *Cruz* decisions. And it still is up --
12 he's right where he was at 120 months because he went
13 out and committed an assault while he was in prison,
14 which added two points. So that, of course -- I haven't
15 even had a chance, Your Honor, because this just struck
16 me, with the added two points and it being a prior
17 assault in the second degree, the time that he's facing,
18 I think before it was 402 months, which is more than 30,
19 add the assault seconds. I don't know. So what I'm
20 asking is for the Court to inquire of Mr. Amos if he
21 wants to go ahead and proceed with this. I'm not
22 threatening. I'm just trying to state the record. The
23 record's very clear. He pled guilty to assault one with
24 a firearm, robbery with a firearm, burglary with a
25 firearm. If we pull out of the April 25th, 2000, deal,

1 we go back to the February 16th. Simple as that. And
2 I'm not -- I don't want to be vindictive. I think, as
3 Mr. Amos and his attorney did in the year 2000, that the
4 120 months was a relatively fair sentence. If he wants
5 more time and is placing himself in the situation of
6 getting more time, there's not much more I can do about
7 it if he really wants it that bad.
8 **THE COURT:** Well, would you like to comment on
9 the idea that merely because the Court doesn't accept
10 his argument on the application of the merger doctrine,
11 that that's a basis to allow somebody to withdraw their
12 plea?
13 MR. RANDOLPH: Well, Your Honor, again, I
14 provided counsel with -- I think it's about a month-old
15 case that of course goes back -- I think *State v. Taylor*
16 is one of the few cases where the precedent has stated
17 since the date the supreme court decided it, every case
18 involving withdrawal of guilty plea cites the *State v.*
19 *Taylor*, and to the two criteria that are necessary to
20 qualify for a withdrawal of guilty plea. And one is the
21 showing of manifest injustice. This does not -- Your
22 Honor's ruling certainly doesn't qualify as manifest
23 injustice. And we'd submit that he just doesn't make it
24 under the -- first place, to the right to withdraw
25 guilty plea. Only we'll withdraw the objection if he

1 really wants to withdraw his guilty plea. But he has to
2 do that. You know, we've spent an awful lot of time
3 trying to figure out what the consequences and making
4 sure the defendants are aware of the consequences of
5 pleading guilty. Mr. Amos has to be aware of the
6 consequences for withdrawing his guilty plea because it
7 goes back to February 16, and 15 years flat time for
8 firearm an enhancements. I think that would be more of
9 a difficulty for him than whether or not he's
10 experienced a manifest injustice in the resentencing
11 process. In the resentencing process he was sentenced
12 for things that he did based upon his criminal history.
13 **THE COURT:** Mr. Amos?
14 MR. AMOS: Your Honor, all I'm trying to get
15 across here with this motion is that if Mr. Randolph
16 wants to keep alleging some fictional assault, that I
17 assaulted somebody with a firearm, which I never pled
18 guilty to, I'm acknowledging that I pled guilty to what
19 the record shows, and that assault was what I pled
20 guilty to when I pled guilty to second degree assault.
21 **THE COURT:** Well --
22 MR. AMOS: Mr. Randolph wants to come --
23 **THE COURT:** Let me stop you for a minute. I'm
24 looking at the transcript of the hearing that was held
25 April 25th, 2000. Page 11, it says, "Tell me in your

1 own words what you did that makes you think you're
2 guilty of assault in the second degree."
3 "I assaulted Joe Hull," -- it says Hall but it's
4 actually Hull -- "with a deadly weapon."
5 "The Court: What was that?"
6 "The Defendant: Firearm and a walky-talky."
7 Sounds to me like you admitted right there that you
8 assaulted him with a firearm.
9 MR. AMOS: If you look lower, the actual plea
10 statement was that on -- it says on page 11 and 12, it
11 says:
12 The Court: "'Paragraph 11, he says on 1/16/2000, in
13 Lewis County, I assaulted an individual with a deadly
14 weapon. I was in possession of a firearm at the time of
15 the assault.'
16 Is that your statement?"
17 The Defendant: "Yes."
18 That -- I mean, that's what I'm trying to say. I
19 committed an assault.
20 **THE COURT:** Do you understand what
21 Mr. Randolph is saying?
22 MR. AMOS: Yeah, I understand what
23 Mr. Randolph is saying, but I don't agree. If it is
24 withdrawn, the whole plea statement is out the door and
25 I should be able to have a trial on the whole thing

APPENDIX F

1 whether I'm facing the original charges or not. I don't
2 agree with three consecutive enhancements for one
3 firearm.
4 **THE COURT:** Well, that's what you pled to,
5 what you pled to initially. You pled guilty to six
6 individual counts in front of Judge Hall.
7 MR. AMOS: Pursuant to a plea agreement.
8 **THE COURT:** Which you didn't keep. Then you
9 came back before me, and the prosecutor's office still
10 allowed you to withdraw your plea to two counts and that
11 substituted one count of assault in the second degree
12 for assault in the first degree and you pled guilty to
13 that. And you told me in your own words that you
14 assaulted Joe Hull with a deadly weapon. I asked you
15 what that was, and you said a firearm and a walky-talky.
16 So as far as I'm concerned, you admitted that you
17 assaulted him with a firearm.
18 MR. AMOS: Well, what assault did this occur?
19 I mean, that's what we're trying to get at. I mean,
20 this -- in my theory, this assault was based on the
21 assault to further the robbery. I pled guilty to one
22 assault, and that one assault was what I pled guilty to
23 in the record. Whether -- I mean, there's -- I mean --
24 **THE COURT:** You pled guilty.
25 MR. AMOS: There's discrepancies in the

APPENDIX F

1 record --

2 **THE COURT:** You pled guilty to one assault in

3 front of me, but you pled guilty to a different assault

4 in front of Judge Hall.

5 MR. AMOS: No, not necessarily. That was the

6 same assault because even the court record says right

7 here on page 7, "I will allow him to withdraw his pleas

8 to count III and IV of the second amended information."

9 The Court charged Count III as rewritten, charged with

10 assault in the second degree, which is a reduction from

11 the original plea on count III, which was first degree

12 assault. It was the same assault whether it was -- it

13 was the -- I pled guilty to one assault first degree in

14 front of Mr. Hall and then came -- we withdrew that plea

15 here and we pled guilty to the same assault. It was

16 just a reduction of the charge. It wasn't a second or

17 third or fourth or fifth assault. It was one assault.

18 **THE COURT:** I think you're not understanding

19 the point that I'm asking you about. The point that I'm

20 asking you about is -- the merger has nothing to do with

21 the two degrees of assault. The merger has to do with

22 whether the assault merges into the other crime.

23 MR. AMOS: Yes. I understand that.

24 **THE COURT:** So what I ruled previously was

25 that there were two separate incidents here, not one but

1 two, and that's why there was no merger.
2 MR. AMOS: Yeah, I understand that, Your
3 Honor. What I'm trying to get across is I pled guilty
4 to only one of those assaultive behaviors, not two of
5 those assaultive behaviors. And that was the point of
6 this withdrawal is to understand what I pled guilty to,
7 to have the state argue what did I plead guilty to, to
8 find out what we pled guilty to, and that was one
9 assault, which was -- whether it was the first amended
10 information, the second amended information or the third
11 amended information, it all encompassed one assault.
12 The assaults never changed.
13 **THE COURT:** Well, as far as I'm concerned,
14 robbery in the first degree, which is what you pled
15 guilty to in front of Judge Hall, it says, "A person is
16 guilty of robbery in the first degree if, No. 1, is
17 armed with a deadly weapon -- a person is guilty of
18 robbery in the first degree if in the commission of a
19 robbery or immediate flight therefrom, he or she, one,
20 is armed with a deadly weapon or two, displays what
21 appears to be a firearm or other deadly weapon, or
22 three, inflicts bodily injury."
23 So the assault on Mr. Hull when you hit him with the
24 walky-talky elevates it to robbery in the first degree.
25 The assault in the second degree with a firearm, which

APPENDIX F

1 is what you admitted to when you pled guilty to the
2 amended charge in front of me, as far as I'm concerned,
3 is entirely a separate assault. That's what I've
4 already ruled. That's why I said there was no merger.
5 MR. AMOS: Then how do we have a basis for a
6 robbery one? Where's the basis for the robbery one?
7 **THE COURT:** You assaulted him with a
8 walky-talky.
9 MR. AMOS: But I never pled guilty to that
10 assault.
11 **THE COURT:** Yes, you did. You just admitted
12 it right here in this statement.
13 MR. AMOS: Yeah, but that statement right
14 there is based on me pleading guilty to the second
15 degree assault. The only thing in that -- in the record
16 before you is me pleading guilty to the second degree
17 assault. That's what I'm trying to get at, Your Honor,
18 is I only pled guilty to one assault. And that assault
19 was the basis -- I mean, that's what I argued into my
20 motion to reconsider merger, is I pled guilty to one
21 assaultive action, period. That was on February 16th,
22 and the plea statement is -- I have my plea statement
23 here somewhere. And then what I'm trying to get across
24 is that I pled guilty to that charge, that crime right
25 here. When I first pled guilty to everything as charged

1 on February 16th, I said, "On January 16th, 2000, in
2 Lewis County, I was in the person's building. I had
3 permission to go in, but not to remain as long as I did.
4 I went in with the intent to help my friends take some
5 marijuana. While we were there, we assaulted Mr. Hull
6 and caused bodily injury with a deadly weapon, a
7 walky-talky. We stole the marijuana and a gun. I have
8 been convicted of a serious crime in the past and I can
9 not possess a gun."
10 Okay. Pleading guilty to that as charged on
11 February 16th, it was allowed in your court on April
12 25th, 2000, I withdrew that plea to count I, assault in
13 the first degree. That plea, pursuant to new plea
14 agreements reached between me and Mr. Blair, I pled
15 guilty as the Court said their understanding was, "I
16 will allow him to then withdraw his pleas to count III
17 and IV of the second amended information."
18 The Court: "Charge Count III, as rewritten,
19 charges with assault in the second degree, which is a
20 reduction from the original plea to count III, which was
21 the assault in the first degree."
22 See, I've only ever pled guilty to one assault.
23 **THE COURT:** All right. Is there anything else
24 you want to say?
25 MR. AMOS: No.

1 **THE COURT:** The motion to withdraw the plea,
2 which was taken before me on April 25th, 2000, is
3 denied. There is no manifest injustice here in adhering
4 to the plea agreement here as made, and the mere fact
5 that the Court does not, at least at this level, does
6 not accept your argument of merger as to the robbery one
7 and the assault second with a firearm, the mere fact
8 that I don't accept that, because I think there were in
9 fact two distinct incidents here that gave rise to both
10 the conviction for robbery in the first degree and
11 assault second while armed with a firearm, is not a
12 reason or a basis justifying the withdrawal of a plea.
13 And I also don't accept the state's argument that if
14 in fact we were to allow that, that we'd necessarily go
15 back to where we were prior to the time that I allowed
16 you to withdraw the plea to assault in the first degree
17 as taken in front of Judge Hall, because I think that
18 plea in fact has gone away by the fact that it was
19 allowed to be withdrawn. But in any event, I'm not
20 granting the motion to withdraw the plea. There's no
21 manifest injustice here, there's no reason why, as far
22 as I'm concerned, you're harmed by the mere fact that I
23 don't accept your argument of merger. If you think the
24 trial court is wrong on the ruling of merger, you can
25 file a PRP with the Court of Appeals, which you've

1 already done on more than one occasion and you know how
2 to do. I've already pronounced sentencing on this, have
3 I not?
4 MR. RANDOLPH: Yes, Your Honor.
5 **THE COURT:** What's left is formal entry?
6 MR. RANDOLPH: That's correct, and I'll hand
7 to --
8 **THE COURT:** And an order denying the request
9 to withdraw the plea.
10 MR. RANDOLPH: What I have is proposed
11 judgment and sentence and findings of fact, exceptional
12 sentence downward by three months. I'm going to give
13 those to counsel to go over with, to provide legal
14 advice or whatever.
15 MR. AMOS: And, Your Honor, I put in another
16 motion to reconsider the same criminal conduct on theft
17 of a firearm, robbery in the first degree.
18 **THE COURT:** And I'm denying it.
19 MR. AMOS: Your Honor, I'd like the record to
20 show that I object to the exceptional sentence downward
21 of three months.
22 **THE COURT:** Mr. Amos, did you review these
23 documents with your standby counsel?
24 MR. AMOS: Yes.
25 **THE COURT:** Did the documents say in writing

APPENDIX F

1 what I said out loud?

2 MR. AMOS: Yes.

3 **THE COURT:** Other than your voiced objection

4 to the exceptional sentence below the standard range, do

5 you have any questions?

6 MR. AMOS: No, Your Honor.

7 **THE COURT:** All right. This again is a felony

8 conviction. It's part and parcel of a felony conviction

9 for a class A felony. As a result of that, your right

10 to possess a firearm of any type in Washington is

11 revoked. You may not under any circumstances possess a

12 firearm unless or until your right to do so is restored

13 by superior court. As a practical matter, given that

14 you're convicted of a class A felony, it's highly

15 unlikely that will ever happen. You need to be aware

16 that possession of a firearm, in your case, is at least

17 a class B felony. This county, along with several

18 others, prosecutes that particular crime. So when you

19 are released from DOC custody, do not have in your

20 possession or control any kind of a firearm, including a

21 black powder rifle or pistol. No hunting or target

22 shooting with any kind of a gun. Don't be around

23 anybody with guns. Don't have any guns in your house,

24 car or apartment. I can't remember if there's community

25 custody on this or not.

1 MR. RANDOLPH: I believe -- I think it's --
2 **THE COURT:** Community placement for 12 months.
3 MR. RANDOLPH: Placement.
4 **THE COURT:** During any period of time that
5 you're under supervision, including if you get any
6 earned early release credits and are released early,
7 it's very important that you do what's required by your
8 community custody, don't do what he or she tells you not
9 to do. If you do what you're told not to do or you
10 don't do what you're told to do, if you've received
11 early release credits, they could treat it as a
12 probation violation, which are 60 days in jail per
13 violation. In the alternative, they could send you back
14 to the institution to serve the balance of the time
15 imposed by the Court.
16 You also have lost the right to vote. Do not
17 attempt to vote, don't attempt to register to vote
18 unless or until you receive a certificate of discharge
19 from the Court. That comes at the completion of the
20 maximum term of the sentence. In as much as this is a
21 class A felony, it's unlikely that will ever happen, but
22 if you attempt to vote or you do vote, you will be
23 committing a crime in the State of Washington.
24 Do you have any questions?
25 MR. AMOS: No.

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1 **THE COURT:** As I stated earlier, if you think
2 that the Court is wrong on my determination of the issue
3 on merger, your remedy is to file a PRP on that issue,
4 which you already know how to do. You need to take your
5 fingerprints.
6 MR. RANDOLPH: Mr. Amos has a PRP pending,
7 which the Court has taken under its own advisement. I
8 don't even remember what that one's about.
9 (Conclusion of proceedings.)
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APPENDIX F

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss
3 COUNTY OF PIERCE)

4

5 I, Kellie A. Smith, Notary Public, in and for the
6 State of Washington, County of Pierce, residing at
7 Puyallup, do hereby certify:
8 That the annexed and foregoing Verbatim Report of
9 Proceedings, Formal Entry, was reported by me and
10 reduced to typewriting by computer-aided transcription;
11 That said transcript is a full, true, and correct
12 transcript of the proceedings heard before Judge Richard
13 L. Brosey on the 12th day of September, 2005, at the
14 Lewis County Courthouse, Chehalis, Washington;
15 That I am not a relative or employee of counsel or
16 to either of the parties herein or otherwise interested
17 in said proceedings.
18 WITNESS MY HAND AND OFFICIAL SEAL THIS _____ day of
19 _____, 2006.
20
21
22 _____
23 Notary Public, in and for
the State of Washington,
residing at Puyallup.
24
25

APPENDIX

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF LEWIS

3

4 STATE OF WASHINGTON,)
)
5 Plaintiff,)
)SUPERIOR NO. 00-1-00034-5
6 vs.)APPEALS NO. 33714-2-II
)
7 MATHEW COLLETT,)
)
8 Defendant.)

9

10 VERBATIM REPORT OF PROCEEDINGS
August 17, 2005
11 Resentencing

12

13 A P P E A R A N C E S

14

15 For the Plaintiff: JEREMY RANDOLPH
Prosecuting Attorney
16 Chehalis, Washington

17 For the Defendant: KENNETH G. JOHNSON
Attorney at Law
18 Chehalis, Washington

19 Presiding Judge: RICHARD L. BROSEY
Dept No. 3

20

21

22 Kellie A. Smith
Official Court Reporter
23 Lewis County Superior Court
Chehalis, Washington 98532
24 (360)740-2658

25

CCR #SM-IT-HK-A225J5

1 August 17, 2005

2 * * * * * * * * * * * *

3 MR. RANDOLPH: Your Honor, this is cause
4 number 00-1-00034-5, State versus Mathew -- no middle
5 initial -- Collett, spelling C-o-l-l-e-t-t.
6 Mr. Collett's in court this afternoon with his counsel,
7 Mr. Kenneth Johnson. The state's represented by Jeremy
8 Randolph. The state's ready to proceed with
9 resentencing.

10 **THE COURT:** That's your true and correct name,
11 Mathew Collett?

12 THE DEFENDANT: Yes, sir.

13 **THE COURT:** All right. Mr. Johnson?

14 MR. JOHNSON: We're ready to proceed.

15 **THE COURT:** Very well. Mr. Randolph?

16 MR. RANDOLPH: Your Honor, in the case of
17 State versus Mr. Collett, Mr. Collett was sentenced by
18 this Court based upon a plea agreement, in which both
19 counsel agreed -- and I quote Mr. Johnson from page 16
20 in the report of proceedings, "We agreed on 120 months
21 under the circumstances. All things considered, I
22 believe that is a fair disposition." The statement of
23 defendant on plea of guilty also refers to agreed 120
24 months.

25 Mr. Collett filed a personal restraint petition

1 which was dismissed by the Court of Appeals on
2 discretionary review, was granted by the Supreme Court
3 on June 1st, 2005. The matter was transferred to Lewis
4 County Superior Court for resentencing consistent with
5 the Westfall, LaChapelle decisions, which held, among
6 other things, that convictions that occurred before a
7 person turned age 15 before June of 2002, could not be
8 accounted in the offender score for a reasoning, or lack
9 thereof, in the Cruz and Smith decisions.
10 Matter comes on for resentencing. There's been
11 further -- and I don't know exactly the correct word,
12 because the word that I would use has some clinical
13 connotations, but there's further attempt to get out of
14 the deal, so to speak, by way of sentencing memorandum
15 and claims about what should and shouldn't be considered
16 same criminal conduct. The state feels bound by its
17 agreement, that is, to recommend to Your Honor 120
18 months. We're asking the Court to find -- and I've
19 reviewed this report of proceedings, and to be perfectly
20 candid, when the record was being made, the state, nor
21 the Court, nor defense counsel could predict that State
22 v. Freeman would come out. That was one of the more
23 amazing compromise decisions where they say that assault
24 second, generally speaking, merges with robbery absent a
25 clear separation of the two crimes, but assault first

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1 doesn't. I've looked at the record, and the record was
2 not made clearly that the assault second with firearm
3 was separate from the robbery. Therefore, we're asking
4 the Court to consider that the robbery is merged with
5 the assault in the second degree and counts as same
6 criminal conduct for those two offenses. We're asking
7 the Court further to make the finding that the defendant
8 was armed with a firearm beyond a reasonable doubt on
9 count two based upon the record that was made before
10 this court where it's perfectly clear that the defendant
11 and one of the coparticipants armed himself with a
12 firearm or more than one firearms stolen from a now
13 deceased Mr. Hull. Having all of that in mind, Your
14 Honor, by my calculations the defendant has an offender
15 score of four of the crime of burglary in the first
16 degree, and that is premised upon the case -- or the
17 concurrent offenses of robbery in the first degree and
18 assault in the second degree, both being violent
19 offenses and both scoring as two, as well as the theft
20 of the firearm and unlawful possession, scoring as one
21 each for a total of four points. The standard range for
22 burglary in the first degree with four points is 36 to
23 48 months. Keeping with the spirit of the plea
24 agreement, we're asking that the Court impose 48 months.
25 On count two, robbery in the first degree, we're asking

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1 the Court, as I've already said, to consider for the
2 purposes of this case and this case alone that the
3 assault in the second degree, based on the record before
4 the Court, would merge into the robbery, and therefore
5 is not counted in the offender score based upon one
6 burglary in the first degree conviction, which is two
7 points, and two other crimes, theft of a firearm and
8 unlawful possession, that to be two points, with a
9 standard range of four. I mean, with an offender score
10 of four. Standard range for an offender score of four
11 for robbery in the first degree is 51 to 68 months.
12 We're asking the Court to impose a 60-month sentence on
13 count two to be run concurrently with the other counts,
14 and also to impose a 60-month enhancement based upon a
15 finding that the defendant or one of his co-participants
16 armed themselves with one or more firearms during the
17 course of both the burglary and the robbery. An assault
18 in the second degree, state calculates the offender
19 score at four. That's premised again on the one
20 burglary in the first degree conviction. The merger
21 cuts both ways as relates to the robbery. That would be
22 two points, and then the other two felonies would be two
23 points for a total of four. The standard range is 15 to
24 20 months. The state's recommending 20 months to run
25 concurrently with the other cases.

1 On the theft of the firearm, because the theft of a
2 firearm does not count against the unlawful possession
3 of a firearm in the first degree, the offender score
4 would be three with a range of 26 to 34 months. Asking
5 the Court to impose 26 months on count -- I'm losing
6 track here. Count four. On count five, the unlawful
7 possession of a firearm in the first degree, again, that
8 would calculate the offender score of only three.
9 Standard range is 31 to 41 months. Asking the Court to
10 impose a sentence of 34 months, that to run consecutive
11 with count four and concurrent with all other counts.
12 As the Court can see, that the 26 and 34 recommended
13 would also add up to 60 months. Along with the 60
14 months for the firearm enhancement on count two would
15 equal the agreed to 120 months.
16 If the Court in an earlier proceeding based upon the
17 plea agreement -- which has now been breached by the
18 defendant and then continues to attempt to breach it
19 further -- but based on the plea agreement was to
20 consider count one and count four as same criminal
21 conduct, the Court -- and they can be same criminal
22 conduct, but the Court can still count them separately
23 for sentencing purposes under 9A.52.050, and we're
24 asking the Court to consider burglary in the first
25 degree separate from the theft of the firearm, not to

1 breach the plea agreement, but to make sure that the
2 plea agreement is kept, and it was recommended 120
3 months, and that's what we're doing.
4 Thank you, Your Honor.
5 **THE COURT:** Mr. Johnson?
6 MR. JOHNSON: Well, we're here for
7 resentencing on Mr. Collett. The matter has come back
8 from the appellate courts, and we're here for the Court
9 first of all to establish the standard ranges for these
10 particular counts and then to sentence Mr. Collett
11 within the standard range. It's his position that
12 obviously count five is a separate crime from the other
13 four. His position on the other four counts, counts
14 one, two, three and four, either merge or are of the
15 same criminal conduct as they occurred at the same time,
16 same place, same victim, same criminal intent here, and
17 should be treated as one offense. The Court has
18 previously ruled that one and four would be the same
19 criminal offense. In this case the Court has ruled that
20 one and two is the same criminal offense in some of the
21 co-defendant cases. I would submit that clearly one,
22 two and four would be, in essence, the same crime. Two
23 and four would clearly be the same criminal conduct.
24 And the appropriate thing would be to treat all one,
25 two, three and four as same criminal conduct. The state

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1 has conceded that two and three merge, so that would be
2 treated as one crime here.
3 The Court needs to make that determination on the
4 same criminal conduct with these -- under these -- this
5 particular set of facts. I guess the issue that is --
6 that comes up here, as brought up by the state and has
7 to do with the firearm enhancement, I don't believe the
8 state has any authority to make that request here, and
9 I've not been cited any authority that would allow the
10 state to request or for the Court actually to impose a
11 60-month firearm enhancement when that was not pled to.
12 That is not before the Court at this time. And so
13 that's -- that's the situation that we're in. I've
14 cited to the Court the Goodwin opinion where a similar
15 situation came up. The Court of Appeals -- the Supreme
16 Court has returned the case for resentencing and the
17 state was not able to go back and bring up matters that
18 had been dismissed. The feeling was that the state has
19 an obligation to proceed within the standard range. If
20 there's an error, then the defendant needs to be
21 resentenced within the standard range regardless of what
22 the agreement is between the two parties. So that's
23 Mr. Collett's position.
24 **THE COURT:** Why should the state ever enter
25 into any kind of a plea bargain agreement with somebody

1 in the position of Mr. Collett? Why shouldn't they,
2 under the circumstances that you're arguing, take the
3 position that they're going to -- he's going to plead to
4 absolutely everything or they're going to go to trial
5 and prove absolutely everything? Otherwise, in essence,
6 he can come back here years later and say, in essence,
7 "I get a freebie."
8 You made a plea bargain once. You made an agreement
9 with the state. He's just free to come in here with
10 impunity and repudiate that? Is that the idea? He can
11 do it but the state can't?
12 MR. JOHNSON: Well, I think the Goodwin case
13 basically indicates that the agreement has to be based
14 upon a correct calculation of the standard range, and if
15 the standard range is not correctly calculated for
16 whatever reason, the defendant is entitled to be
17 resentensed within the standard range.
18 **THE COURT:** Well, the fact of the matter
19 remains the standard range was recalculated. It's the
20 Supreme Court that changed the law after the sentence
21 was pronounced.
22 MR. JOHNSON: That's correct. So this is not
23 a situation where either party went before the Court
24 with the expectation that this matter was incorrect.
25 Law has developed since that time, which has resulted in

1 a lower standard range in this particular case. And
2 that was beyond Mr. Collett's influence or control.
3 That simply happened based upon other cases and other
4 factors.
5 **THE COURT:** So what you're saying to me is that
6 he didn't plead to robbery in the first degree while
7 armed with a firearm; therefore, that the 60-month
8 enhancement doesn't apply.
9 MR. JOHNSON: That's -- that is his position,
10 and I'm not aware of any authority to the contrary.
11 **THE COURT:** Go on with your argument.
12 MR. JOHNSON: Well, I don't really have the --
13 you know, I'm not going to go through particular counts
14 and then come up with particular offender scores, but I
15 think the Court needs to make a ruling on the same
16 criminal conduct, and then we can focus on what would be
17 the standard range for each particular offense. So the
18 main issue is same criminal conduct here, one count
19 versus another count, and then Mr. Collett is simply
20 requesting that he be sentenced within the standard
21 range. And that's his position.
22 There's one other point I'd like to raise here that
23 the state hasn't brought it up. And there was an error
24 that cropped into this sentence. It's a minor matter,
25 but it's of some importance to Mr. Collett. Over on

1 paragraph 4.6, community placement, there are a number
2 of conditions that were imposed in this particular
3 sentence, and it would appear -- my reading of the
4 statute that was in effect in the year 2000, January
5 2000 -- is that these conditions should not have been
6 imposed in this particular case. And I think that what
7 happened is that this defendant was sentenced in the
8 year 2002. At that point this would have been the
9 appropriate form. This was -- so this is some boiling
10 point language that got included in the judgment and
11 sentence that does not belong there, and I have some
12 authority to hand up to the Court in that regard. And
13 so that -- that particular situation needs to be
14 addressed here. I know the state has not made a
15 particular recommendation. I expect that a form will
16 come out of their office, which may include this
17 language, and I would ask the Court to take a look at
18 the statute which was in effect at that time.
19 **THE COURT:** You're talking about the no
20 consumption of alcohol, no contact with drug users?
21 MR. JOHNSON: Well, there are a number of
22 mandatory and discretionary conditions. Those
23 conditions pertain to offenses that occurred after July
24 1, 2000. And of course at the time of Mr. Collett's
25 sentence, they were -- the sentence occurred well after

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1 July 1, 2000, but I think the Court needs to go back to
2 what was the law that was in effect at the time of this
3 particular crime, January of 2000. The law at that time
4 indicated that for a violent offense, as opposed to a
5 sex offense or a serious violent offense, there is 12
6 months -- or one year of community placement without
7 these specific conditions. And so I would ask that the
8 12 months be imposed without specific conditions being
9 included in the judgment and sentence. Because that was
10 the law at the time of this particular crime.
11 **THE COURT:** Mr. Randolph, do you have a
12 position with respect to the issue of same criminal
13 conduct?
14 MR. RANDOLPH: Well, I've already stated my
15 position, Your Honor. The Court has the authority to A)
16 consider or reconsider because -- of course, the Court's
17 being forced to reconsider by virtue of the posture
18 we're before the Court today any findings of same
19 criminal conduct. The state concedes, based on State v.
20 Freeman and on the record before the Court, I'm still
21 convinced that the record is clear that there were two
22 separate acts. There was the robbery and the theft of
23 the firearm, along with the marijuana and then a further
24 robbery where the firearm became an instrumentality.
25 That is not clear from this record and we cannot remake

1 that record. But it's clear that the -- so the assault
2 would merge with the robbery based on that court
3 decision. The burglary -- the other robbery assault,
4 theft and unlawful possession of a firearm, the Court
5 has the discretion under 9.94A or 9A.52.050 to sentence
6 those separately, and we're asking the Court to do so.
7 As I read the record, the primary objective of this
8 crime was to get to Mr. Hull's medical marijuana. That
9 doesn't include the same criminal intent as to then
10 steal a firearm. It appears Mr. Amos was aware there
11 actually was a firearm. And then of course the unlawful
12 possession of a firearm, there's a separate victim. The
13 crime against the government or against the state. The
14 same place, same victim applies in the theft of a
15 firearm, but not same criminal intent. And again, I'm
16 using the same reasoning that would fall under the
17 burglary. There's no reason why when you're in there to
18 rob somebody by force or violence to steal marijuana,
19 that you also take one or more weapons, and to me it's
20 not clear in this record whether there was more than one
21 firearms taken. That is not same criminal conduct as
22 the robbery or as the assault, because the assault is a
23 beating-up of this man who was in a serious medical
24 condition who of course died somewhat more quickly than
25 was expected because of the injuries as a result of the

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1 raid, a matter that is, to be perfectly candid, under
2 exploration at this point. The theft of the firearm has
3 nothing to do with that assault. The theft and the
4 assault was a beating of the man to get to his medical
5 marijuana, and that unlawful possession of a firearm, as
6 I've stated three times now, is a crime against the
7 state. So our position is that, except for the one
8 Supreme Court opinion mandating same criminal conduct
9 finding, that this Court should not make a finding of
10 same criminal conduct.
11 **THE COURT:** Well, pursuant to the state's
12 concession, the assault two merges into the robbery.
13 I'm not making a finding that any of the other crimes
14 constitute the same criminal conduct. I'm not sure the
15 intent is the same based on the record. The victim is
16 not the same, and as far as I'm concerned they are not
17 the same criminal conduct.
18 All right. Mr. Johnson, is there anything else you
19 want to say with respect to the issue of sentencing?
20 MR. JOHNSON: No.
21 **THE COURT:** Mr. Collett, is there anything
22 you'd like to say?
23 THE DEFENDANT: I've been in prison. I got my
24 GED. I don't know if it makes much of a difference. I
25 was on my way to camp. I've made my way through closed

1 custody, the medium, the minimal. I took an industrial
2 safety class. I guess that's all I've really got to
3 say.
4 **THE COURT:** Mr. Randolph, your response to
5 Mr. Johnson's argument that the firearm enhancement does
6 not apply?
7 MR. RANDOLPH: Your Honor, the state's
8 required to plead that. As part of the plea
9 discussions, again, we took the firearm issue off the
10 table and did not ask the Court, because we don't make
11 the finding. Just because we say there was a firearm
12 doesn't mean there was a firearm. The Court has to make
13 that finding. Based on the record that was presented to
14 this Court, the firearm finding's obvious, that one or
15 more of the participants had possession of a firearm.
16 If the Court feels that there was a failure to plead and
17 prove -- and I agree with the Court from this morning's
18 proceeding. I do not believe that Blakely is implicated
19 in this now, then or forever.
20 **THE COURT:** Well, as I understand
21 Mr. Johnson's argument, what he's telling me is that not
22 having made a specific finding of being armed with a
23 firearm on the initial sentence, that on a remand for
24 resentence, the Court cannot, according to the authority
25 that he's arguing, impose a firearm enhancement.

1 Isn't that what you're arguing?
2 MR. JOHNSON: That's correct.
3 **THE COURT:** That's what I'd like you to
4 respond to.
5 MR. RANDOLPH: The problem I have with that,
6 Your Honor -- and the Court's addressed that in a
7 somewhat different manner -- is the fact that
8 Mr. Johnson's asking Your Honor to reconsider the same
9 criminal conduct issues and reconsider all of this, but
10 don't reconsider this. Don't look at this. Close your
11 eyes, Your Honor. Don't look at the fact that this man
12 admitted that the state would be able to prove beyond a
13 reasonable doubt that he or one of his participants was
14 armed with a firearm during the course of those crimes.
15 The state initially pled the firearms, so the defendant
16 was on notice. This isn't a question where we just
17 decided yesterday or today to come up with a firearm
18 enhancement allegation. The initial information alleged
19 actually in count one, two and three that he was armed
20 with a firearm. And this is the tragedy of this.
21 Mr. Hull's life was shortened because of the conduct of
22 these people. Whether or not we'll be able to prove
23 medically that he would have lived a substantial period,
24 a sufficiently substantial period of time beyond what he
25 did live and that these people caused the death to be

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1 that much more precipitating -- I'm not getting the
2 greatest amount of help from my coroner, but the simple
3 fact was this was a vicious home invasion robbery.
4 There were allegations that would have put this young
5 man into prison for at least 30 years. Because we felt
6 that the ten years -- which is basically the ballpark.
7 Forrest Amos and the two that were more cooperative
8 should be in more of the ballpark, and they stand ready
9 to testify at any time. That's where we were at, is
10 that trimming down a rather substantial sentence by
11 removing some of the allegations, and as Your Honor's
12 aware, if the Court had been asked to -- or a jury had
13 been asked to make firearm findings on counts one, two
14 and three, that's 120 and 36. That's 156 months flat
15 time before you get to any of the time to be served for
16 the underlying crimes. We pled it, and it became proven
17 by the defendant's admission. If the Court feels that
18 that is insufficient, we would ask the Court to impose
19 the maximum sentences for the theft of the firearm and
20 unlawful possession of a firearm. That would result in
21 a sentence of 75 months. It would result in an
22 injustice in light of the fact that the other
23 coparticipants are serving who didn't -- who weren't as
24 culpable -- from what I read in this record -- as
25 Mr. Collett got more time. I don't think, no matter

1 what the Supreme Court says in LaChapelle, Westfall,
2 Cruz and Smith, I don't think the Supreme Court is
3 saying to superior court judges, "Put on a blinder and
4 ignore the fact that this young man" -- whether they
5 count in the offender score or not, the Court is not
6 required to put on a blinder and say "This person hasn't
7 engaged in substantial misconduct throughout his youth."
8 This isn't a situation where this didn't exist or we
9 made a mistake of putting crimes that didn't exist.
10 These offenses existed over an extensive period of time
11 by a young man who was more than troubled, both violent
12 and nonviolent crimes. So we're asking the Court, based
13 upon the fact that we pled firearm enhancements and
14 based upon the fact that the defendant admitted in the
15 Alford Plea process that in fact the firearm was
16 involved, to enter a firearm finding so that we can
17 comply with our part of the plea deal that is 120
18 months.
19 **THE COURT:** Mr. Johnson, again, you're arguing
20 what authority for this proposition?
21 MR. JOHNSON: Firearm enhancement?
22 **THE COURT:** Right.
23 MR. JOHNSON: Well, there is no authority.
24 The state has to include the firearm enhancement in the
25 charge, and they don't have that before the Court, so

1 the Court does not have legal authority to impose a
2 firearm enhancement. The Court sees that all the time
3 where there is a firearm in a particular charge, but the
4 firearm enhancement is not specifically included in the
5 information. And that may seem like a technical point,
6 but that is the key to getting a firearm enhancement.
7 If it is not included in the charge, the Court does not
8 have the authority to impose the firearm enhancement.
9 I just don't see --
10 **THE COURT:** He pled to the amended
11 information, right?
12 THE DEFENDANT: Yes, sir.
13 **THE COURT:** Count two of the amended
14 information, robbery first degree, does contain the
15 firearm allegation.
16 MR. JOHNSON: But not the firearm enhancement.
17 MR. RANDOLPH: It contains the firearm
18 allegation, Your Honor. There's no authority that says
19 we -- you know, we've been putting this firearm
20 enhancement and that we're going to seek a firearm
21 enhancement with no case law on it. We've been doing it
22 simply because we've been trying to guess the future as
23 to what would be required or not. It is very clear that
24 we're required to plead the existence of a firearm. It
25 is very clear -- or a deadly weapon, and there's an

1 obvious distinction between -- not an obvious. There is
2 to the Supreme Court, but distinction as relates to the
3 amount of punishment. If the Court feels uncomfortable
4 with that, the 75 months that would result from a
5 maximum sentencing on the two -- theft and unlawful
6 possession will get us close to what the plea
7 agreement -- I think this -- as the Court's already
8 called it, this is a lesson for the state and maybe a
9 lesson for the defense as well that we may end up with a
10 lot more trials here. That is a case -- if
11 Mr. Collett -- and part of the record is very clear. In
12 the report of proceedings, Mr. Collett admitted to being
13 involved. This isn't a case that would have required
14 bringing in the FBI and ATF and what have you to prove
15 it. We have a corpus delicti and we have pretty well
16 full admission, which would result in about 30 years in
17 prison.
18 **THE COURT:** Well, I'm very troubled by the
19 issue of the firearm enhancement. There's no question
20 in my mind that this offense included the use of a
21 firearm. As a matter of fact, one of the convictions --
22 one of the charges to which this defendant pled was
23 unlawful possession of a firearm and also theft of a
24 firearm, so there's no question in my mind that a
25 firearm was used in this commission of these crimes.

1 But I'm faced with -- and as a matter of fact, the
2 statement of defendant on plea, which was prepared by
3 Mr. Johnson, says "took firearm belonging to another
4 person," so there's no question that the unlawful taking
5 was of a firearm. But I guess I'm troubled by the fact
6 that the Court did not make an initial finding that the
7 robbery was committed with the added use of the firearm
8 initially, and I'm very much afraid that if I make that
9 finding now, that the Court of Appeals, or more
10 importantly the State Supreme Court might very well say,
11 "You didn't have the authority to do that, because after
12 all, you didn't make that finding initially." Although
13 I don't think justice is particularly served by not
14 making that finding because -- for a couple of reasons.
15 Number one, because clearly Mr. Collett was or one of
16 his cohorts were armed with a firearm, and secondly, as
17 Mr. Randolph's pointed out, this was a particularly
18 egregious home invasion robbery and burglary, and I
19 think everybody knew that at the time that the original
20 judgment and sentence was handed down in this case, and
21 that's why everybody thought it was appropriate that 10
22 years be imposed.
23 All right. I'm accepting the state's calculations
24 as far as criminal history is concerned. Standard range
25 on count one, which is the burglary first, is 36 to 48

1 months. Be the judgment of the Court the defendant will
2 be sentenced to 48 months. On the count two, the
3 robbery in the first degree, standard range is 51 to 68
4 months. The defendant is sentenced to 68 months. On
5 the assault second, standard range is 15 to 20. 20
6 months. That merges into the robbery. On count four,
7 theft of a firearm, the standard range is --
8 MR. RANDOLPH: : 26 to 34.
9 **THE COURT:** -- 26 to 34. The defendant's
10 sentenced to 34 months. And lastly, on count five,
11 unlawful possession of a firearm, standard range is 31
12 to 41. He's sentenced to 41 months. The time is
13 concurrent, except for the last one is consecutive to
14 count four; correct?
15 MR. RANDOLPH: : Yes, Your Honor.
16 **THE COURT:** And otherwise the time is
17 concurrent.
18 Legal financial obligations remain the same except
19 that I'm increasing the amount of attorney fees awarded
20 to Mr. Johnson and required to be paid as part of the
21 judgment by an additional $400 for a unit for
22 Mr. Johnson handling this matter.
23 MR. JOHNSON: I'll be submitting this as a
24 class A.
25 **THE COURT:** How is the resentencing a class A?

1 MR. JOHNSON: I believe this is a class A
2 case.
3 **THE COURT:** But it wasn't a class A trial.
4 All it is is a resentencing.
5 MR. RANDOLPH: On the other matter, Your
6 Honor, I'll look at the judgment and sentence forms. We
7 received, as Your Honor's aware, from the -- I can't
8 remember what it is this week -- the administrator of
9 the court's office, about once a year, if not more, J&Ss
10 that we're supposed to be using. Our computer is loaded
11 up with those. This is an April 2001 form. I'll go
12 back and check and make sure so we can address at the
13 time of formal entry the conditions issue. It's obvious
14 there were some conditions to community placement. I
15 think the dichotomy involves affirmative conduct versus
16 don't-do conduct. And if there's affirmative conduct
17 that's been ordered that shouldn't be, we'll make sure
18 that's not in the next J&S.
19 **THE COURT:** All right. If you want to submit
20 this as a class A, do so forthwith so I have a chance to
21 look at that. What about formal entry?
22 MR. RANDOLPH: I would sure like to -- Your
23 Honor, could the Court inquire of counsel where
24 Mr. Collett was being housed?
25 **THE COURT:** You were in a camp, weren't you?

1 THE DEFENDANT: I was in Shelton, transporting
2 to camp. I'll be on my way to camp.
3 MR. RANDOLPH: I was confused as to who's in
4 our state and who's in Arizona and who's in Minnesota.
5 If it's possible to deal with it tomorrow afternoon and
6 if counsel's available, and if we can find the time,
7 we'll shoot for that. If not, Your Honor indicated
8 there was a Friday?
9 **THE COURT:** I have time on Friday. I don't
10 know about Mr. Johnson's availability. But I have to
11 tell you, with respect to transporting inmates other
12 than to the court doing the calendar on Thursdays, it's
13 a problem.
14 MR. RANDOLPH: I know. I was just thinking
15 that.
16 **THE COURT:** So if there's going to be any
17 transport by virtue of a special set hearing on a
18 Thursday, your office has to make the arrangements with
19 the jail staff.
20 MR. JOHNSON: Why don't we just put him on the
21 calendar tomorrow to set? It's unlikely we would be
22 able to get it set before Thursday. I'm not available
23 on Friday and he wouldn't go on Friday anyway.
24 MR. RANDOLPH: That's fine.
25 **THE COURT:** As long as he's only going to

1 Shelton and then he's going out to camp. It's not
2 important like it was this morning.
3 MR. RANDOLPH: Your Honor, may I inquire of
4 Corrections Officer Rodkey off the record?
5 (Discussion off the record.)
6 MR. RANDOLPH: We'll put it on for tomorrow on
7 Mr. Johnson's calendar.
8 **THE COURT:** Okay.
9 (Conclusion of proceedings.)
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1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) ss
3 COUNTY OF PIERCE)

4

5 I, Kellie A. Smith, Notary Public, in and for the
6 State of Washington, County of Pierce, residing at
7 Puyallup, do hereby certify:
8 That the annexed and foregoing Verbatim Report of
9 Proceedings, Resentencing, was reported by me and
10 reduced to typewriting by computer-aided transcription;
11 That said transcript is a full, true, and correct
12 transcript of the proceedings heard before Judge Richard
13 L. Brosey on the 17th day of August, 2005, at the Lewis
14 County Courthouse, Chehalis, Washington;
15 That I am not a relative or employee of counsel or
16 to either of the parties herein or otherwise interested
17 in said proceedings.
18 WITNESS MY HAND AND OFFICIAL SEAL THIS _____ day of
19 _____, 2006.
20
21
22 _____
23 Notary Public, in and for
the State of Washington,
residing at Puyallup.
24
25

APPENDIX

H

Received & Filed
LEWIS COUNTY, WASH
Superior Court
AUG 24 2005
By Kathy A. Brack, Clerk
Deputy

RECEIVED
AUG 31 2005
LEWIS CO. PROS. ATTY.

SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS

STATE OF WASHINGTON, Plaintiff, v. MATHEW (NMI) COLLETT, Defendant. SID#: WA 17787853 DOC#: 839677	**No. 00-1-00034-5** **AMENDED JUDGMENT AND SENTENCE (JS)** **PRISON** **Clerk's Action Required, para 4.1, 5.6 & 5.7**

I. HEARING

1.1 A sentencing hearing was held and the defendant, his atorney Kenneth G. Johnson and the Prosecuting Attorney, Jeremy Randolph, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSES: The defendant was found guilty on 8 April 2002, by guilty pleas to the following crimes:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(a)	01.16.00
II	ROBBERY IN THE FIRST DEGREE	9A.56.200(1)(a)	01.16.00
III	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	01.16.00
IV	THEFT OF A FIREARM	9A.56.300	01.16.00
V	UNLAWFUL POSSESSION OF A FIREARM 1ST	9.41.040(1)(a)	01.16.00

as charged in the Amended Information.

APPENDIX H

[X] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s).RCW 9.94A.607.

[X] Current offenses encompassing the same criminal conduct and merging as one crime in determining the offender score are (RCW 9.94A.589): Counts II & III

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	Theft of a Firearm	05.27.97	Pierce Co., WA *	04.27.97	J	NV
2	Assault in the Third Degree	04.09.97	Pierce Co., WA *	03.09.97	J	NV
3	Poss. Stolen Prop. 1st	01.03.96	Pierce Co., WA *	11.25.95	J	NV
4	Theft in the Second Degree	03.11.97	Pierce Co., WA *	05.05.96	J	NV
5	Theft in the Second Degree	01.03.96	Pierce Co., WA *	11.25.96	J	NV
6	Att. To Elude Police Vehicle	03.11.97	Pierce Co., WA *	05.05.96	J	NV

* These convictions were deemed "washed" at the time of the commission of the instant offenses and have not been counted in the offender score for these offenses. *In re La Chappell*, 153 Wn.2d 1 (2004) holding Laws of 2002, Chapt. 107 applies to crimes committed after 13 June 2002; *State v. Varga*, 151 Wn.2d 179 (2004).

[X] The court finds that NONE of the prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525).

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4.0	VII	36-48 mos	None	36-48 months	Life
II	4.0	IX	51-68 mos	None	51-68 months	Life
III	4.0	IV	15-20 mos	None	15-20 months	10 years
IV	3.0	VI	26-34 mos	None	26-34 months	10 years
V	3.0	VII	31-41 mos	None	31-41 months	10 years

2.4 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that

the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

_____.

2.5 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows: 120 months DOC.

III. JUDGMENT

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

_____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE			
	$ 600.00	Restitution to: Family of Joe Hull	
RTN/RJN			
	$_____	Restitution to:_____	
	$_____	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk's Office)	
PCV	$ 500.00	Victim assessment	RCW 7.68.035
CRC	$ 382.90	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee $ 110.00 FRC	
		Witness costs $_____ WFR	
		Sheriff service fees $ 272.90 SFR/SFS/SFW/WRF	
		Jury demand fee $_____ JFR	
		Extradition costs $_____ EXT	
		Other $_____	
PUB	$_____	Fees for court appointed attorney	RCW 9.94A.760
WFR	$_____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	$_____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD		RCW 38.52.430	
	$ 1,000.00	Other costs for: Incarceration in the Lewis County Jail	RCW 9.94A.145
	$_____	TOTAL	RCW 9.94A.760

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.760.

[X] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

4.3 **OTHER**: refrain from the use of controlled substance not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO, no possession or consumption of alcohol, submit to random BAC/PBT's as directed by CCO. Prohibition against use of unlawfull controlled substances is an express condition of this Judgment and Sentence.

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

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

48	months on Count I	34	months on Count IV
68	months on Count II	41	months on Count V
20	months on Count III		months on Count

Actual number of months of total confinement ordered is : 34 + 41 = 75 months
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for Counts IV and V which shall run consecutive to each other pursuant to former RCW 9.94A.400(1)(c), now RCW9.94A589(1)(c).

Confinement shall commence immediately.

(b) The defndant shall receive credit for time served since 31 December 2001.

4.6 **[X] COMMUNITY PLACEMENT** is ordered as follows: Count I for 12 months; Count II for 12 months; Count III for 12 months; or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 commited before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses commited on or after July 1, 2000. 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 restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.
[X]The defendant shall not consume any alcohol.
[X]Defendant shall have no contact with: known drug users/traffickers as defined 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.

[X] The defendant shall comply with the following crime-related prohibitions:refrain from the use of controlled substances not lawfully prescribed by a licensed medical practitioner, submit to random Uas as directed by CCO.

[ ] Other conditions:

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).

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 amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**
[ ] Defendant waives any right to be present at any restitution hearing (sign initials):_____.

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The 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.

5.7 **VOTING RIGHTS.** Your right to vote in the State of Washington is forfeited until lawfully restored. The Clerk is directed to notify the Auditor/Secretary of State of these felony convictions.

5.8 **OTHER:**_____

DONE in Open Court and in the presence of the defendant on the 24th day of August 2005.

JUDGE RICHARD L. BROSEY

Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA # 2248	WSBA # 6194	
JEREMY RANDOLPH	KENNETH G. JOHNSON	MATHEW COLLETT

CAUSE NUMBER of this case: 00-1-00034-5

I, Kathy Brack, 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 DEFENDANT

SID No. WA1778753 Date of Birth 11.04.82

FBI No. 608737VB5 Local ID No. _____

PCN No. _____ DOC No. 839677

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other:_____		[X] Non-Hispanic	[ ] 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, S. Tyler Dated: 8/24/05

DEFENDANT'S SIGNATURE:

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