

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

STATE OF WASHINGTON,
RESPONDENT,
vs.
RICHARD AKUNA,
APPELLANT.

NO. 39288-7-II

MOTION TO VACATE JUDGMENT
AND SENTENCE AND TO
REMAND TO SUPERIOR COURT
FOR RESENTENCING

I. IDENTITY OF MOVING PARTY

COMES NOW the RESPONDENT, STATE OF
WASHINGTON, by and through CHRISTOPHER R. LANZ,
Chief Deputy Prosecuting Attorney in and for
Skamania County, Washington, and asks for the
relief designated in part 2.

II. STATEMENT OF RELIEF SOUGHT

Vacation of the Judgment and Sentence,
imposed upon the Appellant on April 30, 2009, and
remand to Skamania County Superior Court for re-
sentencing to a term of imprisonment of 250
months, which was the term of imprisonment
stipulated by and agreed to by both the State,
Respondent, and Richard Akuna, appellant.

FACTS RELEVANT TO MOTION

For purposes of this motion, the respondent

agrees to and stipulates to the veracity of the facts outlined within STATEMENT OF THE CASE, BRIEF OF APPELLANT, pp. 2-10.

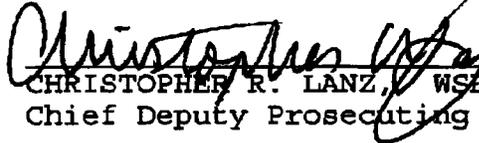
4. GROUNDS FOR RELIEF AND ARGUMENT

The respondent agrees with the near entirety of ARGUMENT, BRIEF OF APPELLANT, pp. 11-15. The respondent agrees the trial court exceeded its authority when it imposed upon the appellant an exceptional sentence of 310 months which exceeded the sentence to which both the appellant and the respondent had stipulated to, which was 250 months.

Therefore, the respondent joins in the appellant's request to vacate the Judgment and Sentence of April 30, 2009. Furthermore, the respondent joins in the appellant's request to have this matter remanded to the Skamania County Superior Court for resentencing to a term of imprisonment of 250 months, which was the term of imprisonment stipulated by and agreed to by both the respondent and the appellant.

Respectfully submitted this 3rd day of
FEBRUARY, 2010.

SKAMANIA COUNTY PROSECUTING ATTORNEY



CHRISTOPHER R. LANZ, WSEA #24220
Chief Deputy Prosecuting Attorney

SKAMANIA COUNTY PROSECUTOR
240 Vancouver Avenue
P.O. Box 790
Stevenson, WA 98648-0790
(509) 427-3796

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

8 STATE OF WASHINGTON,
Appellant,

Court of Appeals No. 39288-7-II
Skamania Co. Sup. Ct. No. 07-1-00085-1

9 vs.

10 RICHARD AKUNA,
Respondent.

AFFIDAVIT OF MAILING

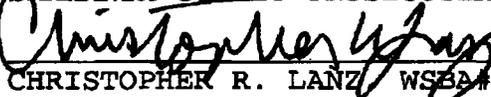
CHRISTOPHER R. LANZ, WSBA# 24220, Skamania County Chief Deputy

11 Prosecuting Attorney, being sworn on oath, states that on the 3RD day of
12 February, 2010, he mailed to the following persons:

13 John Hays
14 Appellate Attorney for Defendant
15 1402 Broadway
Longview, WA 98632-3714

16 and that the mailing contained a copy of this Affidavit of Mailing and
17 MOTION TO VACATE JUDGMENT AND SENTENCE AND TO REMAND TO SUPERIOR COURT
FOR RESENTENCING

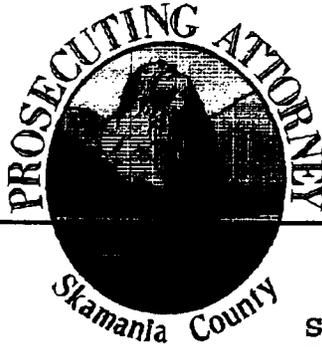
18 SKAMANIA COUNTY PROSECUTING ATTORNEY

19 
20 CHRISTOPHER R. LANZ WSBA# 24220
Chief Deputy Prosecuting Attorney

21 SUBSCRIBED AND SWORN to before me this 3rd day of FEBRUARY,
22 2010.

23 
24 JOANNE E. GILDERSLEEVE
Notary Public for the State of
Washington Residing at Carson
25 My Commission Expires: 01-19-2013
26

PETER S. BANKS
PROSECUTOR



CHRISTOPHER R. LANZ
CHIEF DEPUTY PROSECUTOR

February 3, 2010

SENT VIA USPS AND
FACSIMILE 253-593-2806

David C. Ponzoha
Clerk of the Court
Court of Appeals - Division II
950 Broadway, Suite 300
Tacoma, Washington 98402-4454

Re: State of Washington vs. RICHARD AKUNA
Case No. 39288-7-II

Dear Mr. Ponzoha:

Enclosed for filing is an Affidavit of Mailing and MOTION TO
VACATE JUDGMENT AND SENTENCE AND TO REMAND TO SUPERIOR COURT FOR
RESENTENCING to be filed in the above-referenced matter.

Very truly yours,

CHRISTOPHER R. LANZ
Chief Deputy Prosecuting Attorney

(CRL)

RECEIVED
FEB 03 2010
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON