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I. STATEMENT OF FACTS

The defendant pled guilty on September 10, 2008, to an Amended Information charging him with Robbery in the First Degree, Attempted Robbery in the First Degree, and a second count of Attempted Robbery in the First Degree. A copy of the Statement of Defendant on Plea of Guilty (CP 5) is attached hereto and by this reference incorporated herein.

At the time of the change of plea, he was represented by attorney James Sowder.

The change of plea was in form of a Newton plea to the crimes. The prosecutor set out a long dissertation of what constituted the elements of the three counts that the defendant was pleading guilty to. (RP 428-431). The defendant was obviously taking the benefit of a bargain. After the recitation by the prosecutor, the court addressed the defendant as follows:

THE COURT: All right. Mr. Coonrod, the State - - again, trial date is set for Monday and assuming that the jury heard all of this evidence and you believe that they could, based on that evidence, could find you guilty of all eight counts or some combination thereof, that your standard range if you were convicted on all counts apparently is 153 to 195 months, that you face a potential deadly weapon enhancement of two years and you face also aggravated penalties if the jury so finds that you (inaudible) multiple crimes and/or - - I forgot the other aggravator.

MR. FAIRGRIEVE: It would be unpunished offenses essentially, Your Honor.

THE COURT: Unpunished conduct, and since you'd be scoring over nine, and that if the jury made those findings, you could face even greater penalties.

Reviewing everything, do you feel that in entering your plea of guilty, that this is in your best interest, that the sentencing reduction is something that you feel is - - you don't want to accept the risk of the greater sentence and that, as such; you're entering your plea at this time. Does that fairly summarize it?

MR. COONROD: Yeah.

THE COURT: And you wish the Court to accept your plea?

MR. COONROD: Yes, sir.

THE COURT: Okay. Mr. Coonrod, your signature sir?

MR. COONROD: Yes, sir.

- (RP 431, L.22 – 432, L.25)

The matter was set over approximately three weeks at everyone's request. (RP 435). Sentencing took place on September 25, 2008. Prior to the sentencing hearing, there was a motion by the defendant to withdraw his plea because of a purported conflict of interest (CP 19) and there was also a response from Mr. Sowder indicating a motion to withdraw. That Motion to Withdraw was not certified to the Court of Appeals by the appellant. The State has requested supplementation of the

clerk's papers to allow this very important documentation to also come to the court for consideration.

The court discussed on the day of sentencing with Mr. Coonrod the fact that this was his third attorney and that it just didn't look like he was able to get along with anyone. (RP 442, L.11-13). The court did not rule on the motion for the attorney to withdraw and Mr. Sowder was standing by during this entire portion of the proceedings. The court allowed the defendant to explain his concerns (RP 440) and the defendant was indicating to the court that he was forced to plead guilty and that he was coerced. (RP 442; 449). The court also allowed the defendant to explain his position and to vent about his concerns. (RP 443-449). The court had Mr. Sowder's motion to withdraw and noted in that, contrary to the statements by the defendant, that Mr. Sowder had conducted 37 interviews and had 21 jail visits with the defendant. (RP 452). Nevertheless, the defendant referred to Mr. Sowder as "a slime of the earth lawyer". (RP 454, L.1). Judge Harris reiterated that Mr. Sowder had over 20 years of experience and was imminently qualified to handle this case and further was asking for input from Mr. Sowder during the course of these proceedings. (RP 454; 457). In fact, Mr. Sowder addresses questions concerning the sentencing:

MR. SOWDER: The basis with that was that that's a fairly standard provision about dismissing counts. The issue about as ordered would be that Mr. Coonrod has a hip problem. He's not going to work for a number of years, probably qualifies for Social Security and is probably unemployable. So we would ask the Court not to set any more charges than are necessary and to again - -

- (RP 458, L.17-23)

The court only allowed Mr. Sowder to withdraw after the completion of the hearings. (RP 462).

II. RESPONSE TO ISSUES

A defendant does not have an absolute, Sixth Amendment right to choose any particular advocate. State v. DeWeese, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1992) (citing Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988)). A defendant dissatisfied with appointed counsel has the burden to show good cause, such as an irreconcilable conflict or a complete breakdown in communication to warrant substitution of counsel. State v. Stenson, 132 Wn.2d 668, 734, 940 P.2d 1239 (1997) (Stenson I). In determining whether an irreconcilable conflict exists, the court must consider: (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel's representation, and (3) the effect of any substitution on the scheduled

proceedings. Stenson I, 132 Wn.2d at 734. Additionally, “scrutiny of counsel’s performance is highly deferential and courts will indulge in a strong presumption of reasonableness.” State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987) (citing Strickland v. Washington, 446 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). When determining whether good cause exists, the trial court will look for significant issues, such as conflict of interest, irreconcilable conflict, or complete breakdown of communication between attorney and client. Stenson, 132 Wn.2d at 734. But a general loss of confidence or trust or a failure to attain “a certain ‘rapport’” with counsel, without more, is not sufficient to substitute new counsel. Stenson, 142 Wn.2d at 725 (quoting Frazer v. United States, 18 F.3d 778, 783 (9th Cir. 1994)); Stenson, 132 Wn.2d at 734.

Unsupported allegations are not enough to require substitution and a defendant cannot rely on a general loss of confidence or trust to justify appointment of new counsel. State v. Schaller, 143 Wn. App. 258, 268, 177 P.3d 1139 (2007), rev. denied, 164 Wn.2d 1015 (2008). However, “if the relationship between the lawyer and client completely collapses,” refusal to substitute counsel violates a defendant’s constitutional right to effective assistance of counsel. In re Personal Restraint of Stenson, 142 Wn.2d 710, 722, 16 P.3d 1 (2001) (Stenson II) (citing United States v. Moore, 159 F.3d 1154, 1158 (9th Cir. 1998)).

In determining whether the trial court abused its discretion in concluding there was not an irreconcilable conflict on appeal, the Appellate Court must consider: (1) the extent of the conflict, (2) the adequacy of the court's inquiry, and (3) the timeliness of the motion. Stenson II, 142 Wn.2d at 723-24; State v. Sherrill, 145 Wn. App. 473, 186 P.3d 1157 (2008).

In State v. Varga, 151 Wn.2d 179, 200-201, 86 P.3d 139 (2004) the Supreme Court indicated as follows:

Foy also claims that the trial court erred in refusing to appoint Foy new counsel and denying Foy's motion for a continuance to find new counsel. However, "a defendant does not have an absolute, Sixth Amendment right to choose any particular advocate." State v. Stenson, 132 Wn.2d 668, 705, 733, 940 P.2d 1239 (1997) (citing State v. DeWeese, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1991)). To justify appointment of new counsel, a defendant "must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant." *Id.* at 734. Generally, a defendant's loss of confidence or trust in his counsel is not sufficient reason to appoint new counsel. *Id.* (citing Johnson v. State, 497 So. 2d 863, 868 (Fla. 1986)). On appeal, we review a trial court's decision to deny new court appointed counsel and motions for continuances for abuse of discretion. See *Id.* at 733-34 (citing DeWeese, 117 Wn.2d at 376); see also State v. Rosborough, 62 Wn. App. 342, 346, 814 P.2d 679 (1991).

Other than his own general dissatisfaction and distrust with counsel's performance, Foy fails to point to anything in the record which would demonstrate that the trial court abused its discretion when it denied Foy's request for new counsel

and a continuance. Here, the trial court judge afforded Foy the opportunity to explain the reason for his dissatisfaction with counsel. Foy's RP at 4-5. Moreover, the trial court questioned Foy's counsel about the merits of Foy's complaint. *Id.*; see Stenson, 132 Wn.2d at 737 (holding that the trial court's denial of new court appointed counsel was not abuse of discretion given that he considered the defendant's complaints and evaluated counsel's performance); see also Rosborough, 62 Wn. App. at 347-48. In response, Foy's counsel stated that he had consulted with Foy about trial tactics and advised Foy of his legal rights. Foy's RP at 5. Consequently, the record indicates that the trial court considered the merits of Foy's requests and provides us with no evidence of abuse of discretion.

In addition, "the determination of whether or not the dissatisfaction with his court-appointed counsel by an indigent accused person is justified and warrants appointment of another attorney rests in the sound discretion of the trial court." State v. Shelton, 71 Wn.2d 838, 840, 431 P.2d 201 (1967) (citing State v. Lytle, 71 Wn.2d 83, 426 P.2d 502 (1967)).

The defendant relies on State v. Harell, 80 Wn. App. 802, 911 P.2d 1034 (1996) to support his contention that he was entitled to "conflict-free" counsel to assist in his motion to withdraw his plea. In Harell, the court granted a hearing on the motion to withdraw, based on an allegation of ineffective assistance of counsel. *Id.* at 803. Despite that fact that Harell's attorney did not assist at the hearing and even testified as a witness for the State, the trial court found the assistance was not ineffective and denied the motion to withdraw the plea. *Id.* The Appellate

Court determined that “a plea withdrawal hearing is a critical stage giving rise to the right to assistance of counsel” and that Harrell had been denied his right to counsel at the hearing. Id. at 804-05.

The defendant contends that his allegations of ineffective assistance created a conflict of interest requiring appointment of “conflict-free” counsel. However, the courts have declined to adopt a rule that requires new counsel upon any claim of ineffective assistance. “If a defendant could force the appointment of substitute counsel simply by expressing a desire to raise a claim of ineffective assistance of counsel, then the defendant could do so whenever he wished, for whatever reason.” State v. Stark, 48 Wn. App. 245, 253, 738 P.2d 684 (1987) (citing State v. Sinclair, 46 Wn. App. 433, 436-37, 730 P.2d 742 (1986)). A mere allegation of ineffective assistance does not create an inherent conflict of interest requiring substitute counsel. State v. Rosborough, 62 Wn. App. 341, 346, 814 P.2d 679 (1991).

The record does not support the defendants’ assertions that (1) his plea was not voluntarily and intelligently made; (2) his plea was coerced; and (3) he did not read and understand the terms of the agreement. On the contrary, the record shows that the defendant (1) signed and filed a Statement of Defendant on Plea of Guilty (CP 5) and filed his plea agreement signed by the defendant, his attorney, the prosecutor and

approved and accepted by the court; (2) responded affirmatively when the trial court asked whether he had read and understood the plea agreement and the rights that he was relinquishing; and (3) indicated to the trial court that he was entering into the plea agreement voluntarily.

A guilty plea must be “knowing, intelligent, and voluntary in order to satisfy due process requirements.” State v. Stowe, 71 Wn. App. 182, 186, 858 P.2d 267 (1993) (citing Henderson v. Morgan, 425 U.S. 637, 644-45, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976)); In re Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987); In re Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987). But when a defendant fills out a written plea statement under CrR 4.2(g) and acknowledges that he has read and understands it and that its contents are true, the Appellate Court presumes that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998) (citing State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982)). In addition “when the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.” Perez, 33 Wn. App. at 262 (citing State v. Ridgley, 28 Wn. App. 351, 623 P.2d 717 (1981)).

There is absolutely nothing in this record to indicate that the defendant did not properly plead guilty. Further, it is obvious from the

record, that he was doing this to obtain the benefit of a bargain. His attorney had negotiated this down from seven counts and further ended up getting less time at sentencing than the State was requesting. The defendant in rambling on about the reasons to withdraw his plea never really demonstrated evidence that was of any value. In fact, in Mr. Sowder's Motion to Withdraw, he goes through in minute detail contacts with various potential defense witnesses and areas of defense that the defendant says were not raised. The defendant, when talking about this with the court, was talking about a myriad of other things besides that (pictures of where his feet were, etc.) but never really addressed in any concrete manner that the relationship had broken down and that he did not plead guilty to receive the benefit of a bargain.

The appellant on page 7 of the brief makes mention that there was no questioning of Mr. Sowder by the court about the breakdown in communication or about his advocacy at the sentencing. Yet, in Mr. Sowder's Motion to Withdraw, there is ample evidence and information that the court was able to utilize. In fact, as previously noted, the court did indicate the number of witnesses interviewed and the other matters that Mr. Coonrod was addressing. In other words, the defense attorney was present, was actively involved in both motions (Motion to

Withdraw and Sentencing) and helped the court formulate and process an appropriate sentence.

No one at any of these hearings asked for a continuance. The trial court used its discretion to determine that this matter should proceed given the lateness of the filing of this documentation and the affect that it would have on the scheduled proceedings. In reviewing the criteria in Stenson II, the extent of the conflict appears to be minimal given the recitation of the defense attorney in his motion to withdraw. The court had the opportunity to review the information supplied by the defendant's attorney and also heard and reviewed the information supplied by the defendant. Therefore, the adequacy of the court's inquiry was quite deep in this matter. Further, the timeliness of the motion creates a problem in scheduling of trials and other matters in dealing with this particular case. The court made it clear that the defendant had already exhausted three attorneys and there was just no indication that anyone was going to satisfy him. Given the nature of some of the things he considered to be "evidence" it is obvious that he would have difficulties working with any attorney. The State submits that the bottom line is that the trial court did not abuse its discretion in proceeding with this matter in the manner that it did.

Finally, if the Appellate Court is inclined to believe that there has been some type of problem with his motion to withdraw and sentencing,

the State submits that it would be appropriate to send back for those matters. However, this was a valid plea of guilty that was voluntarily and knowingly made by the defendant. At that time, there appeared to be no conflicts with his attorney and he understood what he was doing and why he was doing it. Given the responses that he made and the inquiries made by the court, together with the recitations made by the prosecutor and the defense attorney at the time of the change of plea, it is apparent that the change of plea should stand.

III. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 25 day of August, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

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

APPENDIX

14

FILED
SEP 10 2008
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,)
Plaintiff,)
v.)
MARX WAYNE COONROD,)
Defendant.)

No. 07-1-00157-3
STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(STDFG)

1. My true name is MARX WAYNE COONROD.
2. My age is 52 and my date of birth is 5-11-1956.
3. I went through the ____ th grade. *College*
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) 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 is James J. Sowder.
 - (b) I am charged with: Count 2-Robbery in the First Degree, Count 7-Attempted Robbery in the First Degree, and Count 8-Attempted Robbery in the First Degree.
The elements are: Count 2- In Clark County, Washington on or about December 19, 2006, with the intent to commit the crime of theft, Marx Wayne Coonrod, did unlawfully take personal property that the defendant did not own from the person of another or in said persons presence against said persons will by the use or threatened use of immediate force, violence or fear of injury to said person or the property of said person or the person or property of another and that taking occurred with and against Washington Mutual Bank.
Count 7 - In Clark County, Washington on or about January 23, 2007, Marx Wayne Coonrod, with the intent to commit the crime of robbery in the first degree did an act which was a substantial step toward the commission of that crime by attempting to take unlawful property that the defendant did not own from the person of another or in said persons presence against said persons will by the use or threatened use of immediate force, violence or fear of injury to said person or the property of said person and the

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1 taking occurred within and against Washington Mutual Bank.

2 **Count 8** - In Clark County, Washington on or about January 23, 2007, Marx Wayne
3 Coonrod, with the intent to commit the crime of robbery in the first degree did an act
4 which was a substantial step toward the commission of that crime by attempting to take
5 unlawful property that the defendant did not own from the person of another or in said
6 persons presence against said persons will by the use or threatened use of immediate
7 force, violence or fear of injury to said person or the property of said person and the
8 taking occurred within and against Key Bank.

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5. **I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:**

- (a) 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) The right to **remain silent** before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and **question the witnesses** who testify against me;
- (d) 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) The **right to appeal** a determination of guilty **after a trial**.

6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:**

- (a) Each crime I am charged with carries a maximum sentence, a fine, and a **STANDARD SENTENCE RANGE** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
2	7	87-116 months	0	87-116 months	18-36 months	Life/\$50,000
7	7	65.25-87 mos.	0	65.25-87 mos.		
8	7	65.25-87 mos.	0	65.25-87 mos.		

* (F) firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (See RCW 46.61.520), (JP) juvenile present
(SM) Sexual motivation, RCW 9.94A.533(8).

- (b) The standard sentence range is based on the crime charged and my **criminal history**. Criminal history includes **prior convictions** and **juvenile** adjudications or convictions, whether

1 in this state, in federal court, or elsewhere.

2 (c) The prosecuting attorney's statement of my **criminal history is attached** to this
3 agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's
4 statement is correct and complete. If I have attached my own statement, I assert that it is correct
5 and complete. If I am convicted of any additional crimes between now and the time I am
6 sentenced, I am **obligated to tell** the sentencing judge about those convictions.

7 (d) If I am convicted of any **new crimes before sentencing**, or if any additional criminal
8 history is discovered, both the standard sentence range and the prosecuting attorney's
9 recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I
10 cannot change my mind if additional criminal history is discovered even though the standard
11 sentencing range and the prosecuting attorney's recommendation increase, and even though a
12 mandatory sentence of life imprisonment without the possibility of parole is required by law.

13 (e) In addition to sentencing me to confinement for the standard range, the judge will order
14 me to pay **\$500.00 as a victim's compensation** fund assessment. If this crime resulted in injury
15 to any person or damage to or loss of property, the judge will order me to make restitution,
16 unless extraordinary circumstances exist which would make restitution inappropriate. The
17 amount of restitution may be up to double my gain or double the victim's loss. The judge may
18 also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

19 (f) ~~For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the
20 judge may order me to serve up to one year of community supervision if the total period of confinement
21 ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault
22 of a child in the second degree, or any crime against a person in which a specific finding was made that
23 I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year
24 of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent
25 offense, the judge will order me to serve at least two years of community placement. The actual period
26 of community placement, community custody, or community supervision may be as long as my earned
27 early release period. During the period of community placement, community custody, or community
supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions
and requirements placed upon me.~~

28 For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement,
29 under certain circumstances the judge may order me to serve up to one year of community custody if the
30 total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls
31 into one of the offense types listed in the following chart, the court will sentence me to community
32 custody for the community custody range established for that offense type unless the judge finds
33 substantial and compelling reasons not to do so. If the period of earned release awarded per RCW
34 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted

1 of falls into more than one category of offense types listed in the following chart, then the community
2 custody range will be based on the offense type that dictates the longest term of community custody.

<u>Offense Type</u>	<u>Community Custody Range</u>
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

11 During the period of community custody, I will be under the supervision of the
12 Department of Corrections, and I will have **restrictions and requirements placed upon me.**
13 **My failure to comply with these conditions will render me ineligible for general assistance, RCW**
14 **74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more**
15 **restrictive confinement status or other sanctions. I have been advised on my third community**
16 **custody violation the Department shall return me to total confinement in the state**
17 **correctional facility to serve the remaining portion of my sentence unless a special**
18 **findings is made to keep me in the community. (RCW 9.94A.737(2)).**

19 I do not waive any right I may have to appear before a court to contest community
20 custody violations.

21 (g) **The prosecuting attorney will make the following recommendation to the judge:**

- 22 1. Both parties stipulate to a standard range of 87-116 months even if Defendant's prior
23 convictions washout. Each party is free to recommend within that standard range.
- 24 2. Defendant acknowledges the state will request restitution even on the dismissed counts.
25 Defendant will agree to pay if ordered.
- 26 3. The Prosecutor will dismiss Counts 1, 3, 4, 5 and 6 with prejudice.
- 27 4. Set over sentencing.
5. Payment of \$200 court costs, \$500 crime victim compensation fund fee, court appointed
attorney fees, \$100 DNA fee, \$100 lab fee, \$500 fine and restitution, if any, to be
determined.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge
must impose a sentence within the standard range unless there is a finding of substantial and

1 compelling reasons not to do so. I understand the following regarding **exceptional sentences**:

2 (i) The judge may impose an exceptional sentence below the standard range if the judge
3 finds mitigating circumstances supporting an exceptional sentence.

4 (ii) The judge may impose an exceptional sentence above the standard range if I am
5 being sentenced for more than one crime and I have an offender score of more than nine

6 (iii) The judge may also impose an exceptional sentence above the standard range if the
7 State and I stipulate that justice is best served by imposition of an exceptional sentence
8 and the judge agrees that an exceptional sentence is consistent with and in furtherance
9 of the interests of justice and the purposes of the Sentencing Reform Act.

10 (iv) The judge may also impose an exceptional sentence above the standard range if the
11 State has given notice that it will seek an exceptional sentence, the notice states
12 aggravating circumstances upon which the requested sentence will be based, and facts
13 supporting an exceptional sentence are proven beyond a reasonable doubt to a
14 unanimous jury, to a judge if I waive a jury, or by stipulated facts.

15 I understand that if a standard range sentence is imposed, the sentence cannot be appealed by
16 anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can
17 appeal the sentence.

18 (i) **If I am not a citizen** of the United States, a plea of guilty to an offense punishable as
19 a crime under state law is grounds for deportation, exclusion from admission to the United
20 States, or denial of naturalization pursuant to the laws of the United States.

21 (j) I understand that **I may not possess**, own, or have under my control any firearm unless
22 my right to do so is restored by a court of record and that I must immediately surrender any
23 concealed pistol license. RCW 9.41.040.

24 (k) I understand that I will be **ineligible to vote** until that right is restored in a manner
25 provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const.
26 Art. VI, § 3, RCW 29A.04.079, 29A.08.520.

27 (l) Public assistance will be suspended during any period of imprisonment.

(m) I understand that I will be required to have a biological sample collected for purposes
of **DNA identification analysis**. For offenses committed on or after July 1, 2002, I will be
required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will
cause me undue hardship.

**NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING
PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE
DEFENDANT AND THE JUDGE.**

1 (n) This offense is a **most serious offense** or strike as defined by RCW 9.94A.030, and if
2 I have at least two prior convictions for most serious offenses, whether in this state, in federal
3 court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life
4 imprisonment without the possibility of parole.

5 (o) The judge may sentence me as a **first-time offender** instead of giving a sentence within
6 the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as
7 90 days' confinement, and up to two years community supervision if the crime was committed
8 prior to July 1, 2000, or up to two years of community custody if the crime was committed on
9 or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the
10 judge could require me to undergo treatment, to devote time to a specific occupation, and to
11 pursue a prescribed course of study or occupational training.

12 (p) If this crime involves a **kidnapping offense** involving a minor, I will be required to
13 register where I reside, study or work. The specific registration requirements are set forth in
14 the "Offender Registration" Attachment.

15 (q) If this is a **crime of domestic violence**, I may be ordered to pay a domestic violence
16 assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court
17 may order me to participate in a domestic violence perpetrator program approved under RCW
18 26.50.150.

19 (r) If this crime involves **prostitution, or a drug offense associated with hypodermic
20 needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS)
21 virus.

22 (s) The judge may sentence me under the **special drug offender sentencing alternative**
23 (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be
24 examined by a licensed or certified treatment provider before deciding to impose a DOSA
25 sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based
26 alternative or a residential chemical dependency treatment-based alternative. If the judge
27 imposes the **prison-based alternative**, the sentence will consist of a period of total confinement
in a state facility for one-half of the midpoint of the standard range, or 12 months whichever
is greater. During confinement, I will be required to undergo a comprehensive substance abuse
assessment and to participate in treatment.

The judge will also impose a term of community custody of at least one-half of the midpoint of
the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the
sentence will consist of a term of community custody equal to one-half of the midpoint of the
standard sentence range or two years, whichever is greater, and I will have to enter and remain

1 in a certified residential chemical dependency treatment program for a period of *three to six*
2 *months*, as set by the court. As part of this sentencing alternative, the court is required to
3 schedule a progress hearing during the period of residential chemical dependency treatment and
4 a treatment termination hearing scheduled three months before the expiration of the term of
5 community custody. At either hearing, based upon reports by my treatment provider and the
6 department of corrections on my compliance with treatment and monitoring requirements and
7 recommendations regarding termination from treatment, the judge may modify the conditions
8 of my community custody or order me to serve a term of total confinement equal to one-half
9 of the midpoint of the standard sentence range, followed by a term of community custody under
10 RCW 9.94A.715.

11 During the term of community custody for either sentencing alternative, the judge could prohibit
12 me from using alcohol or controlled substances, require me to submit to urinalysis or other
13 testing to monitor that status, require me to devote time to a specific employment or training,
14 stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require
15 other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e).
16 The judge, on his or her own initiative, may order me to appear in court at any time during the
17 period of community custody to evaluate my progress in treatment or to determine if any
18 violations of the conditions of the sentence have occurred. If the court finds that I have violated
19 the conditions of the sentence or that I have failed to make satisfactory progress in treatment,
20 the court may modify the terms of my community custody or order me to serve a term of total
21 confinement within the standard range.

22 (t) If I am subject to community custody and the judge finds that I have a **chemical**
23 **dependency** that has contributed to the offense, the judge may order me to participate in
24 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the
25 circumstances of the crime for which I am pleading guilty.

26 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver
27 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including
its salts, isomers, and salts of isomers, a mandatory **methamphetamine clean-up fine** of
\$3,000 will be assessed. RCW 69.50.401(2)(b).

(v) If this crime involves a violation of the state drug laws, my eligibility for state and federal
food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21
U.S.C. § 862a.

(w) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be
suspended or revoked.

1 (x) If this crime involves the offense of vehicular homicide while under the influence of
2 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January
3 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular
4 homicide for each prior offense as defined in RCW 46.61.5055(8).

5 (y) The crime of _____ has a **mandatory minimum**
6 sentence of at least _____ years of total confinement. The law does not allow any reduction
7 of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence
8 of life imprisonment without the possibility of parole described in paragraph 6[n].

9 (z) I am being sentenced for **two or more serious violent offenses** arising from separate
10 and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run
11 consecutively unless the judge finds substantial and compelling reasons to do otherwise.

12 (aa) I understand that the offense(s) I am pleading guilty to include a Violation of the
13 Uniform Controlled Substances Act in a **protected zone enhancement** or manufacture of
14 methamphetamine when a juvenile was present in or upon the premises of manufacture
15 enhancement. I understand these enhancements are mandatory and that they must run
16 consecutively to all other sentencing provisions.

17 (bb) I understand that the offense(s) I am pleading guilty to include a **deadly weapon,**
18 **firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation
19 enhancements are mandatory, they must be served in total confinement, and they must run
20 consecutively to any other sentence and to any other deadly weapon, firearm, or sexual
21 motivation enhancements.

22 (cc) I understand that the offenses I am pleading guilty to include both a conviction under
23 RCW 9.41.040 for **unlawful possession of a firearm in the first or second degree and one**
24 **or more convictions for the felony crimes of theft of a firearm or possession of a stolen**
25 **firearm.** The sentences imposed for these crimes shall be served consecutively to each other.
26 A consecutive sentence will also be imposed for each firearm unlawfully possessed.

27 (dd) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining
assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six
months if this is my first conviction and for at least 12 months if this is my second or subsequent
conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(ee) The judge may authorize **work ethic camp.** To qualify for work ethic authorization my
term of total confinement must be more than twelve months and less than thirty-six months, I
can not currently be either pending prosecution or serving a sentence for violation of the
uniform controlled substance act and I can not have a current or prior conviction for a sex or
violent offense.

1 7. **I plead guilty to** Count 2-Robbery in the First Degree, Count 7- Attempted Robbery in the
2 First Degree and Count 8-Attempted Robbery in the First Degree. I have received a copy of
3 that Information.

4 8. I make this plea **freely and voluntarily**.

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

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

9 11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.
10 This is my statement:

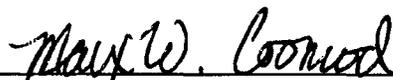
11 **I, MARX WAYNE COONROD BELIEVE THE STATE CAN PROVE BEYOND A**
12 **REASONABLE DOUBT IN COUNT 1-ROBBERY IN THE FIRST DEGREE AND COUNTS**
13 **7 AND 8-ATTEMPTED ROBBERY IN THE FIRST DEGREE. I WISH TO ENTER A**
14 **CHANGE OF PLEA TO ACCEPT THE BENEFIT OF THE PLEA BARGAIN. I**
15 **ACKNOWLEDGE THAT IF I WENT TO TRIAL AND WAS CONVICTED ON ALL COUNTS**
16 **MY STANDARD RANGE WOULD BE 153-195 MONTHS WITH THE POSSIBILITY OF AN**
17 **EXCEPTIONAL SENTENCE BECAUSE MY OFFENDER SCORE WOULD BE 9 OR MORE.**
18 **I UNDERSTAND IF I WAS CONVICTED AFTER TRIAL I WOULD HAVE A DEADLY**
19 **WEAPON ENHANCEMENT OF 2 YEARS OF WHICH NO GOOD TIME IS REDUCED AND**
20 **WOULD RUN CONSECUTIVE TO ALL OTHER TIME. BASED ON WANTING TO**
21 **ACCEPT THE BENEFIT OF THE PROSECUTOR'S PLEA BARGAIN AND ASSESSING**
22 **THE RISK AT TRIAL, I WILL AGREE THE STATE CAN PROVE BEYOND A**
23 **REASONABLE DOUBT THAT IN COUNT 2, ON OR ABOUT DECEMBER 19, 2006, I,**
24 **MARX WAYNE COONROD, WITH INTENT TO COMMIT THEFT DID UNLAWFULLY**
25 **TAKE PERSONAL PROPERTY THAT I DID NOT OWN FROM THE PERSON OF KIMLYN**
26 **REM AGAINST HER WILL BY USE OR THREATENED USE OF IMMEDIATE FORCE,**
27 **VIOLENCE OR FEAR OF INJURY TO HER OR THE PROPERTY OF HER OR THE**
PERSON OR PROPERTY OF ANOTHER AND THE TAKING OCCURRED IN
WASHINGTON MUTUAL BANK AT A BANK LAWFULLY ENGAGED IN BUSINESS IN
THIS STATE.

I BELIEVE THE STATE CAN PROVE BEYOND A REASONABLE DOUBT THAT
FOR COUNT 7, I, MARX WAYNE COONROD, ON OR ABOUT JANUARY 23, 2007 WITH
THE INTENT TO COMMIT A CRIME OF ROBBERY IN THE FIRST DEGREE DID AN
ACT WHICH WAS A SUBSTANTIAL STEP TOWARD THE COMMISSION OF THAT
CRIME BY ATTEMPTING TO UNLAWFULLY TAKE PERSONAL PROPERTY THAT I

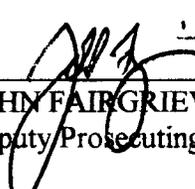
1 DID NOT OWN FROM THE PERSON OF ANOTHER THAT I DID NOT OWN FROM THE
2 PERSON OF ANOTHER, FAWN MCKAY, IN HER PRESENCE OR AGAINST HER WILL
3 BY THE USE OR THREATENED USE OF IMMEDIATE FORCE, VIOLENCE OR FEAR OF
4 INJURY TO HER OR HER PROPERTY OR THE PROPERTY OF ANOTHER AND THE
5 TAKING OCCURRED FROM WASHINGTON MUTUAL BANK AT A BANK LAWFULLY
6 ENGAGED IN BUSINESS IN THIS STATE.

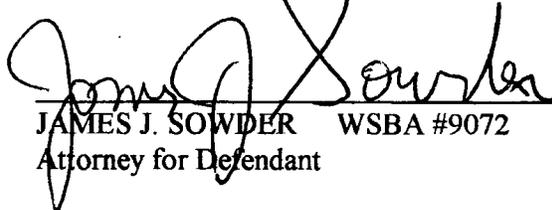
7 I BELIEVE THE STATE CAN PROVE BEYOND A REASONABLE DOUBT IN
8 COUNT 8, I, MARX WAYNE COONROD, ON OR ABOUT JANUARY 23, 2007 WITH THE
9 INTENT TO COMMIT A CRIME OF ROBBERY IN THE FIRST DEGREE DID AN ACT
10 WHICH WAS A SUBSTANTIAL STEP TOWARDS THE COMMISSION OF THAT CRIME
11 BY ATTEMPTING TO UNLAWFULLY TAKE PERSONAL PROPERTY THAT I DID NOT
12 OWN FROM THE PERSON OF ANOTHER, KEY BANK INCORPORATED, IN THE
13 PRESENCE OF ANOTHER PERSON OR AGAINST SUCH A PERSONS WILL BY THE
14 THREATENED USE OR IMMEDIATE FORCE, VIOLENCE OR INJURY TO ANOTHER
15 PERSON AND THAT TAKING WOULD HAVE OCCURRED WITHIN KEY BANK, A BANK
16 LAWFULLY ENGAGED IN BUSINESS IN THE STATE OF WASHINGTON.

17 12. My lawyer explained to me and we have fully discussed all of the above paragraphs and the
18 "Offender Registration" attachment, if applicable. I understand them all. I have been given a copy of this
19 "Statement of Defendant on Plea of Guilty". I have no further questions to ask the judge.

20 
21 _____
22 DEFENDANT

23 I have read and discussed this statement with the
24 defendant and believe the defendant is competent
25 and fully understands the statement.

26 
27 _____
28 JOHN FAIRGRIEVE, WSBA# 23107
29 Deputy Prosecuting Attorney

30 
31 _____
32 JAMES J. SOWDER WSBA #9072
33 Attorney for Defendant

34 The foregoing statement was signed by the defendant in open court in the presence of the
35 defendant's lawyer and the undersigned judge. The defendant asserted that (check one):

36 (a) The defendant had previously read the entire statement above and that the defendant
37 understood it in full; or

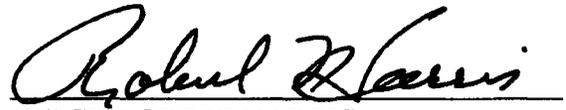
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(b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

(c) An interpreter had previously read to the defendant the entire statement above and the defendant understood it in full. The interpreter's declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED this 10 day of September, 2008.


JUDGE ROBERT HARRIS

ROBBERY, FIRST DEGREE

(RCW 9A.56.200)

CLASS A FELONY

VIOLENT

I. OFFENDER SCORING (RCW 9.94A.525(8))

ADULT HISTORY:

Enter number of serious violent and violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 2 = _____

Enter number of nonviolent felony dispositions x 1/2 = _____

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

Enter number of other serious violent and violent felony convictions x 2 = _____

Enter number of nonviolent felony convictions x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:
STANDARD RANGE
(LEVEL IX)

0	1	2	3	4	5	6	7	8	9 or more
31 - 41 months	36 - 48 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 range for the completed crime (RCW 9.94A.595).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 18 to 36 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- E. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-7, Sexual Motivation Enhancement – Form C.
 - Statutory maximum is a term of life imprisonment in a state correctional institution (RCW 9A.20.021(1)).

The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules.

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

STATE OF WASHINGTON,) No. 07-1-00157-3
Plaintiff,)
v.) DEFENDANT'S STATEMENT OF
MARX WAYNE COONROD,) CRIMINAL HISTORY
Defendant.)

Defendant, MARX WAYNE COONROD, by and through his attorney, JAMES J. SOWDER,
submits the following criminal history as undisputed:

SEE ATTACHED CRIMINAL HISTORY

Total Points: _____

DATED this _____ day of September, 2008.

JAMES J. SOWDER WSBA#9072
Attorney for Defendant

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

STATE OF WASHINGTON,
Plaintiff,
v.
MARX WAYNE COONROD,
Defendant

No. 07-1-00157-3

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

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/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
THEFT 1	MULTNOMAH/OR 000130223	1/10/2000	4/25/2000	
THEFT 1	MULTNOMAH/OR 990231133	2/13/1999	4/20/1999	
THEFT 1	CLACKAMAS/OR CR0002393	8/19/2000	11/20/2001	
ATTEMPT THEFT 1	CLACKAMAS/OR CR0002393	8/26/2000	11/20/2001	

- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this _____ day of September, 2008.

Defendant

Suzan L. Clark, WSBA#17476
Attorney for Defendant

John P. Fairgrieve, WSBA#23107
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

