

NO. 38359-4-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

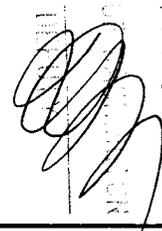
Respondent,

v.

ANTHONY FELLAS,

Appellant.

BY _____
SUPERIOR COURT
CLALLAM COUNTY
OCT 19 11:13 AM '07



County of Clallam
Clerk of Superior Court

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

APPELLANT'S OPENING BRIEF

NANCY P. COLLINS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
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A. SUMMARY OF ARGUMENT.

Anthony Fellas was sentenced on the same day for two related offenses, a felony and gross misdemeanor, and the court imposed concurrent terms. After Fellas served his 18 months in prison, he won reversal of the felony conviction on appeal and the State dismissed it. Even though the felony and misdemeanor sentences were concurrent, and the misdemeanor's statutory maximum was 1 year in jail, the court insisted Fellas serve the entirety of his misdemeanor sentence without credit for the time he served in prison on the felony. On appeal, he argues the trial court denied him due process by refusing to accord him credit for time he served on the vacated, concurrent, interrelated felony sentence.

B. ASSIGNMENT OF ERROR.

The court lacked statutory authority and violated Fellas's rights to due process and equal protection by refusing to credit his misdemeanor sentence with time he served on a concurrently imposed felony sentence after the felony was vacated and dismissed.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR.

By statute and pursuant to the constitutional requirements of due process and equal protection of the law, the court may not

refuse to credit a person convicted of a crime with time spent in confinement on that offense. Here, while Fellas was serving two interrelated and concurrent sentences, the State dismissed one of the convictions, but the court refused to credit Fellas with the time he spent in custody on the vacated offense. Did the court lack statutory authority and violate Fellas's rights to due process and equal protection by refusing to credit his misdemeanor sentence with time he served on a concurrently imposed and dismissed felony offense?

D. STATEMENT OF THE CASE.

Anthony Fellas was arrested based on a warrant and the arresting officer found him in possession of both drugs and a knife, resulting in his prosecution under a single cause number for felony drug possession and gross misdemeanor possession of a knife. CP 73. On December 1, 2006, the court imposed concurrent sentences for the two offenses, including a DOSA sentence of 12 months of prison followed by community custody for the felony, and 180 days jail with 24 months of probation for the misdemeanor. CP 61 (copy of Judgment and Sentence attached as Appendix A). A single Judgment and Sentence addressed both sentences. Id.

This Court reversed Fellas's felony conviction on appeal, finding the prosecution violated his right to remain silent. CP 51. The prosecution decided not to pursue the felony after its reversal and dismissed the charge on May 29, 2008. CP 42. Despite the dismissal of the felony charge, the court on remand ordered that Fellas serve the remaining misdemeanor sentence, including 180 days that had been suspended pending his completion of 24 months of probation. CP 41. Fellas objected to being required to submit to Department of Corrections (DOC) probation crafted for his felony DOSA sentence when the remaining offense was a misdemeanor offense that did not involve drug use. 6/10/08RP 5, 9; 6/30/08RP 5; 9/26/08RP 8-9. He also told the court he had spent "a year and a half" in prison on this case. 5/28/08RP 6. He explained he had "served 18 months." *Id.* at 8. He asked who would pay him back for the time he served, and the court said he had no remedy for the time he served on the felony and still must serve his misdemeanor sentence. *Id.* at 6; 6/6/08 RP 5.

The trial court refused to revisit its imposition of probation and ordered Fellas to submit to UAs and all conditions required by DOC. 6/6/08RP 4-7. The court held a hearing on an alleged probation violation and DOC administratively sanctioned Fellas for

violating terms of probation by imposing additional jail sentences, even after the felony was dismissed and despite his having served 18 months in prison, for his 12-month sentence and the ultimate revocation of six months of community custody imposed in a DOSA sentence. CP 34, p.6 (DOC record showing DOSA revoked October 19, 2007); 5/28/08RP 8; 9/5/08RP 6.

Fellas timely appeals. CP 8. Pertinent facts are addressed in further detail in the argument section below.

E. ARGUMENT.

THE COURT IMPERMISSIBLY REFUSED TO GIVE FELLAS CREDIT FOR TIME HE SERVED ON A CONCURRENT FELONY SENTENCE, AND THUS IMPROPERLY REQUIRED FELLAS TO SERVE MORE THAN THE STATUTORY MAXIMUM FOR A MISDEMEANOR

Anthony Fellas had served 18 months in prison for a felony sentence before it was vacated and dismissed. Because Fellas had also been sentenced to a concurrently imposed gross misdemeanor as part of the same cause number and in a single Judgment and Sentence as the now-dismissed felony, he asked the court to re-evaluate his misdemeanor sentence in light of the dismissal of the felony. The court struck the mandatory fine it had imposed for the drug possession offense, imposed new attorneys

fees that it had ordered before, and otherwise ordered Fellas to serve all remaining time without regard for the time he had already served on the concurrent felony sentence. 6/6/08RP 4. Because the felony and misdemeanor sentences were concurrently entered for a single cause number, Fellas was entitled to receive credit toward his misdemeanor sentence for time he served on the felony after it was reversed and dismissed.

1. Fellas received concurrent sentences and had served the statutory maximum for a gross misdemeanor. A trial court's sentencing authority stems entirely from statute, subject to the constitutional mandates of due process, a jury trial, and prohibition against cruel and unusual punishment. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Ammons, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986). In Washington, sentences are presumed concurrent unless expressly ordered to be consecutive. RCW 9.92.080(2). Sentences involving misdemeanors may be imposed consecutively if based on separate acts and must be expressly ordered at the time of sentencing. Id.

Fellas's two convictions were based on a single act. CP 51, p.2 (Court of Appeals decision). He was accused of possessing both drugs and a knife at the same time, and the prosecution

charged him with two possession offenses in a single document, under one cause number. Id.; CP 73 (Information). At his 2006 sentencing hearing, the court imposed concurrent sentences for his two offenses.

On the same day, December 1, 2006, under the **same cause number**, the court imposed the following **concurrent** terms of sentence:

Felony	Gross Misdemeanor
Custody: 12 months	Custody: 365 days, with 185 days suspended
Community custody: 6 months ¹	Probation: 24 months

As of May 29, 2008, when the felony was dismissed, Fellas had served 18 months in prison, following the revocation of his community custody. 5/29/08RP 6, 8; CP 34, p.6.

The statutory maximum jail term that may be served on a gross misdemeanor is 12 months. RCW 9.92.020. A person serving a term of probation must be credited with time served on that offense. State v. Stanley, 47 Wn.App. 715, 737 P.2d 296 (1987). By statute, a court may suspend terms of a misdemeanor sentence, but the statute does not grant the court authority to

¹ The court amended its initially ordered 12 months of community custody to six months after prompted by the Department of Corrections. CP 59.

refuse to give a person credit for time incarcerated. Instead, “the statute limits the maximum aggregate county jail term that may be imposed as a condition of probation to 1 year.” Id. (citing RCW 9.95.210). Fellas must be given credit for the time he served in jail under the same cause number for both his concurrently imposed misdemeanor and felony sentences. His probation may not be extended when he has served the statutory maximum sentence in prison possible for a gross misdemeanor.

2. Fellas is entitled to credit for time he spent on the concurrent, reversed and vacated sentence. The state and federal constitutions protect a person’s liberty interest in receiving credits for time spent serving a sentence, as well as his right to equal enforcement of sentencing terms. Wolff v. McDonnell, 547 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); In re Personal Restraint of Gronquist, 138 Wn.2d 388, 397, 978 P.2d 1083, cert. denied, 528 U.S. 1009 (1999); U.S. Const. amend. 14; Wash. Const. art. I, §§ 3, 22.

“Where a defendant who has successfully appealed has spent time in prison prior to winning his or her appeal, the State must give credit for that time against the sentence for any second conviction.” State v. Phelan, 100 Wn.2d 508, 515, 671 P.2d 1212

(1983). When offenses stem from a single incident and are charged under the same cause number, the sentence imposed is one, interrelated term. State v. White, 123 Wn.App. 106, 112, 97 P.3d 34 (2004). By imposing a concurrent sentence, the court could not disregard its obligation to accord Fellas credit for all time served on the felony offense toward the 365-day term imposed on the gross misdemeanor.

Here, the court initially imposed a one-year, concurrent, but partially suspended misdemeanor sentence. CP 61. Before the State dismissed the felony conviction, Fellas had served 18 months in prison, and was required to successfully completion of 24 months of misdemeanor probation or would face additional time in prison, of up to 185 days. CP 61, p. 8; 5/29/08RP 6, 8. Additionally, Fellas served at least one 60-day probation violation after the felony was dismissed. 8/8/08RP 5.

But now that the felony sentence was stricken, the related misdemeanor sentence must be re-adjusted. The maximum term he may be ordered to serve on the gross misdemeanor was 12 months in jail, and Fellas has already served that time. RCW 9.92.020.

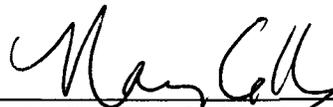
The sentences imposed on December 1, 2006, under a single cause number, were concurrent, interrelated terms. White, 123 Wn.App. at 112. Fellas is entitled to receive credit for all time spent in custody and on probation on the ultimately illegal concurrent felony sentence toward his misdemeanor conviction. By maintaining Fellas's misdemeanor probation, even though he served over the 365-day maximum for that offense, the court has deprived Fellas of his liberty without constitutional or statutory authorization.

F. CONCLUSION.

For the foregoing reasons, Mr. Fellas respectfully requests this Court find Fellas's sentence fully satisfied because the trial court lacked authority to extend his misdemeanor sentence without crediting him for time he served in prison under a concurrent sentencing order.

DATED this 12th day of March 2009.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A

SCANNED-12

COPIES SENT TO:		Date
Agency	#	12-1-06
Pros	<input checked="" type="checkbox"/>	
Def. Adv.	<input checked="" type="checkbox"/>	
Jail	<input checked="" type="checkbox"/>	
Sent G	<input checked="" type="checkbox"/>	
CCSO		
PAPD		
SPD		
FPD		
PI		
Ren		
DOC		
Health/HIV		
CA		
Judge		
EM/CSW		

FILED
 CLALLAM CO CLERK
 2006 DEC -1 P 3:30
 BARBARA CHRISTENSEN

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

STATE OF WASHINGTON,
 Plaintiff,
 vs.
 ANTHONY WAYNE FELLAS
 Defendant.
 SID: WA13754285
 If no SID, use DOB: 05/17/1969
 PAPD No. 06-11663

NO. 06-1-00403-4

FELONY JUDGMENT AND SENTENCE (FJS)
 Prison
 RCW 9.94A.712 Prison Confinement
 Jail One Year or Less
 RCW 9.94A.712 Prison Confinement
 Special Drug Offender Sentencing Alternative
 Clerk's Action Required, para 4.5
 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8

I. HEARING

06 9 01287 7

1.1 A sentencing hearing was held and the Defendant, the Defendant's lawyer and the (Deputy) Prosecuting Attorney were present.

II. FINDINGS

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

2.1 **CURRENT OFFENSE(s):** The Defendant was found guilty on November 1, 2006 by **jury verdict** of:

	CRIME	RCW	CRIME DATE
Count I	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE: METHAMPHETAMINE, a Class C felony #	69.50.4013(1)	08/25/2006

In addition, the Defendant was found guilty on November 1, 2006 by **plea** of:

Count II	UNLAWFUL POSSESSION OF A DANGEROUS WEAPON, a gross misdemeanor #	9.41.250	08/25/2006
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(If the crime is a drug offense, include the type of drug in the second column.) as charged in the () Information.

- Additional current offenses are attached in Appendix 2.1.
- The Court finds that the Defendant is subject to sentencing under **RCW 9.94A.712**
- A special verdict/finding that the offense was predatory was returned on Count(s) _____. RCW 9.94A._____.
- A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) _____. RCW 9.94A._____.
- A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) _____. RCW 9.94A.____, 9A.44.010.

JUDGMENT AND SENTENCE (JS) (Felony)
 (RCW 9.94A.500, .505)
 (WPF CR 84.0400 (6/2006))

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- 1 [] A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.
- 2 [] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- 3 [] A special verdict/finding for use of **firearm** was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.
- 4 [] A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.
- 5 [] A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- 6 [] A special verdict/finding that the Defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- 7 [] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- 8 [] The crime charged in Count(s) _____ involve(s) **domestic violence**.
- 9 [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): _____
- 10 [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juvenile	TYPE OF CRIME
1 Assault-2	07/06/1988	Jefferson WA	05/05/1988	Adult	V
2 Attempted Burglary-2 Possession of Burglar Tools	01/18/1991	Clallam WA 90-1-00127-9	10/28/1990	Adult	
3 Possession of a Controlled Substance: Meth Possession of a Controlled Substance: Marijuana	01/05/2001	00-1-00270-9	08/21/2000 08/21/2000	Adult	
4		03-1-00296-7			
5 Possession of a Controlled Substance: Meth. Possession of a Controlled Substance: Marijuana	11/08/2005	05-1-00181-1	09/09/2005 09/09/2005	Adult	
		06-1-00029-2			

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- Additional criminal history is attached in Appendix 2.2.
- The Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525): _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: _____

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	4	I	6+ - 18m		6+ - 18m	5 YRS
2	N/A	N/A	0 - 12 m		0 - 12 m	12 M.

TOTAL ENHANCEMENTS to be served consecutively (RCW 9.94A.310(3)(e) and (4)(e))	months
--	--------

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

- within below the standard range for Count(s) _____.
- above the standard range for Count(s) _____.

The Defendant and State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the Defendant, found by the court after the Defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

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

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

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.500, .505)
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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: _____

III. JUDGMENT

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

3.2 The Court DISMISSES Count(s) _____

The Defendant is found NOT GUILTY of Count(s) _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Name and address – address may be withheld and provided confidentially to Clerk of the Court's Office)

RTN solely /	\$	Restitution to:	
RJN joint & several	\$	Restitution to:	
	\$	Restitution to:	
	\$	Restitution to:	
	\$	Restitution to:	Drug enforcement fund of <u>Olympic Peninsula Narcotics Enforcement Team (OPNET)</u> County Code 118.000.010 Bars Code 351.50.01
	\$	Restitution to:	Clallam County Jail for pre- and post-conviction medical costs incurred while incarcerated in County Jail [] hearing to be held _____, 20__ [] with review every three months thereafter. Dept code 001.840.000 Bars Code 349.23.00.00.20

PCV \$ 500.00 Victim assessment (\$500.00 for felony and gross misdemeanor; \$250.00 for misdemeanor) RCW 7.68.035

\$ Domestic Violence assessment RCW 10.99.080

CRC \$ Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ WFR

Sheriff's service fees \$ 45.80 SFR/SFS/SFW/WRF

Jury demand fee \$ JFR

Extradition costs \$ EXT

Other \$

PUB \$ Fees for court appointed attorney RCW 9.94A.760

WRF \$ Court appointed defense expert and other defense costs RCW 9.94A.760

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1	FCM/ MTH	\$	Fine RCW 9A.20.021, <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
2	CDF/LDI/ FCD NTF /SAD/SDI	\$2,900. (1,000.00) 1,900.00	Drug enforcement fund of <u>GPNET</u> <u>DRUG COURT</u>	RCW 9.94A.760
3	CLF	\$	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
4		\$	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.7541
5	RTN/RJN	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum)	RCW 38.52.430
6		\$	Other costs for: _____ i.e., Interpreter costs (CIS) Evaluations--court ordered (EVA) Lab/blood test (BBS) Investigator services (INS) Drug Court Program (DCT) Meth lab clean-up (MTH)	
7		\$	TOTAL	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution and LFO order may be entered. RCW 9.94A-.753. A restitution hearing: shall be set by the prosecutor is scheduled for _____, 20__.

RESTITUTION. Schedule attached.
 Restitution ordered above shall be paid jointly and severally with:

RJN	NAME of other defendant(s)	Cause Number	Victim's Name	Amount-\$
				\$
				\$

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8)

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the Court specifically sets forth the rate here: Not less than

\$ _____ per month commencing _____, 20__ . RCW 9.94A.760

The Defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

In addition to the other costs imposed herein, the court finds that the Defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ . (JLR) RCW 9.94A.760.

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

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

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.500, .505)
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HIV TESTING. The Defendant shall submit to HIV testing. RCW 70.24.340

4.3 The Defendant shall not have contact with _____ (name, DOB)
including, but not limited to, personal, verbal, telephonic, written or contact through a third party
for _____ years (not to exceed the maximum statutory sentence).
[] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault
Protection Order is filed with this Judgment and Sentence.
[] The Defendant is ordered to reimburse _____
(name of electronic monitoring agency) at _____, for the cost of pretrial
electronic monitoring in the amount of \$ _____.

4.4 OTHER: JOIN "PAY OR APPEAR" CALENDAR
PAYING \$25.00 PER MONTH
STARTING NOVEMBER 2007c

COURT I

4.5 SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The court finds that the Defendant is a drug offender who is eligible for the special sentencing alternative and the court has determined that the special drug offender sentencing alternative is appropriate. The court waives imposition of a sentence within the standard range and imposes the following sentence:

(a) Prison-Based Alternative (effective for sentences imposed on or after October 1, 2005):

(1) Confinement. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC) (half of the midpoint of the standard range, or 12 months, whichever is greater): 12 months of total confinement in the custody of DOC.

Confinement shall commence immediately unless otherwise set forth here: _____

Work release is authorized, if eligible and approved. If the midpoint of the standard range is 24 months or less, no more than three months may be served in work release status. RCW 9.94A.731 The Defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

(2) Community Custody. Defendant shall serve 0 months in community custody. (The remainder of the midpoint of the standard range.) The Defendant shall comply with the community custody conditions in paragraph 4.6.

(b) Residential Chemical Dependency Treatment-Based Alternative (effective for sentences imposed on or after October 1, 2005).

(1) Defendant shall serve _____ months in community custody (A term equal to one-half of the midpoint of the standard range or two years, whichever is greater) under the supervision of the Department of Corrections (DOC), on the condition that the Defendant enters and remains in residential chemical dependency treatment certified under chapter 70.96A RCW for _____ months.

(2) The Defendant shall comply with the community custody conditions in paragraph 4.6. DOC shall make chemical dependency assessment and treatment services available to the Defendant during the term of community custody, within available funding.

(3) A progress hearing is set for _____ (date). A treatment termination hearing is scheduled for three months before the expiration of the term of community custody, on _____ (date), or to be set later.

4.6 COMMUNITY CUSTODY CONDITIONS. RCW 9.94A.660. Defendant shall report to DOC, Armory Square Mall, 228 West First Street, Suite R, Port Angeles, WA 98362 not later than 72 hours after sentencing or release from custody and the Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the Defendant during the period of community custody, shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, shall not use illegal controlled substances and shall comply with any other conditions of community custody stated in this Judgment and Sentence or other conditions that may be imposed by the court or DOC during community custody:

(a) Undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Department of Social and Health Services.

(b) Undergo urinalysis or other testing to monitor drug-free status. [] The Defendant shall pay the statutory rate to DOC, while on community custody, to offset the cost of urinalysis.

(c) Additional conditions (choose at least three):

pay all court-ordered legal financial obligations

report as directed to a community corrections officer

- 1 notify the court or community corrections officer in advance of any change in Defendant's address or employment
- 2 remain within or outside of prescribed geographical boundaries
- 3 devote time to specific employment or training
- 4 perform community restitution (service) work
- 5 stay out of areas designated by the judge

Other conditions: COGN II - ~~180 DAYS~~ TO SERVE SUPERVISOR PROGRAM
FOR 24 MONTHS -
185 SUSPENDED
SUPERVISED UNDER ~~STRICT~~ CONDITIONS FOR
24 MONTHS.

7 4.7 (a) **Additional Confinement Upon Violation Of Sentence Conditions.** If the Defendant violates any of the sentence conditions in Section 4.6 above, or, for offenses committed on or after June 8, 2000, is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department, unless waived by the offender. If the department finds that the conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. For offenses committed on or after June 8, 2000, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of the sentence, the offender shall be subject to all rules relating to earned release time. RCW 9.94A.660.

15 (b) **Confinement Ordered at the Treatment Termination Hearing** (effective for sentences imposed on or after October 1, 2005). At the treatment termination hearing, the court may impose a term of total confinement equal to one-half of the midpoint of the standard sentence range. Confinement imposed at the hearing shall be followed by the term of community custody in paragraph 4.8. Within available funding, DOC shall make chemical dependency assessment and treatment services available to the Defendant during the terms of total confinement and community custody.

18 4.8 **ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM ALTERNATIVE PROGRAM.** (a) For offenses committed on or after June 8, 2000, the following term of community custody is ordered and shall be imposed upon the Defendant's failure to complete or Defendant's administrative termination from the special drug offender sentencing alternative program (b) (effective for sentences imposed on or after October 1, 2005) For a Defendant sentenced under the residential chemical dependency treatment-based alternative, the following term of community custody is ordered after the term of total confinement imposed at the treatment termination hearing.

22 Defendant shall serve a range from ~~3~~ to ~~12~~ months in community custody. While on community custody, the Defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts

1 necessary to monitor compliance with the orders of the court as required by DOC. The residence
2 location and living arrangements are subject to the prior approval of DOC while in community
custody.

3 The Defendant shall not consume any alcohol. - NEITHER PURCHASE OR POSSESS

4 Defendant shall have no contact with: KNOWN DRUG USERS OR DEALERS

5 Defendant shall remain within outside of a specified geographical boundary, to wit: _____
AS SET BY D.O.C.

6 The Defendant shall participate in the following crime-related treatment or counseling services: _____

7 The Defendant shall undergo an evaluation for treatment for domestic violence
8 substance abuse mental health anger management and fully comply with all
recommended treatment.

9 The Defendant shall comply with the following crime-related prohibitions: _____

10 Other conditions: _____

V. NOTICES AND SIGNATURES

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5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the Defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

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

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

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the Defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION. N/A**

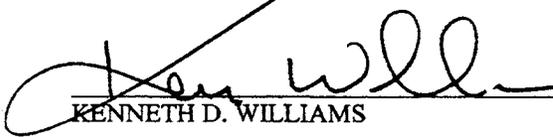
5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the Defendant's driver's license. RCW 46.20.285.

5.9 If the Defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the Defendant must notify DOC and the Defendant's treatment information must be shared with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:** The state recommended
DO SA

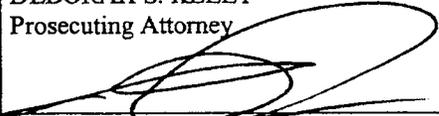
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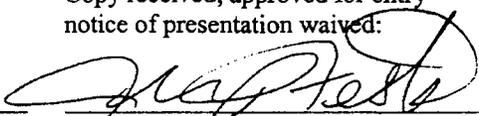
DONE IN OPEN COURT and in the presence of Defendant this date: December 1, 2006.

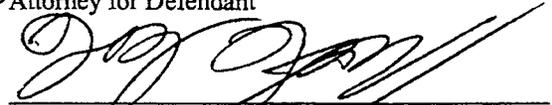

KENNETH D. WILLIAMS JUDGE

Presented by:
DEBORAH S. KELLY
Prosecuting Attorney

Copy received, approved for entry
notice of presentation waived:


TIMOTHY DAVIS WBA #33427
Deputy Prosecuting Attorney


JONATHAN FESTE WBA # 29966
Attorney for Defendant


ANTHONY WAYNE FELLAS Defendant

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

Defendant's signature: _____

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

WITNESS MY HAND AND SEAL of the
said Superior Court affixed this date: December, 2006

Clerk of the Court of said county and state, by: _____, Deputy Clerk

/ljm

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CAUSE NUMBER of this case: 06-1-00403-4
State of Washington v. ANTHONY WAYNE FELLAS

IDENTIFICATION OF DEFENDANT

(If no SID, take fingerprint card for State Patrol)

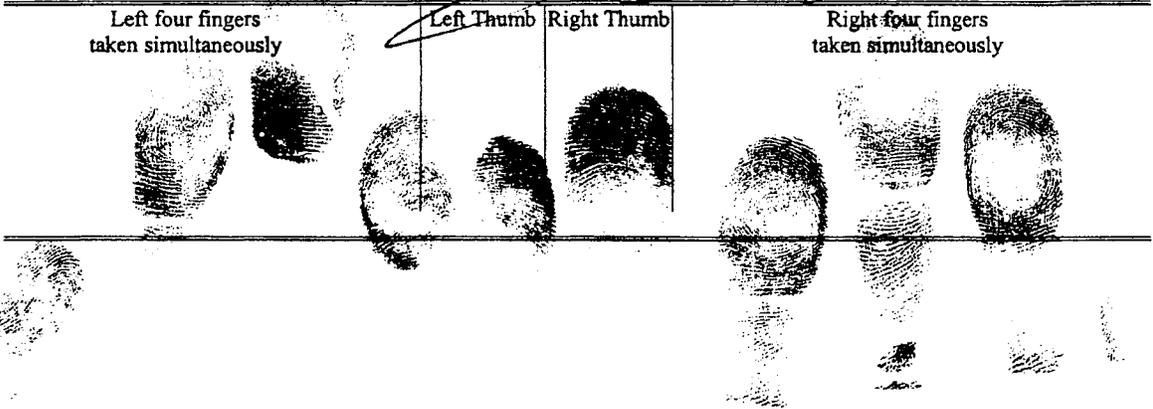
SID No.	WA13754285	Date of Birth	05/17/1969
FBI No.	583 295 HA4	Date of Arrest	08/25/2006
DOL No. (for traffic convictions)		Local ID No. (pick one):	WA0050100 (PAPD)
		OCA	06-11663
PCN No.		Other	
Alias name, DOB:	DOC #943493 5'05, 170 lbs., brown hair, brown eyes		
LKA:			

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

Fingerprints: I attest that I saw the same Defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: Emily Carpenter Deputy Clerk. Dated: 12-1-06, 2006.

DEFENDANT'S SIGNATURE: 



JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.500, .505)
(WPF CR 84.0400 (6/2006))

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

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

STATE OF WASHINGTON,)	
)	COA NO. 38359-4-II
Respondent,)	
)	
v.)	
)	
ANTHONY FELLAS,)	
)	
Appellant.)	

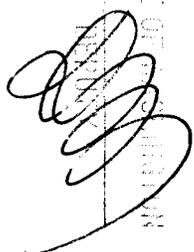
DECLARATION OF SERVICE

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 12TH DAY OF MARCH, 2009, A COPY OF APPELLANT'S OPENING BRIEF WAS SERVED ON THE PARTIES BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL:

- Carol L. Case
Attorney at Law
1212 Campbell Ave Apt 3
Port Angeles WA 98362-2776

- Anthony Fellas
2301 W. 18th Street, B7
Port Angeles, WA 98363

BY  STATE OF WASHINGTON
03/12/09 PM 12:07
COURT OF APPEALS
DIVISION II

SIGNED IN SEATTLE, WASHINGTON THIS 12TH DAY OF MARCH, 2009

x 