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A.

**STATE'S RESPONSE TO APPELLANT'S
ASSIGNMENT OF ERROR**

The amended judgment and sentence associated with Jason M. Christen's plea of guilty to attempted second degree murder is not invalid on its face, because the court commissioner who accepted the plea was acting well within his constitutional "jurisdiction." In the alternative, Mr. Christen waived any objection to the court commissioner's actions, when he failed to object to the court commissioner accepting his guilty plea, and when he failed to ask the superior court judge at the time of sentencing to review the court commissioner's actions.

B,

STATE'S REPOSE TO APPELLANT'S ISSUES PERTAINING
TO ASSIGNMENT OF ERROR

1. The Washington State Constitution does indeed empower superior court commissioners to receive guilty pleas, because the acceptance of a guilty plea is not a matter requiring a jury trial. The duties of court commissioners are the same as judges sitting "at chambers" and include the power to "entertain, try, hear and determine, all actions, causes, motions, demurrers and other matters not requiring a trial by jury."

Even if court commissioners are not empowered to accept guilty pleas, Mr. Christen waived his ability to challenge the court commissioner's action, when he failed to object to the court commissioner's actions, and when he

failed to ask the superior court judge at the time of sentencing to review the court commissioner's actions.

2. The Court Commissioner in this case had the authority to accept a plea because of the power granted by the State Constitution. Due to the unique factual circumstances of this case, no statutory authority is applicable.

3. Mr. Christen's latest motion to withdraw his guilty plea is time barred.

C.

STATEMENT OF THE CASE

On August 21, 2000, Jason M. Christen pled guilty to Attempted Murder in the Second Degree.¹ Mr. Christen was represented by counsel. Pacific County Superior Court

¹ The State is aware that Mr. Christen is now known as Malachi Ezekiel MacGregor-Reign. The State has chosen to use the surname Christen in this brief to avoid any confusion with previous court filings.

Commissioner Douglas E. Goelz accepted the plea. RP (8/21/00) at 2–16. At no time during the change of plea hearing did Mr. Christen object to the authority, power, or “jurisdiction” of the court commissioner to accept his guilty plea. RP (8/21/00) passim. When Pacific County Superior Court Judge Joel Penoyar sentenced Mr. Christen on September 8, 2000, there was some confusion regarding the appellant’s point score. Ultimately, it was determined that Mr. Christen had a standard range of 162 to 237 months. RP (9/9/00) at 12; State v. Christen, 116 Wash. App. 827, 830, 67 P.3d 1157 (2003). Neither Mr. Christen nor his counsel challenged or objected to any action taken by the court commissioner on August 21, 2000. Further, neither Mr. Christen nor his counsel asked Judge Penoyar to review the court commissioner’s actions. Judge Penoyar imposed a standard range sentence of 18 years 216 (months). RP

(9/8/00) at 14. Mr. Christen did not appeal this judgment and sentence.

Instead, in August of 2001, Mr. Christen moved to withdraw his guilty plea, claiming that he had been misinformed about his correct standard range and that the prosecutor had breached the plea bargain. Christen, 116 Wash. App. at 830–831. No mention was made of any problem associated with a court commissioner accepting a guilty plea. The Pacific County Superior Court denied Mr. Christen’s motion. Division II of the Court of Appeals affirmed the decision of the Pacific County Superior Court. Id. at 832.

While Mr. Christen’s appeal was pending with the Court of Appeals, Mr. Christen in September of 2002 moved under

CrR 7.8 to be resentenced.² Mr. Christen claimed that none of his prior juvenile offenses should have been counted in his offender score. He sought to be resentenced, rather than to withdraw his guilty plea. In April 2003, the Court of Appeals granted permission to the Pacific County Superior Court to correct Mr. Christen's sentence. In May 2003, with the prosecutor's concurrence, the Pacific County Superior Court resentenced Mr. Christen based on a point score of zero. Mr. Christen was given a standard range sentence of 165 months. See Appendix "B". Mr. Christen did not seek to withdraw his guilty plea, nor did he appeal this new, lesser sentence. Mr. Christen also did not raise any concern pertaining to a court commissioner taking his plea.

² The factual basis for this statement and the statements that follow can be found in In Re Personal Restraint of Christen, ORDER DISMISSING PETITION, No. 35730-5-II, September 13, 2007. This order is contained in Appendix "A".

In November of 2004, Mr. Christen filed a Personal Restraint Petition (PRP) in Cause No. 32641-8-II and again argued that his guilty plea was not voluntary. This PRP was dismissed by the Court of Appeals. In November of 2006, Mr. Christen filed another PRP, alleging that he was misinformed about his standard range. Once again, the Court of Appeals rejected this contention. See Appendix "A". Not to be deterred, Mr. Christen filed additional PRPs in Cause Nos. 38926-6-II and 38950-9-II. None of these PRPs has been successful. Further, Mr. Christen did not raise any concern pertaining to a court commissioner taking his guilty plea.

The latest filing, which is the subject of this appeal, occurred in September of 2009. Mr. Christen, for the first time, filed a collateral motion in the Pacific County Superior Court to vacate his sentence based on the argument that

Court Commissioner Douglas E. Goelz had no authority to accept Mr. Christen's guilty plea in August of 2000. Mr. Christen denominated his motion inter alia as a motion to vacate sentence under RAP 7.2(e). See Appendix "C". Pacific County Superior Court Judge Michael Sullivan denied this motion on November 9, 2009. See Appendix "D". Mr. Christen then appealed the denial of his latest motion.

D.

ARGUMENT

1. STANDARD OF REVIEW.

In reviewing a ruling of a superior court pertaining to a motion to overturn a final judgment, an appellate court must apply an abuse of discretion standard.³ A trial court abuses

³ Although Mr. Christen did not reference CrR 7.8 in his latest motion before the Pacific County Superior Court, CrR 7.8 is the only vehicle whereby a superior court can grant relief. Because Mr. Christen seeks to vacate his judgment and sentence and withdraw his guilty plea, this

its discretion if it exercises discretion in a manner that is manifestly irresponsible or based upon untenable grounds or reasons. State v. Neal, 144 Wash. 2d 600, 609, 30 P.3d 1255 (2001). For the reasons discussed below, the state asserts that the Pacific County Superior Court had multiple reasons to deny Mr. Christen's latest motion and that there was no abuse of discretion.

2. THE WASHINGTON STATE CONSTITUTION DOES INDEED EMPOWER SUPERIOR COURT COMMISSIONERS TO RECEIVE GUILTY PLEAS, BECAUSE THE ACCEPTANCE OF A GUILTY PLEA IS NOT A MATTER REQUIRING A JURY TRIAL.

WASH. CONST. art. IV, § 23 grants broad powers to court commissioners, as follows:

There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in

collateral appeal is governed by an abuse of discretion standard. State v. Hardesty, 129 Wash. 2d 303, 317, 915 P.2d 1080 (1996).

number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.
[emphasis added]

The duties of judges “at chambers” include the power to “entertain, try, hear and determine, all actions, causes, motions, demurrers and other matters not requiring a trial by jury[.]” State v. Karas, 108 Wash. App. 692 701, 32 P.3d 1016 (2001) (citing State ex rel. Lockhart v. Claypool, 132 Wash. 374, 375, 232 P. 351 (1925)). Since the acceptance of a guilty plea is not a matter requiring a trial by jury, it is well within the constitutional powers of a court commissioner to accept such pleas.

The gravamen of Mr. Christen’s argument is that the extensive case law which explicitly states that a court

commissioner can perform “other matters not requiring a trial by jury” does not apply to criminal cases. Appellant’s Brief at 7–11, 14–15. Mr. Christen makes a distinction between civil actions where a party must request a jury trial and criminal actions where a trial by jury is presumed unless a defendant waives this right. Appellant’s Brief at 14–15. Mr. Christen also tries to minimize the importance of the 1881 territorial statute which defined “at chambers” powers to include all other matters not requiring a trial by jury. Appellant’s Brief at 7–8. By minimizing the 1881 statute and extoling the virtue of a 1891 statute, Mr. Christen attempts to dismiss the case law which refers to the 1881 statute, e.g., Peterson v. Dillon, 27 Wash 78, 67 P. 397 (1901), so as to downplay the assertion that “at chambers” powers included all other matters not requiring a trial by jury.

This intentional obfuscation misses one salient point. The Washington State Constitution which was adopted in 1889 gave court commissioners the authority to perform like duties as a judge of the superior court at chambers. Wash. Const. Art IV, § 23. In trying to interpret what this language meant at the time of the adoption of the Washington State Constitution, courts reasonably would look to prior legislative history i.e., the 1881 territorial law. But it is something quite different to posit that a law enacted in 1891 -- two years after the State Constitution was adopted -- can be an authoritative text for interpreting the 1889 meaning of Article IV, § 23 of the State Constitution.

Likewise, Mr. Christen conveniently ignores the language in Peterson which softens the distinction between acts done in chambers and in open court:

Under our present system, when an act of judicial nature is performed by the judge, it is, in contemplation of law, done in open court, although the act may in reality be done in the private room or office of the judge. When the framers of the constitution used the term “at chambers” in speaking of the duties performed by the judges at chambers, they had in view a certain object, and, in order to ascertain what this was, we must have recourse to the meaning of the term “at chambers” as it was understood at the time this particular provision of the constitution was framed.

Peterson, 27 Wash. at 83. Moreover, Mr. Christen gives short shrift to the conclusion of the Peterson court that court commissioners have the same powers that a judge at chambers had the right to exercise when the State Constitution was adopted. Similarly, Mr. Christen sidesteps the holding of Claypool which asserts that the powers of a court commissioner are equivalent to the powers of a judge at chambers in 1889 and include “other matters not requiring

a trial by jury.” Claypool, 132 Wash. at 375, 377. And finally, Mr. Christen argues that In Re Olson, 12 Wash. App. 682, 531 P.2d 508 (1975), which approves of the line of cases cited above, is wrongly decided. Appellant’s Brief at 10. Mr. Christen cannot cavalierly minimize these cases, especially when they have not been overturned.

In summary, Mr. Christen’s “Maginot Line” is the belief that the authority of court commissioners varies depending on whether the case is civil or criminal in nature. Mr. Christen has cited no case law which explicitly supports this proposition, and his argument depends on a facile interpretation of a 1891 statute in an attempt to undermine the 1881 statute pertaining to “at chambers” powers of judges.

The one case that Mr. Christen cites which cuts against the grain of the cases cited above is State v. Phillip, 44 Wash.

615, 87 P. 955 (1906). Mr. Christen asserts that “Phillip is binding, dispositive authority.” Appellant’s Brief at 12. This contention is erroneous. In Phillip, a court commissioner accepted a guilty plea and sentenced the defendant. The defendant did not have an opportunity to have the case reviewed by a superior court judge.

The present case is fundamentally different from Phillip. Mr. Christen was represented by counsel. The Phillip opinion is silent on this point. Mr. Christen, through his attorney, clearly had a right to object to the court commissioner’s actions. If there had been any defect in the manner and acceptance of the guilty plea, Mr. Christen had every opportunity to object and to request review by the superior court judge prior to sentencing. In Phillip, the court commissioner accepted the defendant’s guilty plea and then sentenced him to prison. Mr. Christen did not experience

such perfunctory action. Court Commissioner Douglas E. Goelz only took the guilty plea; Mr. Christen was subsequently sentenced by the Pacific County Superior Court Judge Joel Penoyar, in a separate proceeding.

Moreover, the holding in State v. Wenatchee Valley Holding Co., 169 Wash. 535, 14 P.2d 51 (1932) stands for the proposition that any purported irregularities pertaining to the actions of a court commissioner can be cured by the consent of the parties. In the present case, neither the State nor Mr. Christen and his counsel expressed any concerns about a court commissioner accepting a guilty plea. Consequently, Mr. Christen's failure to object or to raise any issues pertaining to a court commissioner taking a guilty plea either at the plea hearing itself or at the subsequent sentencing hearing constitutes tacit consent. Therefore, Mr. Christen waived his right to contest this issue. Pursuant to

Wenatchee v. Valley Holding Co., this willingness to proceed cured any purported irregularity. Thus, the holding of Phillip is not dispositive.

Finally, the arguments discussed above need to be juxtaposed with the procedural posture of this case. Mr. Christen filed a collateral attack on his amended judgment and sentence at the superior court level. Mr. Christen desires to withdraw his guilty plea. Pacific County Superior Court Judge Michael Sullivan denied Mr. Christen's motion. To succeed at the Court of Appeals, Mr. Christen must show that Judge Sullivan abused his discretion. Unfortunately for Mr. Christen, a large portion of his appellate brief addresses arguments that were not made at the trial court level. Therefore, one cannot conclude that Judge Sullivan abused his discretion when he was not presented with the many arguments that are contained in Mr. Christen's appellate

brief. Further, Mr. Christen cannot complain that he lacked expertise when he argued his motion at the trial court level. The judiciary requires pro se litigants to comply with applicable statutes and rules and holds pro se persons to the same responsibility as an attorney. In Re Personal Restraint of Bonds, 165 Wash. 2d 135, 143, 196 P.3d 672 (2008).

3. RCW 2.24.040 IS NOT APPLICABLE TO THE PRESENT CASE.

As stated above, the powers of court commissioners are granted by the State Constitution. The legislature cannot subtract from the court's constitutionally based powers. State ex rel. Henderson v. Woods, 72 Wash. App. 544, 549, 865 P.2d 33 (1994). RCW 2.24.040(15) which empowers court commissioners to accept pleas if authorized by local court rules is inapposite, because no such local rule was in

place when Mr. Christen entered his guilty plea. The State disagrees with Mr. Christen's assertions that RCW 2.24.040(15) is unconstitutional and that the legislature cannot expand the jurisdiction of court commissioners. Appellant's Brief at 18-19. However, these disagreements are of no consequence to the disposition of this appeal.

4. THE PACIFIC COUNTY SUPERIOR COURT PROPERLY DENIED MR. CHRISTEN'S LATEST MOTION FOR RELIEF BECAUSE THE MOTION IS TIME BARRED.

Mr. Christen's latest motion which was rejected

Superior Court Judge Michael Sullivan was denominated by

Mr. Christen, inter alia, as a motion to vacate sentence under

RAP 7.2(e). The reference to RAP 7.2(e) begs the real

question, because a trial court must apply the requirements of CR

7.8 in ruling on a post-judgment motion in a criminal case. The

relevant language is contained in CrR 7.8(b):

(b) Mistakes: Inadvertence; Excusable Neglect; Newly discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

Although Mr. Christen's brief does not address the CrR 7.8(b) requirements, the potentially relevant subsections are CrR 7.8 (b)(1), CrR 7.8 (b)(4), and CrR 7.8 (b)(5). Under CrR 7.8(b)(1), it could be argued that the acceptance of a guilty plea by a court commissioner constitutes "irregularity in obtaining a judgment" Even if a court were to accept this argument, Mr. Christen still would not prevail because this motion must be made within one year after the judgment was entered accordingly to the explicit language of CrR 7.8(b).

Further, RCW 10.73.090(1) prohibits a collateral attack on a judgment and sentence that is filed more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. The phrase "valid on its face" has been interpreted to mean "without further elaboration." In Re

Personal Restraint of Stoudmire, 141 Wash. 2d 342, 353, 5 P.3d 1240 (2000). Since the latest judgment and sentence speaks for itself, i.e., there are no obvious errors in the document itself (See Appendix B), the judgment and sentence is facially valid. Moreover, the amended judgment and sentence was signed by the Pacific County Superior Court Judge. Since the Pacific County Superior Court has subject matter jurisdiction and personal jurisdiction over Mr. Christen, the one-year time limit for a collateral attack is applicable. The exceptions listed in RCW 10.73.100 do not apply. The time between the date when the amended judgment and sentence became final and the filing of Mr. Christen's latest motion far exceeds one year. Hence, Mr. Christen cannot succeed based on a CrR 7.8 (b)(1) argument.

CrR 7.8 (b)(4), which pertains to void judgments, provides another possible avenue for Mr. Christen. At the

outset. the state asserts that any arguments for relief under CrR 7.8 (b)(4) should be rejected, because Mr. Christen's latest motion was not filed within a reasonable time. "A void judgment may be collaterally attacked 'within a reasonable time,' subject to further restrictions of RCW 10.73.090." State v. Olivera-Avila, 89 Wash. App. 313, 319, 949 P.2d 824 (1997). Mr. Christen's latest motion was not filed within a reasonable time. Also, Mr. Christen bears the burden of proving the timeliness of his motion. In Re Personal Restraint of Quinn, 154 Wash. App. 816, 833, 226 P.3d 208 (2010).

While the State has not been able to locate a Washington published case that defines what constitutes a reasonable time to file a CrR 7.8 (b)(4) motion, a lapse of more than six years appears to be a priori unreasonable. [The amended judgment and sentence became final in 2003;

Mr. Christen's latest motion was filed in 2009.] Litigants have a duty to raise available arguments in a timely fashion. In Re Personal Restraint of Greening, 141 Wash. 2d 687, 697, 9 P.3d 206 (2000). Additionally, "post conviction collateral review was never intended to be a 'super constitutional procedure enabling [the petitioner] to institute appeal upon appeal and review upon review in forum after forum ad infinitum.'" In Re Personal Restraint of Runyon et al., 121 Wash. 2d 432, 453, 853 P.2d 424 (1993) (quoting Holt v. Morris, 84 Wash. 2d 841, 852, 529 P.2d 1081 (1974) (Hale, C.J. concurring)).

With regard to the substance of Mr. Christen's argument pertaining to whether the amended judgment and sentence is void, Mr. Christen misapplies the meaning of the term "jurisdiction." Mr. Christen claims that the judgment and sentence exceeds "the court's subject matter

jurisdiction.” Appellant’s Brief at 21. This contention is erroneous. “The superior court has original subject matter jurisdiction over all felony criminal proceedings and all proceedings generally, unless jurisdiction has been vested exclusively in some other court.” State v. Golden, 112 Wash. App. 68, 73, 47 P.3d 587 (2002).

In this instance, the superior court clearly has jurisdiction to enter an amended judgment and sentence in a criminal case. When Pacific County Superior Court Judge Joel Penoyar signed the amended judgment and sentence in May of 2003, he was acting under the authorized jurisdiction of the superior court. The fact that the original guilty plea in this case was taken by a court commissioner does not vitiate the superior court’s jurisdiction; at most this fact constitutes an irregularity in the proceedings. “[A] judgment rendered by a court of competent jurisdiction is not void merely because

there are irregularities or errors of law in connection therewith.” Dike v. Dike, 75 Wash. 2d 1, 8, 448 P.2d 490 (1968). A purported irregularity at a previous hearing does not invalidate the subsequent amended judgment and sentence entered by Judge Penoyar. Judged in a light most favorable to Mr. Christen, the amended judgment and sentence at most could have been voidable, if Mr. Christen had made an appropriate motion in a reasonable time period. This statement is a far cry from the assertion that the amended judgment and sentence is ipso facto void.

In short, the flaw in Mr. Christen’s argument is that subject matter jurisdiction resides in the court itself and not in the particular judge who decides a matter. The contention that Mr. Christen’s amended judgment and sentence is void ab initio is erroneous. Mr. Christen’s motion for relief does not fall under the ambit of CrR 7.8 (b)(4).

In a similar vein, Mr. Christen cannot use CrR 7.8 (b)(5) to obtain relief. CrR 7.8 (b)(5) is only applicable when there are “extraordinary circumstances not covered by any other section of the rule.” State v. Brand, 120 Wash. 2d 365, 369, 842 P.2d 470 (1992). “[E]xtraordinary circumstances must relate to fundamental, substantial irregularities in the court’s proceedings” State v. Olivera–Avila, 89 Wash. App. 313, 319, 949 P.2d 824 (1997). Because the purported irregularity in this case is not fundamental and substantial, and because other subsections of CrR 7.8 (b) are applicable to Mr. Christen’s argument, CrR 7.8 (b)(5) cannot be the basis for Mr. Christen’s requested relief.

Finally, the state wishes to briefly mention that Mr. Christen’s long history of filing collateral challenges to his guilty plea constitutes sufficient cause to uphold the latest decision of the Pacific County Superior Court which denied

Mr. Christen's relief. The requirements of RCW 10.73.140 are applicable to this case because "the drafters of CrR 7.8(b) intended RCW 10.73.140 to apply by analogy." Brand, 120 Wash. 2d at 370. The relevant section of RCW 10.73.140 reads as follows:

If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition.
[emphasis added].

In this instance, the latest filing of Mr. Christen avoids treading upon grounds for relief that have been asserted in the past. However, Mr. Christen has not demonstrated good cause with regard to why the latest issue pertaining to the authority of a court commissioner could not have been brought earlier. Consequently, Mr. Christen's appeal of the

latest Pacific County Superior Court order should be dismissed.

5. MR. CHRISTEN CANNOT SHOW THAT HE HAS BEEN PREJUDICED; THEREFORE, THE DOCTRINE OF FINALITY OF JUDGMENTS MILITATES AGAINST THE RELIEF MR. CHRISTEN SEEKS.

Final judgments “may be vacated or altered only in those limited circumstances where the interests of justice most urgently require.” State v. Shove, 113 Wash. 2d 83, 88 776 P.2d 132 (1989). Since a CrR 7.8 (b) motion is the functional equivalent of a personal restraint petition, State v. Madsen, 153 Wash. App. 471, 476, 228 P.3d 24 (2009), it is instructive to examine the threshold requirements for a PRP. For an error of constitutional magnitude, one must show actual and substantial prejudice. In Re Personal Restraint Petition of Mercer, 108 Wash. 2d 714, 721, 741 P.2d 559 (1987). In the present case, Mr. Christen cannot demonstrate

that he was prejudiced by having a court commissioner accept his guilty plea. By waiting over six years to lodge an objection, Mr. Christen's latest claim pales in comparison to the need for finality of judgments. As noted several decades ago:

. . . collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders. These are significant costs which require that collateral relief be limited.

In Re Personal Restraint of Hews, 99 Wash. 2d 80, 86, 660 P.2d 263 (1983).

In essence, any error arising from a court commissioner accepting a guilty plea is harmless. Mr. Christen cannot show that his outcome would have been different if a judge, rather than a court commissioner, had taken his guilty plea. Accordingly, equity supports the

argument for the finality of judgments. Mr. Christen's appeal should be rejected.

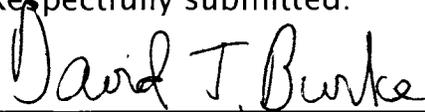
E.

CONCLUSION

For the reasons discussed above, Mr. Christen has not demonstrated that the Pacific County Superior Court Judge Michael Sullivan abused his discretion in denying Mr. Christen's latest motion to withdraw his guilty plea. Therefore, the Court of Appeals should dismiss this appeal.

DATED this 30th day of July, 2010.

Respectfully submitted:



DAVID J. BURKE WSBA# 16163
PACIFIC COUNTY PROSECUTOR

PACIFIC COUNTY PROSECUTOR
CLERK
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

07 SEP 18 PM 1:06

DIVISION II

In re the
Personal Restraint Petition of

JASON M. CHRISTEN,

Petitioner.

No. 35730-5-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
07 SEP 18 PM 2:37
STATE OF WASHINGTON
DEPUTY

Jason M. Christen seeks relief from personal restraint imposed after he pleaded guilty to attempted second degree murder in Pacific County Superior Court cause 00-1-00069-1. For the third time, Petitioner argues he pleaded guilty involuntarily. Without deciding whether the petition is timely under RCW 10.73.090 and .100, we dismiss.

RELEVANT PROCEDURAL HISTORY

Petitioner pleaded guilty on August 21, 2000; the parties believed he had an offender score of 9.5 and a standard range of 223.5 to 297.75 months. *State v. Christen*, 116 Wn. App. 827, 829, 67 P.3d 1157 (2003). But the superior court specifically warned Petitioner that his offender score and range “could go up or down” based on changes to his criminal history; Petitioner told the court he understood and completed his guilty plea. *Christen*, 116 Wn. App. at 830. On the day of sentencing, September 8, 2000, the Department of Corrections reported and the parties agreed that Petitioner had a score of 7.5 and a standard range of 162 months to 237 months. *Christen*, 116 Wn. App. at 830. The superior court imposed a sentence within the new standard range. *Christen*, 116 Wn.

App. at 830. Petitioner neither moved to withdraw his guilty plea nor appealed the judgment and sentence.

Instead, on August 1, 2001, Petitioner moved to withdraw his guilty plea, claiming prosecutorial breach¹ and that he had been misinformed regarding a direct consequence of pleading guilty: his correct standard range. *Christen*, 116 Wn. App. at 830-31. The superior court denied his motion, and Petitioner appealed to this court. *Christen*, 116 Wn. App. at 831. We affirmed because Petitioner was not misadvised; the superior court told him his range could increase or decrease. *Christen*, 116 Wn. App. at 832. Alternatively, we held that Petitioner had intentionally and voluntarily waived his right to be accurately informed of his correct standard range when he chose to plead guilty knowing that his range could go up or down before sentencing. *Christen*, 116 Wn. App. at 832. We filed our opinion on May 6, 2003.

On September 3, 2002, while the appeal was still pending, Petitioner moved for resentencing in the superior court under CrR 7.8(b). Citing then recent Washington State Supreme Court decisions, he argued that none of his prior juvenile offenses should be counted in his offender score, which would result in a score of zero. His motion sought a new sentence, not withdrawal of his plea. At a January 16, 2003, hearing, Petitioner appeared by phone and was represented by counsel. The superior court indicated it would grant the motion and resentence Petitioner if Petitioner first obtained permission from the Court of Appeals, before whom his appeal was still pending.

On April 8, 2003, we granted the superior court permission to correct Petitioner's sentence. On May 2, 2003, Petitioner and his lawyer appeared for resentencing with the

¹ The State had abandoned its original recommendation when the range changed. 116 Wn. App. at 830.

corrected score of zero and a standard range of 92.25 to 165 months. Petitioner did not move to withdraw his guilty plea. The superior court imposed a standard range sentence. Petitioner did not appeal.

On November 19, 2004, Petitioner filed a personal restraint petition with this court, cause 32641-8-II, again arguing that he pleaded guilty involuntarily because he was misinformed about his standard range. He argued that the ends of justice required relitigation because our opinion in his appeal had cited to the materiality test we adopted in *State v. McDermond*, 112 Wn. App. 239, 248, 47 P.3d 600 (2002), a test which was then disapproved in *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 301-02, 88 P.3d 390 (2004). Then Acting Chief Judge Morgan disagreed and dismissed the petition, reminding Petitioner that we had rejected his involuntary guilty plea claim on appeal because Petitioner was not misinformed, *not* because Petitioner had been immaterially misinformed.

On November 17, 2006, Petitioner filed the current petition, his third.² He again contends that he pleaded guilty involuntarily because he was misinformed about his standard range, a direct consequence of pleading guilty.³ This time, he relies on *State v. Mendoza*, 157 Wn.2d 582, 590-91, 141 P.3d 49 (2006), holding that misinformation about a defendant's standard range concerns a direct consequence even when the correct range is actually lower. He asserts that neither the State nor the superior court ever told him his offender score was actually zero, either before he pleaded guilty or before either sentencing hearing.

² He filed an earlier petition that challenged a prison disciplinary action, cause 29705-1-II.

³ Petitioner is no longer arguing the prosecutor breached the plea agreement.

ANALYSIS

We will not reconsider grounds previously rejected on the merits unless the Petitioner demonstrates the interests of justice require relitigation. RAP 16.4(d); *In re Pers. Restraint of Brown*, 143 Wn.2d 431, 445, 21 P.3d 687 (2001); *In re Pers. Restraint of Taylor*, 105 Wn.2d 683, 688, 717 P.2d 755 (1986). “A material intervening change in the law” may satisfy this requirement. See *In re Pers. Restraint of Jeffries*, 114 Wn.2d 485, 488, 789 P.2d 731 (1990). Petitioner appears to argue that *Mendoza* is a change in the law justifying relitigation of his involuntary guilty plea claim.

Mendoza reversed or overruled our earlier decisions which held that misinforming a defendant that the standard range was higher than it actually was did not, by itself, render a guilty plea involuntary. *Mendoza*, 157 Wn.2d at 584, 586, 591. But if this constituted a change in the law, it was not material to Petitioner. We did not reject his earlier involuntariness claims because his standard range decreased. We rejected those claims because he was not misinformed. Petitioner fails to justify relitigation.

Alternatively, as the State notes, Petitioner waived his right to challenge his guilty plea when he failed to do so at his resentencing. As *Mendoza* holds,

if the defendant was clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea.

Mendoza, 157 Wn.2d at 592. Petitioner successfully moved for resentencing, arguing that his offender score was zero, not 7.5. Petitioner agrees that the State conceded error at a hearing before he was resentenced. As noted above, at that same preliminary hearing, the superior court indicated that Petitioner should be resentenced with a new

score. Despite knowing that his score was lower than the parties originally believed, Petitioner did not challenge his guilty plea but instead proceeded with resentencing.

Petitioner argues that his precise lower score was not determined until the sentencing hearing itself. Even if so, however, Petitioner knew, before he was resentenced, “that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea,” but he did “not object or move to withdraw the plea on that basis before he [was] [re]sentenced.” *Mendoza*, 157 Wn.2d at 592. And, assuming that Petitioner could not waive his challenge without knowing his available remedies, his earlier motion to withdraw his purportedly involuntary guilty plea demonstrates that he knew about those remedies before resentencing.⁴

Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b). Any request for counsel is denied.

DATED this 13th day of September, 2007.

Van Deren A.C.J.
Acting Chief Judge

cc: Jason M. Christen
Pacific County Clerk
County Cause No. 00-1-00069-1
David J. Burke

⁴ Knowledge of the remedies is required for waiver by *State v. Walsh*, 143 Wn.2d 1, 9, 17 P.3d 591 (2001). It is not entirely clear whether *Mendoza* retains this requirement, at least when the standard range decreases. See *Mendoza*, 157 Wn.2d at 584, 591-92; *State v. Blanks*, ___ Wn. App. ___, 161 P.3d 455, 458 (2007). We rejected the State’s waiver argument in Petitioner’s appeal because Petitioner did not know the available remedies before his first sentencing. *Christen*, 116 Wn. App. at 832-33. But by the time of resentencing, Petitioner knew he could move to withdraw his plea and had already done so.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of:

JASON M. CHRISTEN,

Petitioner.

No. 35730-5-II

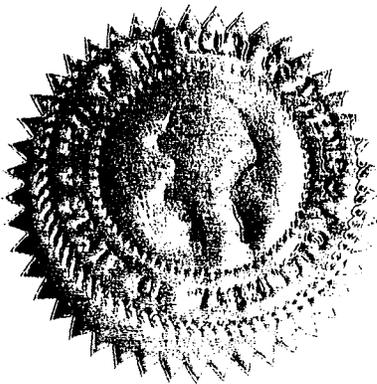
CERTIFICATE OF FINALITY

Pacific County

Superior Court No. 00-1-00069-1

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Pacific County.

This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on September 13, 2007, became final on October 16, 2007.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 22nd day of January, 2008.

A handwritten signature in cursive script, appearing to read "David C. Ponzoha".

David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

CERTIFICATE OF FINALITY

35730-5

Page Two

Jason M. Christen

#814487

Stafford Creek Correctional Center

191 Constantine Way

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David John Burke

Attorney at Law

PO Box 45

South Bend, WA, 98586-0045

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PACIFIC COUNTY COURTHOUSE
National Historic Site

300 Memorial Drive, P.O. Box 45
South Bend, WA 98586
E-mail Address:
dburke@co.pacific.wa.us

March 15, 2007

David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
Suite 300
Tacoma, WA 98402-4454

Re: State of Washington vs. Jason Christen
CAUSE # 35730-5

Dear Mr. Ponzoha:

Please find enclosed the original and one copy of the State's Response To Petitioner's Personal Restraint Petition and an Affidavit of Mailing for processing and filing with regard to the above referenced matter.

Sincerely Yours,

DAVID J. BURKE
PACIFIC COUNTY PROSECUTOR

David J. Burke

Copy to: Jason Christen, Petitioner

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

STATE OF WASHINGTON,)
)
 Respondent.)
)
 vs.)
)
 JASON M. CHRISTEN,)
)
 Petitioner.)
 _____)

NO 35730-5
AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

VICKI FLEMETIS, being first duly sworn on oath, deposes and says:

I am the Office Administrator for the Pacific County Prosecutor.

That on 3/15, 2007, I mailed a copy of Respondent's Response To Petitioner's Personal Restraint Petition to the following address:

JASON CHRISTEN #814487
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520


VICKI FLEMETIS

SUBSCRIBED & SWORN to before me this 15th day of
MARCH, 2007.


NOTARY PUBLIC in and for the State
Of Washington, residing at Raymond

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

35730-5

STATE OF WASHINGTON
RESPONDENT,

VS.

JASON M. CHRISTEN
PETITIONER.

RESPONSE TO PETITIONER'S PERSONAL RESTRAINT PETITION

DAVID J. BURKE
PROSECUTING ATTORNEY
WSBA #16163

David J. Burke

OFFICE ADDRESS:
P. O. Box 45
South Bend, WA 98586
(360) 875-9361

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Other Rules & Regulations

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A.

**STATE'S RESPONSE TO PETITIONER'S
ASSIGNMENT OF ERROR**

The State contests the Petitioner's assertion that the Petitioner did not know his offender score when he was resentenced in May of 2003. The Petitioner was fully aware that he was being resentenced pursuant to the holding in State v. Smith, 144 Wash. 2d 665, 30 P.3d 1245 (2001), 39 P.3d 294 (2002), which changed his offender score. Because the Petitioner did not ask to withdraw his guilty plea when he was resentenced, this personal restraint petition is without merit.

B.

STATEMENT OF THE CASE

In August of 2000, Jason Christen pled guilty to a reduced charge of attempted second degree murder. State v. Christen, 116 Wash. App. 827, 829, 67 P.3d 1157 (2003). As part of the plea bargain, the State originally agreed to recommend a mid-standard range sentence of 260 $\frac{3}{4}$ months based on an offender score of 9 $\frac{1}{2}$ points. Id. Before

sentencing in September of 2000, it was determined that Mr. Christen's offender score was 7½ points, rather than 9½ points. Id. at 830. Two less points resulted in a standard range of 162 to 237 months. At sentencing, the parties agreed that the offender score was 7½ points. The State recommended a sentence of 237 months. Id. Mr. Christen urged a sentence of 162 months. The trial court imposed a 216 month sentence. Id.

In August of 2001, Mr. Christen moved to withdraw his plea. He argued that he misunderstood the correct standard sentencing range when he entered his plea. He also asserted that the State breached the plea agreement by failing to recommend a mid-standard range term within the revised standard range. Id. at 830-831. The trial court denied the motion, and the Court of Appeals affirmed that decision in May of 2003. The Washington State Supreme Court denied review. 150 Wash. 2d 1027, 82 P.3d 243 (2004).

Mr. Christen then filed a personal restraint petition in the Court of Appeals, again urging that he was entitled to withdraw his plea in light of the sentencing

misunderstanding. The Court of Appeals dismissed this petition in May of 2005. See Appendix "A". A motion for discretionary review filed with the Supreme Court was denied in September of 2005. See Appendix "B".

While the previous proceedings were winding their way through the court system, Mr. Christen filed a motion under CrR 7.8 with the Pacific County Superior Court and asked to be resentenced pursuant to the "washout" rule articulated in State v. Smith, 144 Wash. 2d 665, 30 P.3d 1245 (2001), 39 P.3d 294 (2002). See Appendix "C". Although this motion was filed with the Pacific County Superior Court in September of 2002, it was not heard by the Pacific County Superior Court until January of 2003. Because Mr. Christen's original appeal was pending with the Court of Appeals, the Pacific County Superior Court judge ruled that he would take no action until the Court of Appeals gave him permission to act. See Appendix "D". The Court of Appeals granted this permission in April of 2003. See Appendix "E". Resentencing took place on May 2, 2003. Because all of Mr. Christen's prior juvenile offenses washed out under Smith, the

defendant was resentenced using a point count of zero. The standard range was 92¼ months to 165 months. Both the prosecutor and defendant's counsel recommended the midpoint of the standard range. The court sentenced Mr. Christen to the top end of the standard range (165 months) at this sentencing hearing. Mr. Christen never mentioned that he wanted to withdraw his guilty plea. See Appendix "F". Mr. Christen now challenges the efficacy of the sentencing hearing that occurred on May 2, 2003, via a personal restraint petition. Mr. Christen seeks to withdraw his guilty plea.

C.

ARGUMENT

Mr. Christen's latest personal restraint petition is similar to the previous personal restraint petition which the Court of Appeals dismissed. Mr. Christen now claims that State v. Mendoza, 157 Wash. 2d 582, 141 P.3d 49 (2006) and Personal Restraint Petition of Isadore, 151 Wash. 2d 294, 88 P.3d 390 (2004) give him the right to withdraw his guilty plea.

At the outset, it is important to delineate the test that a personal restraint petition must meet. As articulated in Isadore:

In order to prevail on a collateral attack by way of personal restraint petition the petitioner must first establish that a constitutional error has resulted in actual and substantial prejudice, or that a non-constitutional error has resulted in a fundamental defect which inherently results in a complete miscarriage of justice. See In re Pers. Restraint of Cook, 115 Wash. 2d 802, 810, 812, 792 P.2d 506 (1990). These threshold requirements are justified by the court's interest in finality, economy, and integrity of the trial process and by the fact that the petitioner has already had an opportunity for judicial review. In re Pers. Restraint Petition of Cashaw, 123 Wash. 2d 138, 148-149, 866 P.2d 8 (1994).

151 Wash. 2d at 298.

In the present case, the heightened requirements of a personal restraint petition are applicable because Mr. Christen has had a prior opportunity for judicial review. Thus, Mr. Christen cannot prevail in this petition unless he meets at least one of the two criteria listed above.

Mr. Christen cannot establish that a constitutional error produced actual and substantial prejudice. Based on

the decision in Smith, Mr. Christen was given the benefit of being resentenced with an offender score of zero. Under Mendoza, a defendant waives his right to contest his plea by failing to raise the issue at sentencing. 157 Wash. 2d at 591. “[W]aiver is permitted when the defendant is advised of the correct standard range before sentencing and is sentenced within a statutorily authorized lower standard range than contemplated by the plea agreement.” Id. at 591-592.

In this case, Mr. Christen did not object or move to withdraw his plea at the sentencing hearing on May 2, 2003. Mr. Christen claims that he was not aware at this sentencing hearing that his offender score had been changed to zero. This assertion is belied by the facts. Mr. Christen brought a CrR 7.8 motion claiming that under Smith all of his prior juvenile offenses washed out. Upon review, the prosecutor agreed with Mr. Christen’s contention. At the resentencing on May 2, 2003, there was a colloquy in which the prosecutor explained why Mr. Christen’s prior juvenile offenses washed out. Mr. Christen was represented by counsel at two separate hearings in which this matter was discussed. Mr.

Christen was fully aware that the holding in Smith reduced his offender score to zero.

Moreover, nothing prevented Mr. Christen from attempting to withdraw his guilty plea on May 2, 2003. He had previously filed a motion to withdraw his guilty plea in August of 2001 that was the subject of his original Court of Appeals case. He certainly could have made the same request on May 2, 2003, when he was resentenced. Mr. Christen's "silence" at the resentencing hearing with regard to withdrawing his guilty plea can be best interpreted as a conscious decision to avail himself of the lesser sentence which was afforded to him by the holding in Smith. Because of Smith, Mr. Christen's sentence was reduced from 216 months to 165 months. To allow Mr. Christen at this juncture to withdraw his guilty plea would eviscerate Mendoza's "waiver" exception which limits challenges to the voluntariness of a plea.

Further, Mr. Christen cannot show that a non-constitutional error resulted in a fundamental defect that inherently produced a miscarriage of justice. In filing his CrR

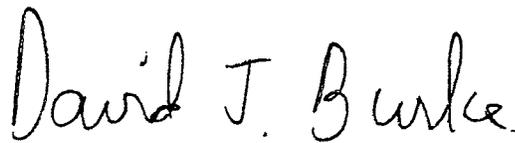
7.8 motion for relief based on the holding in Smith, Mr. Christen specifically asked the Pacific County Superior Court to recalculate his offender score pursuant to Smith. Mr. Christen also asserted that the holding in Smith "requires remand for resentencing." Appendix "C" at 10. Nowhere did Mr. Christen mention that he wanted to withdraw his guilty plea. Mr. Christen has not suffered a miscarriage of justice. His argument fails.

D.

CONCLUSION

Mr. Christen has not met the standard for granting a personal restraint petition. The petitioner's contentions essentially rehash arguments that he has made on his previous appeal and personal restraint petition. Accordingly, this personal restraint petition should be denied.

RESPECTFULLY SUBMITTED:



DAVID J. BURKE
PACIFIC COUNTY PROSECUTOR
WSBA # 16163

FILED

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VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA

BY HL DEPUTY

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

In re the Personal Restraint Petition of:

JASON M. CHRISTEN,

Petitioner.

No. 32641-8-II

CERTIFICATE OF FINALITY

Pacific County

Superior Court No. 00-1-00069-1

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Pacific County.

This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on May 26, 2005, became final on November 1, 2005.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 17 day of November, 2005.

David C. Ponzoha

David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

APPENDIX 'A'

1/9/05

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FILED
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DIVISION II

VIRGINIA LEACH CLEWER
PACIFIC CO. WA

BY _____ DEPUTY

STATE OF WASHINGTON
BY _____ DEPUTY

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FILED
COURT OF APPEALS
DIVISION II

In re the
Personal Restraint Petition of

JASON M. CHRISTEN,

Petitioner.

No. 32641-8-II

ORDER DISMISSING PETITION

00-1-00069-1

Jason M. Christen seeks relief from personal restraint imposed after he pleaded guilty to attempted second degree murder. Christen contends that he was misinformed about the consequences of his plea and argues that the analysis this court used to dismiss the same argument on direct appeal has since been rejected by the state supreme court.

A petition will not be considered if it presents grounds that have been previously heard and determined. An issue will be barred on this ground if

“(1) [T]he same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application.”

In re Haverty, 101 Wn.2d 498, 503 (1984) (quoting *Sanders v. United States*, 373 U.S. 1, 15 (1963)). This standard applies to issues previously raised on direct appeal as well as issues previously raised in a personal restraint petition. *In re Jeffries*, 114 Wn.2d 485, 487-88 (1990).

Christen argues that even though this court held on appeal that he was not misinformed about the consequences of his plea, reconsideration of the issue is warranted

because the court relied on a test from *State v. McDermond*, 112 Wn. App. 239 (2002) that the Washington Supreme Court rejected in *In re Isadore*, 151 Wn.2d 294 (2004). It is true that in addressing whether Christen was misinformed about the consequences of his plea, this court cited the test set forth in *McDermond*:

. . . [T]hree questions will determine whether a plea of guilty was initially invalid due to incomplete or inaccurate advice about one or more of its consequences. (1) Was the defendant incompletely or inaccurately advised about one or more consequences of his plea? (2) *Could* the defective advice have materially affected the defendant's decision to plead guilty? (3) *Did* the defective advice materially affect the defendant's decision to plead guilty? . . . If the answer to any question is no, the remaining questions need not be reached, and the plea should be upheld. If the answer to all three questions is yes, the plea should be set aside.

State v. Christen, 116 Wn. App. 827, 831 (2003) (quoting *McDermond*, 112 Wn. App. at 248). In *Isadore*, the court disapproved of the inquiry into materiality and held that the failure to inform the defendant of a direct consequence renders the plea invalid regardless of whether the misinformation was material to the decision to plead guilty. 151 Wn.2d at 394.

It is true, therefore, that the state supreme court has rejected a portion of the test that this court cited in *Christen*. In *Christen*, however, this court never got to the second step of the *McDermond* test and its inquiry into materiality. Rather, the court reviewed the record and held that Christen had not been misinformed about the consequences of his plea.¹ This analysis does not run afoul of the holding in *Isadore*, and Christen's argument that reconsideration is warranted fails.

Christen makes the related argument that he is entitled to relief because the prosecuting attorney breached the plea agreement. The record shows that the prosecutor

agreed to recommend a sentence of “mid-standard range (260 $\frac{3}{4}$ months)” based on the understanding that Christen’s offender score was 9 $\frac{1}{2}$. *Christen*, 116 Wn. App. at 829. After Christen pleaded guilty but before sentencing, a presentence report revealed that his true offender score was 7 $\frac{1}{2}$ and his standard range was 162-237 months. *Christen*, 116 Wn. App. at 830. At sentencing, the parties agreed that the presentence report’s calculations were correct and the prosecuting attorney announced that the State was released from the plea agreement based on the miscalculations. The prosecutor then recommended 237 months, the high end of the new standard range. Christen requested a low-end sentence of 162 months, and the trial court imposed a sentence of 216 months. *Christen*, 116 Wn. App. at 830.

Rather than a breach of the plea agreement, these facts show that a mutual mistake occurred. *See State v. Moon*, 108 Wn. App. 59, 62 (2001). After Christen’s true offender score and sentence range were calculated, it was impossible for the State to adhere to the plea agreement and recommend a mid-range sentence of 260 months.

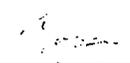
Christen’s burden here is to show that the misunderstanding regarding his offender score and sentence range resulted in actual and substantial prejudice. *See Isadore*, 151 Wn.2d at 298 (petitioner asserting constitutional error must show that it resulted in actual and substantial prejudice to prevail); *In re Hilyard*, 39 Wn. App. 723, 727 (1985) (constitution requires defendant to be informed of the direct consequences of a guilty plea). Christen does not satisfy this burden. He nowhere asserts that he would have gone to trial had he known of the proper offender score and sentence range before pleading guilty. Moreover, the trial court did not accept the State’s eventual

¹ This court held that Christen was not misinformed because the trial court explained when he pleaded

recommendation of a high-end sentence but instead imposed a sentence between what the State recommended and Christen requested. Because Christen does not succeed in showing prejudice as a result of the mistake concerning his offender score and sentence range, he does not succeed in showing that he is entitled to relief. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 26 day of May, 2005.



Acting Chief Judge

cc: Jason M. Christen
Pacific County Clerk
County Cause No. 00-1-00069-1
David J. Burke

guilty that his standard range could go up or down, and Christen manifested an understanding of that fact. *Christen*, 116 Wn. App. at 832.

FILED
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 VIRGINIA LEACH, CLERK
 PACIFIC COUNTY, WA
 BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON
 COUNTY OF PACIFIC

STATE OF WASHINGTON, Plaintiff,

v.
JASON M. CHRISTEN
 Defendant.

SID:WA
 If no SID, use DOB:06/28/82

No.00-1-00069-1

AMENDED JUDGMENT AND SENTENCE (JS)

- Prison RCW 9.94A.712 Prison Confinement
 Jail One Year or Less RCW 9.94A.712 Prison Confinement
 First-Time Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative
 Clerk's Action Required, para 4.1 and 5.8

I. HEARING

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 August 21, 2000 (Date)
 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	ATTEMPTED MURDER IN THE SECOND DEGREE	9A.36.050 & 9A.28.020	4/20/00

as charged in the (8/21/00 AMENDED) Information.

- The court finds that the defendant is subject to sentencing under RCW 9.94A.712.
 A special verdict/finding for use of **firearm** was returned on Count(s) _____. RCW 9.94A.602, .510.
 A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____.
 _____, RCW 9.94A.602, .510.
 A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A. 835.
 A special verdict/finding for **Violation of the Uniform Controlled Substances Act** 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

JUDGMENT AND SENTENCE (JS) (Felony)
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2002))

Page 1 of _____

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APPENDIX 'B'

124

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.

- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine 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(a), RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- 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.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) **domestic violence**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

- 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, Juv.	TYPE OF CRIME
1 ASSAULT II	12/22/92		8/22/92	J	WASH
2 BURGLARY 1	3/14/95		11/2/92	J	WASH
3 TMVWOP	5/1/94		1/26/94	J	WASH
4 FORGERY	1/23/96		9/14/95	J	WASH
5 ROBERY II	5/20/97		9/28/96	J	WASH
6					
7					

- Additional **MISDEMEANOR** 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	SERIOUS-NESS LEVEL	STANDARD RANGE (not including	PLUS ENHANCEMENTS*	TOTAL STANDARD	MAXIMUM TERM

			including enhancements)		RANGE (including enhancements)	
I	0	XIV	92 ¼ - 165 MONTHS			Life

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

[] 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 [] above [] within [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [X] 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):

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 Counts _ [] The defendant is found NOT GUILTY of Counts

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE \$ _____ Restitution to: _____

RTN/RJN \$ _____ R estitution to: _____

\$ _____ R estitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500.00 Victim assessment RCW 7.68.035

CRC \$ 110.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
 Jury demand fee \$ _____ JFR
 Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ 250.00 Fees for court appointed attorney RCW 9.94A.760
WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760
FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional
 fine deferred due to indigency RCW 69.50.430
CDF/LDI/FCD \$ _____ Drug enforcement fund of RAYMOND DRUG TASK FORCE FUND RCW
 9.94A.760
NTF/SAD/SDI
CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
 \$ _____ Felony DNA collection fee not imposed due to hardship RCW 43.43.(Ch.
 289 L 2002 § 4)
RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000
 maximum) RCW 38.52.430
 \$ _____ Other costs for: _____
 \$ 800.00 TOTAL RCW 9.94A.760

[x] 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 order may be entered. RCW 9.94A.753. A restitution hearing:

[x] shall be set by the prosecutor.
 [] is scheduled for _____

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN

[] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

[] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____ . RCW 9.94A.760.

[] 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 statutory rate. RCW 9.94A.760.

[] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

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.

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with (name, DOB) SHAUN KUNDERT including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE _____ years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

165 months on Count I _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: _____
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) CONFINEMENT. RCW 9.94A.712: The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____ minimum term _____ maximum term _____
Count _____ minimum term _____ maximum term _____

- (c) 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: _____

4.6 [X] COMMUNITY PLACEMENT is ordered as follows: Count months;

Count I for 24 months; Count _____ for _____ months;

[] COMMUNITY CUSTODY for count(s) I sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[X] COMMUNITY CUSTODY is ordered as follows:

Count I for a range For _____
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced

under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or 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; (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 necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

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

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

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

Other conditions:

SEE APPENDIX H

For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than 7 working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 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).
- 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 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 court clerk 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.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~

~~If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county~~

sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk 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 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: _____

5/2/03

David Burke

Michael Turner

JUDGE JOEL PENOVAR

Jason M. Christen

~~Deputy~~ Prosecuting Attorney

Attorney for Defendant

Defendant

WSBA #27961-14113

WSBA #237-13216

Print name: LORI MILLER

Print name: MICHAEL TURNER

Print name: JASON M. CHRISTEN

David Burke

Interpreter signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 00-1-00069-1

I, VIRGINA LEACH, 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: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. _____ Date of Birth 06/28/82
(If no SID take fingerprint card for State Patrol)

FBI No. _____ Local ID No. _____

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:
 Asian/Pacific Islander Black/African-American Caucasian
 Native American Other: _____

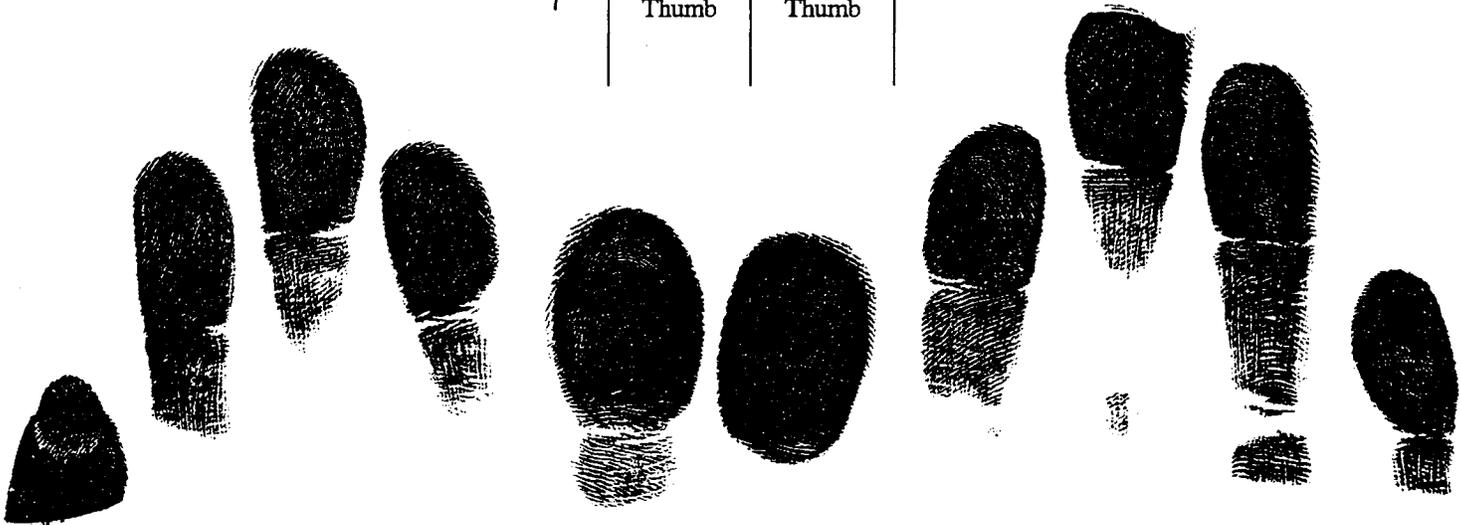
Ethnicity: Hispanic Non-Hispanic

Sex: Male Female

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, Deputy Clerk, [Signature] Dated: 5-2-03

DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON)	
Plaintiff,	)	NO. 00-1-00069-1
)	
vs.	)	JUDGMENT AND SENTENCE
	)	(FELONY) APPENDIX H
JASON M. CHRISTEN,	)	ADDITIONAL CONDITIONS
Defendant.	)	OF SENTENCE
_____)	

The Court having found the defendant guilty of offense (s) qualifying for community custody, it is further ordered as set forth below:

4.5 COMMUNITY PLACEMENT: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after July 1, 1990 to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125(4) that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.52 RCW, committed on or about July 1, 1988, to a one-year term of community placement.

Community Placement is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) Defendant shall comply with the following conditions during the term of community placement:

1. Report to, and be available for contact with the assigned community corrections officers as directed;

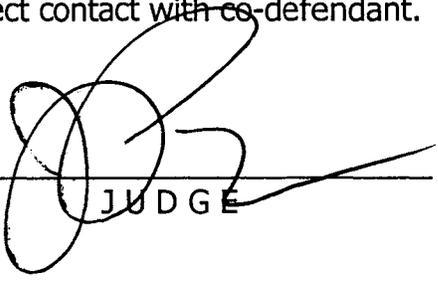
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- 2. Work at Department of Corrections-approved education, employment, and/or community service;
- 3. Not consume controlled substances except pursuant to lawfully issued prescriptions;
- 4. While in community custody not unlawfully possess controlled substances;
- 5. Pay community placement fees as determined by the Department of Corrections;
- 6. Receive prior approval for living arrangements and residence location; and
- 7. Defendant shall not own, use, or possess a firearm or ammunition.

(b) Defendant shall comply with the following additional conditions during the term of community placement.

- 1. Obtain mental health evaluation and follow recommended treatment.
- 2. Obtain drug/alcohol evaluation and follow recommended treatment.
- 3. Do not consume, possess or have under your control any controlled substance or alcoholic beverage.
- 4. Have no contact, direct or indirect, with the victim or the victim's immediate family.
- 5. Do not possess or have under your control any dangerous weapons as defined by CCO.
- 6. Have no direct or indirect contact with co-defendant.

Date: 5/2/03



 JUDGE

SUPERIOR COURT OF WASHINGTON
COUNTY OF PACIFIC

STATE OF WASHINGTON, Plaintiff,

No. 00-1-00069-1

v.

JASON M. CHRISTEN,
Defendant.

**ADDITIONAL MISDEMEANOR
CRIMINAL HISTORY (APPENDIX 2.2 and
2.3, JUDGMENT AND SENTENCE) (APX)**

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

#	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1	THEFT III 3CTS	7/2/91	COWLITZ CO	3/15/91	J	WASH
2	PSP III	7/2/91	COWLITZ CO	3/15/91	J	WASH
3	THEFT III	11/4/92	COWLTIZ CO	10/4/92	J	WASH
4	TAMVWOP	5/10/94	SKAGIT CO	1/26/94	J	WASH
5	MM III 2 CTS	11/22/94	COWLITZ CO	7/8/94	J	WASH
6	ASSAULT IV	11/22/94	COWLITZ CO	7/20/94	J	WASH
7	MM III	11/22/94	COWLTIZ CO	7/28/94	J	WASH
8	MINOR IN POSSESS	7/30/96	COWLITZ CO	4/6/96	J	WASH

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

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
JASON M. CHRISTEN,)
Defendant.)
_____)

NO. 00-1-00069-1
WARRANT OF COMMITMENT

STATE OF WASHINGTON

TO: The Sheriff of Pacific County.

The defendant: **JASON M. CHRISTEN** has been convicted in the Superior Court of the State of Washington of the crime of: **ATTEMPTED MURDER IN THE SECOND DEGREE** and the Court has ordered that the defendant be punished by serving the determined sentence of:

165 (month(s)) on Count No. , 1 months on Count No. , __ months on Count no.

__ (day(s) (month(s)) of partial confinement in the County jail.

__ day(s) (month(s)) of total confinement in the Pacific County jail.

Defendant shall receive credit for time served to this date.

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence in the Pacific County Jail.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF

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CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

The defendant is committed for up to thirty(30) days evaluation at Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

YOU THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery of the proper officers of the Secretary of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED, to receive the defendant for evaluation as ordered in the Judgment and Sentence.

DATED this 2nd day of May, 2003.

By Direction of the Honorable

JOEL PENOYAR

JUDGE
VIRGINIA LEACH

CLERK

BY:

Alain Fortin
DEPUTY CLERK

- cc: Prosecuting Attorney
- Defendant's Lawyer
- Defendant ✓
- Jail ✓
- Institutions (3) ✓
- SG ✓

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, do hereby CERTIFY that this document, consisting of 35 pages, is a true and correct copy of the original now on file and is correct in my office and, as such, is the true and correct copy of the original.

FILED

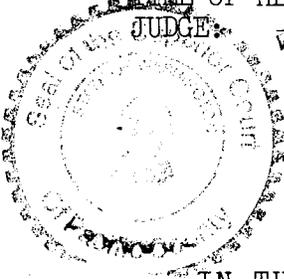
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DATE OF HEARING: _____
TIME OF HEARING: _____
JUDGE: _____
seated at South Bend, Washington, this date: 7-29-10

Virginia A. Leach, County Clerk

By *Dawn Fortin* Deputy

VIRGINIA LEACH CLERK
PACIFIC CO. WA



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

STATE OF WASHINGTON,	)	No. 00-1-00069-1
)	
Plaintiff,	)	MOTION TO VACATE
	)	SENTENCE
v.)	
	)	RAP 7.2(e)
Malachi Ezekiel MacGregor-Reign,	)	(Clerk's Action
	)	Required)
Defendant.)	

I. IDENTITY OF PETITIONER

I, Malachi Ezekiel MacGregor-Reign, incarcerated under the slave name of JASON MILES CHRISTEN, am currently incarcerated at the Stafford Creek Corrections Center, and am the petitioner/movant herein. I make the present MOTION as designated in PART II.

II. RELIEF SOUGHT

Malachi Ezekiel MacGregor-Reign is herein requesting in good faith that this court immediately vacate his sentence, because his plea bargain was accepted by a court commissioner in direct violation of local Rules for the Superior Court of Pacific and Wahkiakum County

MOTION TO VACATE SENTENCE -1

Criminal Court Rules (LCrR) 5, and in violation of the Constitution and Laws of THE STATE OF WASHINGTON.

III. STATEMENT OF FACTS

Petitioner/Movant herein was charged by amended information with RCWs 9A.36.050, 9A.28.020, and 13.04.030(1)(e)(v)(c). Movant pled guilty to these statutes pursuant to an Alford Plea. This plea hearing was facilitated and ruled upon by Commissioner Goelz, a court commissioner for THE COUNTY OF PACIFIC. Commissioner Goelz accepted the movant's plea of guilty on 21 August, 2000.

Movant discovered only four days ago (27 August, 2009) that under Article IV, Section 23 of THE WASHINGTON STATE Constitution, a Superior Court commissioner is only empowered with limited authority, that is, to perform 'like duties as a judge' of the Superior Court "at Chambers", which does not include acceptance of a guilty plea which deals with a Class A Felony. Movant contends that if he is imprisoned for a gross misdemeanor than his restraint is illegal, but that if he is imprisoned for a Class A Felony then his Judgment and Sentence is invalid on its face because the plea agreement is void.

Not only is the imposition of a felony plea

agreement not authorized by a superior court commissioner, it is also not authorized by statute, nor by the Superior Court's own Local Rules.

IV. EVIDENCE RELIED UPON

This MOTION is based on the record and file as presented in Cause No. 00-1-00069-1. The attached AFFIDAVIT OF TRUTH OF Malachi Ezekiel MacGregor-Reign, the EXHIBITS presented, and other related documents.

V. AUTHORITY

1. JURISDICTION. Superior Courts of THE STATE OF WASHINGTON have general jurisdiction to decide any justiciable controversy so long as jurisdiction is not vested in another court. WASH. Const. article IV, sec. 6; RCW 2.08.010; State v. Bowman, 69 Wn.2d 700, 703, 419 P.2d 786 (1996).

This court has the power to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to a modification by the court which initially made the decision. The postjudgment motion or action shall be first heard by the trial court, which shall decide the matter. See RAP 7.2(e).

"When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the sentence when the error is discovered." See, In re Carle, 93 Wn.2d 31, 33 604 P.2d 1293 (1980)(emphasis added); see also, Heflin v. United States, 358 U.S. 415, 418, 3 L.Ed.2d 407, 79 S.Ct. 451 (1959).

2. THIS ACTION IS TIMELY FILED. Movant's claims invoke consideration under the illegal sentence exception as enumerated under RCW 10.73.090(1)-the one-year timebar for collaterally attacking a sentence. RCW 10.73.100(5) provides an exception to the one-year requirement for claim based on the grounds that "[t]he sentence imposed was in excess of the court's jurisdiction."

"Jurisdiction does not relate to the right of the parties, as between each other, but to the power of the court." In re Wesley v. Schneckloth, 55 Wn.2d 90, 93, 346 P.2d 658 (1959). A constitutional court cannot acquire jurisdiction by agreement or stipulation. Either the court has jurisdiction or it does not. If it does not have jurisdiction, any judgment entered is void ab initio and is, in legal effect, no judgment at all. Id., at 93. Unauthorized actions of a court commissioner,

such as the acceptance of a Class A felony sentence in an adult criminal case, are voidable.

3. The acceptance of a guilty plea for a Class A felony by a Superior Court Commissioner in an adult criminal case is not authorized by THE WASHINGTON STATE CONSTITUTION. The Legislature in exercising power vested in it by the Constitution to provide for the creation and appointment of court commissioners must comply with the terms of the Constitution, and it cannot vest in commissioners the de facto judicial duties which under the Constitution only an elected Judge may exercise.

WASHINGTON STATE'S Constitution states explicitly:

COURT COMMISSIONERS. There may be appointed in each county, by the judge of the Superior Court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

This Constitution provision vests a superior court commissioner with three kinds of power: First, Power "to perform like duties as a judge of the superior court at chambers"; second, power "to take depositions"; and third, power "to perform such other business connected with the administration to justice as may be prescribed by law." State ex rel. Lockhart v. Claypool, 132 Wash.

374, 375, 232 P. 351 (1925)(emphasis added); see also, Howard v. Hanson, 49 Wash. 314, 318, 95 P. 265 (1908).

A court commissioner cannot exercise powers beyond those of a judge at chambers where his powers are so limited by constitutional provision.

According to Black's Law Dictionary, 1st Edition, 'CHAMBERS' is defined thusly:

In practice. The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers." (emphasis added).

A court commissioner must necessarily be a subordinate officer of the court of which he is a commissioner. A commissioner is not an elected official, he is not empowered by the people, he is 'appointed' by a court to handle lesser affairs.

'SUBORDINATE' means "placed in or belonging to a lower rank, class, or position"; "To place in a lower rank, class or position". Black's Law Dictionary, Eighth Edition, at page 1467.

'Subordinate Officer' means "an officer ranking below and performing under the direction of another officer". Id., at page 1118.

While a commissioner has jurisdiction where the court for which he is a subordinate officer, an adjunct jurisdiction, that jurisdiction is narrower than that of a judge.

In the case at hand, commissioner Goelz of THE PACIFIC COUNTY SUPERIOR COURT, did not have the power

to accept a Class A felony plea bargain from the defendant JASON MILES CHRISTEN. The Constitution has not vested such power in him. Moreover, Local Rule 5 of THE PACIFIC & WAHKIAKUM COUNTY SUPERIOR COURT expressly prohibits acceptance of a Class A felony plea bargain by a commissioner. Without that authority, the Movant's Judgment & Sentence is invalid on its face and the plea bargain is void.

Superior Courts have a duty to uphold the laws and court rules, which are intended to hold officials as accountable as civilians and/or criminal defendants. It is unacceptable for those who exist to uphold the law to say, "do as I say, not as I do." A violation of the Local Court Room Rules is harmful error and can only be remedied by vacating the Judgment and Sentence (J&S) and deeming the plea therefore void.

At the risk of sounding redundant, a court commissioner is a subordinate officer or adjunct of the court of which he is commissioner, and a court under a commissioner is not a separate court or in any manner distinct from such court. As a general rule, a court commissioner has such power, and such power only, as are conferred on him by constitution or statute and applicable rules of court.

A commissioner's jurisdiction is narrower than that of the judge. He is not a judge by right of the people, but by authority of an elected judge. He is limited to assisting judges in their duties. Their duties, however, are not his. He cannot be too far from the equivalent of a paralegal to an attorney, whom has the skill and abilities to prepare briefs, motions, and even argue to some degree. Nevertheless, a paralegal is not empowered, at least in WASHINGTON STATE, to represent causes in court. Clearly, a commissioner has more qualifications than a paralegal, but he has not been vested by the constitution to carry out business of an open court.

Among the powers possessed by commissioners is the power to hear and determine ex parte or uncontested matters, and to hear and make findings of fact and recommendations and rulings on other matters. The commissioner's powers must be truly limited, for his office is appointed and he cannot be held accountable by the people.

A court commissioner cannot exercise powers beyond those of a judge at chambers where his powers are so limited by the constitutional provision. These powers are the same as those of a judge in vacation, but not of

a court in vacation. There is a serious and definitive difference between the judge's chambers and open court. Unfortunately, the only cases decided by our Supreme Court, which are scant few, have further muddied the waters stirred by the Peterson v. Dillon, 27 Wash. 78, 67 P. 397 (1901) Court. State v. Philip, 44 Wash. 615, 87 P. 955 (1906) is the sole case in which our Supreme Court ruled on the powers of a court commissioner:

"They are ... powerless" in open court. Philip, id.

The Court has viewed the Philip ruling as something of an anomaly, and yet another case was decided upon by the Supreme Court in State v. Yakey, 43 Wash. 15, 85 P. 990 (1906). In this case, the Court found that in Jurisdictions where there are fixed terms of court, and where the courts are powerless to act out of term time, it is necessary to make the distinction between the powers of the court and the powers of the judge. Id. at 22, 85 P. at 993 (citing In re Smith, 4 Colo. 532 (1879)). It has since been observed by Judge Richard D. Hicks, in the Gonzaga Law Review, 32 (1996-97), who was himself a court commissioner from 1985 to 1991, "However, in jurisdictions like Washington, where superior courts are always open, there seems to be no reason to maintain this distinction. Nevertheless, the court admits that our constitution clearly recognizes this

distinction and the supreme court is not at liberty to disregard it, Yakey, 43 Wash. at 22, 85 P. at 933." (emphasis added).

Movant contends that the distinction exists because the court empowers the judge, not vice versa. And, a fortiori, criminal hearings must be fully disclosed. State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995). That is to say, movant contends that open court refers to public trials, hearings, etc., and that "at chambers" refers to lesser proceedings which do not require full public disclosure and/or hearing. The constitution of THE STATE OF WASHINGTON, article I, section 22 protects a defendant's right to a public trial. Surely this right extends to proceedings leading up to the actual trial, which is the culmination of the rest - including arraignments and hearings for pleas of guilt. See Allied Daily Newspapers v. Eickenberry, 121 Wash.2d 205, 210, 848 P.2d 1258 (1993).

4. Unauthorized actions of a court commissioner are voidable.

It appears settled that the action of a court commissioner will not be reviewed in a collateral action, but only on direct appeal. Washington Courts, in

particular, seem to favor a revision standard by the court to which the commissioner has been appointed. If this perception is correct, then it is only logical that this court must hear this motion as a matter of jurisdiction. The superior court judge has a duty, in the interests of justice, to revisit a finality imposed by his, or his predecessor's commissioner. The proper remedy is a motion or application to this court, and any party to a contested proceeding heard before a court commissioner has a right to argue exceptions before the court upon notice of motion given.

RAP 7.2(e): Postjudgment Motions and actions to Modify Decision. The trial court has the authority to hear and determine (1) postjudgment motions (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court which shall decide the matter.

This court is obligated to hear this motion.

5. The acceptance of a Class A felony plea bargain by a Pacific County Superior Court commissioner in an

adult criminal case is not statutorially authorize and is, in fact, illegal. A Pacific County Superior Court commissioner, such as Commissioner Goelz, is without statutory authority to accept a Class A felony plea bargain in an adult criminal case. A sentence imposed without statutory authority can be addressed at any time upon discovery, and this court has a duty, in the interests of justice, and consistent with the Fair Dealing Doctrine, to grant relief.

See State v. Paine, 69 Wn.App. 873, 883-84, 850 P.2d 1369, review denied, 122 Wn.2d 1024 (1993); State v. Julian, 102 Wn.App. 296, 304, 9P.3d 851 (2000). The illegality of the Judgment & Sentence and the void plea bargain restraining the Movant has been demonstrated herein and is fait juridique.

RCW 2.24.040 states: "Such court commissioners shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.634; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

In the present case, RCW 2.24.040 was violated, as was Movant's Constitutional rights. The Court and its officers do not have carte blanche to break laws and violate constitutional rights simply because they are in positions of authority in law. This Crime against the movant is yet another in a long line of manifest injustices riddled throughout his case, Cause Number 00-1-00069-1. This court has unlawful imprisoned the movant and continues to restrain him through abuse of authority, discretion, and outright criminal conspiracy. The present MOTION demonstrates that Malachi Ezekiel MacGregor-Reign (slave name JASON MILES CHRISTEN DOC #814487) has never had a fair hearing in THE PACIFIC COUNTY SUPERIOR COURT, nor has the prosecution for THE STATE OF WASHINGTON ever acted honorably and in good faith with respect to the movant, always denying movant's legitimate claims for relief. The issue presented herein, for the first time, is a constitutional violation. The Supreme Court of THE STATE OF WASHINGTON ruled on 08 DECEMBER, 1906, that court commissioners do not have the power to accept pleas of guilty under the Constitution, Article IV, section 23. Our Supreme Court stated specifically:

Under Bal. Code, § 6684 (P.C. § 2142), a defendant must be arraigned before the court. Under § 6901 (P.C. §2154), "The plea of guilty can only be put in by the defendant himself in

open court." Under § 6975 (P.C. § 2211), the court must render judgment where the defendant is found guilty. In the face of the mandatory provisions of the statute, judges at chambers and court commissioners are a like powerless. (emphasis added).

State v. Philip, 44 Wash. 615, 87 P. 955 (1906). State v. Philip has never been overturned. It remains, over one hundred years later, the state of the law in THE STATE OF WASHINGTON.

VI. CONCLUSION

For the foregoing reasons, the movant herein respectfully requests in good faith that this court hear this motion, deem it timely, and vacate his sentence in lieu of a void plea bargain accepted without constitutional authority.

RESPECTFULLY SUBMITTED this _____ day of September, 2009.

Malachi E. MacGregor-Reign
SLAVE NAME: JASON MILES CHRISTEN
Defendant pro per
Stafford Creek Corrections Ctr.
191 Constantine Way (H4/A81)
Aberdeen, WA. 98520

APPENDIX A

08, 21, 00

County of Pacific

FILED

00 AUG 21 AM 10:41

I, Virginia Leach, County Clerk of Pacific County, do hereby certify that I have compared the foregoing original instrument as the same appears on this date.

**SUPERIOR COURT OF WASHINGTON
FOR PACIFIC COUNTY**

STATE OF WASHINGTON Plaintiff vs. J. Leach Plaintiff
JASON M. CHRISTEN Defendant.

NO. 00-1-00069-1

VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA
DEPUTY

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY
(STDFG)

1. My true name is: JASON M. CHRISTEN.
2. My age is: 18
3. I went through the 12th grade.
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.
 - (b) I am charged with the crime of Attempted Murder in the Second Degree.

 The elements are: on or about April 20, 2000 the defendant with intent to cause the death of another person, but without premeditation, did take a substantial step towards causing the death of Shawn Kundert, a human being, by striking him in the head and body with a blunt instrument, by tying him up and placing his body in water and by leaving him for dead, in violation of RCW 9A.36.050(1)(a), RCW 9A.28.020 AND RCW 13.04.030(1)(e)(v)(c).
5. I UNDERSTAND 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 testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
 - (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
 - (f) The right to appeal a finding of guilt after a trial.
6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
 - (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE (not including enhancements)	PLUS Enhancement for Firearm (F), other deadly weapon (D) or VUCSA (V) in protected zone	TOTAL (standard range including enhancements)	MAXIMUM TERM AND FINE
I	223 1/2 months - 297 3/4 months			Life
2				
3				

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudication's or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months and community custody or community placement is not required due to the nature of the crime. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. 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 placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h).
- (g) The prosecuting attorney will make the following recommendation to the judge: Mid-standard range (260 3/4 months), \$110 Court; \$500 CVC; \$250 Public Defender; Restitution to be determined and 24 months community placement.

- (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 the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

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

- [k] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [l] ~~The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, two years community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~
- [m] ~~The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.~~
- [n] ~~Because this crime involves a sex offense, or a kidnapping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the~~

sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence, I must register with the sheriff of the new county within 24 hours of moving, and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom the person last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level III or on a monthly basis if I have been classified as a risk level I or II. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

- [o] If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.
- [p] If this is a crime of domestic violence and if I, or the victim of the offense, has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [q] If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- [r] The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance

abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate outpatient treatment, a condition not to use illegal controlled substances, and requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could require me to devote time to a specific employment or training, to stay out of certain areas, and to pay thirty dollars per month to offset the cost of monitoring.

[s] If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

[t] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

[u] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.505(8).

[v] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[k].

[w] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

[x] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

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

[z] This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count 1 in the Amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

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

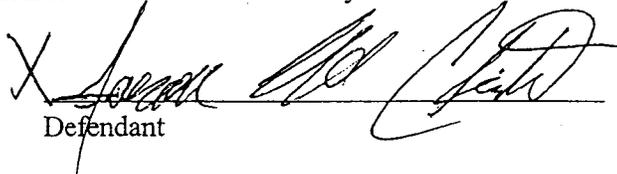
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

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

Alford Plea

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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


Defendant

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


Prosecuting Attorney Bar #13373


Defendant's Lawyer Bar #13216

MICHAEL D. SMITH
Print Name

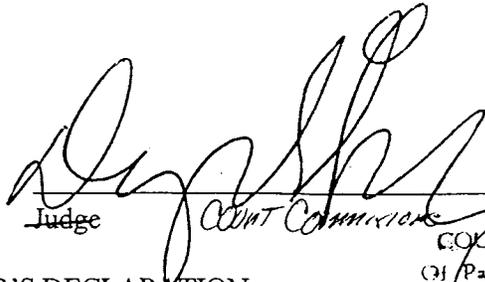
MICHAEL S. TURNER
Print Name

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (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 that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The 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: 8/21/00


~~Judge~~ ~~Court Commissioner~~ COURT COMMISSIONER
Of Pacific County, Washington

INTERPRETER'S DECLARATION
(If required, attach to Statement of Defendant on Plea of Guilty.)

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated _____ for the defendant from English into that language.

Identify document being translated

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Location: _____

SUPERIOR COURT OF WASHINGTON FOR PACIFIC COUNTY

State of Washington

Plaintiff

Cause #00-1-00069-1.

Vs

JASON M. CHRISTEN Defendant

JUDGMENT AND SENTENCE
(FELONY) – APPENDIX H
COMMUNITY PLACEMENT

.....
The court having found the defendant guilty of offense (s) qualifying for community placement, it is further ordered as set forth below:

4.5 COMMUNITY PLACEMENT: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after July 1 1990 to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.1254 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community Placement is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

a) Defendant shall comply with the following conditions during the term of community placement:

1. Report to, and be available for contact with the assigned community corrections officer as directed;
2. Work at Department of Corrections-approved education, employment, and/or community service;
3. Not consume controlled substances except pursuant to lawfully issued prescriptions;
4. While in community custody not unlawfully possess controlled substances;
5. Pay community placement fees as determined by the Department of Corrections
6. Receive prior approval for living arrangements and residence location; and
7. Defendant shall not own, use, or possess a firearm or ammunitions.

The following conditions listed under 4.5 (a) are hereby waived by the court:

b) Defendant shall comply with the following additional conditions during the term of community placement

1. Obtain mental health evaluation and follow recommended treatment.
2. Obtain drug/alcohol evaluation and follow recommended treatment.
3. Do not consume, possess or have under your control any controlled substance or alcoholic beverage.
4. Have no contact, direct or indirect, with the victim or the victim's immediate family.
5. Do not possess or have under your control any dangerous weapons as defined by CCO.
6. Have no direct or indirect contact with co-defendant.

Date: _____

JUDGE
PACIFIC COUNTY SUPERIOR COURT

STATE OF WASHINGTON

County of Pacific

) SS

FILED

00 AUG 21 AM 10:41

I, Virginia Leach, County Clerk of Pacific County, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office and that the same is a true and correct copy of the original and the whole thereof.

VIRGINIA LEACH, CLERK
 PACIFIC COUNTY, WA

IN TESTIMONY WHEREOF, I have hereunto set my hand

and Seal this 21 day of August 2000 at the City of Seaside WA
 CLERK FOR PACIFIC COUNTY
 STATE OF WASHINGTON)
 By [Signature])
 Deputy Clerk)
 Plaintiff,)
 vs.)
 JASON M. CHRISTEN,)
 Defendant.)

NO. 00-1-00069-1

ORDER FOR SENTENCING
SUMMARY

I. BASIS

1.1 On August 21, 200 the above defendant pled guilty to the crime of: Attempted Murder in the Second Degree.

1.2 CUSTODY

[X] The defendant is in custody at the Pacific County Jail.

[] The defendant is not in custody and resides at:

Address: _____ DOB: _____
 _____ SSN: _____
Telephone: _____

II. BASIS

IT IS ORDERED THAT:

2.1 The Department of Corrections shall prepare and present a sentencing summary.

[X] Defendant in custody. An officer of the Department of Corrections shall contact the defendant in the county jail.

[] Defendant not in custody. The defendant shall immediately contact the local Department of Corrections, located at 1216 West Robert Bush Drive, Pacific County Annex Building, South Bend, Washington, telephone (206) 875-9428 or 642-9428.

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse

1
2 2.2 This matter is continued for sentencing:

3 [X] Within thirty (30) court days following convictions
4 to

5 _____ 1:30 p.m.
6 Date Time

7 at the Pacific County Superior Courtroom/Department
8 Address: Pacific County Courthouse
9 300 Memorial Drive
10 South Bend, WA 98586

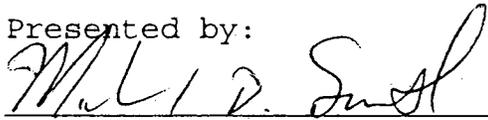
11 [] For the following good cause shown,

12 to _____ a.m./p.m.

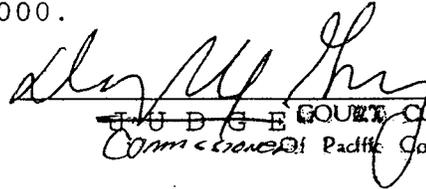
13 at the Pacific County Superior Courtroom/Department
14 Address: Pacific County Courthouse
15 300 Memorial Drive
16 South Bend, WA 98586

17 Dated this 21 day August, 2000.

18
19 Presented by:

20 

21 MICHAEL D. SMITH, WSB#13373
22 Prosecuting Attorney


~~JUDGE~~ COMMISSIONER
Commissioner of Pacific County, Washington

23 cc: Department of Corrections
24 Prosecutor
25 Defense:
26 Defendant

27
28
Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse

FILED

00 AUG 21 AM 10:41

I, Virginia Leach, Clerk of Pacific County, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on the kind of record in my office and that the same is a true and correct copy of the original and the whole thereof.

VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA

IN TESTIMONY WHEREOF I have hereunto set my hand

and Seal this 21 day of Aug 2000 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

DEPUTY

CLEAK

STATE OF WASHINGTON)

Deputy)

Plaintiff,)

vs.)

JASON M. CHRISTEN,)

Defendant.)

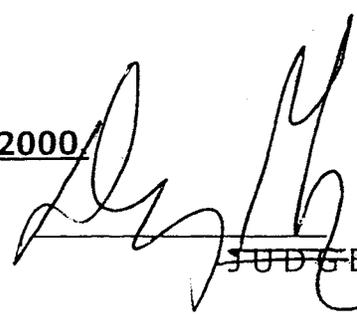
NO. 00-1-00069-1

ORDER ALLOWING PLAINTIFF
TO FILE AN AMENDED
INFORMATION

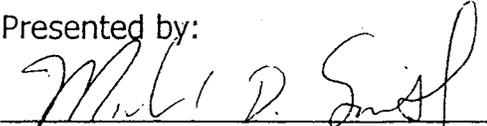
THIS MATTER having come on regularly in open Court upon the motion of Plaintiff, State of Washington, for an order Allowing Plaintiff to File an amended Information in the above-entitled cause; counsel for Plaintiff having requested to amend the Information to charge the defendant with one count of Attempted Murder in the Second Degree; the Court having considered the records and files herein and being fully advised, Now Therefore,

IT IS HEREBY ORDERED that the Plaintiff be and he hereby is permitted to file a Amended Information herein.

DATED this ___ day of August, 2000.


COURT COMMISSIONER
JUDGE of Pacific County, Washington

Presented by:


MICHAEL D. SMITH, WSB#13373
Prosecuting Attorney

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse

County of Pacific

I, Virginia Leach, County Clerk of Pacific County, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office and that the same is a true and correct copy of the original and the whole thereof.

FILED

00 AUG 21 AM 10:41

VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA

BY _____ DEPUTY

IN TESTIMONY WHEREOF, I have hereunto set my hand and

and Seal this 21 day of Aug 2000

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

STATE OF WASHINGTON,	) NO. 00-1-00069-1
)
Plaintiff,	) AMENDED INFORMATION
vs	) RCW 9A.32.050(1)(a)
	) RCW 9A.28.020
JASON M. CHRISTEN,	) RCW 13.04.030(1)(e)(v)(A)
DOB: 06/28/82)
Defendant.)
_____)

COMES NOW, MICHAEL D. SMITH, Prosecuting Attorney for Pacific County, Washington, and amends the information to accuse the defendant of one count of Attempted Murder in the Second Degree, committed as follows:

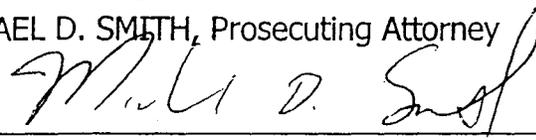
COUNT I

The defendant, **JASON M. CHRISTEN**, in Pacific County, Washington, on or about **April 20, 2000**, with intent to cause the death of another person, but without premeditation, did take a substantial step towards causing the death of **Shawn Kundert**, a human being, by striking him in the head and body with a blunt instrument, by tying him up and placing his body in water and by leaving him for dead, in violation of RCW 9A.36.050(1)(a), RCW 9A.28.020 AND RCW 13.04.030(1)(e)(v)(A).

The maximum sentence for this crime is confinement in a state correctional institution for life, a fine of \$50,000 or by both such confinement and fine.

Dated this 21st day of August, 2000.

MICHAEL D. SMITH, Prosecuting Attorney

by: 

WSBA #13373

I, Virginia Leach, County Clerk of Pacific County, hereby certify that I have compared the foregoing copy with the original instrument as the same appears on the record in my office and that the same is a true and correct copy of the original and the whole thereof.

FILED
00 AUG 21 AM 10:41
VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA
BY _____ DEPUTY

1 IN TESTIMONY WHEREOF, the undersigned set my hand
2 and Seal this 21 day of Aug 2000

3 CLERK
4 By [Signature]
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 FOR PACIFIC COUNTY

7 STATE OF WASHINGTON,)
8 Plaintiff,)
9 vs.)
10 JASON M. CHRISTEN,)
11 Defendant.)
12)
13)

NO. 00-1-00069-1
MOTION FOR ORDER
ALLOWING PLAINTIFF
TO FILE AMENDED
INFORMATION

14 COMES NOW, MICHAEL D. SMITH, Prosecuting Attorney for Pacific County,
15 Washington, and moves the Court for an Order Allowing Plaintiff to file an amended
16 Information. After further investigation, the State is asking that the Information be
17 amended to charge the defendant with one count of Attempted Murder in the
18 Second Degree.
19

20
21 Dated this 21st day of August, 2000.

22 MICHAEL D. SMITH, Prosecuting Attorney

23
24 By [Signature]
25
26 WSBA #13373
27
28

APPENDIX B

LOCAL RULES FOR THE SUPERIOR COURT OF PACIFIC AND WAHKIAKUM COUNTIES

LOCAL CRIMINAL RULES (LCR)

Rule 5. Administrative Rules

Constitutional Court Commissioners may take
pleas in all cases except Class A Felonies.

[Adopted effective September 1, 2000; amended
effective September 1, 2003; September 1, 2004.]

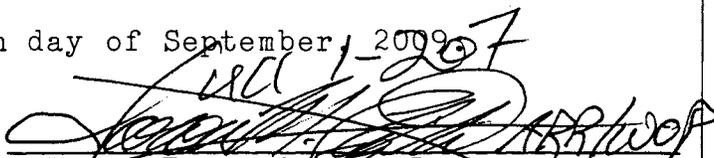
APPENDIX C

1
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3 only other remedy must necessarily be imposition of the true
4 statutory crimes committed, which is RECKLESS ENDANGERMENT in
5 CRIMINAL ATTEMPT, a gross misdemeanor offense in the juvenile
6 court, or else adult court is deemed actionable by a de facto
7 judge.

8 7) I have had my Constitutional right to due process violated
9 and seek therefore this remedy as detailed in my MOTION TO
10 VACATE SENTENCE pursuant to RAP 7.2(e).
11 FURTHER AFFIANT SAYETH NAUGHT!

12 I, **Malachi Ezekiel MacGregor-Reign**, swear under penalty of
13 perjury under the laws of THE STATE OF WASHINGTON that the foregoing
14 is true and correct.

15 SIGNED and DATED this 4th day of September, 2009

16 
17 Malachi E. MacGregor-Reign
18 SCCC/H4-A81 Lower
19 191 Constantine Way
20 Aberdeen, WA 98520

21 NOTARY or WITNESS

22 SUBSCRIBED and SWORN to before me this 4th day of September,
23 2009.

24 
25 Notary Public in and for the
26 STATE OF WASHINGTON, residing
27 at Shelton. My Commission
Expires: 6/6/10

AFFIDAVIT OF TRUTH OF
Malachi Ezekiel MacGregor-Reign - 2



APPENDIX D

RCW 2.24.040
Powers — Fees.

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

- (1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.
- (2) To grant and enter defaults and enter judgment thereon.
- (3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.
- (4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.
- (5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.
- (6) To hear and determine all petitions for the adoption of children and for the dissolution of incorporations.
- (7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.
- (8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.
- (9) To hear and determine ex parte and uncontested civil matters of any nature.
- (10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.
- (11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.
- (12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.
- (13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.
- (14) To hear and determine small claims appeals as provided in chapter 12.36 RCW.
- (15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to *RCW 9.94A.634; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

[2000 c 73 § 1; 1997 c 352 § 14; 1991 c 33 § 6; 1979 ex.s. c 54 § 2; 1963 c 188 § 1; 1909 c 124 § 2; RRS § 85. Prior: 1895 c 83 § 2.]

Notes:

*Reviser's note: RCW 9.94A.634 was recodified as RCW 9.94B.040 pursuant to 2008 c 231 § 56, effective August 1, 2009.

Effective date -- 1991 c 33: See note following RCW 3.66.020.

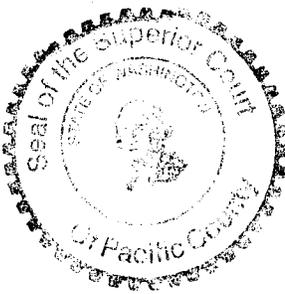
Powers of commissioner under juvenile court act: RCW 13.04.030.

FILED

2009 NOV -9 AM 8:02

VIRGINIA LEACH CLERK
PACIFIC CO. WA

BY [Signature] DEPUTY



STATE OF WASHINGTON } ss.
COUNTY OF PACIFIC }

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, DO HEREBY CERTIFY that this document, consisting of 2 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington this date:

7-29-10
Virginia A. Leach, County Clerk
By [Signature] Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,

Plaintiff,

vs.

JASON M. CHRISTEN,
a.k.a. Malachi Ezekiel MacGregor-Reign,

Defendant.

NO. 00-1-00069-1

MEMORANDUM DECISION
DENYING MOTION TO VACATE
SENTENCE

The Court heard oral arguments by the State, represented by Dr. David Burke, Pacific County Prosecuting Attorney, and the Defendant, represented by Malachi Ezekiel MacGregor-Reign, pro se, the name given by the Defendant in court. The caption lists the defendant's name as Jason M. Christen with an alternate name of Malachi Ezekiel MacGregor-Reign, in order to facilitate accurate tracking of this action in the computer bases.

MEMORANDUM DECISION DENYING DEFENDANT'S
MOTION TO VACATE SENTENCE

Page 1 of 2

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APPENDIX 'D'

The Court read again the entire file after the October 30, 2009 hearing, reviewed its notes, considered arguments of counsel, and also considered the *Defendant's Reply to State's Response to Motion to Vacate Sentence* which reply was filed at the conclusion of the October 30, 2009 hearing and without objection by the State. The Court did not have an opportunity to review Defendant's reply memorandum until after the conclusion of the hearing.

Holding: The Court finds the State's arguments persuasive as outlined in the State's memorandum filed October 7, 2009.

The Court therefore, denies the Defendant's Motion to Vacate Sentence. The State shall prepare an order complying with this decision.

Dated: November 9, 2009


Judge Michael J. Sullivan

FILED
COURT OF APPEALS

10 AUG -2 PM 8:58

STATE OF WASHINGTON

BY _____
COURT

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

STATE OF WASHINGTON,)	
	)	NO 40048-1-II
Respondent)	
	)	AFFIDAVIT OF MAILING
JASON M. CHRISTEN,)	
)	
Appellant)	
_____)	

STATE OF WASHINGTON)
	) ss.
COUNTY OF PACIFIC)

VICKI FLEMETIS, being first duly sworn on oath, deposes and says:

I am the Confidential Secretary for the Prosecuting Attorney for Pacific County, Washington.

That on July 30th, 2010, I mailed 2 copies of Respondent's Brief to:

JORDAN B. McCABE
ATTORNEY AT LAW
P.O. BOX 7212
BELLEVUE WA 98008

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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VICKI FLEMETIS

SUBSCRIBED & SWORN to before me this 30th day of
July, 2010.


NOTARY PUBLIC in and for the State
of Washington, residing at:
RAYMOND

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362