

COURT OF APPEALS
DIVISION II

NO. 38611-9-II

09 JUL 16 PM 12:00

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

STATE OF WASHINGTON
BY *JW*
DEPUTY

STATE OF WASHINGTON, Respondent

v.

JERALD W. DAVENPORT, JR., Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROGER A. BENNETT
CLARK COUNTY SUPERIOR COURT CAUSE NO. 00-1-02097-0

BRIEF OF RESPONDENT

Attorneys for Respondent:

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P M 7-14-09

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I. NATURE OF THE APPEAL

This appeal by the defendant comes closely with the prior appeals and personal restraint petitions that have been filed by the defendant. In reviewing the clerk's papers that have been designated by this appellant attorney, it is obvious that he is not including all of the necessary documentation to allow the Appellate Court to make a decision. Clearly, this matter has previously to the Court of Appeals and clerk's indexes and designations of clerk's papers have previously been provided. It is interesting to note that in the current appellate brief he attaches his appendices, partial documents from Oregon which he had not designated in his designation of clerk's papers. Nevertheless, the designations were previously made and submitted at the time of briefing. The State will continue to use all of the clerk's papers designations from the previous matters. It appears that the defense attorney is treating this as though it is a personal restraint petition. The State submits this appears to be a direct appeal after a resentencing and not necessarily a personal restraint petition.

II. STATEMENT OF THE CASE

On November 19, 2000, the defendant pointed a loaded gun at the employees of a convenience store and demanded money from them. They

complied with his order and provided him money that was in the cash registers. (RP 327-29, 350-53).

The defendant fled the scene in a borrowed car.

A customer arrived at the convenience store shortly after the robbery. He advised the police that he believed that the green Gulf Volkswagen that he observed at the crime scene was associated with the robber. (RP 369).

Based on this information, the police began looking for the vehicle. A short time later, law enforcement saw the suspect vehicle and began a pursuit. With emergency lights activated, the police followed the car in a southerly direction from Washington into Oregon. (RP 399). At speeds reaching 110 miles per hour, the vehicle swerved in and out of traffic. (RP 409, 412, 416).

The suspect vehicle crossed the lanes of travel and took an off ramp from the freeway. When the police found it, it was abandoned. (RP 402). In searching the vehicle, the police found various handgun rounds for .45 caliber and nine millimeter guns. (RP 413). They also found birth certificates, several pictures and clothing. (RP 405-06). The police took one of the photographs and provided it to Officer Martin Holloway. He showed it to one of the victims and told her that the person in the vehicle may or may not be in the photograph. One of the victims

pointed to the defendant's picture and identified him as the person who committed the crime. (RP 420). When Officer Carol Boswell showed the photograph to the other victim, she was unable to positively identify anybody. Shortly thereafter, the victim talked to the police again and said she thought about it all night and was certain that the person who committed the robbery was in the photograph. (RP 290-91).

Within a few days of the crime, the police presented photo montages to both victims. Each was shown the laydown separately. Each identified the defendant in the montage. (RP 292-93, 360-62). Both victims also were able to identify the defendant in court notwithstanding the fact that he had changed his appearances. (RP 333, 356). Both victims indicated that they were identifying him in court from the date of the incident and that the photograph with two people in it and the photo montage did not influence or affect their ability to identify the victim in court from the robbery. (RP 279, 294, 355).

On November 22, 2000, the defendant was taken into custody by Portland officers. The defendant was taken to the hospital because of a self-inflicted knife wound on his neck. While there, he received various medications. (RP 35). However, upon his release a few hours later, nobody could discern a noticeable effect on the defendant. He was conscious, alert, and well oriented. (RP 43, 61-62, 466, 468). His

responses were oriented to the questions asked. He did not appear to be under the influence of alcohol or controlled substances. (RP 33-34).

Upon the defendant's release from the hospital, he was transported to the Portland Police Bureau's precinct where Officer Wally Stefan of the Vancouver Police Department conducted an interview. (RP 467). After advising the defendant of his Miranda rights and after the defendant waived his rights, the defendant fully confessed to committing the robbery. (467). He admitted going to the store while armed. He further told Officer Stefan that he confronted the female store clerks and demanded money. (RP 472). He stated that he used a .357 Taurus gun. He would not tell the officers who provided the gun to him. (RP 473). He stated that after being chased by the police, he abandoned the vehicle. He ran from the car and hurled the gun close to a nearby factory. (RP 474). He also asked about an accident. While being pursued by the police, a civilian car collided with a police vehicle. The civilian occupant died as a result of this collision. (RP 67, 118).

The police conducted a search for the weapon but were unable to find it. They informed some factory employees of their efforts. Within a month of the robbery, an employee of the business called the police. He had found a loaded .357 matching the description of the gun used in the

robbery. Officer Stefan responded to the business and secured the firearm. (RP 115-116, 425-260).

Officer Douglas Rickert, a graduate from the FBI Firearms school and a firearms instructor tested the gun for operability. He found it to be in proper condition and operable. (RP 437-39).

After a Bench trial, this defendant was sentenced on July 5, 2002, to life without parole and appealed the matter. It went through appeal in Division II (#29072-3-II) and then on to the State Supreme Court where it was remanded for reconsideration. State v. Davenport, 154 Wn.2d 1001, 110 P.3d 753 (2005). Because of subsequent case law, one of the two robbery convictions dealing with the underlying crime here was dismissed and the defendant was then resentenced on one count of robbery in the first degree.

At the time of the resentencing in 2006, the new defense attorneys filed a sentencing brief (CP 29) with the trial court arguing, for the first time, that an Oregon conviction did not meet all of the elements of the Washington offense for robbery.

III. RESPONSE TO FIRST ASSIGNMENT OF ERROR

Mr. Davenport argues that his conviction in Oregon for second degree robbery should not count as a “strike” because its elements are not comparable to the elements of robbery in Washington State.

Under the POAA, an out-of-state conviction may not be used as a strike unless the State proves by preponderance of the evidence that the conviction would be a strike offense under the POAA. State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). To determine whether a prior out-of-state or Federal conviction is comparable to the Washington conviction, the sentencing court must compare the out-of-state or Federal offense with the potentially, comparable Washington offenses. At the time of the initial sentencing on July 5, 2002, the deputy prosecutor had provided to the court certified copies of the Oregon conviction for robbery in the second degree. He also at that time encouraged the court to enter into this comparability review so that the court could compare the elements. (RP 532-533). The experienced defense attorney at that time indicated on the record that she was well aware of the prior Oregon conviction, that she had had an opportunity to examine it against the Washington matter and was not raising any objections to the use of it as comparable to the robbery conviction in Washington. (RP 535).

In determining whether foreign convictions are comparable to Washington State strike offenses, the State has devised a two part test for comparability. State v. Morley, 134 Wn.2d 588, 952 P.2d 167 (1998). In Morley, it was determined that for the purposes of determining the comparability of crimes, the court must first compare the elements of the

crimes. Morely, 134 Wn.2d at 605-606. In cases in which the elements of the Washington crime and the foreign crime are not substantially similar, the courts have held that the sentencing court may look at the defendant's conduct, as evidenced by the indictment or information, or other documentation, to determine if the conduct itself would have violated a comparable Washington statute. Morely, 134 Wn.2d at 606.

The court must first look for comparability to the elements of the crime. More specifically, the elements of the out-of-state crime must be compared to the elements of a Washington Criminal Statute in effect when the foreign crime was committed. Morley, 134 Wn.2d at 605-606. If the elements of the foreign conviction are comparable to the elements of the Washington strike offense on its face, the foreign crime counts toward the offender score as if it were a comparable Washington offense.

The State submits that the defense is attempting to add elements to the Washington State concept of robbery that do not really exist. Second degree robbery, RCW 9A.56.190 and .210 requires:

- (a) a theft;
- (b) the use or threatened use of immediate force or fear of injury; and
- (c) the force or fear be used to obtain or retain the property.

- State v. McIntyre, 112 Wn. App. 478, 481, 49 P.3d 151 (2002)

The Oregon statutes for robbery begin with the concept of robbery in the third degree under ORS 164.395 which indicates, in part, as follows:

A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft . . . the person uses or threatens the immediate use of physical force upon another person with the intent of

(a) preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking of

(b) compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft;

Robbery in the second degree under ORS 164.405 is, in part, as follows

A person commits the crime of robbery in the second degree if the person violates ORS 164.395 and the person:

(a) represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon, or

(b) is aided by another person actually present.

The elements of robbery in the second degree in the state of Oregon under ORS 164.405 and contained, specifically, in the indictment that the defendant pled guilty to in Oregon were as follows:

The said defendant, on or about October 17, 1992, in the County of Multnomah, State of Oregon, did unlawfully and knowingly use and threatened the immediate use of physical force upon Laura Rusk, being aided by other persons actually present, while in the course of committing theft of property, to-wit: lawful currency of the United

States of American, with the intent of preventing and overcoming resistance to the said defendant's taking of said property, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon.

A copy of the Indictment (CP, Attachment to the brief) is attached hereto and by this reference incorporated herein. If further clarification is needed as to the conduct and actions of the defendant, at the time that he changed his plea to guilty, he made the following statement in writing to the court;

On October 17, 1992, I helped another person steal money from a store clerk. The other person pretended he had a gun.

A copy of the petition to plead guilty and waiver of jury trial signed by the defendant on March 30, 1993, is attached hereto and by this reference incorporated herein. A copy of the Judgment of Conviction and Sentence is also attached hereto and by this referenced incorporated herein. (CP 29, Attachments to the brief). This matter has already been put to rest in the State of Washington in the case of State of McIntyre, 112 Wn. App. 478, 49 P.3d 151 (2002). In the McIntyre case, the Superior Court has determined that the Oregon conviction for a third degree robbery was the equivalent of a second degree robbery conviction under Washington law. That matter was appealed to Division II and Division II affirmed the judgment. It is interesting to note in the McIntyre case the

Division II did not have to go further in its inquiry into examining the proven facts from the out-of-state record because they found that the elements of the Oregon crime and Washington crimes were the same. State v. McIntyre, 112 Wn. App. at 483.

In McIntyre, the defendant had pled guilty to second degree robbery and appealed the sentencing decision which had treated his Oregon third degree robbery conviction as equivalent to a second degree robbery under the Washington law and sentenced him to fifteen months of confinement. At sentencing, the defendant contested this offender score calculation, claiming that the third degree robbery was not equivalent to a Washington second degree robbery conviction and that his sentencing range should have been 12 to 14 months, not 15 to 20 months. He argued that the Washington statute for second degree robbery included additional requirements that the property be taken from the person of another or in his presence against his will. After examining this issued, Division II determined that the elements of the crimes in the two states were the same. The sentencing court, therefore, properly treated the defendant's 1995 Oregon third degree robbery conviction as a second degree robbery under Washington law.

The State submits that this matter was properly decided at the trial court level and that the crimes in Washington and Oregon are comparable.

The simulated armed robbery committed in the State of Oregon that the defendant pled guilty to is comparable to the Washington robbery statutes. It was a robbery in the State of Oregon and it would be a robbery in the State of Washington.

IV. RESPONSE TO SECOND ASSIGNMENT OF ERROR

The second assignment of error raised by the defendant is a claim that he was denied sixth amendment rights to a jury when the sentencing court found prior conviction.

The State submits that this matter has been resolved in the State of Washington in a number of decisions. In State v. Rivers, 130 Wn. App. 689, 123 P.3d 500 (2005), Mr. Rivers challenged his life sentences as a persistent offender based on an ascertain that the federal and state constitutions should have granted him the right to a jury trial to the prior convictions which lead to the finding of persistent offender. The Court of Appeals determined that because neither the federal nor state constitution required a jury to determine the fact of the prior conviction that the trial court properly ruled in this matter. It also notes that this issue is controlled primarily by State v. Wheeler, 145 Wn.2d 116, 34 P.3d 799 (2001), cert denied, 535 U.S. 996 (2002); and State v. Smith, 150 Wn.2d 135, 75 P.3d 934, cert denied, 541 U.S. 909 (2004).

The State submits that this Washington case law is controlling on this subject.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 13 day of July, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNE WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"

STATE OF OREGON INDICTMENT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

FILED
NOV 19 PM 2:11

THE STATE OF OREGON,)
)
 Plaintiff,)
)
 v.)
)
 JERALD WAYNE DAVENPORT,)
 DOB: 3/20/72)
 Defendant.)

C 92-11-36764
DA 479344
PPB 92-92691

INDICTMENT FOR VIOLATION OF
ORS 164.405 (1,2)

The above defendant is accused by the Grand Jury of Multnomah County, State of Oregon, by this indictment of the crimes of COUNTS 1 and 2 - ROBBERY IN THE SECOND DEGREE, committed as follows:

COUNT 1

ROBBERY IN THE SECOND DEGREE

The said defendant, on or about October 17, 1992, in the County of Multnomah, State of Oregon, did unlawfully and knowingly use and threaten the immediate use of physical force upon Laura Rusk, being aided by other persons actually present, while in the course of committing theft of property, to-wit: lawful currency of the United States of America, with the intent of preventing and overcoming resistance to the said defendants' taking of the said property, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 2

ROBBERY IN THE SECOND DEGREE

The said defendant, on or about October 17, 1992, in the County of Multnomah, State of Oregon, did unlawfully and knowingly aid and abet another who used and threatened the immediate use of physical force upon Laura Rusk, and did represent by word and conduct that he, the said defendant was armed with a deadly weapon, to-wit: a firearm, while in the course of committing theft of property, to-wit: a cash drawer and its contents to include lawful currency of the United States of America and food stamps, with the intent of preventing and overcoming resistance to the said defendant's taking of the said property, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid on November 19, 1992.

Witnesses

Examined Before the Grand Jury:

A TRUE BILL

Laura Rusk
Donald Lind

ENTERED
NOV 19 1992
IN REGISTER BY SB

James A. Elowson
/s/ JAMES A. ELOWSON
Foreman of the Grand Jury

MICHAEL D. SCHRUNK (67111)
District Attorney
Multnomah County, Oregon

By Gregg A. Lowe Deputy

Security Amount: \$ 20,000 + 20,000

The District Attorney hereby affirmatively declares for the record, as required by ORS 161.565, upon appearance of the defendant for arraignment, and before the court asks under ORS 135.020 how the defendant pleads to the charge, the State's intention that any misdemeanor charged herein proceed as a misdemeanor. BALL/78015/dlb

APPENDIX "B"

**PETITION TO PLEAD GUILTY AND WAIVER OF JURY TRIAL
ORDERING ENTERING PLEA OF GUILTY PURSUANT TO PETITION FILED**

In the Circuit/District Court of the State of Oregon
for Multnomah County

93 APR 15 AM 11:34

STATE OF OREGON,

Plaintiff,

C 92-11-36764
DA No. 479344
Citation No. _____

v.

Jerald Wayne Davenport, Jr.

Defendant.

PETITION TO PLEAD GUILTY/
~~NO CONTEST~~ AND WAIVER OF
JURY TRIAL

ENTERED
APR 15 1993

The defendant represents to the Court:

1. My full true name is above
but I also am known as _____
2. I am 21 years of age. I have gone to school through IN REGISTERED BY JKT + GED
My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except _____

3. I understand my right to hire or have the Court appoint a lawyer to help me.
(a) I am represented by: Scott RAVIO
(b) I choose to give up my right to a lawyer; I will represent myself: _____ (defendant's initials).

4. I have told my lawyer all the facts I know about the charge(s) against me. My lawyer has advised me of the nature of the charge(s) and the defenses, if any, that I have in this case. I am satisfied with the advice and help I have received from my lawyer.

5. I understand that I have the following rights: (A) the right to a jury trial; (B) the right to see, hear and cross-examine or question all witnesses who testify against me at trial; (C) the right to remain silent about all facts of the case; (D) the right to subpoena witnesses and evidence in my favor; (E) the right to have my lawyer assist me at trial; (F) the right to testify at trial; (G) the right to have the jury told, if I decide not to testify at trial, that they cannot hold that decision against me; and (H) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.

6. I understand that I give up all of the rights listed in paragraph 5 when I plead guilty/no contest. I also understand that I give up: (A) any defenses I may have to the charge(s); (B) objections to evidence; and (C) challenges to the accusatory instrument.

7. I want to plead Guilty/~~No Contest~~ to the charge(s) of Robbery - Second Degree (Count 1)

8. I know that a No Contest Plea will result in a Guilty finding regarding the charge(s) listed in Paragraph 7.

9. I know that when I plead Guilty/No Contest to the charge(s) in paragraph 7, the maximum possible sentence is 10 years in (prison) ~~(jail)~~, and a fine with assessments totaling \$ 100,000, including a mandatory fine of \$ _____. I also know that the Court can impose a minimum sentence of _____. Further I know that these maximum and minimum sentences can be added to sentences in these other cases: _____

Finally, I know that my driver's license ~~(can)~~ (will) (cannot) be suspended for _____.

10. I understand that I might () will not () be sentenced as a dangerous offender, which could increase each maximum sentence to 30 years, with a 15-year minimum.

11. I have been told that if my crime involved my use or threatened use of a firearm I can receive a mandatory minimum sentence without parole or work release for a period of N/A.

12. I know that if I am not a United States citizen, my plea may result in my deportation from the USA, or denial of naturalization, or exclusion from future admission to the United States.

13. I know that this plea can affect probation or parole and any hearing I may have regarding probation or parole. If probation or parole is revoked, I know that the rest of the sentence in each of those cases could be imposed and executed, and could be added to any sentence in this case.

14. I know that the sentence is up to the Court to decide. The District Attorney may provide reports or other information if requested by the Court. I understand that the District Attorney will make the following recommendation to the Court about my sentence or about other pending charges. This recommendation is () is not () made pursuant to ORS 135.432(2): Gridblock 6 I, 3 years probation
10 units work release or 150 hours community service
CAA fees, unitary assessment, Dismiss Court 2.

15-A. I plead Guilty because, in Multnomah County, Oregon, I did the following: on 10/17/92,
I helped another person steal money from a store clerk.
The other person pretended he had a gun.

15-B. I plead No Contest because (A) I understand that a jury or judge could find me guilty of the charge(s), so I prefer to accept the plea offer (defendant's initials: _____). of (B): _____

16. I declare that no government agents have made any threats or promises to me to make me enter this plea other than the District Attorney's recommendation set forth in Paragraph 14, except: _____

17. I am signing this plea petition and entering this plea voluntarily, intelligently, and knowingly.

3/30/93
(Date)

Jerald W. Dawson Jr.
(Defendant's Signature)

CERTIFICATE OF COUNSEL

I am the lawyer for the defendant and I certify:

1. I have read and explained fully to the defendant the allegations contained in the accusatory instrument(s). I believe defendant understands the charges and all possible defenses to them. I have explained alternatives and trial strategies to defendant.

2 I have explained to the defendant the maximum and minimum penalties that could be imposed for each charge and for all charges together.

3. The plea(s) offered by defendant is (are) justified by my understanding of the facts related to me.

4. To the best of my knowledge and belief, the declarations made by defendant in the foregoing petition are true and accurate.

5. Defendant's decision to enter the plea is made voluntarily, intelligently, and knowingly. I recommend that the Court accept the plea.

I have signed this certificate in the presence of the defendant and after full discussion of its contents with the defendant.

3/30/93
(Date)

Scott Mann
(Lawyer's Signature)

81093
(Bar No.)

In the Circuit Court of the State of Oregon
for Multnomah County

THE STATE OF OREGON,

Plaintiff,

No.

C 92-11-36764 Cr
DA 479344

vs.
Jerald Wayne Davenport

ENTERED

ORDER ENTERING PLEA OF GUILTY
PURSUANT TO PETITION FILED

APR 15 1993

IN REGISTER BY JKT

Residence and phone.

Defendant.

IT IS ORDERED that the following be entered of record:

Appearances: STACY HEYWORTH Dep. DA: SCOTT RAIVIO Def. Att.

defendant's plea of GUILTY: () and arraignment (truly named in charging instrument, or as follows: (

to Robbery II as charged in count 1 of the indictment
count, indictment,
information, complaint

() to the lesser, included offense of _____

defendant's withdrawal of his former plea of Not Guilty and his Plea of GUILTY.

() this case continued pending receipt of a presentence investigation conducted by _____

() the Corrections Division: () long form; () short form

() previous report updated: must be received by _____

() Diagnostic Center: must be received by _____

() other _____

() the following matters be continued pending disposition of the within case: () indictment

() count(s) _____ of the indictment. () other cases, Nos. _____

() this case continued for sentence to _____
(day, date and time)

() the within matter be continued to a later date yet to be determined by the Court.

() other _____

DATED this 30th day of March, 1993.

[Signature]
JUDGE

DISTRIBUTION:

- Original: File
- Green: Def. Att.
- Yellow: Court
- Pink: DA
- Goldenrod: DA

APPENDIX "C"

JUDGMENT OF CONVICTION AND SENTENCE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON

CASE # C9211-36764

D.A.# 479344

v.

JERALD DAVENPORT, JR.

Defendant

JUDGMENT OF CONVICTION
AND SENTENCE (SINGLE COUNT)

1. Hearing Date: APRIL 12, 1993

Reporter/Tape No. CTA175151-884

2. District Attorney: CHARLES BALL

175692

OSB # 78015

3. Defense Attorney: SCOTT RAIVIO

OSB # 81093

4. Defendant is convicted of the following offense:

Offense

ROBBERY II (Count I)

Date of Incident

10/17/92

Offense involved operation of a motor vehicle.

Defendant's: DOB _____

Defendant is unrepresented and knowingly waived counsel.

Defendant waived two-calendar-day delay before sentencing.

5. Defendant is: in custody on recognizance

on security release on sheriff's population release.

6. IT IS ADJUDGED THAT DEFENDANT HAS BEEN CONVICTED on defendant's plea of:

guilty.

no contest.

not guilty and verdict of guilty, by jury trial.

not guilty and finding of guilty, by court trial.

7a. Defendant is acquitted of the following count: _____

b. All other counts contained in the charging instrument in this case are hereby dismissed on motion of the District Attorney in the interests of justice.

8. The security posted is to be:

applied to other court-ordered obligations owed by the defendant or surety in this or any other case, and the balance, if any, is to be refunded.

refunded to the person who posted it less the applicable security release fee.

9. Defendant was advised of the right to appeal (ORS 137.020).

10. Security on appeal (to guarantee the appearance of the defendant)

is set at \$ _____ (ORS 135.285).

is denied.

Bond on appeal (to guarantee payment of fines and costs (ORS 161.665) is set at \$ _____ (ORS 138.135).

ENTERED
APR 16 1993
REGISTER BY JKT

FILED WITH JUDICIAL DISTRICT
93 APR 15 AM 11:45

DISPOSITION

SGL

(On or after 11/1/89)

IT IS ORDERED THAT THE FOLLOWING SENTENCE IS IMPOSED:

11. DEPARTURE SENTENCE OR PRESUMPTIVE SENTENCE

- This sentence is a curational departure,
- This sentence is a dispositional departure, and the Court finds substantial and compelling reasons as stated in the record for this departure
- This is a presumptive sentence. The sentencing guideline grid coordinates are 6 and I.

12. PROBATION

Defendant is placed on probation for 36 months subject to the standard conditions, any special conditions indicated on the Special Probationary Conditions attached hereto, and any financial obligations imposed in the Money Judgment.

Defendant shall be supervised by:

- Oregon State Corrections Division.
- Multnomah County Probation Office.
- Bench Probation.
- This case is transferred to Judge _____ for all judicial supervision of probation.

X MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS

13(a). IMPRISONMENT

- A term of imprisonment for _____ months, and a period of post-prison supervision for _____ months. If the defendant violates the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board. Defendant is committed to the custody of the Oregon State Corrections Department.
- A gun minimum of _____ is imposed. ORS 161.610.
- Defendant is found to be a dangerous offender. ORS 161.725.

13(b). The Court recommends the Defendant enter the following Corrections treatment programs:

- Social Skills Unit Sexual Offender Unit
- Mentally and Emotionally Disabled Unit Drug and Alcohol Unit (Cornerstone)

13(c). JAIL

- A jail term of _____; Defendant is committed to the custody of the Multnomah County Sheriff.
 - i. the term is to:
 - commence immediately.
 - commence on _____.
 - ii. and, as provided by ORS 137.520:
 - work release authorized.
 - passes as authorized by counselor.
 - release on pass, furlough, leave, work, or educational leave prohibited.

The sentence to imprisonment or jail is to run:

- concurrently with _____.
- consecutive to _____.
- with credit for all time served.

13(d). FINE

Defendant shall pay the fine, if any, listed in the Money Judgment.

13(e). OTHER _____

MONEY JUDGMENT

14. IT IS ADJUDGED THAT DEFENDANT PAY THE FOLLOWING OBLIGATIONS:

JUDGMENT CREDITOR: STATE OF OREGON JUDGMENT DEBTOR: DEFENDANT

15. RESTITUTION

- Restitution will be ordered when the amount is determined.
Restitution is ordered now to the persons named below (addresses should be sent by separate cover to Criminal Department):

Table with 3 columns: NAME, AMOUNT, CLAIM NO. Row 1: Laura Rusk, \$750 Compensatory Fine.

Victims are to be paid so:

- they are satisfied in the sequence listed.
each receives an equal amount of each payment made.
each receives a proportional amount of each payment made.

Table with 3 columns: OBLIGATION, TOTAL IMPOSED, WAIVED. Rows include Penalty Assessment, Restitution, Indigent Defense Recovery, Fine (Compensatory), BPST, DUII Conviction, DMV Records, Jail Assessment, and Other (Unitary Assessment).

TOTAL MONEY JUDGMENT \$1,185.00

* Unless a waiver is indicated, those fees and assessments marked are to be imposed administratively if the amount is left blank, and will be a condition of probation, and will not be subject to judgment docketing.

17. PRIORITY OF PAYMENTS

- As listed in Section 16.
As follows:

18. TERMS OF PAYMENT: The amount of the money judgment is:

- suspended until defendant is released from custody.
to be paid immediately.
to be paid in full by
to be paid in installments of \$ per month, beginning on per p.o. and due each month thereafter on that date until satisfied. Compensatory fine paid first;
restitution is joint and several with defendant(s) in case(s):

APRIL 13, 1993
DATE OF JUDGMENT

SIGNATURE (Handwritten signature)

MICHAEL H. MARCUS
Name of Judge Typed or Printed

SPECIAL CONDITIONS OF PROBATION

IT IS ORDERED THAT THE FOLLOWING CONDITIONS OF PROBATION REFERRED TO IN SECTION 12 ARE IMPOSED:

19. It is ordered that the defendant serve a total of 180/90 reserved custody units in a correctional facility or as part of a custody program as set forth in this section, and Defendant is committed to the custody of the appropriate supervisory authority.

- a. custody units in jail.
i. the term is to:
- commence immediately.
- commence on
ii. and, as provided by ORS 137.520:
- work release authorized.
- passes as authorized by counselor.
- release on pass, furlough, leave, work, or educational leave prohibited.

The court finds that space is available and that the defendant is eligible for the programs indicated below:

- b. custody units at a work release center. To be served as follows:
c. custody units at a 24-hour residential custodial treatment facility: Drug Alcohol Mental Health treatment. To be served as follows:
d. custody units at a restitution center. To be served as follows:
e. custody units at a community service center: To be served as follows:
f. custody units of house arrest. To be served as follows:
g. custody units of community service work (each custody unit equals twenty-four hours of community service). To be served as follows:
h. custody units at To be served as follows:

20. OTHER SPECIAL CONDITIONS OF PROBATION:

- a. submit to polygraph examination by a qualified polygraph examiner designated by the court or probation officer under terms and conditions as follows:

