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STATE OF WASHINGTON

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COA# 40289-1

To whom it may concern:

My name is Julio César Aldana Graciano, and this are the points I want to declare for the facts on my appeal on the charges that I've been sentenced on.

Washington Appellate Project

- ① The appointed attorney given to me by the superior court of Tacoma was ineffective in defending my case, so much that she never came to see me while I was incarcerated in the Pierce county jail, therefore our communication was minimal due to my lack of knowledge of English; However, I asked her to establish communication with my brother who does speak perfect English. My brother did called her up on several occasions, leaving several messages, and none of them were returned from her.
- ② My mother was granted a Visa so she could come up to Washington State to testify on my behalf, and yet, she was never called up on trial. Up till today she is in Washington State, risking the loss of her permit to stay in the United States, waiting for my case.
- ③ My attorney (public defender) sent an investigator who speak Spanish to gather a testimony that

explain that my case was lost, not even using any of my family members in my defense.

④ My attorney made a motion for continuance without asking my consent at all

⑤ In one of the appearances in court, I asked my attorney if she could get me a plea bargain with she totally ignored

⑥ I was denied any plea bargain because of my legal status as an immigrant from Mexico without legal residence. According to my attorney I could run the risk of getting 25 years in prison if I asked for an alternative sentence.

⑦ My attorney while on trial, said to keep any questions only by written down on paper because I wasn't allow to talk during the course of the trial.

⑧ I was directed by my attorney to keep quiet and it was better if I didn't testify, because if I did I could have lost my right to an appeal.

⑨ On the 3<sup>rd</sup> day on trial, my attorney didn't even show up, and only her assistant leaving me in total despair. I was asked to cancel the jury and trial but because I didn't do it, then she suddenly showed up on trial.

Thanks

07/04/10

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STATE OF WASHINGTON

BY \_\_\_\_\_

APPEALS NO. 40289-1-II

STATE OF WASHINGTON )  
 Respondent )  
 )  
 v. )  
 )  
 JULIO ALDANA GRACIANO )  
 Appellant )

No: 09-1-01836-9

Motion for Additional  
Grounds for Review  
RAP 10.10

Comes now the appellant Julio Aldana Graciano, I have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional for review that are not addressed in that brief. I understand that the Court of Appeals will review the statement of additional grounds for review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

Denial of defendants' right to plead guilty.

Defendant was denied right to plead guilty under CrR 4.2

ADDITIONAL GROUND 2

Prosecutor misconduct

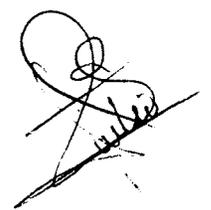
- A. Discriminatory behavior due to defendants' immigration status denying him equal access to justice.
- B. Misstatement of the Law.

ADDITIONAL GROUND 3

Ineffective Counsel

Defense counsel failed to pursue a plea agreement based on defendants' immigration status.

(SEE ATTACHED) ADDITIONAL GROUND



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APPEALS NO. 40289-1-II

### ADDITIONAL GROUND 1

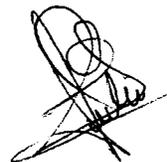
#### Denial of defendants' right to plead guilty

The defendant Julio Aldana Graciano during his proceedings, requested from his counsel a plea agreement in which he would have plead guilty to the charges against him in exchange for less time. The response to his request was "that he was not entitled to a plea because he was an illegal immigrant." An action that forced Aldana Graciano to go to trial.

Defendants do not have a constitutional right to plead guilty, but this state has conferred such a right by court (**State v. Brett 126 Wn.2d 156**) rule. CrR 4.2(a) provides: "A defendant may plead not guilty, not guilty by reason of insanity or guilty." See *State v. Martin*, 94 Wn.2d 1, 4, 614 P.2d 164 (1980).

While counsel wields enormous power within the scope of representation of a client, the goals of litigation remain in the client's hands. Competent defendants have the absolute right to plead guilty, as long as the plea is knowing, intelligent, and voluntary. (*State v. Cross*, 156 Wn. 2d 580 (2006) In Washington, both such rights exist. While there is no federal constitutional right to plead guilty (North Carolina v. Alford, 400 U.S. 25, 38 n.11, 27 L. Ed. 2d 162, 91 S. Ct. 160 (1970)), such a right has been established in this state by court rule. CrR 4.2(a) confers upon informed defendants the right to plead guilty unhampered by the wishes of the State. *State v. Martin*, 94 Wn.2d 1, 5, 614 P.2d 164 (1980).

Despite Gracianos request he was denied such right because of his immigration status. (see attached letter)



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APPEALS NO. 40289-I-II

ADDITIONAL GROUND 2  
Prosecutor Misconduct

A. Discriminatory behavior due to defendants' immigration status: Denial of access to justice.

The defendant Julio Aldana Graciano requested for a plea agreement without success. Graciano was informed by his counsel that the state would not permit an agreement because his immigration status affected his ability to successfully complete treatment in the community. (See attached letter from Department of Assign Counsel)

The defendants' status as deportable alien unnecessarily placed him in a more restrictive status of confinement and denied him equal access to justice in equal protection of the law. The Fourteenth Amendment entitles both citizens and aliens to the equal protection of the laws of the state in which they reside.

A trial court does not violate the Sentencing Reform Act of 1981 (chapter 9.94A RCW) by denying a special sex offender sentencing alternative to an eligible offender based on the consideration that, because of the offender's possible deportation, a sentencing alternative could be rendered unworkable and inappropriate in that the offender might evade treatment and/or adequate punishment.

This law does not state that the defendant should be denied his right to a plea agreement, but that he could be denied "at the discretion of the court" the sentencing alternative (SSOSA).

**9.94A.685. Alien offenders.**

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and naturalization service for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(3) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030, or any other offense that is a crime against a person.

The sentencing reform act of 1981 does not impede a convicted offender from serving his time due to immigration status or his ability to complete ordered treatment or whether he plead or went to trial.

In defendants Graciano case the state used his immigration status to deny him his right to plead guilty in a plea agreement, and in fact denied him equal access to justice and equal protection. The SSOSA would have been a condition of sentencing not community custody in this case. Whether the plea would be accepted by the court with or without such treatment stipulation was for the judge to consider. State v. Zabroski, 56 Wn. App. 263, 783 P.2d 127 (1989).

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Prosecutor Misconduct  
B. Misstatement of the Law.

The defendant Julio Aldana Gracianos request for a plea was denied, and he was disqualified by the prosecutor who had no authority to do so. The decision to impose a SSOSA is entirely within the trial court's discretion. Onefrey, 119 Wn.2d at 575. A court abuses its discretion if it categorically refuses to impose a particular sentence or if it denies a sentencing request on an impermissible basis. State v Khanteechit, 101 Wn. App. 137, 139, 5 P.3d 727 (2000). Neither Washington case law nor RCW 9.94A.340 specifies alienage or deportability as an impermissible basis for denial of a SSOSA. 8 The court may consider such subjective factors as problems related to a particular offender, the offender's social situation, and the impact on the community when imposing a sentence under the SRA. Former RCW 9.94A.120(8)(a).

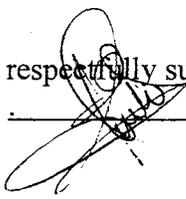
In the case of the defendant it is the prosecutor and not the court who is denying the plea due to his immigration status, although the defendant request was not for SSOSA but for a reduction in time. The decision to grant a special sex offender sentencing alternative to an eligible sex offender under former RCW 9.94A.120 (8) (2000), recodified as RCW 9.94A.670, is discretionary with the trial court. The court abuses its discretion if it categorically refuses to grant a sentencing alternative or denies a sentencing alternative on an impermissible basis. Defendant claimed that the state prosecutor violated the Sentencing Reform Act of 1981 (SRA), Wash. Rev. Code ch. 9.94A, the equal protection clause of the Fourteenth Amendment, and Wash. Const. art. I, 12 by denying his request for a plea based on his status.

GROUND 3  
Ineffective Counsel

The defendants counsel allowed the discriminatory action of the state prosecutor to deprive her client of equal protection under the Fourteenth Amendment, and Wash. Const. art. I, 12. Defense counsel allowed the prosecutor to disqualify Graciano from getting a plea agreement based on his immigration status. (See attached letter) Defense counsel knowing that CrR 4.2 gives defendant the right to plead guilty allowed for her client to be disqualified by the prosecutor and not the court. Openly depriving the defendant of a different outcome in the proceedings.

The test in Washington for determining whether a defendant was denied his constitutional right to effective assistance of counsel is set out in Strickland v. Washington, 466 U.S. 668 (1984), as follows: the defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. State v. Sardinia, 42 Wn. App. 533, 713 P.2d 122, review denied, 105 Wn.2d 1013 (1986).

Dated this      day of May 2010

respectfully submitted  
  
\_\_\_\_\_



Pierce County

Department of Assigned Counsel

07/04/10

MICHAEL R. KAWAMURA

Director

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APPEALS NO. 40289-1-II

March 9, 2010

Julio Aldana Graciano DOC#337434  
Shelton Corrections Center, R-7  
P.O.Box 900  
Shelton, WA 98584

RE: Superior Court Cause No. 09-1-01650-2

Dear Mr. Aldana Graciano:

I have spoken to Ms. MacDonald regarding your letter. She indicates that you never requested her to solicit a plea agreement from the prosecutor. In fact, she says that she saw you at the jail on the Friday prior to interviewing the children and specifically requested that you permit her to solicit an offer from the State of two counts of first degree child molestation -- an offer which she felt she could have obtained from the prosecutor. You told her that you were not interested in any plea agreement.

She did indicate that the only offer in the case ever made by the State was that of a SSOSA sentencing recommendation upon receipt of a favorable SSOSA evaluation report. SSOSA is a Special Sex Offender Sentencing Alternative. It requires a sex offender treatment evaluation. To be eligible for a SSOSA sentence a defendant must, among other things, (1) admit to the sex act(s) charged and (2) be amenable to treatment in the community. You would never admit to the acts and your immigration status affects your ability to successfully complete treatment in the community.

Sincerely,

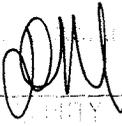
K. Richard Whitehead  
Chief Deputy



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PIERCE COUNTY

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STATE OF WASHINGTON

BY  COUNTY

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document **Appellant's Pro Se Statement of Additional Grounds for Review** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 40289-1-II** and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  respondent **Kathleen Proctor - Pierce County Prosecuting Attorney**,  appellant and/or  other party, at the regular office or residence or drop-off box at the prosecutor's office.

  
MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: July 9, 2010