NO. 37229-1-II

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

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DIVISION II
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STATE OF WASHINGTON
BY
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STATE OF WASHINGTON, Respondent

v.

CLYDE RAY SPENCER, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO. 85-1-00007-2

RESPONSE TO PERSONAL RESTRAINT PETITION

Attorneys for Respondent:

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Clark County, Washington

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TABLE OF CONTENTS

I. STATEMENT OF THE FACTS 1

II. RESPONSE TO PERSONAL RESTRAINT PETITION 2

1. Denial of effective counsel,..... 4
2. Plea not ratified by defendant, ... 4
3. Plea was involuntary, and 4
4. Plea agreement not kept by the prosecution..... 4

III. CONCLUSION 7

TABLE OF AUTHORITIES

Cases

Alford....4, 5
Personal Restraint of Clements, 125 Wn. App. 634, 644, 106 P.3d 244 (2005)....5
State v. Dixon, 38 Wn. App. 74, 683 P.2d 1144 (1984)....4
State v. Hanson, 126 Wn. App. 276, 108 P.3d 177 (2005)....3
State v. Ice, 138 Wn. App. 745, 158 P.3d 1228 (2007)....4, 5
State v. Macon, 128 Wn.2d 784, 801, 911 P.2d 1004 (1996)....3
State v. Taylor, 83 Wn.2d 594, 595, 521 P.2d 699 (1974)....3, 4
State v. Young, 62 Wn. App. 895, 900, 802 P.2d 829 (1999)....3

I. STATEMENT OF THE FACTS

On May 16, 1985, the defendant pled guilty in the Clark County Superior Court to eleven counts of a sixteen count Second Amended Information which was dated May 3, 1985. The defendant pled guilty to the following counts:

> Count I- Statutory Rape in the First Degree- named victim Kathryn E. Spencer.
>
> Count II- Statutory Rape in the First Degree- named victim Matthew Ray Spencer.
>
> (Count 1 and Count 2 are pre SRA)
>
> Count III- Statutory Rape in the First Degree- named victim Kathryn E. Spencer.
>
> Court VII- Statutory Rape in the First Degree- named victim Matthew Ray Spencer.
>
> Count IX- Complicity to Statutory Rape in the First Degree- Matthew Ray Spencer involved in sexual intercourse with Kathryn E. Spencer at the direction of the defendant.
>
> Count X- Complicity to Statutory Rape in the First Degree- Matthew Ray Spencer involved in sexual intercourse with Matthew Hansen at the direction of the defendant.
>
> Count XII- Statutory Rape in the First Degree- named victim Matthew Hansen.
>
> Count XIII- Complicity to Statutory Rape in the First Degree- Matthew Hansen involved in sexual intercourse with Matthew Ray Spencer at the direction of the defendant.
>
> Count XIV- Complicity to Statutory Rape in the First Degree- Matthew Hansen involved in sexual intercourse with Kathryn E. Spencer at the direction of the defendant.
>
> Count XV- Statutory Rape in the First Degree- named victim Matthew Hansen.

Count XVI- Statutory Rape in the First Degree-
named victim Matthew Hansen.

A copy of the Statement of Defendant on Plea of Guilty with the attached Second Amended Information is attached hereto and by this reference incorporated herein.

Also included as an appendix is the change of plea hearing from May 16, 1985. This sets forth the underlying factual basis to support each of the counts referred to and gives specific detail as to the type of sexual activity involved. A copy of the transcript of Change of Plea dated May 16, 1885, is attached hereto and by this reference incorporated herein.

As a result of the plea of guilty the defendant was sentenced on May 23, 1985. As previously indicated counts I and II were pre SRA and the rest of the counts that he pled guilty to were post SRA. A copy of the Judgment and Sentence is attached hereto and incorporated herein.

II. RESPONSE TO PERSONAL RESTRAINT PETITION

The defense claims that there has been recantation of evidence in the case which would undermine the trustworthiness and validity of the change of plea and thus entitle the defendant to relief from the Judgment. The claim is that his son, Matthew Ray Spencer, who is now an adult, has recanted his involvement in this. The defendant also makes claim that the

daughter, Kathryn Spencer, has also recanted. However, when the Court reviews the documentation and affidavit that Kathryn Spencer has prepared she does not say that the activity did not take place, rather, she maintains that she does not, or will not, remember any of the events.

Recantations are not rare in criminal cases and are inherently questionable. State v. Hanson, 126 Wn. App. 276, 108 P.3d 177 (2005); State v. Macon, 128 Wn.2d 784, 801, 911 P.2d 1004 (1996); State v. Young, 62 Wn. App. 895, 900, 802 P.2d 829 (1999).

The court will allow a defendant to withdrawal his plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. In our case the defendant's argument is not well taken, for he cites no authority for the approach he's taking nor does he ask the trial court below to apply its discretion. The record shows that the defendant merely argues that his guilty plea was manifestly unjust in light of his newly discovered evidence. The defendant has the burden of demonstrating a manifest injustice in light of all the surrounding facts of his case. State v. Taylor, 83 Wn.2d 594, 595, 521 P.2d 699 (1974). A trial court must exercise greater caution in setting aside guilty pleas once the safeguards of CrR 4.2 (d) & (e) have been met. Taylor, 83 Wn.2d at 595. Defendant does not contend that the trial court erred in accepting the guilty plea. What he is claiming is, now with his newly discovered

evidence, that there has been a "manifest injustice". The Taylor case recognized the following four indicia of "manifest injustice":

1. Denial of effective counsel,
2. Plea not ratified by defendant,
3. Plea was involuntary, and
4. Plea agreement not kept by the prosecution.

-(Taylor, 83, Wn.2d at 598).

In the event that it does not meet this criteria, there must be a showing that a manifest injustice will occur if the withdrawal is not permitted. A manifest injustice is one that is obvious, directly observable, overt or not obscure. Taylor, 83 Wn.2d at 598.

In the situation dealing with an Alford plea, the standard remains basically the same. As held in State v. Dixon, 38 Wn. App. 74, 683 P.2d 1144 (1984) a manifest injustice exists if the total factual basis for the Alford plea changed by the newly discovered evidence, when viewed in balance with the record. Dixon, 38 Wn. App. at 76.

While it is true that the rule set forth in State v. Ice, 138 Wn. App. 745, 158 P.3d 1228 (2007) is that newly discovered evidence, in the form of victims recanted testimony, may constitute a manifest injustice warranting withdrawal of a guilty plea where the recanted testimony is the

sole evidence supporting the conviction. Nevertheless it continues to maintain also that the manifest injustice in an Alford plea situation, when viewed in balance with the record, must change the factual basis for the plea. (Ice, 138 Wn. App. at 748)

The State submits that this is the area where this personal restraint petition fails. First of all the claim by the defendant's son, many decades after the alleged events, is simply not credible. It's of interest that he had never indicated any issues with what he had told the police back in 1985 until after he had an opportunity to meet with and talk with his father once he had become an adult. This, in and of itself, raises concerns about the veracity and credibility of the recantation supplied. As indicated in a footnote in the case of In re Personal Restraint of Clements, 125 Wn. App. 634, 644, 106 P.3d 244 (2005):

> Discussions of recantation evidence often merge the issues of reliability and credibility. Reliability is the overriding concern and encompasses all relevant circumstances surrounding the recantation, including possible undue influence, coercion, and any other improper motive or influence. (cite omitted) Credibility amounts to a threshold determination of plausibility that involves more than the demeanor of witnesses. A credibility determination includes an assessment of the evidence in light of its rationality, internal consistency, consistency with other evidence, and common experience. (cite omitted) In this context, credibility is a component of reliability.

The defendant in the personal restraint petition continues to maintain, throughout, that Kathryn Spencer has recanted her testimony. Yet, in reviewing what she had indicated recently, the State submits that it is not a recantation but merely an indication that she doesn't remember, or does not want to remember, the events when she was a small child.

Finally, you have the most telling factor of all and that is that none of this deals with the third victim of the sexual misconduct, Matthew Hansen. In fact, when we look at the eleven counts that the defendant plead guilty to, four of those counts deal either directly or in complicity with Kathryn Spencer (Counts I, III, IX, XIV), four of those counts deal with or complicity activities with Matthew Ray Spencer (Counts II, VII, IX, X), and six of the counts deal with either direct sexual intercourse or complicity related to Matthew Hansen (X, XII, XIII, XIV, XV, XVI). Matthew Hansen has not recanted anything. Matthew Hansen certainly appears, by count, to be the main victim and yet there is nothing to indicate that he is recanting anything about what he had previously told law enforcement.

Further, there is internal corroboration in the fact, as indicated by the Deputy Prosecutor at the time of the change of plea in providing the recitation of factual information. Matthew Hansen was present at many of

the activities dealing with the other two children and would have been a witness against the defendant if this matter were to go to trial. Likewise, Kathryn Spencer also maintained back then that she was also present during much of the interactivities. As the Dixon court had pointed out, newly discovered evidence, when viewed in balance with a record, must change the factual basis for the plea. This recantation does not meet the obvious, directly observable standard of manifest injustice.

The State submits that there has simply been no showing here to justify overturning a valid guilty plea.

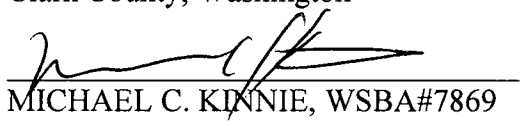
III. CONCLUSION

The personal restraint petition should be dismissed.

DATED this 12 day of March, 2008.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By: 
MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"

STATEMENT OF DEFENDANT ON PLEA OF GUILTY

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

STATE OF WASHINGTON, Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER, Defendant.	)	STATEMENT OF DEFENDANT ON PLEA OF GUILTY

1. My true name is: CLYDE RAY SPENCER.

2. My age is: 37.

3. I went through the 16th grade in school, and can/~~cannot~~ read and write the English language.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is JAMES E. RULLI.

5. I have been given and have read a copy of the Information and I have been informed and fully understand that I am charged with the following crimes which carry maximum sentences of:
(See Attached Sheet)

Ct. I: _____, ____ years, and/or $_____ fine.
Ct. II: _____, ____ years, and/or $_____ fine.
Ct. III: _____, ____ years, and/or $_____ fine.
Ct. IV: _____, ____ years, and/or $_____ fine.

All counts, 20 to life and/or a $50,000 fine

The standard sentence range for the above offense(s) is as shown on the attached offender scoring sheet based upon the attached Prosecutor's Declaration of Criminal History.

6. The elements of the crimes charged against me are:

See attached Information as read by the court to the defendant in open court.

FILED
MAY 16 1985
George J. Miller, Clerk, Clark Co.

7. I have been informed and fully understand that:

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

(b) I have the right to remain silent before and during trial and I need not testify against myself.

(c) I have the right at trial to hear and question witnesses who testify against me.

243/569

23

(d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

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

(f) I have the right to appeal a determination of guilty after a trial.

(g) If I plead guilty I give up the rights in statements 7(a)-(f).

8. I have been informed and fully understand the Prosecuting Attorney will make the following recommendation to the Court, and take the following action:

Prosecutor will recommend the Defendant be sent to the institution

9. I plead guilty to the crime(s) of:

Seven counts of Statutory Rape 1° and Four counts of Complicity to Statutory Rape 1°

as charged in the second amended Information.

10. I make this plea freely and voluntarily.

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

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

13. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed this present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and Prosecuting Attorney's recommendation increases.

14. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I have been informed and fully understand that the Court does not have to follow anyone's recommendation as to sentence

when sentencing is within the standard range. I have been informed that I may be ordered to pay restitution, court costs, a fine, attorney's fees, a victim's compensation assessment or a drug fund contribution, if applicable.

15. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. If I am on probation or parole, this plea could be the basis for revocation of probation or parole.

16. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime in the information. This is my statement:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

17. I have read or have had read to me and fully understand all of the numbered sections above (1 through 16) and have received a copy of "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

James M. Peters
Deputy Prosecuting Attorney

Ray Spencer
Defendant

James E. Rulli
Defendant's Lawyer

The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Dated this 16th day of May, 1985.

Tom Lodge
JUDGE OF THE SUPERIOR COURT

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,
Plaintiff,

vs.
CLYDE RAY SPENCER,

Defendant.

No. 85-1-00007-2

INFORMATION

"SECOND AMENDED"

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant is guilty of the crime committed as follows, to-wit:

Count I.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on an unknown date during the summer of 1983, being over thirteen (13) years of age, engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on an unknown date during the summer of 1983, being over thirteen (13) years of age, engage in sexual intercourse with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count III.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did engage in sexual intercourse, to-wit: by placing his penis or finger in Kathryn E. Spencer's vagina or rectum when she was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count IV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did engage in sexual intercourse, to-wit:

ARTHUR D. CURTIS
Prosecuting Attorney in and for Clark County, Washington

By _____
Deputy Prosecuting Attorney

by placing his penis into the mouth of Kathryn E. Spencer when she was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count V.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, did, between July 14, 1984, and August 26, 1984, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Kathryn E. Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Kathryn E. Spencer to commit it by engaging in sexual intercourse, to-wit: fellatio with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1) and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, did, between July 14, 1984, and August 26, 1984, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Kathryn E. Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Kathryn E. Spencer to commit it by engaging in sexual intercourse, to-wit: fellatio with Matthew Hansen, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1) and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, engage in sexual intercourse, to-wit: by placing his penis or finger in the rectum of Matthew Ray Spencer, a person who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VIII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between August 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse, to-wit: fellatio, with Matthew Ray Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count IX.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Ray Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Ray Spencer to commit it, by engaging in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, by placing his fingers in her rectum, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count X.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Ray Spencer, an innocent or irresponsible person, to engage in such conduct, or, with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage or request Matthew Ray Spencer to commit it, by engaging in sexual intercourse with Matthew Hansen, who was less than eleven (11) years of age, to-wit: by placing his fingers in Matthew Hansen's rectum or by committing fellatio on Matthew Hansen, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, engage in sexual intercourse with Matthew Hansen, a person who was less than eleven (11) years of age, to-wit: by causing him to place his mouth upon the defendant's penis, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XII.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, did, on one or more occasions between July 14, 1984, and August 26, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, a person who was less than eleven (11) years of age, to-wit: by causing him to place his fingers in the defendant's rectum, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XIII.

date same as Ct XII

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Hansen, an innocent or irresponsible person, to engage in such conduct, or with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Hansen to commit it, by engaging in sexual intercourse with Matthew Ray Spencer, who was less than eleven (11) years of age, to-wit: by placing his thumb in Matthew Ray Spencer's rectum and/or by placing his penis in his rectum, in violation of RCW 9A.44.070 (1), and RCW 9A. 08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XIV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, being a person over thirteen (13) years of age, acting with the kind of culpability that is sufficient for the commission of the crime of Statutory Rape in the First Degree, did cause Matthew Hansen, an innocent or irresponsible person, to engage in such conduct, or with knowledge that it would promote or facilitate the commission of the crime of Statutory Rape in the First Degree, did solicit, command, encourage, or request Matthew Hansen to commit it, by engaging in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age, in violation of RCW 9A.44.070 (1), and RCW 9A.08.020 (1), (2) and (a), and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XV.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on an unknown date between August 27, 1984, and December 25, 1984, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, who was less than eleven (11) years old, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count XVI.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on or about the 16th day of February, 1985, being a person over thirteen (13) years of age, did engage in sexual intercourse with Matthew Hansen, who was less than eleven (11) years old, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

ARTHUR D. CURTIS
Prosecuting Attorney in and
for Clark County, Washington

By: s/ James M. Peters
James M. Peters, WSBA #7295
Deputy Prosecuting Attorney

Date: May 3, 1985

Count I - Statutory Rape I - RCW 9A.44.070 (1);
Count II - Statutory Rape I - RCW 9A.44.070 (1);
Count III - Statutory Rape I - RCW 9A.44.070 (1);
Count IV - Statutory Rape I - RCW 9A.44.070 (1);
Count V - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count VI - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count VII - Statutory Rape I - RCW 9A.44.070 (1);
Count VIII - Statutory Rape I - RCW 9A.44.070 (1);
Count IX - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count X - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count XI - Statutory Rape I - RCW 9A.44.070 (1);
Count XII - Statutory Rape I - RCW 9A.44.070 (1);
Count XIII - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count XIV - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);
Count XV - Statutory Rape I - RCW 9A.44.070 (1);
Count XVI - Statutory Rape I - RCW 9A.44.070 (1);

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	DECLARATION OF CRIMINAL HISTORY
Defendant.	)	

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his attorney, and the Prosecuting Attorney's Office, the defendant has the following prior criminal convictions:

I. UNDISPUTED:

YEAR	CHARGE	COUNTY and STATE	SENTENCE
	NONE		

II. DISPUTED:

YEAR	CHARGE	COUNTY and STATE	SENTENCE

Dated this 16 day of MAY, 1985.

Ray Spencer
Defendant

James E. Lobb
Attorney for Defendant

James H. Peters
Deputy Prosecuting Attorney

5. Count I - Statutory Rape I
Count II - Statutory Rape I
Count III - Statutory Rape I
Count IV - Statutory Rape I
Count V - Complicity to Statutory Rape I
Count VI - Complicity to Statutory Rape I
Count VII - Statutory Rape I
Count VIII - Statutory Rape I
Count IX - Complicity to Statutory Rape I
Count X - Complicity to Statutory Rape I
Count XI - Statutory Rape I
Count XII - Statutory Rape I
Count XIII - Complicity to Statutory Rape I
Count XIV - Complicity to Statutory Rape I
Count XV - Statutory Rape I
Count XVI - Statutory Rape I

STATUTORY RAPE, FIRST DEGREE
(RCW 9A.44.070)
VIOLENT

I. OFFENDER SCORING (RCW 9.94A.360 (5))

ADULT HISTORY: (All adult offenses served concurrently count as ONE offense; those served consecutively are counted separately)

Enter number of Serious Violent and Violent felony convictions . . . . . _____ x 2 = _____

Enter number of Nonviolent felony convictions . . . . . _____ x 1 = _____

JUVENILE HISTORY: (All adjudications entered on the same date count as ONE offense)

Enter number of Serious Violent and Violent felony adjudications . . . . . _____ x 2 = _____

Enter number of Nonviolent felony adjudications . . . . . _____ x 1/2 = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same criminal conduct count in offender score)

Enter number of other Serious Violent and Violent felony convictions . . . . . 8 x 2 = 16

Enter number of other Nonviolent felony convictions . . . . . _____ x 1 = _____

Total the last column to get the TOTAL OFFENDER SCORE **16**
(round down to the nearest whole number)

II. STANDARD SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE: (Seriousness Level IX)	31 - 41 months	35 - 46 months	41 - 54 months	46 - 61 months	51 - 68 months	57 - 75 months	77 - 102 months	87 - 116 months	108 - 144 months	129 - 171 months

B. The range for attempt, solicitation, and conspiracy is 75% of the standard sentence range for the completed crime (RCW 9.94A.410)

C. Financial obligations may be added: fines, restitution, court costs, attorney's fees, assessments (SHB 1247 Section 23, RCW 9.94A.140, 9.94A.120 (9), 9.94A.270 (1))

III. SENTENCING OPTIONS FOR FIRST DEGREE STATUTORY RAPE

A. If no prior sex offense conviction and sentence is less than six years: special sexual offender sentencing alternative (RCW 9.94A.120 (7)(a))

B. If sentence is less than six years: sexual offender treatment program (RCW 9.94A.120 (7)(b))

C. Exceptional sentence (RCW 9.94A.120 (2))

THIS OFFENSE REFERENCE SHEET IS FOR USE WITH THE VIOLENT SCORING FORM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	DECLARATION OF CRIMINAL HISTORY
Defendant.	)	

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his attorney, and the Prosecuting Attorney's Office, the defendant has the following prior criminal convictions:

I. UNDISPUTED:

YEAR	CHARGE	COUNTY and STATE	SENTENCE
	NONE		

II. DISPUTED:

YEAR	CHARGE	COUNTY and STATE	SENTENCE

Dated this 16 day of MAY, 1985.

Ray Spencer
Defendant

James E. Rulli
Attorney for Defendant

James A. Peters
Deputy Prosecuting Attorney

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,
Plaintiff,

vs.

CLYDE RAY SPENCER,

Defendant.....

85 1 00007 2
No.....

INFORMATION

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant..... .....is.....guilty of ..... the crime.....committed as follows, to-wit:

Count I.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did unlawfully and feloniously engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age at the time, to-wit: age five (5) years, in violation of RCW 9A.44.070 (1), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, Clyde Ray Spencer, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, did knowingly cause Kathryn E. Spencer, not the spouse of the defendant and less than fourteen (14) years of age, to-wit: age five (5) years, to have sexual contact with the defendant or another, in violation of RCW 9A.44.100 (1) (b), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Date: January 2, 1985

Count I - Statutory Rape I - RCW 9A.44.070 (1) and Count II - Indecent Liberties - RCW 9A.44.100 (1) (b)

FILED
JAN 3 - 1985
George J. Miller, Clerk, Clark Co.

ARTHUR D. CURTIS
Prosecuting Attorney in and for Clark County, Washington

By _____
Deputy Prosecuting Attorney

"INDEX 1"

In the Superior Court of the State of Washington
In and For the County of Clark

STATE OF WASHINGTON,
Plaintiff,

vs.

CLYDE RAY SPENCER,

Defendant.

No. 85-1-00007-2

INFORMATION

AMENDED

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant is guilty of the crime s committed as follows, to-wit:

Count I.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, being over thirteen (13) years of age, did unlawfully and feloniously engage in sexual intercourse with Kathryn E. Spencer, who was less than eleven (11) years of age at the time, to-wit: age five (5) years, in violation of RCW 9A.44.070(1), and contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on one or more occasions between July 14, 1984, and August 26, 1984, did knowingly cause Kathryn E. Spencer, not the spouse of the defendant and less than fourteen (14) years of age, to-wit: age five (5) years, to have sexual contact with the defendant or another, in violation of RCW 9A.44.100(1)(b) and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

Count III.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on an unknown date during the summer of 1984, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

FILED
FEB 28 1985
George J. Miller, Clerk, Clark Co.

ARTHUR D. CURTIS
Prosecuting Attorney in and for Clark County, Washington

By _____
Deputy Prosecuting Attorney

"INDEX 2"

9

Count IV.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on an unknown date between August 27th, 1984, and December 25, 1984, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

Count V.

That he, CLYDE RAY SPENCER, in the County of Clark, State of Washington, on or about February 16, 1985, being a person over thirteen years of age, did engage in sexual intercourse with Mathew Allen Charles Hanson, who is less than eleven years old, to-wit: age four, in violation of RCW 9A.44.070 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

February 28, 1985

ARTHUR D. CURTIS,
Prosecuting Attorney
Clark County, Washington

By: James M. Peters
James M. Peters
Deputy Prosecuting Attorney

Count I: Statutory Rape I, RCW 9A.44.070(1)
Count II: Indecent Liberties, RCW 9A.44.100(1)(b)
Count III: Statutory Rape I, RCW 9A.44.070
Count IV: Statutory Rape I, RCW 9A.44.070
Count V: Statutory Rape I, RCW 9A.44.070

85-1-7-2

STATE OF WASHINGTON)
:ss
COUNTY OF CLARK)

JAMES M. PETERS, being first duly sworn, upon oath, deposes and states:

That I am a Deputy Prosecuting Attorney for Clark County, Washington, and in the course of that capacity have personal knowledge that Clyde Ray Spencer is presently pending trial before Department 3 of the Superior Court of Clark County, Washington for the crimes of Statutory Rape in the First Degree and Indecent Liberties involving his daughter, Kathryn E. Spencer, age five, said trial is set to begin April 15th, 1985.

In my official capacity, on February 28th, 1985, I was contacted by Detective Sharon N. Krause of the Clark County Sheriff's Office, who is known to your affiant to be a reliable and credible individual and who reported the following information:

That this morning, February 28th, 1985, she was contacted by Shirley Spencer, who is the wife of the defendant, Clyde Ray Spencer, and her five year old son, Mathew Allen Charles Hanson, whose date of birth is November 28, 1975. During the course of that contact Krause had occasion to interview Mathew Allen Charles Hanson based on concerns expressed by Shirley Spencer that her son, age five, may have been sexually molested by Clyde Ray Spencer within the preceding twelve months. During the course of her interview with Mathew Allen Charles Hanson, age five, Krause determined the following information:

Mathew appeared to be a bright and verbal child who was easy to understand and informed Krause that he had observed his father engaged in sexual acts with both his step-sister, Kathryn Spencer, who is the victim of

FEB 28 1985
George J. Miller, Clerk, Clark Co.

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P. O. BOX 5000
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(206) 699-2261

"INDEX 3"

16

Counts I and II of the present Information, and his step-brother, Mathew Spencer, age nine, who is the natural son of Clyde Ray Spencer;

Mathew also related to Deputy Krause that he himself had been victimized by Ray Spencer on numerous occasions describing in detail acts of having to perform fellatio on his father, his father performing fellatio on him, his father penetrating his rectum digitally, he having to perform digital penetration upon his father and his father performing penal penetration upon the child's rectum;

Specifically, Mathew indicated that during the sum of 1984 when his step-siblings, Katy and big Matt were present at his residence on the Lewis River in Clark County, Washington, his stepfather took him into the master bedroom of the house while his mother, Shirley, was at work. Further, that Clyde Ray Spencer, and he were both naked during this contact and that Clyde Ray Spencer engaged him in anal penetration of Mathews rectum and required Mathew to perform fellatio upon Clyde Ray Spencer;

Further Mathew described to Deputy Krause that sometime after his step-sister, Katy, left to return to her home in California, which Krause advises was on August 27th, 1984, a number of additional acts occurred. Specifically, on one occasion he and the defendant, Ray Spencer were in the bathtub and Ray Spencer forced Mathew's head under the bath water and caused him to put his mouth on Ray's erect penis. Mathew further indicated to Krause that there were bubbles in the bath-tub when this occurred.

In interviewing Spencer's wife, Shirley, Shirley

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indicated that on one occasion after Katy left she attempted to put bubble bath in Mathew's bathwater and Mathew expressed extreme fear of having bubbles in his bathwater.

Further, that Shirley Spencer indicated to Deputy Krause that on or about February 16, 1985, Ray Spencer was residing at the Salmon Creek Motel located in Clark County, Washington. She indicated that she had an appointment in the evening of that date and had agreed with Ray Spencer to leave Mathew in his care at the Salmon Creek Motel. She indicated she dropped Mathew off in Room 17 of that motel and described the room as an upstairs room located at the back of the complex with a television set mounted high upon the wall. In her interview with Mathew, Krause learned that during that interaction with Ray Spencer, Mathew was again sexually assaulted. Mathew indicated that Ray Spencer inserted his penis into Mathew's rectum and also forced Mathew to put his mouth on Ray Spencer's penis.

Further, your affiant requested that Sgt. Mike Davidson of the Clark County Sheriff's Office verify the description of the motel room on February 28, 1985 at 1:20 p.m. your affiant was advised that Davidson had personally viewed the room and determined the existence of the television mounted high on the wall. Further, he verified that Spencer was registered at the Salmon Creek Motel between February 6th and February 20, 1985.

Wherefore, based upon the foregoing information, your affiant believes there is good and sufficient information to believe that Clyde Ray Spencer is guilty of an additional three counts of Statutory Rape in the First Degree and your affiant prays that he be apprehended and brought before the Court for further proceedings.

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VANCOUVER, WASHINGTON 98666
(206) 699-2281

Further your affiant saith not.

James M. Peters
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN TO BEFORE ME THIS 28 day of February, 1985.

Notary Public in and for the
State of Washington residing
at Vancouver, therein.

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 5000
VANCOUVER, WASHINGTON 98668
(206) 699-2281

APPENDIX "B"

CHANGE OF PLEA HEARING (TRANSCRIBED)

May 16, 1985

CHANGE OF PLEA

THE COURT: State vs. Spencer. I think this is the latest amended, Second Amended Information that was filed on May 3, 1985. As I understand it based upon this Motion and Order of Dismissal that Mr. Peters has presented on behalf of the Prosecutor's Office, Mr. Spencer proposed to plead guilty to all of the counts except IV, V and VI, VIII and XI. So he would be pleading guilty to the 11 remaining counts, is that right?

MR. RULLI: That's correct, Your Honor.

THE COURT: Also I understand that this is proposed to be an Alfred or Newton plea, is that right?

MR. RULLI: That's correct.

THE COURT: Okay. Mr. Spencer, you still have the right to remain silent. Do you understand that you don't have to plead guilty, or even discuss the plea of guilty if you don't want?

MR. SPENCER: Yes, sir, I understand.

THE COURT: And have you prepared

1 and gone over this Plea Statement with your attorney,
2 Mr. Rulli?
3 MR. SPENCER: Yes, sir.
4 THE COURT: Do you feel you
5 understand everything that is in it?
6 MR. SPENCER: Yes, sir.
7 THE COURT: I'm going to go
8 through it with you in detail. If you have any questions,
9 just ask and we will try to answer them.
10 You're thirty-seven years of age. You have two years
11 of post-high school education, is that correct?
12 MR. SPENCER: Yeah, I have four
13 years.
14 THE COURT: Sixteen total years
15 of education, right?
16 MR. SPENCER: Yes, sir.
17 THE COURT: Okay. Now, you're
18 familiar with the Second Amended Information, and you have
19 read all of the charges, correct?
20 MR. SPENCER: Yes, sir.
21 THE COURT: Do you understand
22 that you do have the right to a speedy, public trial by
23 jury, and that trial is set for Monday, May 20th, at
24 9 o'clock?
25 MR. SPENCER: (Nodding head)

1 THE COURT: And during the course
2 of these proceedings, the original charges, I believe, were
3 filed on January 3, 1985. The case was originally set for
4 trial on February 27th, 1985. You and Mr. Rulli asked for
5 a continuance, and a continuance was granted, and you did
6 execute a Waiver of Speedy Trial. Is that correct?
7 MR. SPENCER: Yes, sir.
8 THE COURT: The case was then set
9 for trial on April 17th, 1985. Somewhere in that time period
10 additional charges were filed by the Prosecutor, and, again,
11 your attorney and you requested a continuance to adequately
12 prepare for the additional charges. And you executed a
13 Waiver of Speedy Trial on March 14th, 1985, correct?
14 MR. SPENCER: That's correct.
15 THE COURT: The case was then set
16 for trial on May 20th, and between then and May 3rd, the
17 Second Amended Information was filed. Now, if you did
18 proceed to trial, you have the right to remain silent; the
19 right to confront any witnesses called by the State to
20 testify against you; the right to have witnesses produced
21 at public expense, if you were unable to get your witnesses
22 here.
23 You would be entitled to the presumption of innocence.
24 The State would have to prove you're guilty beyond a
25 reasonable doubt.

1 What the State has to prove, or what we call the elements
2 of the crime, I'll go through those with you one by one.
3 Even if you lost the trial, you could appeal to the Court of
4 Appeals and/or the Supreme Court to review any errors that
5 you felt were committed at the time of trial. If you plead
6 guilty, of course, you give up your trial rights. Do you
7 have any questions about that?
8 MR. SPENCER: No, sir.
9 THE COURT: Do you feel you
10 understand your trial rights?
11 MR. SPENCER: Yes, sir.
12 THE COURT: Okay. With respect
13 to Count I, the State alleges and would have to prove beyond
14 a reasonable doubt that you, Clyde Ray Spencer, in Clark
15 County, Washington, during the summer of 1983, at a time
16 that you were over thirteen years of age, did engage in
17 sexual intercourse with Kathryn E. Spencer, who was less
18 than eleven years of age.
19 Sexual intercourse would involve some penetration of
20 the vagina of the victim in some fashion by you by person
21 or instrument, is that correct?
22 MR. PETERS: Or rectum or any
23 oral contact with her involving his genitals, or he involving
24 her genitals.
25 THE COURT: That's correct.

1 Now, Count II, Clyde Ray Spencer, Clark County, State
2 of Washington, again during the summer of 1983, did engage
3 in sexual intercourse, same definition, at a time that you
4 were over thirteen and the victim was less than eleven. The
5 victim alleged, Matthew Ray Spencer.
6 Count III, again yourself, Clark County, Washington, on
7 one or more occasions between July 14, 1984 and August 26,
8 1984, at a time when you were over thirteen years of age, did
9 engage in sexual intercourse by placing your penis or finger
10 in Kathryn E. Spencer's vagina or rectum when she was less
11 than eleven years of age.
12 Count V, again, yourself ----
13 MR. PETERS: That's dismissed,
14 Your Honor. IV, V and VI are part of the plea bargain.
15 THE COURT: Okay, moving on to
16 VII, that you, Clyde Ray Spencer in Clark County on or about
17 or between July 14th and August 26th, 1984, at a time when
18 you were over thirteen years of age, engaged in sexual
19 intercourse by placing your penis or finger in the rectum of
20 Matthew Ray Spencer at a time when the victim was less than
21 eleven years of age. Count VIII, that you,
22 Clyde Ray Spencer ----
23 MR. PETERS: Count VIII is
24 dismissed.
25 THE COURT: VIII is another one.

1 MR. PETERS: Your Honor, number
2 IX is a complicity or accomplice count. Basically the
3 allegation -- I know we need to read the elements. For the
4 Court's information, the allegation is that Mr. Spencer was
5 having the children, making the children perform sexual acts
6 with one another as he looked on.
7 THE COURT: Okay. What the
8 information charges is the State would have to prove beyond
9 a reasonable doubt would be that between July 14 and
10 August 26, 1984, at a time that you were over thirteen years
11 of age, you did act with the kind of culpability that is
12 sufficient for the commission of the crime of Statutory Rape
13 in the First Degree, did cause Matthew Ray Spencer, an
14 innocent or irresponsible person, to engage in such conduct,
15 or, with knowledge that it would promote or facilitate the
16 commission of the crime of Statutory Rape in the First Degree,
17 did solicit, command, encourage or request Matthew Ray Spencer
18 to commit it by engaging in sexual intercourse with
19 Kathryn E. Spencer, who was less than eleven years of age,
20 by placing his fingers in her rectum in violation of the law
21 of the State of Washington.
22 Count X, Clyde Ray Spencer, Clark County, between
23 July 14 and August 26, 1984, at the same time when you were
24 over thirteen years of age, acting with the kind of
25 culpability that is sufficient for the commission of the

1 crime of Statutory Rape in the First Degree, did cause
2 Matthew Ray Spencer, an innocent or irresponsible person, to
3 engage in such conduct, or, with knowledge that it would
4 promote or facilitate the commission of the crime of
5 Statutory Rape in the First Degree, did solicit, command,
6 encourage or request Matthew Ray Spencer to commit it, by
7 engaging in sexual intercourse with Matthew Hansen, who was
8 less than eleven years of age, to-wit: By placing his
9 fingers in Matthew Hansen's rectum or by committing
10 fellatio on Matthew Hansen, in violation of State Law of the
11 State of Washington.
12 Count XII, Clyde Ray Spencer, Clark County, Washington,
13 did on one or more occasions between July 14th and August 26th,
14 1984, being a person over thirteen years of age, engage in
15 sexual intercourse with Matthew Hansen, a person who is less
16 than eleven years of age, to-wit: By causing him to place
17 his fingers in the defendant's rectum.
18 MR. PETERS: The next two counts,
19 Your Honor, you'll recall at arraignment you added the dates.
20 Those were inadvertently omitted.
21 THE COURT: Count XIII, in that
22 Clyde Ray Spencer, in Clark County, Washington, between
23 July 14th and August 26th, 1984, acting with the kind of
24 culpability that is sufficient for the commission of the
25 crime of Statutory Rape in the First Degree, did cause

1 Matthew Hansen, an innocent or irresponsible person, to
2 engage in such conduct, or with knowledge that it would
3 promote or facilitate the commission of the crime of
4 Statutory Rape in the First Degree, did solicit, command,
5 encourage, or request Matthew Hansen to commit it, by engaging
6 in sexual intercourse with Matthew Ray Spencer, who was less
7 than eleven years of age, to-wit: By placing his thumb in
8 Matthew Ray Spencer's rectum and/or by placing his penis in
9 his rectum in violation of the law of the State of Washington.
10 Count XIV, Clyde Ray Spencer, Clark County, Washington,
11 between July 14th and August 26th, 1984, at a time when you
12 were more than thirteen years of age, acting with the kind
13 of culpability that is sufficient for the commission of the
14 crime of Statutory Rape in the First Degree, did cause
15 Matthew Hansen, an innocent or irresponsible person, to
16 engage in such conduct, or with knowledge that it would
17 promote or facilitate the commission of the crime of
18 Statutory Rape in the First Degree, did solicit, command,
19 encourage, or request Matthew Hansen to commit it, by
20 engaging in sexual intercourse with Kathryn E. Spencer,
21 who was less than eleven years of age.
22 Count XV, Clyde Ray Spencer, Clark County, State of
23 Washington, on or about an unknown date between August 27
24 and December 25, 1984, at a time when you were over thirteen
25 years of age, did engage in sexual intercourse with

1 Matthew Hansen, who was less than eleven years of age.

2 Count XVI, Clyde Ray Spencer, Clark County, Washington,

3 on or about the 16th day of February, 1985, at a time that

4 you were over thirteen years of age, did engage in sexual

5 intercourse with Matthew Hansen, who was less than eleven

6 years of age.

7 Those are the legal elements that the State would have

8 to prove to a jury beyond a reasonable doubt. The jury would

9 have to take each count separately, make a decision on each

10 count and they would be instructed that they couldn't

11 cumulate the evidence from one count to prove that you were

12 guilty of other counts.

13 Any questions about what the State would have to prove

14 at the time of trial?

15 MR. SPENCER: No, sir.

16 THE COURT: As far as any

17 recommendation by the Prosecutor in the plea bargaining

18 process, the Prosecutor makes no commitment other than to

19 recommend that you do be sent to the Department of

20 Corrections. Is that correct?

21 MR. SPENCER: Yes, sir.

22 MR. RULLI: And, of course, a

23 dismissal of the five counts, Your Honor.

24 THE COURT: The five counts that

25 we have talked about.

1 Has anybody made any threats or promises of any kind
2 that we haven't talked about to you to cause you to plead
3 guilty?
4 MR. SPENCER: No, sir.
5 THE COURT: Would any plea that
6 you made today be made freely and voluntarily?
7 MR. SPENCER: Yes, sir.
8 THE COURT: As far as sentencing
9 goes, the sentencing range would be based upon the fact that
10 you have no criminal history and you would be required then
11 to sign a statement stating that you have no criminal history,
12 is that correct?
13 MR. SPENCER: Yes, sir.
14 THE COURT: If it turns out that
15 there were a criminal history, then the Prosecutor could
16 change any recommendation made and the sentencing range could
17 increase. According to the Offender's Scoring Sheet
18 Statutory Rape in the First Degree, you would have an
19 offender's score of 16, which would put you at the top of
20 the sentencing range, 129 to 171 months is the top of the
21 range.
22 MR. PETERS: That's right, and
23 in addition to that, Your Honor, there are Counts I and II
24 that are pre-SRA and the maximum on those are 20 to life,
25 with five -- Excuse me, fifty thousand dollar fine maximum

1 on each, that was not stated, I might indicate, in item five
2 where it usually is.
3 But the maximum on all of these is 20 to life and
4 fifty thousand dollar fine.
5 THE COURT: Okay. Even though
6 under the new Sentencing Reform Act we talk about ranges as
7 a matter of maximums, these are 20 to life counts and the
8 two that are under the pre-SRA Act, or Sentencing Reform Act
9 do carry 20 to life.
10 So the Judge is bound to sentence you to not less than
11 20 and could sentence you up to life. Any time set by the
12 Judge in the pre-SRA cases would serve as a maximum and the
13 Board of Prison Terms and Paroles would set the minimum time,
14 or the release date.
15 As far as the SRA cases, I mean counts, those would
16 be -- You would have to serve the time indicated or set by
17 the Judge less the possibility of good time which could be
18 up to one third off.
19 MR. PETERS: And credit for time
20 served.
21 THE COURT: Credit for time
22 served.
23 The Court does have the authority to, under certain
24 circumstances, to go outside of the standard sentencing
25 range, either go under or above the range and the Court does

1 not have to follow any recommendation with respect to the
2 sentence within the standard range. So, even, for example,
3 if the Prosecutor recommended the minimum within the range,
4 the Court could still give you the maximum.
5 Also, this may be academic, but it's on the form, you
6 could be required to pay restitution, court costs, a fine,
7 attorney's fees, and victim's compensation assessment.
8 Also, as Mr. Peters said, each one of these carries up
9 to a fifty thousand dollar fine.
10 Now, if you're not a United States citizen, you could
11 be deported to your home country if you plead guilty to a
12 felony, which either of these counts is.
13 And if you did have a criminal history and you were on
14 probation or parole, a plea of guilty here would be the
15 basis to revoke probation or parole. Any questions so far?
16 MR. SPENCER: No, sir.
17 THE COURT: Now, as I understand
18 it, you do not admit that you committed any of these
19 offenses, is that correct?
20 MR. SPENCER: That's correct.
21 THE COURT: But you have reviewed
22 the State's evidence with Mr. Rulli on each count, is that
23 correct?
24 MR. SPENCER: Yes, sir.
25 THE COURT: And you do feel that

1 if the State's evidence were presented to the jury and you
2 presented whatever defense you might have, that the jury
3 would find you guilty to each count beyond a reasonable
4 doubt?
5 MR. SPENCER: That's correct.
6 THE COURT: Do you have any
7 question in your mind about that?
8 MR. SPENCER: No, sir.
9 THE COURT: Have you considered
10 in entering this type of plea, that is a plea without
11 admitting guilt, that the fact that the Prosecutor has in
12 effect dropped five of the sixteen counts?
13 MR. SPENCER: Yes, sir.
14 THE COURT: Has that been some
15 inducement for you to enter your plea?
16 MR. SPENCER: Yes, sir.
17 THE COURT: Okay. Why are you
18 entering a plea without admitting guilt?
19 MR. SPENCER: Because I don't
20 remember the crimes.
21 THE COURT: You don't remember
22 the crimes?
23 MR. SPENCER: That's correct.
24 THE COURT: You think you're
25 blocking them out now, or do you know?

1 MR. SPENCER: Well, I have taken
2 every test they have got and they can't find anything, if
3 I'm suppressing down deep.
4 THE COURT: Is there any type
5 of defense based upon his capacity?
6 MR. RULLI: Your Honor, I have
7 had Mr. Spencer examined by Dr. McGovern and by
8 Dr. Hank Dixon, two psychiatrists, and both doctors
9 concluded that he has his full capacity about him. We do
10 not have any insanity or diminished capacity defense; that
11 he was not under the influence of any alcohol or drugs at
12 the time of these alleged offenses.
13 THE COURT: That's correct, was
14 there any alcohol or drugs involved or anything that might
15 have affected your mental capacity?
16 MR. SPENCER: No, sir.
17 THE COURT: So you feel that
18 based upon the doctor's evaluations and opinions, that you
19 and Mr. Rulli's advice that you can present no legal defenses
20 to the charges?
21 MR. SPENCER: That's correct.
22 THE COURT: All right, I'm going
23 to have the Prosecutor now go through the State's evidence
24 because I have to be able to make a determination that there
25 is sufficient evidence for the jury to reach a verdict beyond

1 a reasonable doubt. Mr. Peters.

2 MR. PETERS: Your Honor, if I

3 may, I would like to ask Deputy Sharon Krause of the

4 Sheriff's Office to approach the bench and assist me. I

5 have personally interviewed each of these children as has

6 Mr. Rulli in my presence with the exception of one of the

7 victims he interviewed with Mrs. Krause yesterday, I believe.

8 But she's interviewed them in much more depth than I have.

9 There may be some things that she can add that I missed.

10 So, if she would with the Court's permission, step

11 forward.

12 THE COURT: All right. Fine.

13 Mr. Rulli, is there any question in your mind that the jury

14 if presented the evidence the State has would convict

15 Mr. Spencer?

16 MR. RULLI: I have no doubt,

17 Your Honor.

18 THE COURT: All right.

19 Deputy Krause or Mr. Peters.

20 MR. PETERS: With respect to

21 Count I and Count II, Your Honor. Count I and II involved

22 indecent liberties that occurred to Kathryn Spencer and

23 Matthew Spencer. Both of the children are the natural

24 children of Ray Spencer. Kathryn now is six, I believe,

25 and Matthew is nine.

1 These two children describe having been in Clark County,
2 Washington during the summer of 1983 to visit their father
3 at the brown house where he lived. We have evidence that
4 Mr. Spencer in fact did reside at that time, that being the
5 summer of 1983, in a brown house here in Clark County,
6 Washington.
7 They both describe numerous incidents of sexual contact
8 between themselves and their father involving penetration
9 in both cases, of their rectum, involving oral sex on both
10 cases. This occurred on numerous occasions during the
11 summer.
12 Also, involving contact with Kathryn's genitals, by
13 Mr. Spencer.
14 Can you remember other details, Mrs. Krause?
15 THE COURT: Those are Counts I
16 and II?
17 MR. PETERS: That's Count I and
18 II, both children described having observed these behaviors
19 with one another, in other words, they corroborate each
20 other.
21 THE COURT: Do you have any
22 basis to refute the testimony of the kids relative to those
23 Counts, I and II?
24 MR. SPENCER: No, sir.
25 THE COURT: Do you feel they're

1 sufficiently competent, or that the jury would accept their
2 versions of what happened?
3 MR. SPENCER: Yes, sir.
4 MR. PETERS: I might indicate,
5 Your Honor, that Mr. Spencer is thirty-seven years of age,
6 which is one of the elements that we have to prove, and he's
7 acknowledged that here and he's obviously over thirteen from
8 looking at him here.
9 THE COURT: Okay.
10 MR. PETERS: Count III, Your
11 Honor, the victim here is Kathryn Spencer. Again, she's at
12 this time six years old. This occurred last summer. We have
13 alleged between July 14th, '84 and August 26th, '84. The
14 reason for those dates is that Kathryn came to Clark County
15 from Sacramento where she resides with her mother for a
16 summer visit with her father, Ray Spencer, on July 14th.
17 And returned, according to the evidence from -- that would
18 be provided by her mother as well as Clyde Spencer that it
19 was August 26, 1984.
20 Obviously Mr. Spencer continues to be over thirteen
21 years of age, he engaged in sexual intercourse and our
22 theory would indicate there was numerous occasions during
23 the summer. She as well as her brother, Matthew and her
24 stepbrother Matthew Hansen observed these incidents.
25 Again, most of these incidents occurred with all three

1 children being present in Mr. Spencer's house, which he
2 shared with his wife, Shirley, on Lucia Falls Road. Most
3 of the incidents occurring in the bedroom of the house. But
4 they also occurred in the shower and in the living room, and
5 in one other bathroom in the house.
6 Kathryn indicates to myself, to Mr. Rulli and Mrs. Krause
7 that he placed his penis or finger in her rectum, and that
8 he placed his penis or finger in or about the area of her
9 vagina, but she was very clear about pain upon these
10 penetrations, that she cried, the other children are clear
11 that she cried from the pain. And she's very clear about
12 the penetration of her rectum in any case. I think that's
13 all.
14 THE COURT: Do you have any
15 basis to refute the Prosecutor's case with respect to
16 Count III?
17 MR. SPENCER: No, sir.
18 MR. PETERS: Count No. VII, Your
19 Honor, involves the victim, Matthew Ray Spencer, involves
20 the same time frame that is mentioned in the previous count,
21 that would be Count III, July 14th to August 26th, 1984.
22 Matthew Spencer is the nine-year old son of Ray Spencer,
23 natural son. He came up during that time frame to visit
24 his father. When Mr. Rulli and I spoke with Matthew in
25 Sacramento last week, he was clear about having been here

1 during that time frame. He in response to one of Mr. Rulli's
2 questions, he remembered that he spent the Fourth of July,
3 the firecracker time as he described, in Sacramento. He
4 remembers the previous summer of having spent firecracker
5 time up here in Clark County and having gone to the fireworks
6 at Fort Vancouver. So he was able to differentiate one
7 summer from the other.
8 He indicated to us that on numerous occasions during
9 last summer on the dates stated, there was sexual contact
10 with his father, that is his father would place his penis or
11 finger in the rectum of Matthew Spencer, who, as I said, is
12 nine. He was able to describe the difference between a
13 flaccid and an erect penis, indicating that when these events
14 occurred, his father's penis was hard and caused him a great
15 deal of pain when he penetrated his rectum. He also
16 indicated he was crying when these occurred.
17 His statements were corroborated by his stepbrother,
18 Matthew Hansen, and his sister, Kathryn.
19 THE COURT: That was VII?
20 MR. PETERS: That was VII.
21 THE COURT: Do you have any basis
22 to refute Count VII's evidence by the State?
23 MR. SPENCER: No, sir.
24 MR. PETERS: Your Honor, Count IX,
25 the count of complicity or another word would be accomplice

1 to Statutory Rape in the First Degree. The proof that we
2 would have offered if we had gone to trial would involve the
3 three children's testimony that between July 14th and
4 August 26th, 1984, Mr. Spencer, who was then obviously over
5 thirteen, caused these children in the instance of Count No.
6 IX, Matthew Spencer, himself five years old -- Excuse me,
7 nine years, Matthew Spencer, to engage in sexual intercourse
8 with his sister, Kathryn, who was six.
9 The children said, or would say or would testify that
10 their father made them do this with one another. Matthew
11 would testify and Kathryn will testify that their father
12 made them engage in this behavior as he looked on, and on
13 some occasions took photographs.
14 THE COURT: Were any of those
15 recovered?
16 MR. PETERS: No, there hasn't
17 been a search warrant executed, Your Honor, although we have
18 been advised by Shirley Spencer that she has searched the
19 house. She's been cooperative. There was no search warrant
20 executed. She has searched the house, and a number of items
21 of pornography were discovered, books involving descriptions
22 of incest and sexual behavior between adults and children.
23 But no photographs involving these children were discovered.
24 In any case, Matthew and Kathryn would both testify
25 that Ray did solicit, command, request, or encourage Matthew

1 to engage in sexual intercourse with Kathryn by having
2 Matthew place his fingers into her rectum with Ray and the
3 other child, Matthew Hansen, looking on. Again, all three
4 children are corroborative of one another.
5 THE COURT: Do you have any basis
6 to refute Count IX's evidence?
7 MR. SPENCER: No, sir.
8 MR. PETERS: Count X, Your Honor,
9 is basically the same type of interaction, except that the
10 victims are different. It's the same date, last summer,
11 July 14th to August 26th, 1984, and basically the children
12 again would testify, that is the two named children as well
13 as Kathryn Spencer, that the defendant caused them, or in
14 their words, made them engage in sexual behavior, and in
15 this particular case, Matthew Ray Spencer, age nine to engage
16 in sexual intercourse with Matthew Hansen, who was age five
17 at that time, by having Matthew place his finger in
18 Matthew Hansen's rectum, and by having Matthew Spencer place
19 his penis in Matthew Hansen's -- Excuse me, mouth on
20 Matthew Hansen's penis.
21 Again, the facts are corroborated by all three children.
22 THE COURT: Any defense to
23 Count X?
24 MR. SPENCER: No, sir.
25 MR. PETERS: Count No. XI is the

1 same dates, July 14th, August 26th.

2 MR. RULLI: Count XII.

3 MR. PETERS: Yes, Count XII. The

4 State would offer proof that Mr. Spencer, the defendant, was

5 over the age of thirteen at that time. That he engaged in

6 sexual intercourse with Matthew Hansen, again, who is five

7 years old, by having Matthew Hansen place his finger in

8 defendant's rectum.

9 Your Honor, the children will testify as to all of these

10 counts, and we would have corroborative information from

11 Mr. Spencer's police department work records as well as from

12 Shirley Spencer and her work records that Shirley, the

13 mother of Matthew Hansen and the wife of the defendant, was

14 working multiple shifts during last summer. She works for

15 C-Tran and was working as a relief driver, and was gone

16 sometimes in the early morning, sometimes during the day and

17 sometimes in the evening.

18 Mr. Spencer, who was a police officer at the time, was

19 working five days on, two days off followed by five days on,

20 three days off shift, and his work records indicate that he

21 took multiple sick-vacation and comp time days off last

22 summer in addition to the normal days off that he had,

23 presumably to spend time with his children.

24 The testimony would be that he had access to them on

25 numerous days when his wife was not present. The children

1 would also testify to that and indicate that on virtually
2 everyday or almost everyday that their father was alone with
3 them, he would engage in these sexual behaviors.
4 So, as to Count XII, we have charged that on numerous
5 occasions during that period of time there was sexual
6 intercourse between the defendant and six-year old Matt Hansen
7 by having Matt cause -- Excuse me, by causing the defendant,
8 causing Matt to place his finger in the defendant's rectum.
9 I believe I stated the ages, didn't I?
10 THE COURT: Any defense to
11 Count XII?
12 MR. SPENCER: No, sir.
13 MR. PETERS: Count XIII, Your
14 Honor, is another count of complicity, this time involving
15 Matt Hansen, the person who is the so-called, if you would,
16 perpetrator, albeit innocent perpetrator, he's six years
17 old, and he would testify that on one or more occasions
18 during the time period between July 14th and August 26th,
19 1984, he was forced or caused, or made by his father, the
20 defendant -- stepfather, the defendant, to engage in sexual
21 intercourse with the defendant's natural son,
22 Matthew Ray Spencer, who was nine at the time, by the
23 defendant causing Matthew Hansen to place his thumb in
24 Matthew Spencer's rectum, and by placing his penis in
25 Matthew Spencer's rectum.

1 Again, our theory there was complicity to commit
2 Statutory Rape in the First Degree.
3 THE COURT: Any defense to
4 Count XIII?
5 MR. SPENCER: No, sir.
6 MR. PETERS: Count No. XIV, Your
7 Honor, involves the defendant again being over thirteen years
8 of age, involving himself with two innocent children,
9 Matthew Hansen, age five, and Kathryn Spencer, age six,
10 causing them to have sexual contact with one another,
11 actually sex with him, and of course with one another.
12 Again, during this time frame between July 14th, August 26th,
13 1984 on one or more occasions, Matthew Hansen, and
14 Kathryn Spencer will testify that then the defendant had
15 Matthew Hansen engage in sexual intercourse with
16 Kathryn Spencer.
17 Mrs. Krause, would you relate what the children told
18 you about how that occurred, that would be Matthew Hansen
19 when Matthew Hansen was doing the things to Kathryn Spencer.
20 DEPUTY KRAUSE: Matthew Hansen
21 indicates that he had to insert his finger into Kathryn's
22 rectum, and also place his mouth on Kathryn's vagina, and
23 that Kathryn had to do those same acts to him by placing her
24 mouth on his penis.
25 THE COURT: Any defense to

1 Count XIV?

2 MR. SPENCER: No, sir.

3 MR. PETERS: I might add all

4 these counts up to this point in addition to the next last

5 two counts occurred at Mr. Spencer's home on Lucia Falls

6 Road in Clark County, Washington.

7 THE COURT: Okay.

8 MR. PETERS: With one exception,

9 that is the last count, No. XV occurred in the house that I

10 indicated involves the defendant on an unknown date between

11 August 27th and December 25th, 1984.

12 Now, the Court will note this is a different period of

13 time. The defendant engaged in sexual intercourse with

14 Matthew Hansen.

15 Mrs. Krause's interview as well as -- or contacts with

16 Matthew Hansen indicate that this behavior took place after

17 the two California children, Kathryn and Matthew Ray Spencer

18 returned to Sacramento. They returned on August 26th,

19 therefore the beginning date of this time frame is August 27th.

20 Matthew Hansen further indicated this behavior took

21 place prior to Christmas and the concluding date being

22 December 25th, and what he indicated was that on that

23 occasion his father was giving him a bubble bath and he was

24 in the bubble bath with him, is that correct?

25 DEPUTY KRAUSE: That's correct.

1 MR. PETERS: And he forced
2 Matthew's head down under the water through the bubbles onto
3 the defendant's erect penis.
4 The way this count was discovered was that young
5 Matthew reacted -- Who had always enjoyed bubble baths,
6 reacted very violently when his mother, Shirley Spencer,
7 the defendant's wife, attempted to give him a bubble bath.
8 That prompted questioning by her and statements, which we
9 believe would have been admissible under the hearsay
10 exception 98.44.120 regarding his stepfather causing him to
11 perform fellatio on him during that period of time, again,
12 when Matthew was approximately five years old.
13 THE COURT: Any defense to
14 Count XV?
15 MR. SPENCER: No, sir.
16 MR. PETERS: Your Honor, the
17 last count, Count XVI occurred after Mr. Spencer was
18 originally charged with one or more counts under this
19 cause number. It is alleged to have taken place
20 February 16th, 1985. This is the one and only offense that
21 did not take place in the Lucia Falls home that we're aware
22 of. This offense took place at a motel on Highway 99 in
23 Clark County where Mr. Spencer was staying after he had been
24 released by Your Honor.
25 What happened in this particular case and the way that

1 we're able to verify the date, first of all, by the motel
2 receipt from when Mr. Spencer was staying at the motel.
3 Second, Mrs. Shirley Spencer would testify that she
4 took her son, Matthew Hansen, age five, to this motel to
5 stay, to see his stepfather while she was working.
6 Mr. Spencer, the defendant, asked to have Matthew stay
7 overnight with him for a visit, and that during that visit,
8 Matthew would be prepared to testify that the defendant
9 engaged in oral sex with him and penetrated his rectum with
10 his penis, that is the defendant penetrated the boy's rectum
11 with his penis.
12 Additional corroboration of that was obtained first of
13 all by statements that the boy made to his mother. Secondly,
14 the boy's detailed description that the boy was able to give
15 of this motel room which was somewhat unique.
16 The police then went out and corroborated the fact that
17 the description he gave of the motel room was in fact
18 accurate.
19 THE COURT: At that time he was
20 only charged with assaulting or with abusing Kathryn?
21 MR. PETERS: That's right.
22 There was no knowledge at that time that he had in fact
23 engaged in any behavior with his children.
24 THE COURT: Any defense to
25 Count XVI?

1 MR. SPENCER: No, sir.

2 THE COURT: Mr. Rulli, do you

3 agree that you would be able to present no defense to any

4 of the counts?

5 MR. RULLI: Yes, Your Honor.

6 THE COURT: So, you would just

7 be putting the State to it's test if it went to trial?

8 MR. SPENCER: Yes, sir.

9 THE COURT: Did you anticipate

10 putting on any defense witnesses?

11 MR. RULLI: No.

12 THE COURT: Do you agree?

13 MR. SPENCER: Yes, sir.

14 MR. PETERS: I might indicate,

15 Your Honor, we planned in addition to the proof of these

16 behaviors calling the mothers of both children to describe

17 a series of unusual behaviors and symptoms exhibited by the

18 children. The details of which, I guess, are not

19 particularly necessary right now, but we were also prepared

20 to call an expert witness, a counselor who deals almost

21 exclusively with sexually abused children, by the name of

22 Patricia Walker, to testify that these behaviors or symptoms

23 are consistent with and typically seen in children who have

24 had serious trauma or a serious, dramatic event in their

25 lives. They're consistent with those things seen in children

1 who have been sexually abused.

2 THE COURT: Well, based upon the

3 evidence that would be presented by the State as reviewed by

4 Mr. Peters, it does appear there's overwhelming evidence from

5 which a jury could, and likely would, conclude beyond a

6 reasonable doubt that Mr. Spencer is guilty of Count I, II,

7 III, VII, IX, X, XII, XIII, XIV, XV, XVI in the Second

8 Amended Information.

9 Mr. Spencer, with respect to each of those counts, do

10 you propose to enter the same pleas?

11 MR. SPENCER: Yes, sir.

12 THE COURT: What is that plea?

13 MR. SPENCER: Guilty.

14 THE COURT: Do you have any

15 questions at all about this procedure?

16 MR. SPENCER: No, sir.

17 THE COURT: Do you feel that you

18 were adequately represented by Mr. Rulli and that Mr. Rulli

19 has, as far as you're concerned, made a maximum legal effort

20 to explore any defenses you might have whether for mental

21 as well as any factual defenses?

22 MR. SPENCER: Yes, sir.

23 THE COURT: Do you have any

24 questions at all about his representation?

25 MR. SPENCER: No, sir.

1 THE COURT: Do you think that
2 he's adequately, fairly and on your behalf presented to you
3 your options relative to pleading guilty versus going to
4 trial?
5 MR. SPENCER: Yes, sir.
6 MR. PETERS: Your Honor, I might
7 indicate for the record in case this matter is reviewed, it
8 is, I think, important to note that Mr. Spencer was, at the
9 time of these offenses, a Vancouver Police Officer and had
10 been for the previous five or six years approximately; prior
11 to that was involved as a law enforcement officer in
12 California, and has considerable experience with the system.
13 THE COURT: Are there any
14 statements made that would have required preliminary hearings?
15 MR. PETERS: Well, there was one
16 series of statements after his arrest in February,
17 February 18th, I believe, where we would have had to have
18 had a 3.5 Hearing. It was not the sort of statement that is
19 a classic admission, but Mr. Spencer did indicate upon
20 questioning, after Advice of Rights, that he did not
21 remember doing these things, as much as he stated here today,
22 but if the children said it's true, it must be true.
23 THE COURT: Do you understand
24 that you would be entitled to a preliminary hearing at which
25 time the Court would make sure that all constitutional

1 safeguards were in place and for your benefit prior to
2 allowing those statements to be presented to a jury?
3 MR. SPENCER: Yes, sir.
4 THE COURT: And do you feel that
5 any statements made by you to any police officers during the
6 custodial setting were made freely and voluntarily by you
7 with a full understanding of your rights?
8 MR. SPENCER: Yes, sir.
9 THE COURT: Any evidence on the
10 suppression question?
11 MR. PETERS: The only evidence
12 that there was, physical evidence that had any particular
13 value was that pile of pornographic books which were brought
14 to the police by Shirley Spencer. I did not intend to
15 introduce those in my case in chief, and only intended to
16 use them should Mr. Spencer take the witness stand and in
17 some way say that he would never think of doing such a thing.
18 We have these books to use for cross examination.
19 THE COURT: Do you agree that
20 those books were brought to the authorities by your wife?
21 MR. SPENCER: I don't know
22 anything about it.
23 THE COURT: Well, you don't have
24 any basis to ask that those be suppressed, Mr. Rulli?
25 MR. RULLI: No, sir, there's no

1 legal basis.

2 THE COURT: Anything else?

3 MR. PETERS: Can I have just a

4 moment. Your Honor, there is one matter that was just

5 brought to my attention by Mr. Curtis, which I think is a

6 good idea. I don't know if the Court is aware of the

7 Harold Bernard Smith case, that was a case that came back

8 before Clark County Courts some ten years after the fact.

9 THE COURT: I had the case on

10 rebound.

11 MR. PETERS: Where an attorney

12 was being -- Basically was a federal judge who was being --

13 who had been an attorney prior, because he allegedly did not

14 allege -- on the return was that the attorney did not do a

15 competent job with regard to the mental health aspects of

16 the case.

17 I wonder if we might want to inquire further of

18 Mr. Rulli about the mental health aspects of this in terms

19 of perhaps a report from Dr. Dixon or Dr. McGovern, which

20 would indicate that Mr. Spencer was -- does not have a

21 mental disease or defect defense; make those things part of

22 the record so that in the future this doesn't come back.

23 THE COURT: Mr. Rulli.

24 MR. RULLI: Well, I think we

25 adequately covered that already on the record, Your Honor.

1 THE COURT: Well, have you
2 examined both with a respect to a defense of insanity or
3 mental incompetence?
4 MR. RULLI: Dr. Dixon related to
5 me that my client did not suffer from any mental diseases.
6 THE COURT: And is competent and
7 able to assist you in his defense?
8 MR. RULLI: Yes, sir, he's
9 cognizant of the charge against him and to the best of his
10 recollection he's been able to assist me.
11 THE COURT: Do you agree?
12 MR. SPENCER: Yes, sir.
13 MR. PETERS: Your Honor, it is
14 my understanding from plea negotiation consultations, that
15 Mr. Spencer had seen Dr. Dixon on four occasions, and
16 Dr. McGovern on one or more occasions. I'm not sure exactly
17 about that.
18 THE COURT: Is that correct?
19 MR. SPENCER: Yes, sir.
20 MR. PETERS: Dr. Dixon is known
21 to me as a -- I believe he's a forensic psychiatrist,
22 Board certified forensic psychiatrist. He's testified both
23 for the Defense and the Prosecution.
24 THE COURT: Numerous times.
25 MR. PETERS: Dr. McGovern is a

1 well-known psychologist who is also well-known and
2 remembered for his forensic work and abilities.
3 THE COURT: That's correct.
4 As far as the form here goes, paragraph 16 has a blank,
5 is there an attachment to that?
6 MR. PETERS: That's the factual
7 basis which I stated orally along with Mrs. Krause.
8 THE COURT: And you're willing,
9 Mr. Spencer, in a typical plea we have a written statement
10 in here, even in a Newton plea, that you feel the evidence
11 is such that the jury could and likely would find you guilty
12 beyond a reasonable doubt, and you're willing to accept
13 Mr. Peter's and Sharon Krause's narrative as your statement,
14 or as a statement of the State's case in paragraph 16, is
15 that correct?
16 MR. SPENCER: That's correct.
17 MR. PETERS: Okay, I request, and
18 this is somewhat unusual, that we have the court reporter
19 do a transcript of this now -- I mean not right now ----
20 THE COURT: Have it attached in
21 a week or two, is that satisfactory with you that the
22 transcript of this proceeding be attached as support for
23 paragraph 16?
24 MR. SPENCER: That's fine.
25 MR. RULLI: No objections,

1 Your Honor.

2 MR. PETERS: There are additional

3 paragraphs that are blank, paragraph 5 didn't have the

4 maximums. I stated those orally, as did the Court.

5 THE COURT: I suppose we could

6 bring that -- They're all the same.

7 MR. PETERS: Yes, 20 to life with

8 a fifty thousand dollar maximum fine.

9 With respect to paragraph No. 6, Your Honor read and

10 stated the elements to each count prior to proceeding beyond

11 paragraph 6, other than that, I think everything is in order.

12 THE COURT: All right,

13 Mr. Spencer's pleas are accepted by the Court as having been

14 made freely and voluntarily, with a full and intelligent

15 understanding of the potential consequences and that there's

16 an overwhelming factual basis for the pleas, and there is

17 sufficient evidence from which the jury could and likely

18 would find Mr. Spencer guilty of each count beyond a

19 reasonable doubt.

20 If Mr. Spencer would sign the statement, please.

21 (Mr. Spencer signs statement)

22

23 THE COURT: The statement is

24 signed by Mr. Spencer, each attorney and myself.

25 Sentencing?

1 MR. PETERS: Your Honor, I have
2 prepared an order for a presentence report. I don't know if
3 you want to execute it or not. You do have some discretion
4 in this matter with regard to concurrent or consecutive on
5 Counts I and II with regard to 20 and up to life on both of
6 those counts as well as within the range on the remainder of
7 the counts.
8 THE COURT: I don't think a
9 presentence would serve any practical purpose myself, do you?
10 MR. RULLI: No, sir.
11 THE COURT: Are you requesting
12 one?
13 MR. RULLI: No, sir.
14 THE COURT: Presentence report
15 takes up to 40 work days. Do you request a presentence
16 report?
17 MR. PETERS: No, sir.
18 THE COURT: Do you?
19 MR. RULLI: No, sir.
20 THE COURT: Do you feel a
21 presentence report would present any facts that might
22 mitigate or aid you in the decision that I will have to make
23 at the time of sentencing?
24 MR. SPENCER: No, sir.
25 THE COURT: Okay, based upon that,

1 there's no need for one.

2 MR. PETERS: I would ask Your

3 Honor that if any mental health professionals are going to

4 be called to testify, or reports provided, we have notice of

5 those five days prior to the sentencing hearing so we can

6 prepare.

7 THE COURT: Have you thought

8 about your presentation for sentencing yet?

9 MR. RULLI: I have asked

10 Dr. Dixon to submit a written report, Your Honor, and I

11 haven't received it yet.

12 THE COURT: So how far down the

13 line do you want sentencing set?

14 I have signed an Order of Dismissal in Counts IV, V, VI,

15 VIII and XI.

16 We could probably -- I could schedule it next Thursday,

17 the 23rd of May at 1:30.

18 MR. RULLI: Your Honor,

19 Mr. Spencer requested that the Court proceed now.

20 THE COURT: I don't really have

21 enough feeling for the decision I have to make on

22 consecutive versus concurrent and versus 20 to life to

23 proceed right now. I was notified this morning there may be

24 a plea. I was called at home that there would be a plea,

25 and I simply haven't had enough time to think about those

1 major decisions in your life.

2 There's a lot of difference between 20 and life.

3 MR. SPENCER: Yes, sir, there

4 is.

5 THE COURT: For a thirty-seven

6 year old man, there's also a lot of difference in the

7 concurrent-consecutive, so I think I would need -- I would

8 like to have some input from the professionals, Dr. Dixon

9 and anybody else that has information.

10 MR. PETERS: As I said, Your

11 Honor, if they're going to be calling any witnesses, we would

12 really want to know that five days ahead of time so that we

13 can prepare to question them.

14 MR. RULLI: McGovern and Dixon

15 would be two professionals, Your Honor.

16 MR. PETERS: If they're going to

17 testify I would like to have access to them to interview

18 them, or to have their reports prior to sentencing.

19 THE COURT: That's fine. Do you

20 plan to bring them in person?

21 MR. RULLI: I don't know if they

22 will want to be here in person. I'll talk to the doctors

23 and find out.

24 MR. PETERS: We don't have five

25 days between now and next Thursday.

THE COURT: You could know by tomorrow afternoon whether you're going to use them live or not?

MR. RULLI: Yes.

THE COURT: And if you should, tell them they both need to be available to Mr. Peters Monday, Tuesday or Wednesday of next week for an interview.

MR. RULLI: All right.

MR. PETERS: Same if they're going to submit reports.

THE COURT: Well, you want to interview them either way?

MR. PETERS: I'm not sure, whenever I read the reports I would know.

THE COURT: Well, they should be available for his interview whether they're coming live or by written report or both.

MR. PETERS: Thank you.

THE COURT: Thank you.

MR. SPENCER: Thank you, Your Honor.

(Conclusion of Change of Plea Hearing)

* * * * *

APPENDIX "C"

JUDGMENT AND SENTENCE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	
Defendant.	)	JUDGMENT AND SENTENCE

THIS MATTER having come on regularly for hearing this 23rd day of May, 1985, the defendant being present in person and represented by his undersigned attorney, the State being represented by the undersigned deputy prosecuting attorney, the defendant having previously entered valid pleas of guilty to:

Count I - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983; and

Count II - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983,

the court having afforded each counsel the right to speak, having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered both counsel, and the defendant, now, therefore, the court ORDERS, ADJUDGES AND DECREES:

1. The defendant is guilty of the above crimes.

2. The defendant is hereby sentenced to confinement at hard labor in a penal institution under the jurisdiction of the State of Washington, Department of Corrections, for maximum terms of:

Life on Count I and Life on Count II, said maximum terms to run consecutive.

3. Defendant is hereby remanded to the custody

Left Thumb

Attest: I saw the same defendant who appeared in court on this document affix his thumb prints thereto.
CLERK OF THE SUPERIOR COURT OF CLARK COUNTY:
BY: _____ Deputy
(SEAL)

Right Thumb

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	
Defendant.	)	JUDGMENT AND SENTENCE

THIS MATTER having come on regularly for hearing this 23rd day of May, 1985, the defendant being present in person and represented by his undersigned attorney, the State being represented by the undersigned deputy prosecuting attorney, the defendant having previously entered valid pleas of guilty to:

Count I - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983; and

Count II - Statutory Rape I - RCW 9A.44.070 (1) committed on an unknown date during the summer of 1983,

the court having afforded each counsel the right to speak, having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered both counsel, and the defendant, now, therefore, the court ORDERS, ADJUDGES AND DECREES:

1. The defendant is guilty of the above crimes.

2. The defendant is hereby sentenced to confinement at hard labor in a penal institution under the jurisdiction of the State of Washington, Department of Corrections, for maximum terms of:

Life on Count I and Life on Count II, said maximum terms to run consecutive.

3. Defendant is hereby remanded to the custody

Left Thumb

I attest that I saw the same defendant who appeared in court on this document affix his thumb prints thereto.

CLERK OF THE SUPERIOR COURT OF CLARK COUNTY:

By: _____ Deputy

(SEAL)

Right Thumb

FILED MAY 23 1985 George L. Hiller, Cl...

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 5000
VANCOUVER, WASHINGTON 98660
(206) 699-2261

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of the Clark County Sheriff for detention until delivered into the custody of officers of the State of Washington Department of Corrections, for transportation to a correctional facility designated by the Department.

DONE in Open Court and in the presence of the defendant this 23 day of May, 1985.

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

Defense Attorney

Left Thumb

I attest that I saw the same defendant who appeared in Court on this document affix his thumb prints thereto.

CLERK OF THE SUPERIOR COURT OF CLARK COUNTY:

By: Deputy

(SEAL)

Right Thumb

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS
Defendant.	)	

STATE OF WASHINGTON)
: ss
COUNTY OF CLARK)

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corections, and Officers in charge of correctional facilities of the State of Washington:

G R E E T I N G:

WHEREAS, Clyde Ray Spencer has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crimes of Count I - Statutory Rape in the First Degree - RCW 9A.44.070 (1) and Count II - Statutory Rape in the First Degree - RCW 9A.44.070 (1) and judgment has been pronounced against him that he has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13 and a minimum term to be fixed by the Board of Prison Terms and Paroles. All of which appears to us of record; a certified copy of said judgment being endorsed hereon and made a part hereof.

CLERK OF THE SUPERIOR COURT
By: Deputy
(SEAL)

NOW, THIS IS TO COMMAND YOU, the said Sheriff, to detain the said Clyde Ray Spencer until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct him to the appropriate facility, and this is to command you, the said Superintendent of the appropriate facility to receive of and from the said officer or officers the said Clyde Ray Spencer for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections for maximum terms of confinement of not more than life on Count I and life on Count II, said terms to run consecutive and a minimum term to be fixed by the Board of Prison Terms and Paroles.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS THE HONORABLE THOMAS L. LODGE, JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS 23rd day of May, 1 9 8 5.

GEORGE J. MILLER
Clerk of the Clark County
Superior Court

By: Deputy

(SEAL)

By: Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGEMENT AND SENTENCE (PRISON)
Defendant.	)	

FILED

MAY 23 1985

George J. Miller, Clerk, Clark Co.

THIS MATTER having come on regularly for sentencing on the 23rd day of May, 1985, the defendant being present and represented by his undersigned attorney, with the State being represneted by the undersigned deputy prosecuting attorney, and the defendant having previously entered valid pleas of guilty to:

Count III - Statutory Rape I - RCW 9A.44.070 (1);

Count VII - Statutory Rape I - RCW 9A.44.070 (1);

Count IX - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);

Count X - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);

Count XII - Statutory Rape I - RCW 9A.44.070 (1);

Count XIII - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);

Count XIV - Complicity to Statutory Rape I - RCW 9A.44.070 (1), RCW 9A.08.020 (1), (2) and (a) and RCW 9A.08.020 (1), (2), (c), (3), (a) and (i);

Count XV - Statutory Rape I - RCW 9A.44.070 (1); and

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Seal of the Superior Court of Clark County, State of Washington

I certify that I saw the same defendant who appeared in court on this document affix his thumbprints thereto.

(SEAL) BY: Deputy

Right Thumb

Count XVI - Statutory Rape I - RCW 9A.44.070 (1), and the court having afforded each counsel the right to speak, having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered the arguments presented, now, therefore, the Court makes the following:

1. FINDINGS OF FACT

1. The defendant is guilty of the above-listed crimes;

2. The maximum terms for the above crimes are:

Count III - Life

Count VII - Life

Count IX - Life

Count X - Life

Count XII - Life

Count XIII - Life

Count XIV - Life

Count XV - Life

Count XVI - Life

3. The following crimes encompass the same criminal conduct and count as one crime in determining criminal history:

Counts: N/A

4. Possession by the defendant or an accomplice of a deadly weapon as defined by RCW 9.94A.125 at the time of the commission of the crimes charged in Count(s) N/A

(was) (was not) specially alleged and proven, and N/A

are to be added to the presumptive sentencing range.

BY: (SEAL)

SUPERIOR COURT OF CLARK COUNTY:

(SEAL)

Deputy

Appeared this thumbprints thereto.

Right Thumb

247/297

5. The Court finds that the defendant has a criminal history as set forth in the Declaration of Criminal History previously filed.

6. The defendant has served ninety five (95) days of confinement prior to sentencing, said confinement being solely related to the crimes for which the defendant is being sentenced.

7. The presumptive sentencing range for this defendant based upon the criminal history related above is as follows:

Count III - 129-171 mos. Count XIII - 129-171 mos.
Count VII - 129-171 mos. Count XIV - 129-171 mos.
Count IX - 129-171 mos. Count XV - 129-171 mos.
Count X - 129-171 mos. Count XVI - 129-171 mos.
Count XII - 129-171 mos.

8. The following facts are found to exist and justify an exceptional sentence outside the presumptive sentencing range:

N/A

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over the defendant and the subject matter.

2. The defendant is guilty of the crime(s) set forth above.

3. There (~~exist~~) (do not exist) substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

CLARK COUNTY PROSECUTING ATTORNEY

(SEAL) By: Deputy

III. JUDGMENT AND SENTENCE

The court having determined that no legal cause exists to show why judgment should not be pronounced, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant is sentenced to a term of confinement as follows:

Count III - 171 months
Count VII - 171 months
Count IX - 171 months
Count X - 171 months
Count XII - 171 months — 171 months total
Count XIII - 171 months
Count XIV - 171 months
Count XV - 171 months
Count XVI - 171 months

Said terms to run as follows: Consecutive to Counts I and II.

Further, defendant shall make the following monetary payments:

1. _____ restitution.
2. _____ fine.
3. _____ court costs.

Defendant is hereby remanded to the custody of the Clark County Sheriff for detention until delivered into the custody of Officers of the State of Washington, Department of Corrections for transportation to a correctional facility designated by the Department.

DONE in Open Court and in the presence of the

/

/

/

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

Attorney for Defendant

STATE OF WASHINGTON)
: ss
COUNTY OF CLARK)

I, GEORGE MILLER, County Clerk and Clerk of the Superior Court of the State of Washington, for the County of Clark, holding terms at Vancouver, in said County, do hereby 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 23rd day of May, 1 9 8 5.

GEORGE J. MILLER
Clerk of said County and State

By: _____
Deputy

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P. O. BOX 5000
VANCOUVER, WASHINGTON 98666
(206) 699-2261

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 85-1-00007-2
vs.	)	
CLYDE RAY SPENCER,	)	WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS
Defendant.	)	

STATE OF WASHINGTON)
: ss
COUNTY OF CLARK)

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crimes of:

Count III - Stat. Rape 1°
Count VII - Stat. Rape 1°
Count IX - Complicity to Stat Rape 1°
Count X - Complicity to Stat. Rape 1°
Count XII - Stat Rape 1°
Count XIII - Complicity to Stat Rape 1°
Count XIV - Complicity to Stat Rape 1°
Count XV - Stat Rape 1°
Count XVI - Stat Rape 1°

and judgment has been pronounced and the defendant has been

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98666

sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections, pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of:

Count III -
Count VII -
Count IX -
Count X -
Count XII - 171 months
Count XIII -
Count XIV -
Count XV -
Count XVI -

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS, HONORABLE THOMAS L. LODGE

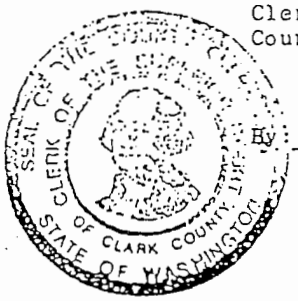
/

/

/

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS 23rd day of May, 1 9 8 5.

GEORGE J. MILLER
Clerk of the Clark County Superior Court



By _____ Deputy

arrest and detention of said defendant, CLYDE RAY SPENCER _____, and that said defendant shall be entitled to be released from such arrest and detention upon the following condition:

✓ The execution of an appearance bond with sufficient solvent securities in the sum of $100,000 or the deposit of cash in lieu thereof with the Clerk of the Court.

or

_____ No bail pending appearance before the Court.

By this Court this 28th day of February, 1985.

JUDGE OF THE SUPERIOR COURT

Presented by:

Deputy Prosecuting Attorney

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

FILED
COURT OF APPEALS
DIVISION II
08 MAR 17 AM 9:27
STATE OF WASHINGTON
BY CA
DEPUTY

STATE OF WASHINGTON, Respondent, v. CLYDE RAY SPENCER, Petitioner.	No. 37229-1-II Clark Co. No. 85-1-00007-2 DECLARATION OF TRANSMISSION BY MAILING

STATE OF WASHINGTON)
: ss
COUNTY OF CLARK)

On March 13, 2008, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO:		
	David Ponzoha, Clerk Court Of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	CLYDE RAY SPENCER DOC# 910743 295 LIND AVENUE SW APT. 1 RENTON WA 98055
	PETER A. CAMIEL ATTORNEY AT LAW 710 CHERRY STREET SEATTLE WA 98104	

DOCUMENTS: Response to Personal Restraint Petition

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Jennifer L. Jackson
Date: 3/13, 2008.
Place: Vancouver, Washington.