

No.

37230-4

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
CLERK OF COURT
BY: 

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

IN RE THE RESTRAINT OF:

DANIEL J. STOCKWELL,

Petitioner.

PERSONAL RESTRAINT PETITION

Judgment in Pierce County Superior Court No. 86-1-00878-2
The Hon. Robert H. Peterson, Presiding

NEIL M. FOX
WSBA No 15277
Cohen & Iaria
1008 Western Ave. Suite 302
Seattle WA 98104

Phone: 206-624-9694
Fax: 206-624-9691
e-mail: nmf@cohen-iarria.com

ORIGINAL

TABLE OF CONTENTS

	<i>Page</i>
A. <u>STATUS OF PETITIONER</u>	1
B. <u>STATEMENT OF GROUNDS FOR RELIEF</u>	1
1. <u>Facts Upon Which Unlawful Restraint is Based</u>	1
2. <u>Argument Why Restraint is Unlawful</u>	3
a. <i>Summary of Argument</i>	3
b. <i>This Petition is Not Time Barred</i>	4
c. <i>The Guilty Plea Should Be Withdrawn Because it Did Contain the Proper Statutory Maximum</i>	6
i. <i>The Plea Was Not Voluntary</i>	6
ii. <i>Withdrawal of the Plea</i>	9
C. <u>REQUEST FOR RELIEF</u>	10
D. <u>OATH</u>	12
E. <u>PETITIONER’S CERTIFICATION</u>	13

TABLE OF CASES

	Page
<i>Washington Cases</i>	
<u>In re Restraint of Davis</u> , 142 Wn.2d 165, 12 P.3d 603 (2000)	10
<u>In re Restraint of Goodwin</u> , 146 Wn.2d 861, 50 P.3d 618 (2002)	4
<u>In re Restraint of Isadore</u> , 151 Wn.2d 294, 88 P.3d 390 (2004)	7,8,9
<u>In re Restraint of Stroudmire</u> , 141 Wn.2d 342, 5 P.3d 1240 (2000)	4
<u>In re Restraint of Thompson</u> , 141 Wn.2d 712, 10 P.3d 380 (2000)	4
<u>In re Restraint of Turay</u> , 150 Wn.2d 71, 74 P.3d 1194 (2003)	4,5
<u>In re Restraint of Vega</u> , 118 Wn.2d 449, 823 P.2d 1111 (1992)	6
<u>State v. Barton</u> , 93 Wn.2d 301, 609 P.2d 1353 (1980)	7
<u>State v. Mendoza</u> , 157 Wn.2d 582, 141 P.3d 49 (2006)	6,8,9
<u>State v. Miller</u> , 110 Wn.2d 528, 756 P.2d 122 (1988)	6,10
<u>State v. Ross</u> , 129 Wn.2d 279, 916 P.2d 405 (1996)	6,7
<u>State v. Vensel</u> , 88 Wn.2d 552, 564 P.2d 326 (1977)	7
<u>State v. Walsh</u> , 143 Wn.2d 1, 17 P.3d 591 (2001)	6,10
<i>Federal and Other State Cases</i>	
<u>Henderson v. Morgan</u> , 426 U.S. 637 (1976)	6
<i>Statutes, Constitutional Provisions, and Rules</i>	
CrR 4.2	6,9

RAP 16.4	1,10,11
RCW 9A.20.020	5
RCW 9A.20.021	2,3,5
Former RCW 9A.44.070	1,3
RCW 10.73.090	2,3,4,5,6
RCW 10.73.100	2,5
RCW 10.73.140	5,6
U.S. Const. amend. 14	<i>passim</i>
Wash. Const. art. 1, § 3	<i>passim</i>

A. STATUS OF PETITIONER

Petitioner Daniel J. Stockwell, an inmate at the Washington State Reformatory, Washington State Department of Corrections (DOC # 912170), applies for relief from restraint as defined in RAP 16.4(b). Mr. Stockwell challenges his 1986 conviction for Statutory Rape in the First Degree in Pierce County Superior Court No. 86-1-00878-2. A copy of the judgment and sentence entered in that case on October 3, 1986 (signed on September 26, 1986) is attached as Exhibit 3.

B. STATEMENT OF GROUNDS FOR RELIEF

1. Facts Upon Which Unlawful Restraint is Based

By information filed on April 29, 1986, in Pierce County Superior Court, the State of Washington charged Mr. Stockwell with one count of Statutory Rape in the First Degree, under former RCW 9A.44.070, alleging that Mr. Stockwell, “during the period between February 1, 1985 and March 31, 1985, did unlawfully and feloniously being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old.” Exhibit 1.

Mr. Stockwell entered a guilty plea to that charge on July 29, 1986. A copy of the “Statement of Defendant on Plea of Guilty” is

attached as Exhibit 2. The statement lists the maximum sentence as “twenty (20) years” and a \$50,000 fine. In fact, because the crime took place after July 1, 1984, and Statutory Rape in the First Degree was a Class A felony, the maximum sentence was confinement for a term of life, not 20 years. RCW 9A.20.021.

Mr. Stockwell was sentenced on September 26, 1986 (judgment actually filed on October 3, 1986). The judgment repeats the error from the plea form, stating in Section 4 that the maximum term is 20 years.¹ Exhibit 3.

Mr. Stockwell was under the supervision of the Department of Corrections until October 1989, until he finished making his legal financial obligation payments. Ex. 4. Mr. Stockwell did not receive a order of discharge until October 25, 1989. Exhibit 5. Mr. Stockwell never received any notice from the Department of Corrections as to the requirements of RCW 10.73.090 - .100 with regard to this case. Exhibit 7.

Mr. Stockwell has not filed any other petition for collateral relief attacking this judgment.

¹ There are no surviving transcripts from 1986 for this case. Ex. 6.

2. Argument Why Restraint is Unlawful

a. *Summary of Argument*

In 1985, the crime of Statutory Rape in the First Degree, former RCW 9A.44.070, was a Class A felony. Because the crime took place after July 1, 1984, the statutory maximum was “confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine.” RCW 9A.20.021(1)(a).

In Pierce County Superior Court No. 86-1-00878-2, however, the judgment lists the wrong maximum penalty – 20 years, instead of life – making the judgment facially invalid. Moreover, the guilty plea is invalid because the defendant’s statement made at the time he pled guilty also reveals that he was incorrectly informed as to the maximum possible penalty.

Because the judgment is facially invalid, this petition is not time-barred under RCW 10.73.090. Because the plea was based upon misinformation about a direct consequence of the plea, the plea was unconstitutional as it was neither knowing nor voluntary. The plea therefore violated due process of law under U.S. Const. amend. 14 and

Wash. Const. art. 1, § 3. Under these circumstances, prejudice is presumed. The judgment should be vacated and Mr. Stockwell is entitled to withdraw his plea.

b. *This Petition is Not Time Barred*

This petition is clearly filed more than one year after the judgment was final. RCW 10.73.090 establishes a time-bar to this petition if “if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.”

A judgment and sentence is invalid on its face if it evidences the invalidity “without further elaboration.” In re Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). In Goodwin, the Supreme Court held that the term “facial invalidity” was broader than “constitutional invalidity,” and that clearly erroneous sentencing errors (such as the improper use of juvenile convictions to determine an offender score) made the judgment facially invalid. Moreover, the phrase “on its face” includes the documents signed as part of a plea agreement. Id. at 866 n.2 (citing In re Restraint of Stroudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000) & In re Restraint of Thompson, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)).²

² The Supreme Court has explained that “the relevant question in a
(continued...)

In this case, the maximum penalty listed on the judgment and sentence is clearly erroneous. While the 20 years listed on the judgment (and the guilty plea statement) was correct for crimes that took place before July 1, 1984, RCW 9A.20.020(1) & (4), the maximum was clearly life for Class A felonies that took place after July 1, 1984. RCW 9A.20.021(4). As noted, the crime in this case allegedly took place between February to March 1985. Ex. 1. Thus, the maximum was life, not 20 years.

The face of the judgment itself reveals an error that renders it invalid without further elaboration. RCW 10.73.090 does not apply.

Additionally, Mr. Stockwell who was still under the supervision of the Department of Corrections on July 23, 1989, was never informed by DOC of the restrictions on collateral attack set out in RCW 10.73.090 & .100. Exhibit 7. RCW 10.73.140 specifically provides:

As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23,

² (...continued)

criminal case is whether the judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face. Such documents may be relevant to the question whether a judgment is valid on its face, but only if they disclose facial invalidity in the judgment and sentence itself." In re Restraint of Turay, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003).

1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony.

This language is mandatory, and if a defendant is not given proper notice, the time limits cannot be applied. In re Vega, 118 Wn.2d 449, 450-51, 823 P.2d 1111 (1992). Thus, in addition to the fact that the judgment is facially invalid, RCW 10.73.090 does not apply because of the lack of compliance with RCW 10.73.140.

c. *The Guilty Plea Should Be Withdrawn Because it Did Contain the Proper Statutory Maximum*

i. *The Plea Was Not Voluntary*

Under the Due Process Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, a guilty plea is only constitutionally valid if it is made knowingly, voluntarily and intelligently. Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); CrR 4.2(d). A defendant must understand “all” the “direct” consequences of the plea. State v. Ross, 129 Wn.2d 279,

284, 916 P.2d 405 (1996). A sentencing consequence is direct when “the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” *Id.* at 284, *quoting State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

The maximum possible sentence is a “direct” consequence of a guilty plea. *State v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the time a plea of guilty is entered, whether in justice or superior court, that the record show on its face the plea was entered voluntarily and intelligently, and affirmatively show the defendant understands the maximum term which may be imposed.”).

Here, there is no question but that Mr. Stockwell was misinformed of the legal maximum for the crime of Statutory Rape in the First Degree. The guilty plea statement clearly shows that he was told that the maximum was 20 years, not life.

When a defendant is misinformed about a direct consequence of a guilty plea, he or she does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004), the Supreme Court held that a defendant “need not make a special showing of materiality,” in order for

misinformation to render a guilty plea invalid, but instead must only show that the misinformation concerned “a direct consequence of [the] guilty plea.” 151 Wn.2d at 296. The Court rejected the State’s arguments about materiality:

[T]he materiality test requested by the State conflicts with this court’s jurisprudence. This court has repeatedly stated that a defendant must be informed of all direct consequences of a guilty plea, and that failure to inform the defendant of a direct consequence renders the plea invalid.

151 Wn.2d at 301.

In State v. Mendoza, *supra*, the defendant was misinformed about the standard range. The true range was actually lower than what was stated on the plea form. Nevertheless, the Supreme Court of Washington held that a:

guilty plea may be deemed involuntary when based on misinformation regarding the direct consequences of the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

157 Wn.2d at 591.

Again, the Washington Supreme Court rejected the State’s argument to apply a materiality test:

In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated.

157 Wn.2d at 590-91.

Here, Mr. Stockwell was misinformed about the maximum penalty – a direct consequence of the guilty plea. He was not informed of this mistake prior to sentencing. To the contrary, the mistake was repeated on the judgment itself. Thus, the plea was constitutionally involuntary, in violation of the Due Process Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3.

ii. *Withdrawal of the Plea*

A defendant may withdraw his or her guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. Isadore, supra; CrR 4.2(f). “An involuntary plea produces a manifest injustice.” Isadore, 151 Wn.2d at 298.

Where a plea agreement is based upon misinformation, the defendant may choose specific enforcement of the agreement or

withdrawal of the guilty plea. Walsh, 143 Wn.2d at 8-9. The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. Miller, 110 Wn.2d at 535.

Mr. Stockwell chooses withdrawal of his plea. If the State objects, then the State should be required to make a *prima facie* showing of any compelling reason not to allow this remedy. If the State cannot do so, then this Court should vacate the judgment and remand to Pierce County Superior Court to allow for withdrawal of the plea. If the State makes a *prima facie* showing, then this Court should remand for a hearing on Mr. Stockwell's choice of remedy.

C. REQUEST FOR RELIEF

Mr. Stockwell is under restraint as defined by RAP 16.4(b). See In re Davis, 142 Wn.2d 165, 170 n.2, 12 P.3d 603 (2000) (defendant still under restraint and could file PRP even if no longer incarcerated or under state supervision). Mr. Stockwell has no other remedies available to him other than by filing a Personal Restraint Petition. The restraint is illegal under the Due Process Clause of U.S. Const. amend. 14 and the Due Process Clause of Wash. Const. art. 1, § 3. Because Mr. Stockwell was

clearly informed of the wrong statutory maximum for the crime he was charged with committing, he has shown actual prejudice.

RAP 16.4(c) provides in part:

The restraint must be unlawful for one or more of the following reasons . . .

...

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

...

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; . . .

...

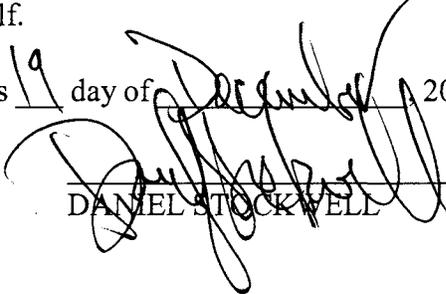
(7) Other grounds exist to challenge the legality of the restraint of petitioner.

Here, the plea was unconstitutional under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, and thus relief under RAP 16.4(c) is justified. The conviction should be vacated and Mr. Stockwell should be allowed to withdraw his guilty plea.

E. PETITIONER'S CERTIFICATION

I, Daniel Stockwell, declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 19 day of December 2007.



DANIEL STOCKWELL

Relevant Statutory Provisions and Rules

CrR 4.2 provides in part:

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity, or guilty. . . .

....

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. . . .

...

(f) Withdrawal of Plea. The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8. . . .

RAP 16.4 provides:

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b)

and the petitioners restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons: (1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or (2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or (3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or (4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or (5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or (6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or (7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090, .100, and .130. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

U.S. Const. amend. 14, § 1 provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. 1, § 3 provides:

No person shall be deprived of life, liberty, or property, without due process of law.

RCW 9A.20.020, "Authorized sentences for crimes committed before July 1, 1984," provides in part:

(1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine; . . .

.....

(4) This section applies to only those crimes committed prior to July 1, 1984.

Former RCW 9A.20.021 (1985), "Maximum sentences for crimes committed July 1, 1984, and after," provided in part:

(1) Felony. No person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine; . . .

...

(4) This section applies to only those crimes committed on or after July 1, 1984.

Former RCW 9A.44.070 (1985) provided:

Statutory rape in the first degree. (1) A person over thirteen years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven years old.

(2) Statutory rape in the first degree is a class A felony. . .

RCW 10.73.090 provides:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a

motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

RCW 10.73.140 provides:

As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony.

Exhibit 1

J.R. APR 29 1986

FILED

IN COUNTY CLERKS OFFICE
A.M. APR 29 1986 P.M.

PIERCE COUNTY, WASHINGTON
BRIAN SONNTAG, COUNTY CLERK

By _____
OF WASHINGTON

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

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J. STOCKWELL,

Defendant.

86 1 00878 2
NO.

INFORMATION

I, WILLIAM H. GRIFFIES, Prosecuting Attorney for Pierce County,
in the name and by the authority of the State of Washington, do accuse
DANIEL J. STOCKWELL of the crime of STATUTORY RAPE IN THE FIRST
DEGREE, committed as follows:

That DANIEL J. STOCKWELL, in Pierce County, Washington, during
the period between February 1, 1985 and March 31, 1985, did unlawfully
and feloniously being over the age of 13 years, engage in sexual
intercourse with Christina Sawyer, who was less than 11 years old,

8888 11/9/2006 88888

1 contrary to RCW 9A.44.070, and against the peace and dignity of the
2 State of Washington.

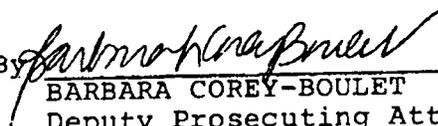
3 DATED this 28th day of April, 1986.

4
5 WILLIAM H. GRIFFIES

6 Filed Direct
7 City Case
8 WA02703

PROSECUTING ATTORNEY IN AND FOR
SAID COUNTY AND STATE.

9 mtc

10 BY 
11 BARBARA COREY-BOULET
12 Deputy Prosecuting Attorney
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INFORMATION - 2

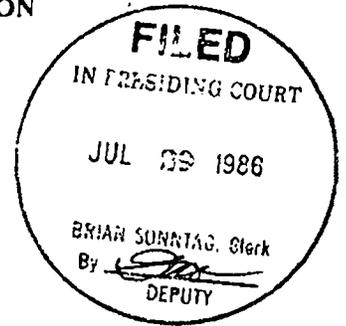
Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402
Telephone: 591-7400

6600 11/9/2008 80000

Exhibit 2

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

VOL 156 PAGE 1565



J.R. JUL 29 1986

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL J STOCKWELL,

Defendant.

NO. 86-1-00878-2

STATEMENT OF DEFENDANT ON PLEA
OF GUILTY (Felony)

1. My true name is Daniel James Stockwell
2. My age is 35, dob 7-27-51
3. I went through the 15th grade in school.
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:
MICHAEL R JOHNSON
5. I have been informed and fully understand that I am charged with the crime(s) of STATUTORY RAPE IN THE FIRST DEGREE

The elements of the crime(s) are: In Pierce County, Washington, between February 1, 1985 and March 31, 1985, the defendant did being over the age of 13 years, engage in sexual intercourse with Christina Sawyer, who was less than 11 years old.

The maximum sentence(s) is (are): twenty (20) years
years and \$ 50,000
fine(s).

In additon, I understand that I must have to pay restitution for crime(s) to _____ when I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is/are at least 36 months and no more than 48 months

based upon my criminal history which I understand the Prosecutor presently knows to be: _____

1985 Ind Lib adult

Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. 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.

11105 5857/6/11 5855

- (b) I have the right to remain silent before and during trial, and I need not testify against myself.
- (c) I have the right to hear and question any witness who testifies against me.
- (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(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilt after a trial.
- (g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead Guilty to the crime(s) of _____

 STATUTORY RAPE IN THE FIRST DEGREE

_____, as charged in the _____
 information.

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

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

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

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court: exceptional sentence within SSOSA guidelines, provided Conte
(defendant's therapist) affirms that defendant is still treatable; \$365.00 fine;
restitution, if any; reasonable costs; \$70.00 CVPA

2008 11/05/2008 08:12

14. I have been further advised ~~the~~ the crime(s) of NA

with which I am charged carries with it a term of total confinement of not less than _____ years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge).

15. I have been advised that the sentences imposed in Counts _____ will run consecutively/concurrently unless NA the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. 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~~ NA from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: I, Daniel Stokwell Dan
over 13 years of age, and did have oral
sex with Christine Sawyer under 11 years
of age. This was in Pierce County in
February + Early March of 1985. I voluntarily
revealed this to my group which entered
in January of 1986.

11/9/2005 08:11:55

19: I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court.

[Handwritten Signature]
Defendant

[Handwritten Signature]
Deputy Prosecuting Attorney

BARBARA L COREY-BOULET

[Handwritten Signature]
Defendant's Attorney

MICHAEL R JOHNSON

The foregoing statement was read by or to the defendant and signed by the defendant in the presences of his or her 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.

Further, the court finds that acceptance of this plea is consistent with prosecuting standards and the interests of justice.

Dated this 29 day of July, 1986
[Handwritten Signature]
Judge

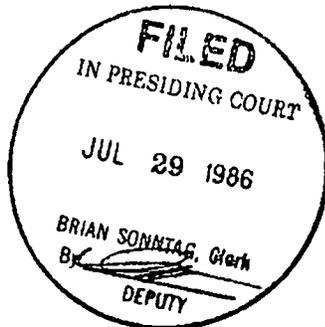


Exhibit 3

OCT 3 1986

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON LIBER 172 PAGE 256
FOR THE COUNTY OF PIERCE

THE STATE OF WASHINGTON

vs.
DANIEL J. STOCKWELL

Filed
IN COUNTY CLERKS OFFICE
A.M. OCT 2 1986
PIERCE COUNTY WASHINGTON
COUNTY CLERK

NO. 86-1-00878-2

JUDGMENT AND SENTENCE

SID NO. WA10438137

white; male; 7/27/51

This court having conducted a sentencing hearing pursuant to RCW 9.94A.110 on September 26,
1986 upon defendant's conviction(s) of the crime(s) set forth below, and the court having heard from the parties and considered the presentence reports and the records and files herein, and otherwise being fully advised, now makes the following findings:

1. PARTIES PRESENT: Present at the sentencing hearing were the defendant, the defendant's attorney, _____
MICHAEL R JOHNSON, Deputy Prosecuting Attorney BARBARA L COREY-BOULET,
and _____

2. CURRENT OFFENSE(S): The defendant has been convicted of the following current offense(s) upon a plea of guilty/~~conviction by jury/verdict of guilty by the court~~, on the 29th day of JULY, 19 86.

Count I Crime: STATUTORY RAPE IN THE FIRST DEGREE
RCW: 9A.44.070 Crime Code: _____
Date of Crime: between February 1, 1985 and March 31, 1985
Incident Number: 86-097272
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

Count _____ Crime: _____
RCW: _____ Crime Code: _____
Date of Crime: _____
Incident Number: _____
Special Finding: _____

/ / Additional current offenses attached as Appendix A.

This court has jurisdiction of the defendant and the subject matter. It is ADJUDGED that the defendant is guilty of the current offenses set forth above.

6868 11/9/2385 88125

The following group(s) of current offenses encompassed the same criminal conduct and should be counted as one crime in determining the offender score (RCW 9.94A.400 (1)): _____

The following counts in the _____ information are hereby dismissed: _____

3. **CRIMINAL HISTORY:** This Court finds that the defendant has the following criminal history used in calculating the offender score pursuant to RCW 9.94A.360:

	Sentencing Date	Crime	Adult/Juvenile	Crime Date	Crime Type
1.	9/6/85	Ind Lib	adult	2/21/85	
2.					
3.					
4.					

The defendant's criminal history is attached in Appendix B and incorporated by reference into this Judgment and Sentence.

4. **SENTENCE DATA:**

	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count I	1	IX	36 - 48 months	20 years
Count				
Count				

Presumptive data score sheet(s) is attached as Appendix C and is incorporated by reference into this judgment.

5. **SENTENCE ALTERNATIVE FINDINGS:**

A. **FIRST TIME OFFENSE:** The defendant qualifies as a first-time offender pursuant to RCW 9.94A.120 (5). The first-time offender waiver is/is not used in this sentence.

B. **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify a sentence above/below the standard range for count(s) _____. Findings of Fact and Conclusions of Law pursuant to RCW 9.94A.120 (3) and Stipulations as to real and material facts, if any, are attached as Appendix D.

C. **SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE:** The defendant has been convicted of a felony sexual offense as specified in RCW 9.94A.120 (7) (a) and is eligible for use of the special sexual offender sentencing alternative. The defendant and the community will/will not benefit from use of the alternative.

D. **SEXUAL OFFENDER TREATMENT PROGRAM:** The defendant has been convicted of a felony sexual offense, does not qualify for the special sexual offender sentencing alternative, and is to be sentenced to a term of confinement of more than one year but less than six years. The defendant shall/shall not be ordered committed for evaluation for treatment pursuant to RCW 9.94A.120 (7) (b).

E. RESTITUTION: Based on information concerning restitution attached in Appendix E, the defendant is responsible for payment of restitution:

For offenses adjudicated herein pursuant to RCW 9.94A.140 (1).

For offenses which were not prosecuted and for which the defendant agreed to make restitution in a plea agreement, which is attached to Appendix E.

To be set by later order of court.

6. MONETARY PAYMENTS JUDGMENT AND SENTENCE: The defendant is ADJUDGED to be responsible for making monetary payments as stated below, within ten years, under the supervision of the Department of Corrections. The defendant is ORDERED to make the following monetary payments:

A. COSTS: Court costs in the amount of \$ _____

B. VICTIM ASSESSMENT: Penalty assessment pursuant to RCW 7.68.035: \$ ~~50.00~~ 70.00

C. RESTITUTION: Restitution payments to: (subject to modification based on failure of co-defendants to pay):

\$ _____

\$ _____

\$ _____

\$ _____

Restitution information attached in Appendix E -- total amount ordered: \$ _____

D. RECOUPMENT: Recoupment for defense attorney's fees of to D.A.C. \$ 250⁰⁰

E. FINE: A monetary fine in the amount of \$ 365⁰⁰

F. DRUG ENFORCEMENT FUND: Reimbursement in the amount of \$ _____

G. OTHER: Other costs in the amount of \$ _____

for _____ T \$ 685⁰⁰

The above payments shall be made to the Pierce County Superior Court Clerk, 110 County-City Building, Tacoma, Washington 98402, and the Clerk of the Court shall credit monetary payments to the above obligations in the above listed order according to the rules of the clerk and according to the following terms:

PER PROBATION OFFICER

Terms to be set by defendant's Community Correction Officer.

Provided that no forfeiture proceedings are pending at the date of this order, bail or bond is exonerated.

(SUSPENDED SENTENCE - SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE)

7. DETERMINATE JUDGMENT AND SENTENCE: The court having found that the defendant is eligible for the Special Sexual Offender Sentencing Alternative (RCW 9.94A.120 (7) (a)) and that the community and the defendant will benefit from its use, and further having determined that no legal cause exists to show why a further judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED that the defendant serve the determinate sentence and abide by the conditions set forth below.

SENTENCE: The defendant is sentenced to a term of total confinement of _____ days/months on Count I, _____ days/months on Count II, _____ days/months on Count III. The terms of this sentence are concurrent. The execution of this sentence is SUSPENDED and the following conditions are imposed:

[] A. CONFINEMENT: _____ days/months of total confinement in the Pierce County Jail, with credit for time served prior to this date, to commence _____.

[] B. ALTERNATE CONVERSION:

[] a. _____ days/months of total confinement are hereby converted to _____ days/months of partial confinement to be served subject to the rules and regulations of the Pierce County Jail.

[] b. _____ days of total confinement are hereby converted to _____ hours of community service to be completed as follows: _____

[] c. The defendant is eligible for an alternative sentence to total confinement pursuant to RCW 9.94A .380 but alternatives were not utilized because: _____

[X] C. TREATMENT: 24 days/months of ~~inpatient~~ outpatient sex offender treatment as follows: continue treatment with Comte and Associates follow all directions of

[X] D. COMMUNITY SUPERVISION: 12 months in community supervision by the Department of Corrections, to commence immediately, the defendant shall report by _____ to the Community Corrections Office. The defendant shall comply with all rules, regulations and requirements of the Community Corrections Officer.

[] E. OTHER CONDITIONS: _____

[] Additional conditions of sentence are attached as Appendix E.

Violations of the conditions or requirements of this sentence are punishable by up to 60 days of confinement for each violation (RCW 9.94A.200 (2)) or by revocation of the suspension and execution of the sentence (RCW 9.94A.120 (7) (a) (vi)).

The following appendices are attached to this Judgment and Sentence and are incorporated by this reference:

- [] Appendix A, Current Offenses
- [] Appendix B, Current History
- [] Appendix C, Sentence Scoring Worksheet(s)
- [] Appendix D, Exceptional Sentence
- [] Appendix E, Restitution

DONE IN OPEN COURT this 26 day of September, 19 86.

[Signature]
JUDGE

Presented by:

Kathleen Proctor
Deputy Prosecuting Attorney

Approved as to form:

Michael R Johnson
Attorney for the Defendant

F I L E D
IN COUNTY CLERKS OFFICE
OCT - 3 1986 P.M.
PIERCE COUNTY, WASHINGTON
BRIAN J. THURMAN, County Clerk

FINGERPRINTS



Fingerprint(s) of: DANIEL J STOCKWELL

Attested by: Sonntag BRIAN SONNTAG
CLERK COUNTY CLERK

By: Charbonneau JUDICIAL ASSISTANT
DEPUTY CLERK Date: 9/26/86 SEP 26 1986

CERTIFICATE

I, _____,
Clerk of this court, certify that the above is a true
copy of the Judgment and Sentence in this action
on record in my office.

Dated: _____

Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

State I.D. Number WA10438137

Date of Birth 7/27/51

Sex male

Race white

8888 11/9/2888 88138

Exhibit 4



DEPARTMENT OF CORRECTIONS
DIVISION OF COMMUNITY SERVICES

2 OCT 30 1983

REPORT TO: The Honorable Robert H. Peterson

DATE: 10/20/89

NAME: STOCKWELL, DANIEL J.

NUMBER: DOC #912170
Pierce Co. #86-1-00878-2 (B)

CRIME: Statutory Rape in the First Degree

SENTENCE: 12 Months Comm. Supv.
10 Years LFO

DATE OF SENTENCE OR PAROLE: 09/26/86

TERMINATION DATE: 09/26/87 Comm. Supv.
09/26/96 LFO

PRESENT LOCATION: 7410 South Park
Tacoma, Washington 98408

STATUS: Level 6

TYPE OF REPORT: REQUEST FOR DISCHARGE

The above named Offender has satisfactorily completed the sentence requirements in the category(s) marked below:

Community Supervision for Months

hours community service

Payment of:

<u>-0-</u>	Court costs
<u>\$612.50</u>	Restitution
<u>\$365.00</u>	Fine
<u>\$250.00</u>	Attorney's fees
<u>\$ 70.00</u>	Crime Victim's Compensation
<u>-0-</u>	Drug Fund Assessment
<u>-0-</u>	Supervision Fees

FILED
IN COUNTY CLERK'S OFFICE

A.M. **OCT 27 1989** P.M.

PIERCE COUNTY WASHINGTON
TED RUTH COUNTY CLERK
BY DEPUTY

Other: _____

Comments: Please be advised that Mr. Stockwell has now fulfilled all conditions imposed by the Court. A Discharge is recommended at this time.

Submitted By:
William R. Lester
Community Corrections Officer
6422 Montclair Road S.W.
Tacoma, WA 98499
(206) 964-9387

Approved By:
Stuart K. Forsythe, Supervisor
Orig & 2: Court
cc: PA
Agency File
Present to Court

6888 11/9/2006 00147

Exhibit 5

STATE OF WASHINGTON,

Plaintiff

vs.

DANIEL J. STOCKWELL

Defendant.

NO. Pierce Co. #86-1-00878-2 (B)

CERTIFICATE AND ORDER OF DISCHARGE

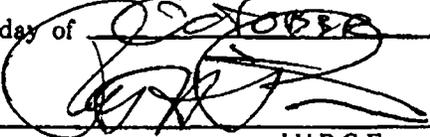
DOC #912170

This matter having come on regularly before the above entitled court pursuant to RCW 9.94A.220, the court having been notified by the Secretary of the Department of Corrections or his designee that the above named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the court having reviewed the records and file herein, and being fully advised in the premises, Now, Therefore,

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed.

IT IS HEREBY ORDERED that the defendant be DISCHARGED from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be HEREBY RESTORED.

DONE IN OPEN COURT this 25 day of OCTOBER, 1989

JUDGE

Presented by:

Kathleen Proctor
Deputy Prosecuting Attorney

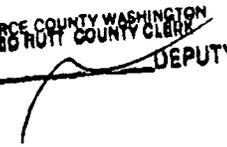
CERTIFICATE AND ORDER OF DISCHARGE

WRL:smg
10/20/89

FILED
IN COUNTY CLERK'S OFFICE

A.M. **OCT 27 1989** P.M.

PIERCE COUNTY WASHINGTON
TERRY COUNTY CLERK

BY  DEPUTY

JC

Exhibit 6

1
2
3
4
5
6
7 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
8 DIVISION TWO

9 IN RE PERSONAL RESTRAINT OF:
10 DANIEL J. STOCKWELL,
11 Petitioner.

} NO. _____
} CERTIFICATION OF NEIL M. FOX
}
}
}
}
}

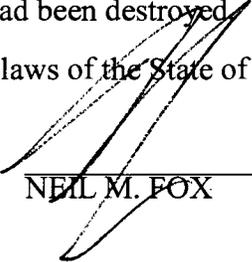
14
15 I, Neil M. Fox, certify and declare as follows:

16 1. I am an attorney licensed to practice law in the State of Washington. I
17 represent Mr. Stockwell, the petitioner.

18 2. In the Summer of 2007, I attempted to locate transcripts for the guilty plea and
19 sentencing hearings (7/29/86 & 9/26/86) from Pierce County Superior Court No. 86-1-00878-
20 2. On August 6, 2007, I received a phone call from Amy Roetto, Managing Court Reporter at
21 Pierce County Superior Court. Ms. Roetto informed me that none of the court reporters' notes
22 from the two hearings were still in existence and had been destroyed.

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

25 12/21/08 Seattle WA
DATE AND PLACE



NEIL M. FOX

Exhibit 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN RE PERSONAL RESTRAINT OF: DANIEL J. STOCKWELL, Petitioner.	}	NO. _____ CERTIFICATION OF DANIEL J. STOCKWELL
---	---	--

I, Daniel J. Stockwell, certify and declare as follows:

1. I am the petitioner in this Personal Restraint Petition.
2. With regard to Pierce County Superior Court No. 86-1-00878-2, I was never given notification by the Department of Corrections of the requirements of RCW 10.73.090 & .100 regarding limitations on collateral attack petitions.

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

12/19/07
DATE AND PLACE


DANIEL J. STOCKWELL

COHEN & IARIA
1008 WESTERN AVENUE
SEATTLE, WA 98104
206-624-9694

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

IN RE THE PERSONAL RESTRAINT OF
DAN STOCKWELL,
Petitioner.

COA NO. 37230-4-11

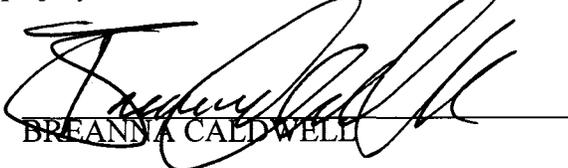
CERTIFICATE OF SERVICE

I, Breanna Caldwell, certify and declare, that on the 21st day of Decemberr 2007, I deposited copies of this Personal Restraint Petition, with proper postage attached, addressed to:

Gerald Horne
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave. South, Room 946
Tacoma WA 98402-2171

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

12/21/07 Cohen & Iaria
DATE AND PLACE


BREANNA CALDWELL

ORIGINAL