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STATE OF WASHINGTON
BY 
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NO. 36822-6-II
Clark County No. 07-1-00270-7

STATE OF WASHINGTON,

Respondent,

vs.

RENE HERNANDEZ CASTILLO

Appellant.

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

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C. STATEMENT OF THE CASE

1. FACTUAL HISTORY

Mr. Rene Hernandez Castillo was a passenger in a car when it was stopped and he was arrested for having a felony warrant. Trial RP, p. 70-81. After exiting the car and prior to raising his hands, he dropped a small bundle which contained methamphetamine. Trial RP, p. 81-82, 87-88. During the search of the car, the officers found a handgun in the area between center console and the front passenger seat. Trial RP, p. 105. The car belonged to the driver, Jeffrey Newberry, and the gun was within reach of Mr. Newberry. Trial RP, p. 117-118, 153. Mr. Newberry claimed that he saw an item in Mr. Castillo's hand that was metal. Trial RP, p. 146. He didn't see what it was. Trial RP, p. 147. Mr. Newberry has at least nine prior felonies, including convictions for possession of drugs and manufacture or delivery of drugs, and for possession of stolen property. Trial RP, p. 153. He also has misdemeanor convictions for possession of stolen property and theft. Trial RP, p. 153-154. He also is prohibited from possessing a firearm. Trial RP, p. 154.

Mr. Castillo admitted to knowingly possessing methamphetamine. Trial RP, p. 88. He did not admit to possessing the gun. Trial RP, p. 98.

Stephanie Bailey was Rene Castillo's girlfriend when this incident occurred. Trial RP, p. 162. Approximately one week prior to this incident, Mr. Castillo was a passenger in Ms. Bailey's car. Trial RP, p. 163. Ms. Bailey's father, Mike Bailey, knowing that the police were

investigating Mr. Castillo, searched her and found ammunition in her glove box. Trial RP, p. 157. The bullets were for a .38 caliber gun. Trial RP, p. 158, 177. The gun recovered from between the center console and the front passenger seat of the car Mr. Newberry was driving was a .38 special. Trial RP, p. 197.

2. PROCEDURAL HISTORY

The Clark County Prosecuting Attorney charged Mr. Castillo by Amended Information with one count of Unlawful Possession of a Firearm in the First Degree, and one count of Possession of a Controlled Substance-Methamphetamine. CP 3-4. The State further alleged that he was armed with a firearm while he possessed the methamphetamine. CP 3. At trial, defense counsel stipulated that Mr. Castillo had previously been convicted of Second Degree Assault, and stipulated to the admission of the Judgment and Sentence for that conviction (Exhibit 16), Trial RP, p. 15,-16, 200. Without objection, the court instructed the jury as follows with regard to the charge of Unlawful Possession of a Firearm in the First Degree:

To convict the defendant of the crime of unlawful possession of a firearm in the first degree, as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 12th day of February, 2007, the defendant had a firearm in his possession or control;

(2) That the defendant had previously been convicted of Assault in the Second Degree, which is a serious offense; and

(3) That the possession or control of the firearm occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt, then it will be your duty to return a verdict of not guilty.

CP 17.

The jury was not instructed on the definition of knowledge. Clerk's Papers.

A jury convicted Mr. Castillo as charged, and returned a special verdict finding that he was armed with a firearm during the commission of Count II (possession of methamphetamine). CP 25-27. The jury also returned a special verdict finding that Mr. Castillo committed the current offenses shortly after being released from incarceration. CP 28. At sentencing, the parties agreed that Mr. Castillo, with an offender score of six, would have to receive the statutory maximum of 60 months on Count II (possession of meth). RP (9-5-07), p. 5, 6. On Count I (UPF First Degree), the standard range was 57-75 months. RP (9-5-07), p. 5.

Relying on RCW 9.94A.533 (3), the State argued that the court was required to add the enhancement to Count I (the Unlawful Possession

of a Firearm conviction), because the court lacked the authority to go beyond the presumptive, and maximum, sentence of 60 months on the Possession of Methamphetamine conviction. RP (9-5-07), p. 6-8. Based on that assertion, the court arrived at a standard range of 75-93 months on Count I (adding the 18 month firearm enhancement). RP (9-5-07), p. 10. The court decided upon a sentence of 60 months on Count I, adding 12 months based on the jury's finding of "rapid recidivism," and 18 months for the firearm enhancement, for a total of 90 months on Count I. RP (9-5-07), p. 14-15, CP 116.¹ The court imposed 60 months on Count II, to be concurrent to Count I. CP 116.

D. ARGUMENT

I. MR. CASTILLO'S CONVICTION FOR UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE SHOULD BE REVERSED AND DISMISSED BECAUSE THE COURT FAILED TO INSTRUCT THE JURY ON THE ESSENTIAL ELEMENT OF KNOWLEDGE.

Knowledge is an essential, non-statutory element of the crimes of unlawful possession of a firearm in both the first and second degree. *State v. Anderson*, 141 Wn.2d 357, 364-65, 5 P.3d 1247 (2000). The State bears the burden of proving knowing possession, and the "to-convict" instruction must include the knowledge element. *State v. Shouse*, 119

¹ The Court did not impose an exceptional sentence. It merely structured the sentence to give recognition to the jury's finding. The sentence of 72 months (excluding the 18 month enhancement) was within the standard range.

Wn.App. 793, 796, 83 P.3d 453 (2004). Here, the court did not instruct the jury that in order to convict Mr. Castillo, it was required to find that he knowingly had a firearm in his possession or control, and the State was relieved of its burden of proving this element. CP 17.

This Court may review an issue raised for the first time on appeal if it is a “manifest error affecting a constitutional right.” RAP 2.5 (a) (3); *State v. Scott*, 110 Wn.2d 682, 688, 757 P.2d 492 (1988). The constitutionality of a conviction, including whether the State proved all the requisite elements, is such a right. *State v. Cuble*, 109 Wn.App. 362, 366, 35 P.3d 404 (2001). An instruction that omits an element of an offense is subject to harmless error analysis. *State v. Brown*, 147 Wn.2d 330, 340, 58 P.3d 889 (2002), adopting the reasoning of *Neder v. United States*, 527 U.S. 1, 9, 119 S.Ct. 1827 (1999). Where an element is missing from a to-convict jury instruction, the error is harmless if the reviewing court can conclude beyond a reasonable doubt that the verdict would have been the same absent the error. *Brown* at 341.

In this case, the State alleged that Mr. Castillo possessed a firearm that was located in Mr. Newberry’s car, within Mr. Newberry’s reach, and the possession of which would have also rendered Mr. Newberry a felon in possession of a firearm. Further, Mr. Castillo did not admit to possessing, or even knowing about the gun, although he readily admitted

possessing methamphetamine. The evidence on this charge was not overwhelming. The jury could have concluded that Mr. Newberry was lying, and that the gun was his, but still have convicted Mr. Castillo based on the erroneous “to-convict” instruction. The jury could have easily concluded that Mr. Castillo had the gun in his custody or control without concluding he knew it was there. Such a result is precluded by the Supreme Court’s holding in *State v. Anderson*, supra. This error is not harmless beyond a reasonable doubt and Mr. Castillo’s conviction for unlawful possession of a firearm should be reversed.

II. MR. CASTILLO RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO STIPULATE TO HIS PRIOR CONVICTION FOR ASSAULT IN THE SECOND DEGREE AS AN UNAMED FELONY.

Mr. Castillo received ineffective assistance of counsel because his attorney stipulated to the fact that had a prior conviction for assault in the second degree where he could have simply stipulated that Mr. Castillo had been convicted on an unnamed, qualifying offense. When the name or nature of a prior offense that serves as an element of a current offense might taint the verdict, and when the purpose of the evidence is solely to prove the element of the prior offense, the defendant may stipulate to the previous conviction. *Old Chief v. United States*, 519 U.S. 172, 174, 117 S.Ct. 644 (1997). Washington courts have adopted the reasoning of *Old*

Chief. State v. Johnson, 90 Wn.App. 54, 950 P.2d 981 (1998). Here, where the jury was asked to determine whether Mr. Castillo was not only the type of person who would illegally possess a handgun, but would arm himself with the handgun while possessing methamphetamine, his prior conviction for a violent felony assault was extremely prejudicial and simply did not have to be mentioned to the jury.

Criminal defendants are guaranteed reasonably effective representation by counsel at all critical stages of a case. *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052 (1984); *State v. Mierz*, 127 Wn.2d 460, 471, 901 P.2d 186 (1995). To obtain relief based on a claim of ineffective assistance of counsel, a defendant must establish that (1) his counsel's performance was deficient; and (2) the deficient performance was prejudicial. *Strickland* at 687; *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251(1995). A legitimate tactical decision will not be found deficient. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

It is often posited that tactically, it is wise to identify the qualifying felony for the jury where the qualifying felony is a non-violent crime, or perhaps a crime that doesn't directly demonstrate propensity (for example, if the qualifying felony is possession of stolen property it is thought that the jury should know the crime so that they are not left to imagine the

conviction was for something much worse, such as a violent felony). Here, where the conviction was for a violent felony, an assault, there is no legitimate tactical reason to allow the jury to hear what the crime was, particularly where the current offense is a gun crime. This only could have prejudiced Mr. Castillo, and it was wholly unnecessary. Once an attorney has decided to relieve the State of its burden of proving the *existence* of the qualifying prior conviction by stipulating to it, what possible legitimate reason would there be to allow the jury to hear that the crime was a violent felony?

As noted in section one, above, the evidence on the count of unlawful possession of a firearm was not strong. The owner of the car, who had the gun within his reach, was also a felon who had every motive to lie about possessing the gun and who had numerous prior convictions for crimes of dishonesty. His testimony about what he saw in Mr. Castillo's hand was extremely vague. It is likely that the jury would have reached a different result, particularly where it was just as plausible that the gun belonged to Mr. Newberry, had defense counsel stipulated to the prior conviction as an unnamed, qualifying felony. Mr. Castillo should be granted a new trial on the charge of unlawful possession of a firearm because he was denied effective assistance of counsel.

III. MR. CASTILLO'S SENTENCE ON COUNT ONE SHOULD BE REVERSED AND THE SENTENCE ENHANCEMENT REMOVED BECAUSE RCW 9.94A.533 (3) (f) SPECIFICALLY PROHIBITS ATTACHING A FIREARM ENHANCEMENT TO THE CHARGE OF UNLAWFUL POSSESSION OF A FIREARM.

The fact pattern of this case, insofar as sentencing is concerned, is unique. The jury returned a finding that Mr. Castillo was armed with a firearm as to Count II. However, Mr. Castillo was “maxed out” with six points on his offender score so the court was unable to give Mr. Castillo more than the statutory and presumptive range maximum of sixty months. *State v. Thomas*, 150 Wn.2d 666, 80 P.3d 168 (2003). Relying on RCW 9.94A.533 (3) which says, inter alia, “If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.”

Mr. Castillo would agree that had the conviction on Count I been for burglary or robbery, for example, the court’s decision to attach the firearm enhancement to Count I would have been appropriate. But where, as here, the only other conviction to which the enhancement could be added was a conviction for unlawful possession of a firearm, RCW 9.94A.533 (3) (f) precludes this result. The statute, insofar as it pertains to these facts, is clearly ambiguous. The sentence quoted above from the

first paragraph of subsection (3) obviously provides for the situation where a defendant is found to be armed with a firearm on one count, but the enhancement can't be applied to that count because its application would require a sentence beyond the statutory maximum so the enhancement is then applied to another, otherwise eligible count or counts. Here, there are only two counts and both of them are ineligible, albeit for different reasons, to carry this enhancement.

In construing a statute, we a reviewing court looks to the legislature's intent. *State v. Carter*, 138 Wn.App. 350, 356, 157 P.3d 420 (2007); citing *State v. Faust*, 93 Wn.App. 373, 376, 967 P.2d 1284 (1998). "While 'plain language does not require construction, a statute that is susceptible to two or more reasonable interpretations is ambiguous.'" (Internal citations omitted). *Carter* at 356, citing *Faust* at 376; *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994); *State v. Sunich*, 76 Wn.App. 202, 206, 884 P.2d 1 (1994). "Under the rule of lenity, when a criminal statute is ambiguous and the legislative intent is insufficient to clarify it, the ambiguity must be resolved in favor of the accused." *Carter* at 356, citing *In re Pers. Restraint of Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999).

Here, the statute is ambiguous because the first paragraph of RCW 9.94A.533 (3) contemplates a result where, as here, the other offense or

offenses to which the enhancement must be applied is one of the enumerated offenses in subsection (f), to which it can't be applied. This ambiguity should be resolved in favor of Mr. Castillo and this Court should hold that where, as here, an enhancement can't be applied to the offense to which the jury attached it due because it would exceed the statutory maximum for that offense, and the only other offense available is an offense to which it can't be applied under subsection (f), the sentence should be reversed and the enhancement stricken.

E. CONCLUSION

Mr. Castillo's conviction for unlawful possession of a firearm in the first degree should be reversed. The sentence enhancement of 18 months should be stricken.

RESPECTFULLY SUBMITTED this 30th day of May, 2008.



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APPENDIX

RCW 9.94A.533 Adjustments to standard sentences.

(1) The provisions of this section apply to the standard sentence ranges determined by RCW **9.94A.510** or **9.94A.517**.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter **9A.28** RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW **9.41.010** and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW **9.41.010** and the offender is being sentenced for an anticipatory offense under chapter **9A.28** RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW **9A.28.020**:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not

covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW **9.94A.728**(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW **9.41.010** and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW **9.41.010** and the offender is being sentenced for an anticipatory offense under chapter **9A.28** RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon

enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW

9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW **9.94A.728**(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the

sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter **9A.28** RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW **69.50.401**(2) (a) or (b) or **69.50.410**;

(b) Fifteen months for offenses committed under RCW **69.50.401**(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW **69.50.4013**.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter **69.50** RCW if the offense was also a violation of RCW **69.50.435** or **9.94A.605**. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW **46.61.502** for each prior offense as defined in RCW **46.61.5055**.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW **9.94A.030**. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total

period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter **9A.28** RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW **9A.28.020**:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW **9.94A.728**(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

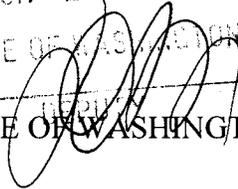
(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in [the] sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

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

STATE OF WASHINGTON,)	Court of Appeals No. 36822-6-II
)	Clark County No. 07-1-00270-7
Respondent,)	
)	
vs.)	
)	AFFIDAVIT OF MAILING
RENE HERNANDEZ CASTILLO,)	
)	
Appellant.)	

ANNE M. CRUSER, being sworn on oath, states that on the 30th day of May 2008,
affiant placed a properly stamped envelope in the mails of the United States addressed to:

Arthur Curtis
Clark County Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666-5000

AND

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

AND

Mr. Rene Hernandez Castillo, Jr.
DOC #885290

Anne M. Cruser
Attorney at Law
P.O. Box 1670
Kalama, WA 98625
Telephone (360) 673-4941
Facsimile (360) 673-4942
anne-cruser@kalama.com

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2
3
4 Airway Heights Corrections Center
5 P.O. Box 2079
6 Airway Heights, WA 99001-2079

7 and that said envelope contained the following:

- 8 (1) BRIEF OF APPELLANT
9 (2) RAP 10.10 (TO MR. CASTILLO)
10 (3) AFFIDAVIT OF MAILING

11 Dated this 30th day of May, 2008

12
13 
14 ANNE M. CRUSER, WSBA #27944
15 Attorney for Appellant

16
17 I, ANNE M. CRUSER, certify under penalty of perjury of the laws of the State of
18 Washington that the foregoing is true and correct.

19
20 Date and Place: May 30, 2008, Kalama, WA

21 Signature: Anne M. Cruser
22
23
24
25