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COURT OF APPEALS
DIVISION II

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No. 37133-2-II

STATE OF WASHINGTON
BY CR

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

STATE OF WASHINGTON,

Respondent,

v.

MICAH DANIEL TAVAI,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable Katherine Stolz and
the Honorable Linda C.J. Lee, Judges

APPELLANT'S OPENING BRIEF
(AMENDED COVER PAGE)

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A. ASSIGNMENTS OF ERROR

1. The trial court abused its discretion and violated Tavai's minimal due process rights in revoking his suspended sentence.

2. Tavai did not receive effective assistance of counsel.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. None of the conditions of the SSOSA required Tavai to keep the same job or refrain from associating with people he knew from his neighborhood, nor was he prohibited from taking a job where alcohol was served or gambling occurred. Did the trial court abuse its discretion in relying on those facts as violations and revoking Tavai's SSOSA?

Further, would it have violated Tavai's First Amendment right to freedom of association to prohibit contact with persons who did not share a relationship to Tavai's crime?

2. Defendants facing revocation of a suspended sentence are entitled to certain due process protections, including the rights to allocution and notice. Was Tavai's right to allocution violated where he had repeatedly indicated his desire to address the court at the various hearings, the court issued its decision without asking Tavai if he wished to speak, and Tavai's subsequent efforts to speak were shut down by the court and counsel because the court had already ruled?

3. Was Tavai's right to notice violated when the prosecution only notified him that it would rely on the fact that Tavai had been terminated from treatment as the grounds for revocation of the SSOSA but relied on several additional grounds at the hearing, all of which the court appears to have adopted?

4. Counsel failed to object when 1) the prosecutor and court relied on invalid aggravating factors for revocation of the SSOSA, 2) counsel's client was deprived of the opportunity to address the court prior to its decision on his fate, and 3) counsel's client was subjected to revocation of his suspended sentence and years in prison without proper notice of the allegations upon which that decision would be based. Further, counsel failed to take the minimal steps necessary to ensure that Tavai's rights were not violated. Was counsel prejudicially ineffective?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Micah D. Tavai was charged by information with second-degree rape of a child. CP 2; RCW 9A.44.076. On February 8, 2007, he entered a guilty plea to the offense, in exchange for which the prosecution agreed to recommend a Special Sex Offender Sentencing Alternative. CP 6-20. That same day, the Honorable Katherine Stolz accepted the plea. 1RP 3-9.¹

On March 23, 2007, Judge Stolz granted a SSOSA, imposing 9 months in custody initially with a sentence of 95-125 months to life suspended pending further proceedings if Tavai failed to complete the SSOSA. 2RP 11-14; CP 26-39. After a review hearing on September 14, 2007, the state filed a petition for a hearing to determine "noncompliance"

¹The verbatim report of proceedings consists of five volumes, which will be referred to as follows:

February 8, 2007, as "1RP;"
March 23, 2007, as "2RP;"
September 14, 2007, as "3RP;"
October 3, 2007, as "4RP;"
December 14, 2007, as "5RP."

with the SSOSA on October 3, 2007. 3RP 3; CP 57-60. A continuance was granted on October 3, 2007, and a revocation hearing was held on December 14, 2007, after which Judge Stolz revoked the SSOSA and ordered Tavai committed for a term of 131.9 months to life, along with a life term of community placement. 4RP 3-5; 5RP 3; CP 74-75.

Tavai appealed. CP 79. After the appeal was filed, the court entered an order modifying the judgment and sentence to 125 months to life after the court was reminded that the standard range was only up to 125 months. CP 79; Supp. CP ___ (Order Correcting Judgment and Sentence, filed 7/11//08). This pleading follows.

2. Facts regarding offense

The charges in this case stemmed from allegations that Micah Tavai, then 22 years old, had consensual sexual relations with his stepsister, who was then 12. CP 2. In his Statement of Defendant on Plea of Guilty, Tavai stated that he was at least 36 years old than the stepsister, who was at least 12 years old but less than 14 and not married to him. CP 6-20.

3. Facts relating to revocation hearing

At sentencing, the court agreed that Tavai was a proper candidate for a SSOSA sentence. 2RP 10-11. Judge Stolz warned Tavai, however, that she did not “give second chances” so that Tavai needed to comply with his conditions “fully.” 2RP 10-11. One of those conditions was to “[u]ndergo and successfully complete an outpatient” treatment program, with the listed program provider as “Dan DeWalche.” CP 33-34, 46-48. Tavai was also required to “follow all rules set forth by the treatment

provider” and not to change providers without prior approval from the court or his Community Corrections Officer (CCO). CP 26-39, 46-48.²

Other conditions of the SSOSA, listed in Appendix H to the judgment and sentence, included the following:

- (2) Work at Department of Corrections’ approved education, employment, and/or community service;
... [and]
- (8) Notify community corrections officer of any change of address or employment.

CP 46-48.³ Tavai was also tasked to “[o]bey all laws.” Id.

On September 14, 2007, the parties appeared before Judge Stolz for a review hearing. 3RP 3. The prosecutor told the court that Mr. Tavai had been having some difficulty making payments towards treatment and that the prosecution believed he had violated some conditions by going to a park and a bar at some point. 3RP 3. The prosecutor said he was thinking of asking for sanctions of 60 days per violation but had not yet decided whether to do so. 3RP 4. The prosecutor asked the court to set a review hearing 30 days later and have Mr. Tavai taken into custody that day. 3RP 3.

The court told the parties it had received a report from “probation” saying it was recommending the court give Tavai a verbal reprimand and a warning that if he went to another park, he would be arrested. 3RP 4. The court had also received a letter from the treatment provider saying that he

²A copy of the Judgment and Sentence is attached as Appendix A.

³A copy of the appendices to the Judgment and Sentence is attached as Appendix B.

was willing to continue to see and treat Tavai but had cautioned him that any further violations would result in termination from the program. 3RP 5. Counsel asked the court not to revoke the suspended sentence but rather to let Tavai continue with treatment. 3RP 5-6. Counsel stated his belief that Tavai now understood that he was on a “razor thin margin.” 3RP 6. Counsel asked the court to set a review hearing for three months later. 3RP 6.

When the court asked Tavai if he wanted to say anything, Tavai responded that he had been getting in trouble since the age of 16 and he had finally managed to clean up. 3RP 6-7. He noted that he had not lied about going to the bar or the park and expressed his frustration that he was being “treated like garbage” when he was trying so hard. 3RP 6-7.

The court acknowledged that Tavai had made some “minimal progress,” had gone to treatment sessions, had just gotten a job and was working to pay for treatment. 3RP 9. The court cautioned Tavai to make sure he paid his treatment fees and said he “better drop” all his old buddies that have gang affiliations” and “[b]etter not go around places where you have friends who are stupid enough to be using alcohol or drugs,” because one of the reasons people reoffend is that they get drunk and then lose control. 3RP 10. The court also noted that Tavai had moved into “clean and sober housing,” which was one of its reasons for not taking him into jail that day. 3RP 10.

The court told Tavai that he had been given a “great opportunity” to turn his life around with the SSOSA sentence and that he now had to “do exactly as you are told” or the court would revoke his suspended

sentence and he would spend 125 months in jail. 3RP 7-8. The court said that Tavai needed to study the Appendix H to his judgment and sentence because that contained his conditions and next time there was a discussion of a violation that he was somewhere he was not supposed to be, he was “going to go to prison, no ifs, and or buts.” 3RP 9.

On October 2, 2007, when Tavai reported to his CCO, he was arrested. CP 65. On October 3, 2007, the prosecution filed a Petition for Hearing to Determine Noncompliance with Condition or Requirement of Sentence (Petition), in which the prosecution alleged a violation of the terms of the SSOSA, as follows:

- 2) Defendant was terminated from sexual deviancy treatment on or about 10/1/08; and that the foregoing acts and deeds were committed subsequent to and in direct violation of the terms and conditions of the aforementioned sentence.

CP 59.⁴ Tavai was ordered held pending the hearing on the state’s Petition. 4RP 3-6.

On October 4, 2007, the treatment provider filed a letter in which he stated that Tavai had self-reported being terminated from his job due to poor performance on September 26, 2007. CP 61-62. Tavai had also reported that he had been at a crime scene because he and a friend had gone to the home of two mutual friends and discovered them murdered. CP 61-62. The provider was concerned that one of the victims apparently was a gang member and drug dealer and thought it appeared that Tavai was continuing to associate with individuals involved in criminal activities. CP 61. Because the provider thought that this conduct

⁴A copy of the Petition is attached as Appendix C.

“increases the likelihood” that Tavai will be involved in or accused of other crimes, the provider said he no longer viewed Tavai as “a viable treatment candidate” and had terminated Tavai from treatment. CP 61-62.

On October 8, 2007, Lynne Hudson, a Community Corrections Officer (CCO) at the Department of Corrections (DOC) sent the judge a “Court-Notice of Violation,” in which DOC listed two violations; the termination from sexual deviancy treatment and “[b]eing terminated from employment on or about 9/23/07.” CP 64-65. The CCO admitted that Tavai had not only self-reported the termination from employment but had also secured a new job as a dishwasher within less than 10 days. CP 65. He had been due to start that job on October 2, the day his CCO had him taken into custody. CP 65.

The hearing on the Petition to revoke the suspended sentence was held on December 14, 2007. 5RP 1. At the hearing, the prosecutor asked if the court had the opportunity to review the Petition the state had submitted. 5RP 3-4. The prosecutor then reminded the court that Tavai had previously been before the court because it was alleged he had been in a public park and a bar. 5RP 3-4. The prosecutor declared that, in relation to those prior incidents, Tavai had been “associated with individuals who were known drug users.” 5RP 4. The prosecutor told the court that Tavai had now been terminated from his SSOSA treatment program and lost his employment, which the prosecutor argued were “two conditions which he’s supposed to adhere to to be engaged in the SSOSA program.” 5RP 5.

The prosecutor next told the court that he felt Tavai had been given enough opportunities and should not be given more. 5RP 5. The

prosecutor argued that Tavai's having been at the "homicide crime scene" where the people who were killed had a "marijuana grow op" indicated that Tavai was "clearly still associating with people who are walking on the wrong side of the law" which showed he could not "comply with the conditions that are required to successfully complete SSOSA." 5RP 5. The prosecutor asked that Tavai be revoked for all these "violations." 5RP 6.

At that point, the court asked the CCO if she wanted to say anything. 5RP 6. After she declined, Tavai's counsel then spoke, urging the court to give Tavai one more chance to succeed with the SSOSA. 5RP 6. Counsel suggested that it was proper to give Tavai some consequence for his current errors but asked that to be 60 days per violation, which counsel calculated as "4 months in the Pierce County Jail." 5RP 6.

Counsel noted that it was Tavai's "associations with other people" that had caused his problems, because he had been terminated from treatment for his association with the murdered people, who were childhood friends. 5RP 6-7. Counsel said that Tavai was not himself "participating in any way in any criminality" and was "getting by" and participating in his SSOSA treatment and doing fine. 5RP 7. Counsel reported that the "associations" Tavai had with the murdered people were "very loose" and should not be grounds to revoke the SSOSA. 5RP 7-8.

As a result of the treatment provider saying he would not continue treatment, counsel had gotten the Department of Assigned Counsel to provide funds to have Tavai evaluated by a different treatment provider, with whom Tavai could be "hooked up" once he was released from the

proposed four months in jail for the violations. 5RP 8. Tavai's mom had said she would provide Tavai some financial support and a place to live upon his release. 5RP 8.

The prosecutor then asked if counsel was contesting the alleged violations the prosecution had cited, saying he was ready to swear in Tavai's CCO if necessary. 5RP 9. Counsel stopped short of declaring that he was stipulating to the violations but did not argue that they had not been proven. 5RP 8-10.

Counsel then pointed out that, while Tavai had gotten fired, he had already gotten a job and had informed his CCO at his very next appointment about both the termination and the new job, although counsel acknowledged that Tavai "should have picked up the phone immediately after he got canned." 5RP 10. When Tavai said that he got "laid off" the court said "apparently, what they said is that he was terminated for poor performance." 5RP 10. Counsel then reiterated that the important point was that Tavai had reported the situation at his very next appointment and already had a new job by that time. 5RP 11.

At that point, the court asked about the new job, saying Tavai was "not supposed to be at a fast-food joint." 5RP 11. Tavai responded that the new job was at a "bar, casino" where food was served. 5RP 11. The court said "[t]hat's not exactly the place where you should be employed." 5RP 11. Tavai said it was during the day when kids were in school and all he did was wash dishes. 5RP 11.

At that point, the court said it did not think Tavai had "really made much of an effort" and ordered Tavai terminated from the SSOSA

program. SRP 12; CP 76-78.

D. ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION AND
VIOLATED TAVAI'S MINIMAL DUE PROCESS RIGHTS IN
REVOKING HIS SSOSA, AND COUNSEL WAS
PREJUDICIALLY INEFFECTIVE

The Special Sex Offender Sentencing Alternative (SSOSA) statute permits the sentencing court to suspend an eligible sex offender's sentence and impose a brief term of confinement to be followed by community custody, during which the offender is required to comply with certain conditions. See RCW 9.94A.670(4) and (5). The court also retains the authority to revoke a suspended sentence if it finds that the offender has violated the conditions of the suspended sentence or failed to make satisfactory progress in treatment. RCW 9.94A.670(10). Revocation is not the only option, and a court may also order the offender to be confined for up to 60 days for each violation of the conditions. See RCW 9.94A.634(3)(c); see State v. Partee, 141 Wn. App. 355, 360-61, 170 P.3d 60 (2007). Whatever decision the court makes, it is usually reviewed for abuse of discretion. Partee, 141 Wn. App. at 641.

In this case, this Court should reverse the trial court's decision to revoke Tavai's SSOSA, because that decision 1) was based in large part on improper grounds, 2) was entered in violation of Tavai's right to allocution, 3) was entered in violation of Tavai's right to notice and 4) was entered at a proceeding where Tavai did not receive effective assistance of counsel.

a. Job loss and association with others were not valid grounds for revoking the SSOSA

In revoking the suspended sentence, the trial court relied on several alleged violations of the terms of the SSOSA. Although the court failed to enter written findings and conclusions in support of its decision, the court's oral decision makes reasons clear. In telling Tavai the SSOSA was being revoked, the court specifically declared:

You've been terminated from your treatment program. You got fired from your job for poor performance; and obviously, you need to keep the job to keep in treatment because you have to pay for your treatment; and I would think that the thought of the amount of jail time that's hanging over your head would give you some reason to tow the line, and I think I agree with the treatment provider. I don't think he's a good candidate to be out in the community anymore. Now, granted, he may have ties to these old friends; but those are ties he should have broken off a long time ago, and he apparently couldn't; and I am, at this time, going to revoke the SSOSA and sentence him to prison.

SRP 12. The court also expressed concern about Tavai's new job, stating that a "bar, casino" was "not exactly the place" Tavai should be employed.

SRP 11-12.

Thus, the court clearly relied on Tavai's having been terminated from his treatment program, having lost his job, and associating with people on the wrong side of the law as grounds for revocation. The latter two reasons, however, were not valid, because they were not violations of Tavai's conditions.

First, it was not a condition of Tavai's SSOSA that he not lose or change his job. Appendix H to his judgment and sentence provided, *inter alia*, that Tavai must "[w]ork at Department of Corrections' approved education, employment, and/or community service." CP 46-48. But that

Appendix also required Tavai to “[n]otify community corrections officer of *any change of address or employment.*” CP 46-48 (emphasis added).

As a result, while it was clear that Tavai was permitted only to work at approved locations, it was *not* clear that Tavai would have his SSOSA revoked if he lost his job, was laid off or quit. Indeed, Appendix H specifically contemplated that Tavai might not keep the same job throughout the SSOSA process, because it specifically refers to a *change* in employment. And neither that Appendix nor any other condition imposed required that he *refrain* from changing employment; only that he notify his CCO when that occurred. See CP 26-48.

Thus, Tavai was not required to maintain the same job or lose his SSOSA. Nor was he even required to get pre-approval of his CCO before changing where he worked, although that *could* have been a condition the court ordered under RCW 9.94A.670(5)(c). Because the court chose not to order that condition, Tavai’s losing his job was not, in fact, a violation of the conditions of his SSOSA sentence, and the court erred in holding otherwise.

Further, to the extent the court relied on its belief that Tavai should not be working in a bar or gambling facility and thus was no longer in compliance with his conditions, that reliance was misplaced. Nothing in Tavai’s judgment and sentence indicated that he was required to stay away from places where there was drinking or gambling; he was only prohibited from drinking there. CP 26-39, 46-48. Nor was there any evidence presented at the hearing which indicated that the place Tavai had secured a new job was not DOC approved. 5RP 1-13. Rather than being used

against him, the fact that Tavai had gone out immediately and gotten another job right away should have been recognized to be a strong indication of Tavai's desire to comply with his requirements and also to remain able to pay for treatment.

Similarly, to the extent the court relied on Tavai's associations with people "on the wrong side of the law" as a separate violation of Tavai's SSOSA conditions, that reliance was improper not only because it was not valid but also because it violated Tavai's First Amendment rights. Appendix F to the Judgment and Sentence checked off boilerplate language, pre-printed, which provided that "[t]he offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____." CP 37-39. The "class," however, was left blank. CP 37-39.

Appendix H did not include any requirement that Tavai stay away from anyone except for "the victim." CP 46-48. And the order prohibiting contact did not list anyone other than the victim. CP 49-50. Other than "minor children," there was no class of individuals Tavai was ordered to stay away from as a condition of his SSOSA. CP 26-39, 46-50. Nor is staying away from a specific class of individuals a required condition of a SSOSA sentence. See RCW 9.94A.670(4)(b); RCW 9.94A.670(5); RCW 9.94A.712; RCW 9.94A.715; RCW 9.94A.700(4) (mandatory conditions); RCW 9.94A.700(5) (optional conditions).

Thus, Tavai had no conditions of his SSOSA which required him to stay away from old friends in the neighborhood who might be engaged in criminal acts, so long as he, himself, did not commit new crimes.

In addition, any condition requiring Tavai to stay away from his old neighborhood friends would not have been valid in this case. There is no question that a criminal defendant may be subject to limitations on his constitutional rights during community placement. See, State v. Moultrie, 143 Wn. App. 387, 396, 177 P.3d 776 (2008). As a result, while the First Amendment protects a defendant's constitutional right to freedom of association, a sentencing judge may order the a defendant not have contact with a victim of the crime "or a specified class of individuals" as a condition of community supervision. See, e.g., Roberts v. U.S. Jaycees, 468 US. 609, 617-18, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984) (right to freedom of association); Moultrie, 143 Wn. App. at 399 (certain limits permissible); RCW 9.94A.700(5)(b).

To be proper, however, such a condition must be "reasonably necessary to accomplish the essential needs of the state and public order," which requires that the court limit contact only with those who "share a relationship to the offender's crime." State v. Riley, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993); see also, State v. Riles, 135 Wn.2d 326, 348-49, 957 P.2d 655 (1998).

Thus, in Riles, a condition which precluded a defendant who had raped a 19-year old woman from having contact with "any minor-age children" was improper because there was "no reasonable relationship between his crime" and that order. 135 Wn.2d at 349-50. Indeed, the Court held, that order "borders on unconstitutional overbreadness" and had to be stricken. Id.

Similarly, here, there was no evidence that Tavai's crime had

anything to do with hanging out with the “wrong crowd” or knowing people who were involved in crime. The crime involved consensual sexual conduct at Tavai’s home with his stepsister, committed alone, without others around. See CP 2.

Notably, there was no evidence that Tavai himself was in any way involved in any criminality; just that he unfortunately knew someone who was and who ended up dead. And the only discussion at the hearing regarding Tavai’s involvement with the people in question was counsel’s declaration that the involvement was very limited and passing. 5RP 7-8.

To the extent the court relied on Tavai’s continuing to have contact with people from his neighborhood who were apparently involved in drugs, that reliance was also in error, and this Court should so hold.⁵

b. Tavai’s due process rights were violated

In addition to relying on improper grounds, the revocation here was accomplished in violation of Tavai’s due process rights.

A defendant in Tavai’s situation has a conditional liberty interest at stake when he faces revocation of a suspended sentence. State v. Canfield, 154 Wn.2d 698, 705, 116 P.3d 391 (2005). As a result, although revocation hearings are not subject to the same due process mandates as those which apply during trial, defendants facing revocation still enjoy minimal due process rights. See State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1998); see Morrissey v. Brewer, 408 U.S. 471, 482, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

⁵Counsel’s ineffectiveness in failing to object to the court’s reliance on these factors is discussed in more detail, *infra*.

Those rights include:

(a) written notice of the claimed violations; (b) disclosure . . . of evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation.

Dahl, 139 Wn.2d at 683.

In this case, both Tavai’s right to allocution and his right to notice were violated.

i. Tavai’s right to allocution was violated

(a) Relevant facts

When the parties appeared before Judge Stolz after it was alleged that Tavai had been in a park and a bar, the court first heard from the prosecutor and counsel, then asked Tavai if he wished to speak prior to the courts decision. 3RP 6-7. Tavai did so. 3RP 6-8.

On the day the state’s Petition for revocation was filed, the parties appeared before Judge Linda C.J. Lee in order to discuss whether Tavai should be released or held in custody for the revocation hearing. 4RP 3. At that hearing, an attorney appearing for Tavai said Tavai did not “totally understand what’s happening here today” and wanted to address the court. 4RP 5. The court would not allow Tavai to speak, stating it was trying to “protect Mr. Tavai’s rights” by not hearing “anything about the merits of the revocation.” 4RP 6. The court then ordered Tavai held until the revocation hearing. 4RP 6.

At the hearing on the state’s Petition, the court first heard at length from the prosecutor about why he thought Tavai’s SSOSA should be

revoked. 5RP 3-6. The court then gave the CCO the opportunity to speak, but she declined. 5RP 6. Next, the court referred to Tavai's counsel by name, apparently to allow his argument. 5RP 6. After counsel was through, the court asked, "[a]nything else from anyone," and the prosecutor responded, after which counsel made further argument. 5RP 8-9. At one point during that argument, counsel addressed Tavai, asking for clarification of a fact, after which counsel again presented argument. 5RP 9-11.

At that point, the court asked a question about Tavai's new job, and it was Tavai who answered, telling the court that his new job was at a bar/casino where food was served. 5RP 11. The court said "[t]hat's not exactly the place where you should be employed." 5RP 11. Tavai said it was during the day when kids were in school and all he did was wash dishes. 5RP 11.

Without asking Tavai if he wished to address the court, the court then ruled, revoking Tavai's suspended sentence. 5RP 12. Tavai tried to speak about the violations, but the court told Tavai he had shown poor judgment which meant he was going to prison. 5RP 12. When Tavai again tried to speak, counsel cut him off, saying, "[s]he's already ruled." 5RP 12.

(b) Tavai's right to allocution was violated

Defendants in Tavai's situation have the right to "be heard in person." Canfield, 154 Wn.2d at 706. This right is, in plain terms, the right of the defendant to allocute at the hearing, if the defendant wishes to

do so. Canfield, 154 Wn.2d at 706. Allocution at a revocation hearing “serve[s] an important function,” because the defendant has a conditional liberty interest at stake. Canfield, 154 Wn.2d at 705. Allowing the opportunity for a defendant to allocute at revocation hearings is proper and does not unduly burden the proceedings, because “allowing a defendant a few moments of the court’s time is minimally invasive.” 154 Wn.2d at 705. Indeed, due process requires allowing a defendant to speak, because he has a right to offer “a plea in mitigation” or to “plead for leniency” if he indicates a wish to do so. 154 Wn.2d at 707-708.

In this case, Tavai clearly wanted to speak to the court about the potential revocation. Indeed, he likely *expected* that opportunity. At the previous hearing discussing the park/bar allegations, Judge Stolz had specifically *given* Tavai the opportunity, asking if he wished to say anything before the court ruled. 3RP 6-7. When Tavai later went before Judge Lee after the Petition had been filed, his counsel informed the court of Tavai’s desire to speak, but Judge Lee would not let him do so. 4RP 6. Then, in front of Judge Stolz, Tavai was never given the opportunity to speak after the arguments of counsel, because the judge did not give him that chance prior to going right into her ruling. 5RP 11-12. Further, the judge - and counsel - effectively refused to allow him to allocute even after the ruling, because the ruling had already occurred. 5RP 11-12.

Thus, although Tavai clearly wished to offer pleas in mitigation or leniency prior to the court’s decision, he was deprived of that right. His right to allocution under Dahl was therefore violated, and this Court

should so hold.⁶

In response, the prosecution may attempt to convince the Court that Tavai did not adequately raise this issue below and should not be allowed to do so on appeal. This Court should reject any such argument.

It is true that, in Canfield, the Court held that a defendant must give some notice of his desire to speak before the failure to allow him to do so can be raised. 154 Wn.2d at 708. It is Tavai's position, however, that he gave such notice here, first by addressing the court when asked if he wished to do so at the September hearing regarding the park/bar allegations, next by trying to address Judge Lee, and then by trying to speak to the judge when questions were being asked at the revocation hearing. 3RP 6-7; 4RP 6; 5RP 9-12. These efforts indicated that Tavai wanted to offer his own statements to the court in order to seek leniency or argue in mitigation, as do his attempts to speak after the court had ruled.

In any event, even if Tavai's efforts are somehow not deemed sufficient, reversal would nevertheless be proper based on counsel's ineffectiveness. See infra.

Because Tavai's right to allocution was violated at the revocation hearing, this Court should reverse and remand for a new hearing in front of a different judge.

ii. Tavai's right to notice was violated

(a) Relevant facts

In the prosecution's Petition for revocation, filed October 3, 2007,

⁶Counsel's ineffectiveness in failing to raise this issue below is discussed in more detail, *infra*.

the prosecutor alleged one violation, as follows:

- 1) Defendant was terminated from sexual deviancy treatment on or about 10/1/08; and that the foregoing acts and deeds were committed subsequent to and in direct violation of the terms and conditions of the aforementioned sentence.

CP 58.

In the October 4, 2007, letter, the treatment provider cited both Tavai's self-report of termination from his job and Tavai's apparent association with individuals who seemed involved in criminal activity as the reasons the provider thought Tavai was no longer a "viable treatment candidate" and had terminated him from treatment. CP 61-62. The CCO's "court-notice" listed both the termination from sexual deviancy treatment and "[b]eing terminated from employment on or about 9/23/07" as "violations." CP 64.

The state did not amend its Petition to request that the termination from employment serve as independent grounds for revocation. The CCO's notice was apparently sent to counsel but does not appear to have been served on Tavai. CP 64-68.

At the hearing on the Petition, the prosecutor argued that both Tavai's termination from treatment and the loss of his job were violations of "two conditions" of Tavai's SSOSA program. 5RP 5. The prosecutor also argued that Tavai was "clearly still associating with people who are walking on the wrong side of the law" and thus was not complying "with the conditions that are required to successfully complete SSOSA." 5RP 5. The prosecutor asked that Tavai be revoked for "his violations." 5RP 6.

After hearing counsel's argument on those "violations," the court

asked about the new job, saying Tavai was “not supposed to be at a fast-food joint.” 5RP 11. When Tavai responded that the new job was at a “bar, casino” where food was served, the court said “[t]hat’s not exactly the place where you should be employed.” 5RP 11. In ruling, the court declared:

You’ve been terminated from your treatment program. You got fired from your job for poor performance; and obviously, you need to keep the job to keep in treatment because you have to pay for your treatment; and I would think that the thought of the amount of jail time that’s hanging over your head would give you some reason to tow the line, and I think I agree with the treatment provider. I don’t think he’s a good candidate to be out in the community anymore. Now, granted, he may have ties to these old friends; but those are ties he should have broken off a long time ago, and he apparently couldn’t; and I am, at this time, going to revoke the SSOSA and sentence him to prison.

5RP 12. The court did not enter written findings and conclusions on the revocation. In its Order Revoking Sentence, the court referred to the state’s Petition as the grounds for the revocation, declaring:

having read said petition, and hearing testimony in support therefore/defendant having stipulated to the violation(s), and it appearing therefrom that the defendant has, by various acts and deed, violated the terms and conditions of said sentence,

the suspended sentence was being revoked. CP 76-78.

(b) Tavai’s rights to notice were violated

The court’s decision violated Tavai’s due process rights to notice. Under Dahl, due process requires the state to inform an offender both “of the specific violations alleged and the facts that the State will rely on to prove those violations.” 139 Wn.2d at 685. Here, Tavai was not given constitutionally sufficient notice of the violations upon which the prosecution relied. Further, the court relied on several of those same

factors in revoking Tavai's suspended sentence.

The only violation alleged in the Petition was the termination from treatment. CP 57-60. Yet in revoking the suspended sentence, the court appears to have relied not only on that termination but also on Tavai's losing his job and associating with people who were apparently involved in criminal activity. 5RP 12. Neither of those violations, however, was alleged in the Petition upon which the motion for revocation relied. CP 57-60. Tavai's due process rights to notice were thus violated.

Dahl, supra, is instructive. In Dahl, the defendant was notified by the state that he was facing revocation of a suspended sentence because he had failed to make progress in treatment. 139 Wn.2d at 681-84. There were several treatment reports filed which indicated several incidents alleged to have occurred. 139 Wn.2d at 681. At the revocation hearing, the prosecution cited to those incidents, which it said demonstrated Dahl's failure to make progress, and the court relied on those incidents in revoking. 139 Wn.2d at 681-82. On review, the Court agreed that, while the incidents were discussed in the reports which Dahl had been given, "the State did not inform Dahl that it sought revocation of his SSOSA based on these occurrences." 139 Wn.2d at 684.

The Court, however, disagreed that Dahl had not been given sufficient notice of the violations upon which the revocation was being sought. Id. The Court found that the separate incidents not alleged in the State's petition were not considered "violations that served as grounds for revocation," but were instead used as examples proving the charged grounds -i.e., the failure to progress in treatment. Looking at the record,

the Court found that “[t]he actions and statements of both the prosecutor and trial judge make clear that the two incidents were never intended to be considered as separate SSOSA violations” but were instead just taken into account as part of the proof of the charged grounds of failing to progress in treatment. 139 Wn.2d at 684-85. The Court gave examples from the record, in which “the prosecutor did not represent the . . . incidents as independent violations of SSOSA.” 139 Wn.2d at 685. Thus, the Court concluded, Dahl’s due process rights to notice were satisfied because the State provided notice of the violation it was relying on and the reports simply indicated the evidence supporting the allegations against him. 139 Wn.2d at 685-86.

Here, unlike in Dahl, the prosecutor’s arguments and the court’s ruling make it clear that the termination from employment and associating with others “walking on the wrong side of the law” were treated as separate violations. The prosecutor specifically referred to “violations,” not a single violation as alleged in the Petition. 5RP 5; see CP 57-60. Indeed, the prosecutor declared not only the termination from treatment but also Tavai’s “losing his employment” as separate “conditions” of the SSOSA program. 5RP 5. And the prosecutor specifically related “deviance from the requirements” of the suspended sentence with Tavai’s “clearly still associating” with people he should not be associated with as a basis for the revocation. See 5RP 5-6.

Further, the court’s specific declaration that it was revoking because Tavai “got fired . . . for poor performance” indicates the court’s reliance on that factor, as does the court’s declaration that Tavai “should

have broken off” ties with his old friends “a long time ago” and “apparently couldn’t” as another basis. 5RP 11-12.

Thus, unlike in Dahl, here, the prosecutor and the court both relied on reasons for revocation which were never charged in the Petition. As in Dahl, there were other indications of those facts as potential reasons for violations, but the prosecution never gave Tavai notice that it would be relying on those other violations at the hearing. Tavai’s due process rights to notice were therefore violated. *See, e.g., State v. Bahl*, ___ Wn.2d ___, ___ P.3d ___ (2008 Wash. LEXIS 1032) (October 9, 2008) (at 19) (due process requires fair warning of proscribed conduct).

In response, the prosecution may attempt to rely on a Division One case in which the court held that a defendant’s claim of improper notice should not be addressed if he did not raise at the issue at the revocation hearing. Any such reliance should be rejected. In State v. Robinson, 120 Wn. App. 294, 85 P.3d 276, review denied, 152 Wn.2d 1031 (2004), the defendant was released from prison and subject to certain community placement conditions, which it was alleged he violated. 120 Wn. App. at 297. DOC filed a document alleging 8 violations, and it was unclear whether the defendant was sent a copy. 120 Wn. App. at 297-98. A month later, the state sent notices alleging only two violations. 120 Wn. App. at 298. At the sentence modification hearing, the defendant admitted to 6 of the violations alleged in the DOC report and did not object to testimony and letters which the prosecution introduced to support its claim. 120 Wn. App. at 298. After the court found him guilty of 8 violations, he was ordered to serve a total of 360 days in confinement. 120

Wn. App. at 298.

On appeal, Robinson argued that his rights were violated because he did not receive proper notice of all of the violations. 120 Wn. App. at 299. The Court of Appeals declined to address the issue because, when the prosecution listed and the court relied on the DOC listed violations, Robinson did not object but instead admitted 6 of them. 120 Wn. App. at 299. Relying on State v. Nelson, 103 Wn.2d 760, 697 P.2d 579 (1985), the Court held, a defendant “could not sit by while his due process rights were violated at a hearing and then allege due process violations on appeal.” Robinson, 120 Wn. App. at 299. While recognizing that Nelson involved the failure to object to the admission of *evidence*, the Robinson Court nevertheless declared, without citation to authority, that “improper notice should be treated in the same manner” and that Robinson had therefore waived the notice requirements by failing to object to notice at the modification hearing. 120 Wn. App. at 299.

The holding of Robinson is questionable, however, and should not be followed by this Court, because of the very significant differences between the situation in Nelson and that in Robinson. In Nelson, the defendant argued on appeal that his rights to confrontation and cross-examination were violated at a parole revocation hearing when the prosecution relied on several reports of treatment providers and others but did not present live testimony. 103 Wn.2d at 764-65. But the defendant himself used similar material and specifically argued below that it was proper. 103 Wn.2d at 764-65. Given those circumstances, the Court found, the defendant had waived any claim that admission of that evidence

was in violation of his rights to confrontation and cross-examination. 103 Wn.2d at 764.

That ruling is not only consistent with the general rule that a defendant must object to the introduction of evidence in order to raise that issue on appeal but also the general rule that a defendant who chooses not to try to exercise his right of confrontation with a witness at trial cannot then raise that issue on appeal. *See, e.g., State v. Coria*, 146 Wn.2d 631, 641-42, 48 P.2d 1980 (2002); *In re Suave*, 103 Wn.2d 322, 330, 692 P.2d 818 (1985). Further, that ruling is consistent with the limited rights of confrontation and cross-examination which defendants facing revocation enjoy. Under Dahl, the right to confront and cross-examine in revocation hearings is limited and does not exist if “there is good cause” for not allowing it. Dahl 139 Wn.2d at 683. In stark contrast, Dahl recognized no similar limitation on the right to “written notice of the claimed violations.” 139 Wn.2d at 683.

These serious, significant differences between the situation in which the Court reached its conclusions in Nelson and the situation facing Division One in Robinson illuminate the very real flaws in the cursory reasoning of Robinson. This Court should decline to follow that flawed decision and should instead hold the prosecution to the limits it set for itself when it chose to only allege a single violation of the SSOSA in filing the Petition for revocation.

If the Court is inclined, however, to follow the faulty reasoning of Robinson, that case would still not control. Unlike here, in Robinson there was no claim that counsel was ineffective in failing to raise the issue

below. See 120 Wn. App. at 294-99. Here, there is such a claim. See *infra*.

The prosecution's reliance on Tavai's losing his job and his "associations" - and the court's decision based on those allegations - were in error.⁷ This Court should so hold and should reverse.

c. Counsel was prejudicially ineffective

All of the errors and violations of Tavai's rights below were compounded by and indeed caused by counsel's prejudicial ineffectiveness. Defendants in criminal cases are guaranteed the right to effective assistance of counsel at all critical stages of a criminal proceeding. See Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.3d 816 (1987). Sentencing is such a critical stage, as is any part of a criminal proceeding which holds significant consequences for the accused. See State v. Robinson, 153 Wn.2d 689, 694, 107 P.3d 90 (2005); Bell v. Cone, 535 U.S. 685, 695-96, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002). A SSOSA revocation hearing holds such consequences, because the potential result of the hearing is the defendant's loss of his conditional liberty. See RCW 9.94A.670(10). Further, fundamental fairness requires given a defendant facing revocation the right to effective assistance of counsel where he faces losing his conditional liberty based upon allegations which the state will try to prove at a contested hearing. See State v. Wentworth, 17 Wn. App. 644, 645, 564 P.2d 810, review denied,

⁷Counsel's ineffectiveness in failing to raise these issues below is discussed in more detail, *infra*.

89 Wn.2d 1012 (1977); Mempa v. Rhay, 389 U.S. 128, 88 S. Ct. 254, 19 L. Ed. 2d 336 (1967).

Counsel is ineffective where his performance falls below an objective standard of reasonableness despite a strong presumption of competence, and the deficiency prejudiced the defendant. Strickland, 466 U.S. at 687; Thomas, 109 Wn.2d at 226. Counsel's performance meets that standard when he fails to be aware of or investigate the relevant law or matters of defense. Thomas, 109 Wn.2d at 226; see State v. Woods, 138 Wn. App. 191, 197, 156 P.3d 309 (2007).

Here, counsel's performance was deficient in several ways. First, it was not objectively reasonable for counsel to fail to object to the prosecution and the court relying on alleged violations of Tavai's conditions of SSOSA when those violations were not valid. A court does not have authority to revoke a suspended sentence based on violation of a void or nonexistent condition. See, e.g., State v. Raines, 83 Wn. App. 312, 316, 922 P.2d 100 (1996). And there could be no tactical reason for counsel to fail to object to the prosecutor and the court sending your client to prison for allegedly violating conditions of his suspended sentence *when he had not committed those violations*.

Further, this is not a situation where the court's reliance on those improper factors did not prejudice counsel's client. In some situations, where a court relies on improper factors at sentencing, for example, appellate courts have upheld the sentence and found no prejudice because either the trial court has clearly indicated that it would reach the same conclusion even if one or more of the factors is later deemed improper or it

is clear from the record that the court would reach that same conclusion. See, e.g., State v. Fisher, 108 Wn.2d 419, 739 P.2d 683 (1987). Here however, there was no such finding entered by the court. CP 76-78; 5RP 1-13. And the court's ruling indicated that it considered all these allegations intertwined, so that its decision clearly rested on consideration of the invalid allegations. 5RP 12.

It was also not objectively reasonable for counsel to fail to ensure that his client's due process rights were not violated. There can be no question that Tavai clearly wished to exercise his right to allocution. Not only had he done so in the same context before, he had tried to do so in these ongoing proceedings, in front of Judge Lee.

Further, the U.S. Supreme Court has recognized that "[t]he most pervasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." Green v. U.S. 365 U.S. 301, 304, 81 S. Ct. 653, 5 L. Ed. 2d 670 (1961). Yet counsel effectively deprived his client of that right by failing to ensure that Tavai was permitted to speak. Tavai thus lost his chance to plead for mercy or in mitigation and affect the court's decision before it was made.

There could also be no tactical reason for failing to object to the prosecution's reliance on grounds for revocation not alleged in the Petition. Had counsel objected, the court would not have relied on those grounds. Further, because the uncharged grounds were a large part of the court's reasons for deciding to revoke the SSOSA, had counsel objected, there is a reasonable probability that counsel's client would not have lost his conditional liberty if counsel had spoken up.

Further, counsel's failures not only prejudiced Tavai below but also continue to affect Tavai's rights because of their potential impact on review. As noted above, there is caselaw suggesting that the due process right to notice should be raised below or is waived. See Robinson, 120 Wn. App. at 296. Although Tavai disputes the validity and propriety of this caselaw, as argued *infra*, that caselaw is likely to be raised by the prosecution in response as a reason this Court should not address the violations of Tavai's rights. If this Court is inclined to agree with the prosecution, counsel's failure to object below should be seen as prejudicial and ineffective, because, by failing to raise the violations of his client's due process rights below, counsel not only ensured that those rights would go unredressed at that time but also will have prejudiced Tavai's ability to receive relief on appeal.

The same is true with the issue of allocution. As argued, *infra*, that issue was sufficiently raised below to be preserved for appeal. However, counsel's failure to raise the issue is likely to be relied on by the prosecution on appeal in an effort to convince this Court to find waiver. And that position does find some support in Canfield, *supra*, although ultimately, as argued *infra*, the issue was sufficiently preserved below. If, however, the Court is inclined to give any "waiver" argument currency, it should nevertheless reverse based on counsel's failure to ensure his client's right to allocution by properly raising the issue below.

Counsel's unprofessional failures prejudiced Tavai. To prove prejudice, Tavai need only show that there is a reasonable probability that, but for counsel's errors, the result would likely have been different. State

v. Cienfuegos, 144 Wn.2d 222, 226, 25 P.3d 1011 (2001). A “reasonable probability” need only be sufficient to “undermine confidence in the outcome.” Thomas, 109 Wn.2d at 226.

Here, had counsel not failed to perform to a minimal standard of professional conduct on his client’s behalf, the court would have been made aware that 1) it was relying on several alleged violations which were not, in fact, violations of the terms of the SSOSA, 2) the state was relying on alleged violations for which it failed to give proper notice and 3) Tavai wished to speak prior to the court entering its decision. There is a reasonable probability that the court would then have decided to impose local sanctions and allow Tavai to work with another treatment provider, especially given the relatively non-violent nature of his crime.

Counsel was prejudicially ineffective at the revocation hearing, and this Court should so hold and should reverse.

E. CONCLUSION

For the reasons stated herein, this Court should reverse.

DATED this 12th day of November, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE BY MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Appellant's Opening Brief to opposing counsel and to appellant by depositing the same in the United States Mail, first class postage pre-paid, as follows:

to Ms. Kathleen Proctor, Esq., Pierce County Prosecutor's Office, 946 County City Building, 930 Tacoma Ave. S., Tacoma, Washington, 98402;

to Mr. Micah Tavai, DOC 853631, Clallam Bay Corr. Center, 1830 Eagle Crest Way, Clallam Bay, WA. 98326.

DATED this 12th day of November, 2008.


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STATE OF WASHINGTON
BY Law
DEPUTY



06-1-04244-3 27197412 JDSWCJ 03-26-07



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 06-1-04244-3

vs.

MAR 26 2007

MICAH DAVID TAVAI,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

06-1-04244-3

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 02/23/07

By direction of the Honorable

Stolz

JUDGE
KEVIN KATHERINE M. STOLZ

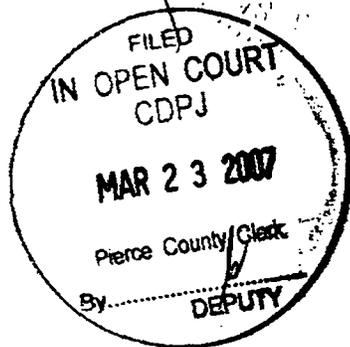
CLERK

By: *Engler*

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO *Engler* SHERIFF

Date: MAR 26 2007 *Engler* Deputy



STATE OF WASHINGTON

ss:

County of Pierce

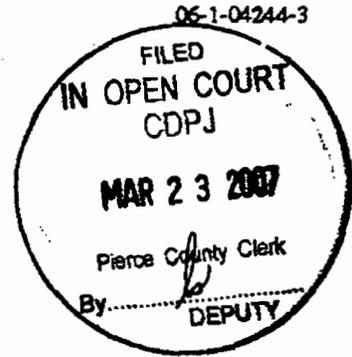
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

caf



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

MAR 26 2007

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-04244-3

vs

JUDGMENT AND SENTENCE (JS)

MICAH DANIEL TAVAI,

Defendant.

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (DOSA), 4.15.2, 5.3, 5.6 and 5.8

SID: WA21235343
DOB: 05/17/1984

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2/18/07 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	Rape of a Child in the Second Degree - Domestic Violence, (Charge Code: I37)	9A.44.076 10.99.020	N/A	06/25/06	Lakewood PD 062040869

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.333(8).

as charged in the Original Information

- The crime charged in Count(s) I involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

JUDGMENT AND SENTENCE (JS)
(Felony) (6/2006) Page 1 of 9

07-9-03560-6

06-1-04244-3

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPCS - MI	02/19/03	PIERCE COUNTY WA	09/22/02	ADULT	NV
2	OTHER CURRENT: UPCS 05-1-05739-6	3/23/07	PIERCE COUNTY WA	11/18/03	ADULT	NV

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	XI	95-125 MONTHS TO LIFE	N/A	95-125 MONTHS TO LIFE	LIFE/\$50,000

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

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

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: N/A

III. JUDGMENT

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

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 1,000 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 1,800⁰⁰ TOTAL

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

4.2 RESTITUTION

[X] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[] is scheduled for _____

[] defendant waives any right to be present at any restitution hearing (defendant's initials): MHD?

[] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

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

4.4 COLLECTION COSTS

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

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4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

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

4.7 HIV TESTING

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

4.8 DNA TESTING

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

4.9 NO CONTACT

The defendant shall not have contact with P.J. (DOB: 3/7/94) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

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

4.10 OTHER:

see Appendix "H" & "G" & "F"

4.11 BOND IS HEREBY EXONERATED

06-1-04244-3

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4.12 SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the county jail or Department of Corrections (DOC):

_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

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

Court I Minimum Term: 131.9 Months Maximum Term: life
Court _____ Minimum Term _____ Months Maximum Term: _____
Court _____ Minimum Term _____ Months Maximum Term: _____

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

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

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

Actual number of months of total confinement ordered is: _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.

The sentence herein shall run onsecutively to the felony sentence in cause number(s) _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail 197 unless the credit for time served prior to sentencing is specifically set forth by the court: ~~423 days~~

CFTS

06-1-04244-3

(c) **SUSPENSION OF SENTENCE.** The execution of this sentence is suspended, and the defendant is placed on community custody under the charge of DOC for the length of the suspended sentence or three years, whichever is greater, and shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. Community custody may be extended for up to the statutory maximum term of the sentence. Violation of community custody may result in additional confinement. The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community service work and be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody:

Undergo and successfully complete an outpatient inpatient sex offender treatment program with

Dan DeWaltche
for a period of 36 months

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

Serve 9 ~~day~~ months of total confinement. Work Crew and Electronic Home Detention are not authorized. RCW 9.94A.030.

Obtain and maintain employment.

Work release is authorized, if eligible and approved. RCW 9.94A.180.

Defendant shall perform hours of community service as approved by defendant's community corrections officer to be completed:

as follows: _____

on a schedule established by the defendant's community corrections officer. RCW 9.94A.

Other conditions: _____

The conditions of community custody shall begin immediately unless otherwise set forth here: _____

4.13 **REVOCATION OF SUSPENDED SENTENCE.** The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence, with credit for any confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.

4.14 **TERMINATION HEARING.** A treatment termination hearing is scheduled for _____

(three months prior to anticipated date for completion of treatment) RCW 9.94A.

06-1-04244-3

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A
- 5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

06-1-04244-3

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 3/23/07

[Signature]

Deputy Prosecuting Attorney
Print name: Yam McLean
WSB # 2582

[Signature]

JUDGE
Print name: KATHERINE M. STOLZ

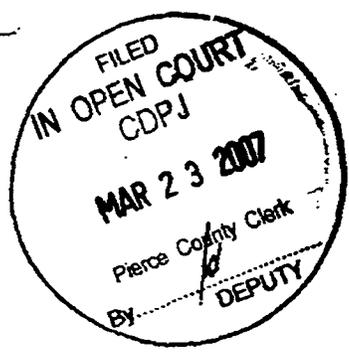
Attorney for Defendant
Print name: Ed DeCosta
WSB # 21675

[Signature]

Defendant
Print name: MICAH D. JARVI

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]



06-1-04244-3

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-04244-3

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

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

IDENTIFICATION OF COURT REPORTER

KIMBERLY A. O'NEILL

Court Reporter

06-1-04244-3

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: _____

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: comply w/ SSOCA treatment

all conditions set forth on Appendix 11C1

06-1-04244-3

APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

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I. The defendant shall attend and complete sexual deviancy treatment with:

Dan Dewalsche

1. The defendant shall follow all rules set forth by the treatment provider;
2. The defendant shall submit to quarterly polygraph examinations to monitor compliance with treatment conditions;
3. The defendant shall submit to periodic plethysmograph examinations;
4. The defendant shall not peruse pornography, which shall be defined by the treatment provider.
- 5.

II. The defendant shall not have any contact with the victim(s) J.P. or any minor child (without prior written authorization from the treatment provider and community corrections officer). The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, _____

III. The defendant's living arrangements shall be approved in advance by the community corrections officer.

IV. The defendant shall work at Department of Corrections approved education or employment.

V. The defendant shall not consume alcohol.

VI. The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.

VII. The defendant shall remain within geographical boundaries prescribed by the community corrections officer.

VIII. _____

06-1-04244-3

IDENTIFICATION OF DEFENDANT



SID No. WA21235343
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/17/1984

FBI No. 311688XB2

Local ID No. UNKNOWN

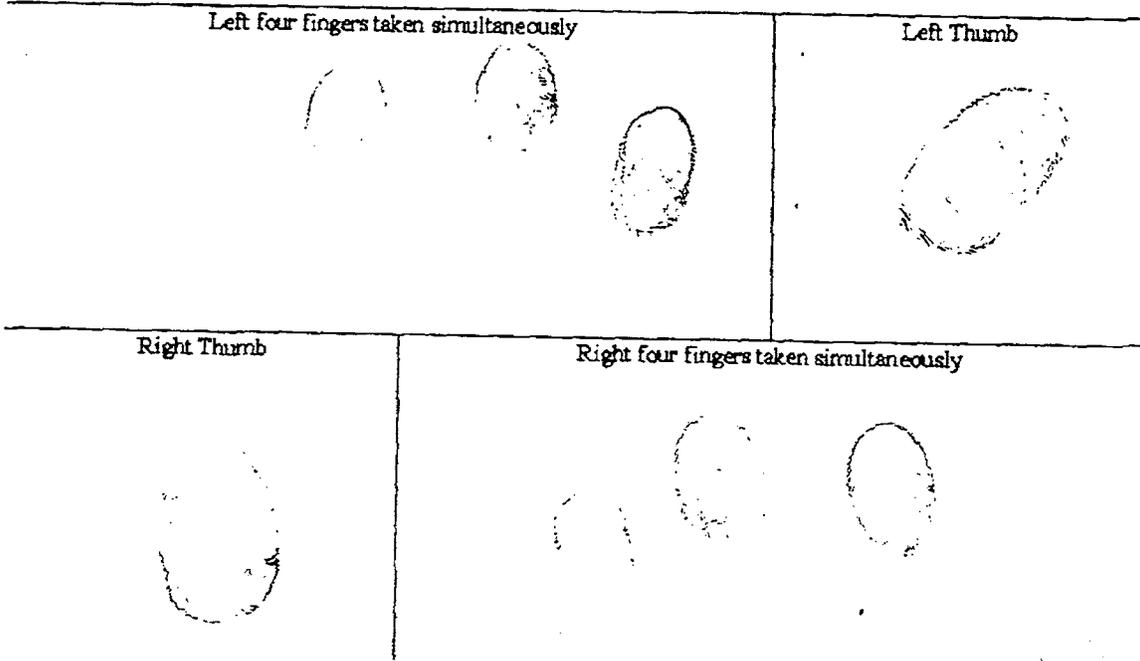
PCN No. 538873276

Other

Alias name, SSN, DOB:

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, J. Shipman Dated: 3/23/07

DEFENDANT'S SIGNATURE: Penials V. Jones

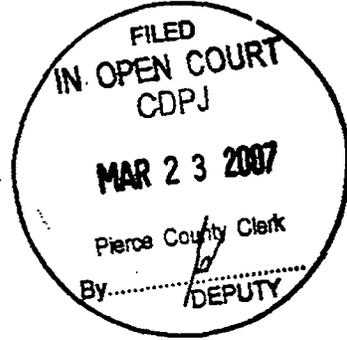
DEFENDANT'S ADDRESS: 1902 S. Union Apt. #5
TACOMA, WA 98405

JUDGMENT AND SENTENCE (JS)
(Felony) (6/2006) Page ___ of ___

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400



06-1-04244-3 27197416 APXH 03-26-07



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

STATE OF WASHINGTON]

Cause No.: 06-1-04244-3]

Plaintiff]

JUDGEMENT AND SENTENCE (FELONY)]

v.]

APPENDIX H]

Micah D. Tavai, Defendant]

COMMUNITY PLACEMENT / CUSTODY]

DOC No. 853631]

The court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:

- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
- (2) Work at Department of Corrections' approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
- (8) Notify community corrections officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set fourth in writing by the Community Corrections Officer.

WAIVER: The following above-listed mandatory conditions are waived by the Court: None

(b) OTHER CONDITIONS: Defendant shall comply with the following other conditions during the term of community placement / custody:

10. Reside at a residence and under living arrangements approved of in advance by your community corrections officer. You shall not change your residence without first obtaining the authorization of you community corrections officer.
11. Enter and complete a state approved sexual deviancy treatment program through a certified sexual deviancy counselor. You are to sign all necessary releases to insure your community corrections officer will be able to monitor your progress in treatment.
12. You shall not change sexual deviancy treatment providers without prior approval from the Court and your community corrections officer.
13. You shall not possess or consume any mind or mood altering substances, to include alcohol, or any controlled substances without a valid prescription from a licensed physician.
14. Have no contact with the victim without the prior approval of CCO and therapist. This includes but is not limited to personal, verbal, written or contact through a third party.
15. Do not possess or peruse pornographic materials. Your community corrections officer will define pornographic material.
16. Hold no position of authority or trust involving children under the age of 18.
17. Do not initiate or prolong physical contact with children under the age of 18 for any reason.
18. Inform your community corrections officer of any romantic relationships to verify there are no victim-age children involved.
19. Submit to polygraph and plethysmograph testing upon direction of your community corrections officer or therapist at your expense.
20. Register as a sex offender in your county of residence.
21. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)
22. Submit to a blood draw for DNA purposes and for an HIV test.

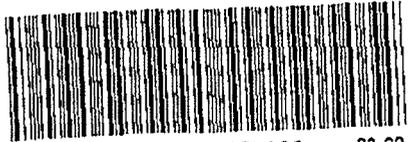
- 23. Follow all conditions imposed by your sexual deviancy treatment provider.
- 24. Obey all laws.
- 25. You shall not have access to the internet unless the computer has child blocks in place and active.
- 26. Must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of residence in which the offender lives or has exclusive/joint control/access.

DATE 3/23/07

[Handwritten Signature]
 JUDGE, PIERCE COUNTY SUPERIOR COURT
KATHERINE M. STOLZ

[Handwritten Signature]
 Def.





06-1-04244-3 27224212 ORNCCS 03-29-07

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR 28 2007 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOK, County Clerk
BY [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-04244-3

vs.

(Clerk's Action Required)

MICAH DANIEL TAVAI,

ORDER PROHIBITING CONTACT
(Domestic Violence)

Defendant.

AS A CONDITION OF SENTENCE

Physical Description: SEX MALE; RACE
ASIAN/PACIFIC ISLAND; EYES BROWN;
WEIGHT 190; HEIGHT 5' 8"; DOB 05/17/84

THIS MATTER having come before the undersigned Judge of the above-entitled court, and the court having considered the records and files herein and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED pursuant to RCW 10.99 and 26.50 that the defendant shall have no contact, directly or indirectly, in person, in writing, by telephone, or electronically, either personally or through any other person, with: PJ Pennie Johnson, DATE OF BIRTH: 03/07/1994 relationship to defendant if known: Other: family member, until:

- Expires: Non-Expiring (Class A)
- Expires: Ten (10) years (Class B)
- Expires: Five (5) years (Class C)
- Expires: Two (2) years (Gross Misdemeanor)

or until modified or terminated by the court. It is further

ORDERED that the Clerk of the Court shall forward a copy of this order on or before the next judicial day to the Law Enforcement Support Agency (LESA), who shall enter it in the computer-based intelligence system available in this state used by law enforcement to list outstanding warrants.

WARNINGS TO THE DEFENDANT: Violation of this order is a criminal offense under chapter 10.99 RCW and 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order. If the violation of the order prohibiting contact involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and

territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C sections 2261, 2261 A, or 2262.

Effective immediately, and continuing as long as this order prohibiting contact is in effect, you may not possess a firearm or ammunition. 18 U.S.C. Section 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. Section 925(a)(1). If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. Section 922(g)(9); RCW 9.41.040

You can be arrested even if any person protected by this order invites or allows you to violate the order's provisions. You have the sole responsibility to avoid the persons protected or to refrain from violating the order's provisions. Only the court can change this order.

Pursuant to 18 U.S.C. Section 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

NOTICE TO: Sheriff of Pierce County, Chief of Tacoma Police Department and ALL PEACE OFFICERS:

YOU ARE HEREBY DIRECTED to maintain a record of this Order Prohibiting Contact and enforce its provisions.

PLEASE NOTIFY the Pierce County Prosecuting Attorney's Office, 930 Tacoma Avenue South, Room 946, Tacoma, Washington 98402 (253) 798-7400 if the defendant violates the terms of the Order.

DATED this 23RD day of March 2007.

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 28 2007 P.M.
PIERCE COUNTY, WASHINGTON
HELEN STOCK, County Clerk
DAVID [unclear] DEPUTY

Judge

Copy received:

Entry noted

Ymiria's [unclear]
Defendant

[Signature]
Defense Counsel 21673

Victim: PJ _____

caf

DOC # 85631

06-1-04244-3



08-1-04244-3 28367754 PTHRG 10-04-07

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT - 3 2007 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOK, County Clerk
BY DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-04244-3

vs.

MICAH DANIEL TAVAI,

PETITION FOR HEARING TO
DETERMINE NONCOMPLIANCE
WITH CONDITION OR
REQUIREMENT OF SENTENCE

Defendant.

COMES NOW MARY E. ROBNETT, Deputy Prosecuting Attorney for Pierce County, Washington, and petitions and shows the court as follows:

That on or about March 23, 2007 the above named defendant was sentenced pursuant to defendant's plea of guilty to/trial conviction for the charge of RAPE OF A CHILD IN THE SECOND DEGREE; that subsequent to the granting of said sentence defendant has failed to comply with the terms of community supervision or other conditions of the sentence as set forth in the Report of Violation attached hereto and by this reference made a part hereof, to-wit:

- 1) Defendant was terminated from sexual deviancy treatment on or about 10/1/07; and

ORIGINAL

DOC # 85631

06-1-04244-3

that the foregoing acts and deeds were committed subsequent to and in direct violation of the terms and conditions of the aforementioned sentence;

WHEREFORE, your petitioner prays that the suspended standard range sentence be revoked pursuant to RCW 9.94A.120(7), and the defendant be committed to the Department of Corrections.



PETITIONER
WSB # 21129

MARY E. ROBNETT, declares under penalty of perjury:

That I am a Deputy Prosecuting Attorney for Pierce County, Washington, and the petitioner named in the within and foregoing petition; that I have read the same, know the contents thereof and believe the same to be true.

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

DATED: October 3, 2007
PLACE: TACOMA, WASHINGTON



PETITIONER
WSB # 21129

wjj



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

ORDER FOR ARREST AND DETENTION

NOTICE TO DETAINING AGENCY

OAA Offender
NOV
NOV Date: _____

Yes No
 Yes No

County Staff Will Schedule Hearing
 DOC Will Schedule Hearing
 Not Applicable

Offender Name TAVAI, MICAH		DOC Number 85631	Cause/FOS Number 06-1-04244-3
Date Issued 10/2/07	Community Corrections Officer LYNNE HUDSON	Phone Number 680-2683	Warrant Expiration Date NONE

NOW THEREFORE, the above Community Corrections Officer, pursuant to the authority vested by the provisions of RCW 9.94A.628, RCW 9.94A.631, RCW 9.94A.634, RCW 9.94A.740, RCW 9.95.220, RCW 72.04A.090 and/or RCW 10.77.190, does hereby order said offender to be arrested and detained in jail or appropriate custodial facility pending appearance before the Superior Court or Community Corrections Hearing Officer. Offender shall not be released from custody on bail or personal recognizance except upon approval of the Superior Court or Department of Corrections hearing rendered duly authorized authority.

WHEREAS THE ABOVE OFFENDER:

County Jurisdiction

- Post-Release Supervision-PRS (RCW 9.94A.628)
 Probation-PRO (RCW 9.95.220)
 Community Custody DOSA-CCD(RCW 9.94A.120)
 LFO Only (RCW 9.94A.634, 9.94A.740)
 Sex Offender Community Custody-SCC (RCW 9.94A.670)
 Community Custody Maximum-CCM (RCW 9.94A.505)
 Community Supervision-SRA (RCW 9.94A.631)

DOC Jurisdiction

- Community Custody Prison-CCP (RCW 9.94A.740)
 Community Placement-CC (RCW 9.94A.740)
 Community Custody Jail-CCJ (RCW 9.94A.740)

Having been convicted of an offense and placed under the jurisdiction of the Department of Corrections, by the Superior Court of the state of Washington for PIERCE County on this 23 day of March, 2007:

(Insanity Acquittal) (RCW 10.77.190)

DOC 09-325 (Rev. 8/14/07)

DOC 320.155, DOC 350.750, DOC 420.390
Page 1 of 2

ORDER FOR ARREST AND DETENTION

Having been acquitted by reason of insanity under the above cause number(s) and placed on conditional release by the Superior Court of the state of Washington _____ County on this _____ day of _____, 20 _____ which conditional release has not expired:

WHEREAS, it now appears the above person has violated condition(s) or requirements of sentence or supervision as follows:

- 1. Being terminated from sexual deviancy treatment on or about 10/1/07.
-
-
-
-

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

DOB: 5/17/84 Sex: m Race: asian Hair: blk Eyes: brown Height: 5'8"
 Weight: 190 Scars / Tattoos: TAT UR ARM
 AKA(s): _____
 Comments: _____

Photo Attached: Yes No

Issued by (CCO): [Signature] Date: 10/2/07
 Copy served by: _____ Date: _____
 Received by: _____ Date: _____
 (If applicable) Supervisor Signature: _____ Date: _____

Distribution: CCI / CCP ORIGINAL - Detaining Agency
 COPY - Central File (via CRM), Hearings Officer, Offender, File
 When applicable, Local Law Enforcement / Arrest
ALL OTHERS ORIGINAL - Detaining Agency
 COPY - Court, Prosecutor, Offender, File
 When applicable, Local Law Enforcement / Arrest