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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Has defendant failed to show a manifest error involving a constitutional right as required to review an issue raised for the first time on appeal?
2. Should this court dismiss defendant's personal restraint petition where the claimed errors are moot and do not involve issues of substantial public interest?

B. STATEMENT OF THE CASE.

On March 11, 1998, defendant was convicted in Pierce County Superior Court Cause No. 97-1-04562-4 of rape of a child in the first degree. CP¹ 9-19. The court sentenced defendant to 108 months in total confinement and three years of community custody. CP 9-19. As part of defendant's conditions of release, he was required to follow directives of the Department of Corrections (DOC). CP 9-19.

On July 31, 2009, the State sought to modify defendant's sentence, alleging violations of four conditions of his community custody. CP 20-23. Specifically, the State alleged that defendant failed to comply with DOC imposed conditions when he had unauthorized contact with a minor,

¹ Citations to Clerk's Papers will be to "CP." As none of the transcripts were numbered sequentially, citations to the verbatim report of proceedings will be to "RP" followed by the date of the hearing.

did not maintain law abiding behavior, and traveled outside of Pierce County. CP 20-23.

On August 14, 2009, the court appointed the Department of Assigned Counsel to represent defendant and the revocation hearing was set over. RP 08/14/09 3-5, 6. The court informed defendant that his attorney would discuss the allegations against him so he could be prepared for the next revocation hearing. RP 08/14/09 7.

On September 11, 2009, defendant's revocation was again set over because his attorney believed the court's jurisdiction had run and wanted to research the issue. RP 09/11/09 2-3, 6.

On October 9, 2009, the parties indicated that the court still had jurisdiction at that time, but still had a disagreement as to how long the court's jurisdiction would run. RP 10/09/2009 3-4. During this hearing, defendant argued that he should be released as he still had not received notice of the allegations against him. RP 10/09/09 5. Defendant's counsel acknowledged that he had received the violation report. RP 10/09/09 5. The court directed the parties to confirm whether the State complied with

the Washington Administrative Code (WAC)² and ordered a special-set hearing on October 14 if the issue was not resolved. CP 24; RP 10/09/09 7-8. The evidentiary hearing was set over at the State's request as the prosecutor was ill. CP 33; RP 10/09/09 2, 9.

The next hearing was held November 4, 2009. RP 11/04/09 2. The defense requested another continuance acquire phone records. RP 11/04/09 2-3. The parties agreed that there was no longer a question of jurisdiction, but defendant again stated that he had not received his required notice of violations. RP 11/04/09 2, 4, 5. The prosecutor informed the court that he and counsel had discussed that issue and concluded that the WAC applied to non-judicial administrative hearings only. RP 11/04/09 5-6. Defendant's counsel agreed that the WAC applied to administrative rather than judicial hearings. RP 11/07/09 7.

The December 11, 2009 hearing was set over as the State witnesses, who had been present for earlier hearings, were unavailable due to medical issues. RP 12/11/09 3-4.

² The State assumes that the court was discussing WAC 137-104-050 which sets forth the community custody violation hearing procedures for the Department of Corrections (DOC). WAC 137-104-050(6) states:

Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.

The revocation hearing was held on January 22, 2010. RP 01/22/10 3. Ane Black Crow and her daughter, Morgan³, testified that they lived together in King County. RP 01/22/10 4-5, 7-8, 14. Several other family members also resided with them, including Morgan's two-year old daughter and Iesha Holley, the mother of one of Ane's grandchildren. RP 01/22/10 4, 5, 7-8, 15-16.

In the summer of 2009, defendant visited Ms. Holley and stayed at the Black Crow's house for two separate two-week periods. RP 01/22/10 5-8, 15-16. Morgan's daughter was always present when defendant was at the house. RP 01/22/10 9, 16.

Community Corrections Officer (CCO) Pamela Bohon testified that defendant was required by DOC to obtain approval from her as to where he resides. RP 01/22/10 19. He was also required to remain within Pierce County unless she gave him prior, written approval. RP 01/22/10 20. Defendant never notified her that he was staying with the Black Crows in King County, nor did he get her permission to leave Pierce County. RP 19-20.

CCO Bohon also testified that Iesha Holley came to her office sometime around July 27, 2009. RP 01/22/10 21. Ms. Holley showed CCO Bohon several text and voice messages on her cell phone that she

³ As Ane and Morgan Black Crow share the same last name, the State refers to them by their first names for the sake of clarity.

claimed were from defendant. RP 01/22/10 22. CCO Bohon listened to the voice messages and recognized defendant's voice. RP 01/22/10 22. Defendant left fourteen voicemails between 4:14 p.m. and 10:52 p.m. on July 27, 2009. RP 01/22/10 22-24. All the messages were angry and most threatened some sort of physical violence against Ms. Holley. RP 01/22/10 22-23. Defendant even called and left Ms. Holley a threatening voicemail while she was in CCO Bohon's office. RP 24.

Defendant testified on his own behalf. RP 01/22/10 26. He stated that he used to date Ms. Holley, but they broke up when she gave him a fraudulent check. RP 01/22/10 26, 31-32. Defendant admitted that, because of the fraudulent check, he left angry text and voice messages on Ms. Holley's cell phone, but he denied making any threats. RP 01/22/10 32-34.

The State abandoned the allegation that defendant failed to register. RP 01/22/10 37. The State did argue that defendant had violated the terms of his community custody by having contact with a minor, failing to comply with his residency requirements, failing to remain within Pierce County, and failed to maintain law abiding behavior by making harassing phone calls to Ms. Holley. RP 01/22/10 37-38. The State requested a sanction of 60 days for each violation. RP 01/22/10 38-39.

Defendant stipulated that he had impermissible contact with a minor. RP 01/22/10 40. Defendant also claimed that his failure to acquire permission from CCO Bohon to leave Pierce County and his visits to the

Black Crows should be considered a single violation. RP 01/22/10 39-40. Defendant argued that his phone calls to Ms. Holley were justified because she “scammed” him. RP 01/22/10 41.

The court found that defendant had committed all four violations as alleged by the State. RP 01/22/10 44. Specifically, the court noted that defendant’s contact with a minor was undisputed, and that repeated, threatening voicemail messages was a law abiding behavior violation because the messages were not justified by the circumstances. RP 01/22/10 43-44. The court imposed 60 days for each of those violations. RP 01/22/10 45. The court also found that defendant’s failure to obtain permission for living with the Black Crows and leaving Pierce County were essentially the same violation, yet it violated different conditions. RP 01/22/10 43. The court imposed 30 days for each of those violations. RP 01/22/10 44-45. The court found defendant had 178 days credit for time served against his 180-day sanction. RP 01/22/10 45. Defendant filed a timely notice of appeal, and a timely first-time personal restraint petition, both raising due process claims against the violation hearing. At the request of the State, this court consolidated the personal restraint petition with the direct appeal.

C. ARGUMENT.

1. DEFENDANT’S CLAIMS OF DUE PROCESS VIOLATIONS MUST FAIL AS HE HAS NOT SHOWN A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT NOR HAS HE SHOWN THAT HE DID NOT RECEIVE DUE PROCESS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION.

The 14th Amendment prohibits states from depriving any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1. In the context of probation or parole violations, due process requires a hearing before revoking community custody. *Morrissey v. Brewer*, 408 U.S. 471, 487-88, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); *In re McNeal*, 99 Wn. App. 617, 630, 994 P.2d 890 (2000). A revocation hearing, however, does not require “a full-blown criminal prosecution because society has already been put to the burden of proving beyond a reasonable doubt that [the] defendant was guilty of the crime.” *State v. Canfield*, 154 Wn.2d 698, 706, 116 P.3d 391 (2005). “For purposes of minimal due process, proper notice must set forth all alleged parole violations so that a defendant has the opportunity to marshal the facts in his defense.” *State v. Dahl*, 139 Wn.2d 678, 684, 990 P.2d 396 (1999).

- a. Defendant did not preserve his claims of error where he did not object below and cannot show a manifest error affecting a constitutional right.

As a general rule, appellate courts will not consider a claim of error raised for the first time on appeal unless the defendant shows it is a “manifest error affecting a constitutional right.” RAP 2.5(a); RAP 2.5(a)(3); *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2010); *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). The manifest constitutional error exception to the general rule is a narrow one. *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999); *McFarland*, 127 Wn.2d at 333. RAP 2.5(a)(3) is not meant to allow defendants to obtain a new trial “whenever they can identify some constitutional issue not raised before the trial court.” *McFarland*, 127 Wn.2d at 333. To show manifest error under RAP 2.5(a)(3), the defendant must identify a constitutional error and show how, in the context of trial, the claimed constitutional error actually affected the defendant’s rights—“it is this showing of actual prejudice that makes the error ‘manifest,’ allowing appellate review.” *McFarland*, 127 Wn.2d at 333.

Where the claimed error is of constitutional magnitude, the court must determine whether the error is manifest error that results in actual prejudice. *O’Hara*, 167 Wn.2d at 99; *McFarland*, 127 Wn.2d at 333. Essential to the determination of actual prejudice is the necessity of a plausible showing by the defendant that the asserted error had practical

and identifiable consequences in the trial of the case. *WWJ Corp.*, 138 Wn.2d at 603. Absent an affirmative showing of actual prejudice, the error is not “manifest,” and thus, is not reviewable under RAP 2.5(a)(3). *O’Hara*, 167 Wn.2d at 99; *McFarland*, 127 Wn.2d at 334. Further, if the record is insufficient to determine the merits of the constitutional claim of error and the facts necessary to adjudicate the claimed error are not in the record, “no actual prejudice is shown and the error is not manifest” under RAP 2.5(a)(3). *McFarland*, 127 Wn.2d at 338.

Here, defendant raises several claims of due process violations for the first time on appeal. *See* Appellant’s Opening Brief at *i*. Defendant’s due process claims all stem from his assertion that he did not receive proper notice of prohibited conduct or the violation allegations. As defendant did not raise these issues below, the record has not been sufficiently developed for review.

The court sentenced defendant to three years of community custody. CP 9-19. As part of the conditions of his community custody, defendant was required to report to and be available for contact with the assigned CCO as directed. CP 9-19. Defendant’s residence location and living arrangements were to be subject to the prior approval of DOC during the period of community placement. CP 9-19. The court also directed defendant to “submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.” CP 9-19. Defendant never challenged DOC’s ability to impose additional conditions necessary

to monitor compliance with court orders. In fact, defendant stipulated to having impermissible contact with a minor. RP 01/22/10 40. He also did not challenge DOC's authority to restrict his living arrangements or his ability to travel to other counties. RP 39-40. Defendant claims, for the first time on appeal, that the court did not impose any conditions, therefore he did not commit any violations. Because defendant did not raise this issue below, DOC's list of conditions were not made part of the record, nor is defendant's acknowledgement of his understanding of those conditions. Without a properly preserved record, defendant's claim of error is not manifest because this court cannot review whether the DOC-imposed conditions are "additional conditions necessary to monitor compliance."

Defendant's claims regarding lack of notice of the violation allegations are similarly infirm. The record shows that CCO Bohon provided a written notice of the violations to defendant's counsel prior to the revocation hearing. RP 10/09/09 5. Counsel agreed that he was in possession of a violation report at the hearing held on October 9, 2009. RP 10/09/09 5. The court directed the parties to return on a special set date to determine if the State had complied with notice requirements in the WAC. CP 24; RP 10/09/09 8-9. That hearing was never held because the parties agreed that the WAC did not apply. *See* RP 11/04/09 5-6. As the adequacy of this notice was not raised below, the record does not contain any information regarding the notice defendant received. Even defendant

notes that this “court “cannot assess the constitutional adequacy” of the notice because the court file does not contain any copy of the notice counsel received. Appellant’s Opening Brief at 9. If the court cannot assess defendant’s claim of error because the facts necessary to adjudicate the matter are not in the record, then the error is not manifest.

Defendant also has not shown actual prejudice. The purpose of notice is to ensure that the defendant can prepare a defense. Defendant had sufficient notice to enable him to present a defense. Defendant was able to acquire evidence⁴ which he attempted to use to refute the allegation of harassment. *See* CP 34; RP 01/22/10 26-27. Defendant has not shown that he was unaware of the allegations against him or that he was unable to present a defense. Due process was satisfied when defendant received notice of his violations and any perceived error is not manifest.

Defendant’s claim that his only notice came after “substantial” confinement is not supported by the record. Nothing in the record indicates that notice was not timely given. Defendant was arrested and held in custody on July 29, 2009. CP 35. At that time, defendant received verbal notice of the allegations and the court determined that there was probable cause to hold defendant for the violations. *See* RP 11/04/09 6. The prosecutor filed a petition for a violation hearing with written

⁴ The evidence defendant attempted to admit was ultimately excluded as hearsay. RP 01/22/10 29.

allegations attached on July 31, 2009, two days⁵ after defendant was taken into custody. Nothing in the record supports defendant's contention that he did not receive notice in a timely fashion.

Without a proper record, defendant has not shown actual prejudice arising from manifest error affecting a constitutional right. RAP 2.5(a)(3) precludes defendant from raising these issues for the first time on appeal.

- b. If this court does review defendant's claims on the merits, the record supports a finding that defendant received due process as articulated by the United States Supreme Court in *Morrissey*.

During a revocation hearing, a defendant is afforded only minimal due process protections, particularly:

- (a) written notice of the claimed violations of parole, (b) disclosure of evidence against him, (c) an opportunity to be heard in person and to present witnesses and documentary evidence, (d) the right to confront and cross-examine adverse witnesses, (e) a neutral and detached hearing body, and (f) a written statement by the fact finder as to the evidence relied on and reasons for revoking community custody.

Morrissey, 408 U.S. at 489; *State v. AbdRahmaan*, 154 Wn.2d 280, 285-86, 111 P.3d 1157 (2005).

Here, defendant was represented by counsel and his counsel received written notice of the allegations. RP 10/09/09 5. Defendant was

⁵ Defendant mistakenly claims that this notice was filed with the court on August 14, 2009. See Appellant's Opening Brief at 9; *but see* CP 20-23.

provided discovery through counsel. CP 36. He testified on his own behalf and acquired physical evidence. CP 34; RP 01/22/10 26. Through counsel, he cross-examined and confronted the State's witnesses. RP 01/22/10 10, 17, 24. The judge, a neutral and detached hearing body, issued a written ruling finding the allegations and a detailed oral ruling as to the evidence relied upon. CP 25-26; RP 42-45. While defendant is correct that this case lacks a writing of the evidence relied on, the lower court's oral ruling is sufficient for this court to provide meaningful review. Defendant's sole remedy is for remand to allow the lower court to transfer its oral ruling to writing. *See In re Breedlove*, 138 Wn.2d 289, 311, 979 P.2d 417 (1999) (remedy for trial court's failure to issue findings of fact and conclusions of law is remand for entry of the findings and conclusions).

2. THIS COURT SHOULD DISMISS THE PERSONAL RESTRAINT PETITION AS THE ISSUES RAISED BY DEFENDANT ARE MOOT AND HE HAS FAILED TO SHOW THAT HIS CASE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

Personal restraint procedure has its origins in the State's habeas corpus remedy, guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a

substitute for an appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). 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, and they require that collateral relief be limited in state as well as federal courts. *Id.*

In this collateral action, the petitioner has the duty of showing constitutional error, and that such error was actually prejudicial. The rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in the context of personal restraint petitions. *In re Mercer*, 108 Wn.2d 714, 718-21, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient in a collateral action to demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825-26. To obtain collateral relief from an alleged nonconstitutional error, a petitioner must show “a fundamental defect which inherently results in a complete miscarriage of justice.” *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than the constitutional standard of actual prejudice. *Id.* at 810.

Reviewing courts have three options in evaluating personal restraint petitions:

1. If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error or a fundamental defect resulting in a miscarriage of justice, the 20-23 must be dismissed;
2. If a petitioner makes at least a prima facie showing of actual prejudice, but the merits of the contentions cannot be determined solely on the record, the court should remand the 20-23 for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(a) and RAP 16.12;
3. If the court is convinced a petitioner has proven actual prejudicial error, the court should grant the personal restraint 20-23 without remanding the cause for further hearing.

In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

In a personal restraint petition, “naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” *In re Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988) (citing *In re Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986), which quoted *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). That phrase means “more is required than that the petitioner merely claiming in broad general terms that the prior convictions were unconstitutional.” *Williams*, 111 Wn.2d at 364. The 20-23 must also include the facts and “the evidence reasonably available to support the factual allegations.” *Williams*, 111 Wn.2d at 364.

The evidence that is presented to an appellate court to support a claim in a personal restraint 20-23 must also be in proper form. On this subject, the Washington Supreme Court has stated:

It is beyond question that all parties appearing before the courts of this State are required to follow the statutes and rules relating to authentication of documents. This court will, in future cases, accept no less.

In re Connick, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). The petition must include a statement of the facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2); *Williams*, 111 Wn.2d at 365. Personal restraint petitioner claims must be supported by affidavits stating particular facts, certified documents, certified transcripts, and the like. *Williams*, 111 Wn.2d at 364. If the petitioner fails to provide sufficient evidence to support his challenge, the petition must be dismissed. *Williams*, 111 Wn.2d at 364. The purpose of a reference hearing “is to resolve genuine factual disputes, not to determine whether the petitioner actually has evidence to support his allegations.” *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

Where the appellate court can no longer provide effective relief, the case is moot. *In re LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986); see *Dunner v. McLaughlin*, 100 Wn.2d 832, 676 P.2d 444 (1984); *In re Cross*, 99 Wn.2d 373, 662 P.2d 828 (1983). The court will make an

exception to this rule and address a moot case when it can be said that matters of continuing and substantial public interest are involved. Three criteria must be considered when determining whether the requisite degree of public interest exists: (1) the public or private nature of the question presented, (2) the need for a judicial determination for future guidance of public officers, and (3) the likelihood of future recurrences of the issue. *In re Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1988).

Here, defendant makes several due process claims relating to his revocation hearing in Pierce County Cause No. 97-1-04562-4 and to his arraignment in Pierce County Cause No. 10-1-00153-2. Personal Restraint Petition at 6-11. Defendant's due process claims in Cause No. 97-1-04562-4 all claim that due process was violated because he did not receive notice of his violations and of extension of his term of community custody. This court should reject each of petitioner's claims.

While the State disputes petitioner's claim of untimely arraignment under Cause No. 10-1-00153-2, the case was dismissed prior to trial. Appendix A. Defendant is under no restraint relating to that case, nor does he face the possibility of restraint. The errors claimed for Cause No. 10-1-00153-2 should be dismissed as defendant is not under restraint and any issues are moot.

For Cause No. 97-1-04562-4, defendant has not shown prejudicial error. The only prejudice defendant claims is that lack of notice deprived

and hindered his ability to present a defense. Personal Restraint Petition at 8. Yet, as discussed in his direct appeal, defendant was provided with counsel, written notice of the allegations, disclosure of evidence against him, an opportunity to be heard and present evidence, the opportunity to confront witnesses, a neutral and detached magistrate, and a written statement by the fact finder. In short, defendant presented a defense which was simply unsuccessful. The record indicates that defendant received the minimal due process required at community custody revocation hearings as required under *Morrissey*.

Finally, defendant's claim that the court lacked jurisdiction to consider the violations as his term of community custody had expired is without merit. Defendant fails to consider the provisions of former RCW 9.94A.625(3)⁶ which states that a period of community custody is tolled when the offender is in custody for any reason. After being released from full confinement for Cause No. 97-1-04562-4 on November 5, 2006, defendant was in custody on an unrelated charge. RP 09/11/09 3-6; RP 10/09/09 3-4. Defendant was in custody pending trial in Pierce County Cause No. 06-1-05599-5 from his arraignment date of November 29, 2006 to his sentencing date of October 17, 2008. Appendix B. Defendant's term of community custody tolled while he was in custody on the

⁶ Recodified as RCW 9.94A.171(3) effective August 1, 2009, but the tolling provision remains the same.

unrelated case. According to DOC's calculations, defendant's term of community custody expires October 26, 2011. RP 11/04/09 5.

This Court should dismiss the petition as defendant's issues are moot and he has failed to show a constitutional error that resulted in actual prejudice.

D. CONCLUSION.

The State respectfully requests this court to affirm the trial court's finding that defendant violated the terms of his community custody and dismiss defendant's personal restraint petition. If this court finds that remand is necessary, the State requests that the remand be limited to allow the lower court to issue written findings regarding the violation hearing.

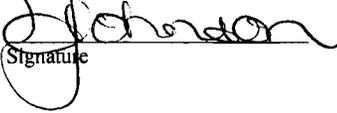
DATED: February 15, 2011

MARK LINDQUIST
Pierce County
Prosecuting Attorney


KIMBERLEY DEMARCO
Deputy Prosecuting Attorney
WSB # 39218

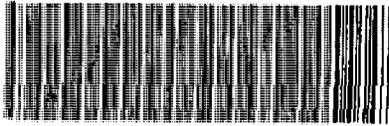
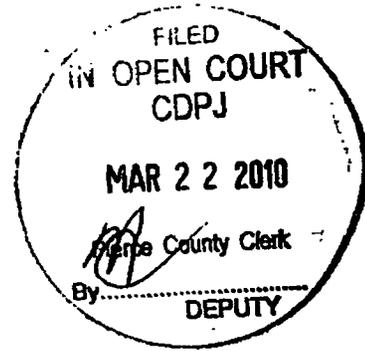
Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2/16/11 
Date Signature

APPENDIX “A”

Motion to Dismiss



10-1-00153-2 33980185 ORDSMWO 03-22-10

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-00153-2

vs.

FERNANDO ANTONIO IRIZARRY,

MOTION AND ORDER FOR
DISMISSAL WITHOUT PREJUDICE

Defendant.

DOB: 10/07/76

SID #: WA18531787

MOTION

Comes now the plaintiff, herein, by its attorney, MARK LINDQUIST, Prosecuting Attorney for Pierce County, and moves the court for an order dismissing without prejudice the above entitled action, on the grounds and for the reason that significant evidentiary problems exist such that the State is unable to prove the charges beyond a reasonable doubt.

The defendant is charged with Failure to Register as a Sex Offender with a violation period of January 1, 2009 through July 31, 2009. During that time the defendant reported weekly to the Pierce County Sheriff's Department, as required, as a transient sex offender. The defendant provided a list, which he signed under penalty of perjury, each time he reported of the locations where he stayed each night of the seven day period. The location that the defendant provided, almost exclusively, was the "MLK Center" in Tacoma, Washington. However, witnesses Ane and Morgan Black Crow have indicated that the defendant actually stayed the night at their residence for at least 10 nights of 14 during two separate 14-day periods in late May or early

MOTION AND ORDER FOR
DISMISSAL -}

indismiss dot

Office of Prosecuting Attorney
930 Tacoma Avenue S, Room 946
Tacoma, Washington 98402-2171
Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-1-00153-2

1
2
3 June, and in July, 2009. The witnesses have indicated to the undersigned that the defendant
4 arrived on a Friday night with his then-girlfriend and it was intended he would stay the weekend,
5 but he ended up staying additional nights. The defendant brought only a backpack of clothes,
6 and possibly another bag. The second time period that the defendant stayed with the Black
7 Crows he also brought a computer. According to the Black Crows it was understood that the
8 defendant's stay was temporary, and that he may on any given night not return to their residence.
9 The defendant did not receive mail or phone calls at their residence, and did not invite people
10 over to the residence. The Black Crows did not see him much during the day, as he would leave
11 the residence and return at night to sleep. The defendant did not have a key to the residence, but
12 as the residence was kept unlocked the defendant could come and go as he pleased. The Black
13 Crows had, at any given time, approximately 11 people who resided at the house in this
14 temporary manner.

15 The Black Crows' residence is in King County. The defendant never provided their
16 address as a location that he spent the night in either May, June or July, 2009. Pursuant to *State*
17 *v. Flowers*, ___ P.3d ___, No. 38468-0-II (February 9, 2010), where a transient sex offender
18 reports false information on the forms that the sheriff's department requires them to fill out,
19 listing where they have stayed for the seven nights prior to their report date, the crime committed
20 is the gross misdemeanor of making a false statement to a public servant.

21 Additionally, pursuant to RCW 9A.44.130(4)(a)(viii), offenders who lack a fixed residence
22 and who are under supervision, as the defendant was, shall register in the county of their
23 supervision. If the defendant was in fact transient, under the current case law and the facts of
24 this case, the defendant would have committed the crime of making a false or misleading
25 statement to a public servant. He was required by subsection (4)(a)(viii) to register in Pierce

10-1-00153-2

County, the county of his supervision, which he did in fact do, but he provided false information to the sheriff's department regarding where he stayed each night.

If, however, the defendant actually established a "fixed residence" with the Black Crow's, then the portion of RCW 9A.44.130 that would apply to the defendant would probably be subsection (5)(a), which provides that an offender must provide notice of a move to a new county within ten days of the move to the county sheriff with whom the person last registered; in this case, the Pierce County Sheriff's Department. The State cannot establish beyond a reasonable doubt that the defendant had been residing at the new address with the Black Crows for the full ten-day period that is set forth in the statute and it is doubtful that the State could prove beyond a reasonable doubt that the defendant had established a "fixed residence" at the Black Crow's.

The State cannot prove the felony charge of failure to register as a sex offender against the defendant, however the defendant may face charges of making a false or misleading statement to a public servant and the matter is being referred to the misdemeanor division of the Pierce County Prosecutor's Office for a determination whether the gross misdemeanor charges should be filed in District Court.

DATED: this 22nd day of March, 2010

MARK LINDQUIST
Pierce County Prosecuting Attorney
by: 
KARA E. SANCHEZ
Deputy Prosecuting Attorney
WSB#: 35502

10-1-00153-2

ORDER

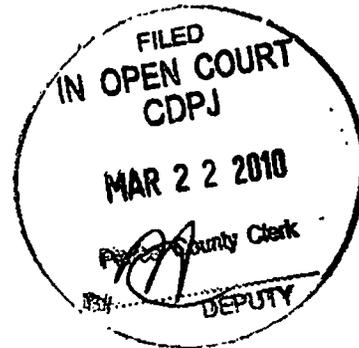
The above entitled matter having come on regularly for hearing on motion of MARK LINDQUIST, Prosecuting Attorney, and the Court being fully advised in the premises, it is hereby;

ORDERED that the above entitled action be and same is hereby dismissed without prejudice, bail is hereby exonerated. Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

DATED the 22nd day of March, 2010.


JUDGE

kes

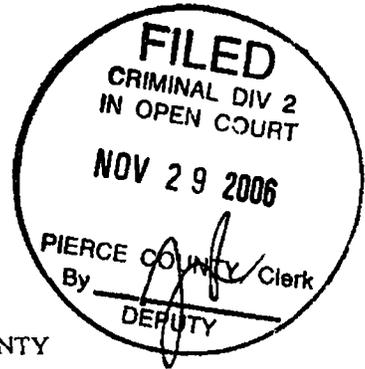


APPENDIX “B”

*Order Establishing Conditions of Release
&
Judgment and Sentence*



06-1-05599-5 26580787 ORECRP 11-30-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-05599-5

vs.

ORDER ESTABLISHING CONDITIONS
PENDING TRIAL PURSUANT TO CrR 3.2

FERNANDO TRIZAMY
JNO LB
Defendant.

06-332-0618

WA02703

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending trial in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release conditions:

- Defendant is to be held in custody without bail (no bail hold).
- Defendant is to be released on personal recognizance.
- Defendant is to be released upon execution of a surety bond in the amount of \$ 500,000 or posting of cash in the amount of \$ 500,000.
 - in meeting the above amount, defendant shall be given credit for \$ _____ already posted.

bail argument is resolved by

Conditions that take effect upon release from custody:

- Defendant is released to the supervision of _____.
- Defendant is to reside/stay only at this address _____.
- Travel is restricted to Pierce, King, Thurston, and Kitsap Counties.
- Defendant is not to drive a motor vehicle without a valid license and insurance.
- Defendant is to keep in contact with defense attorney.

Conditions that take effect immediately:

- Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.

Defendant is to have no contact with the victim(s) or witness(es), to wit:

_____ This includes any attempt to contact, directly or indirectly, by telephone and/or letter.

Pierce County jail shall monitor phone calls made by the defendant to insure compliance with this directive.

Defendant is to have no contact with minor children (under age 18) and is not to be on school grounds or playgrounds, except for: _____

Defendant is to report to the Pierce County jail by _____ for administrative booking procedure.

Defendant shall not possess weapons or firearms.

Defendant shall not consume or possess alcohol or non-prescription drugs, or associate with any known drug users or sellers.

Additional conditions of release are included in an attachment:

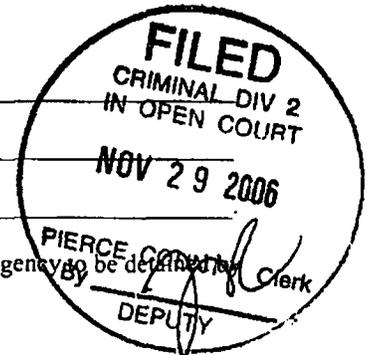
BTC Protective Order Other _____

Other _____

Defendant is hereby committed to the custody of the arresting law enforcement agency to be detained by _____ the same until the above stated conditions of release have been met.

DATED this 29th day of November, 2006.

Cecily G. Grant
JUDGE



I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney or, if I am representing myself, the Office of the Prosecuting Attorney-informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE OR BAIL IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000, OR BOTH (RCW 10.19).

Address: _____ Phone: _____

Fernando Trizany
04-1-0 5594-5

Fernando Trizany
DEFENDANT
11/29/06
DATE

06-1-05599-5



06-1-05599-5 30747230 JS 10-20-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-05599-5

vs.

JUDGMENT AND SENTENCE (FJS)

FERNANDO ANTONIO IRIZARRY

Defendant.

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA18531787
DOB: 10/7/1976

OCT 20 2008

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 9/4/2008 by [X] plea [] jury-verdict [] bench trial of:

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|-------|---|-----------------|-------------------|------------------------------|------------------------|
| II | TAMPERING WITH A WITNESS (Charge Code KK25) | 9A.72.120(1)(a) | None | 11/28/2006 - 4/23/2007 | Tacoma PD 063320618 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

08-9-13750-6

06-1-05599-3

- 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 | CHILD RAPE 1 | 12-30-98 | Pierce Cty, WA | 11-4-97 | Adult | Sex |
| 2 | MAL MISCH 3 | 6-25-97 | Pierce Cty, WA | 4-27-97 | Adult | Misd |

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-------------------|--|-------------------|--|--------------------|
| II | I | III | 3-8 Months | None | 3-8 Months | 5 yrs/ \$10,000 |

- 2.4** **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:
- within below the standard range for Count(s) _____.
 - above the standard range for Count(s) _____.
 - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.
- Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defend'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):
-

- The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:
-

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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.

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: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

| | | |
|---------|--|---|
| RTN/RJN | \$ _____ | Restitution to: _____ |
| | \$ _____ | Restitution to: _____ |
| | (Name and Address--address may be withheld and provided confidentially to Clerk's Office). | |
| PCV | \$ 500.00 | Crime Victim assessment |
| DNA | \$ 100.00 | DNA Database Fee |
| PUB | \$ 700.00 | Court-Appointed Attorney Fees and Defense Costs |
| FRC | \$ 200.00 | Criminal Filing Fee |
| FCM | \$ _____ | Fine |

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 1200.00 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with J.Y.M., D.O.B. 7/2/61 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

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

4.4 OTHER:

| |
|--|
| |
| |
| |
| |
| |
| |
| |

4.4a BOND IS HEREBY EXONERATED

4.5 JAIL ONE YEAR OR LESS. 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 county jail:

8 days/months on Count I _____ days/months on Count _____
_____ days/months on Count _____ days/months on Count _____

06-1-05599-5

Actual number of months of total confinement ordered is: 8

CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

Work Crew RCW 9.94A.725 Home Detention RCW 9.94A.731, .190

Work Release RCW 9.94A.731

CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

BTC Facility

ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

Alternatives to total confinement were not used because of: _____

criminal history failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(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:

652 DAYS.

4.6 COMMUNITY SUPERVISION CUSTODY. RCW 9.94A.505. Defendant shall serve _____ months (up to 12 months) in community supervision (Offense Pre 7/1/00) or community custody (Offense Post 6/30/00). N/A

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).]

06-1-05599-5

Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- remain in prescribed geographic boundaries specified by the community corrections officer
- notify the community corrections officer of any change in defendant's address or employment
- Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)
- not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). (RCW 9.94A.030(8)).

Other conditions: _____

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, 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 seven working days.

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

4.7 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

06-1-05599-5

completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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 or the clerk of the court 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 may be taken without further notice. 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 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. 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.

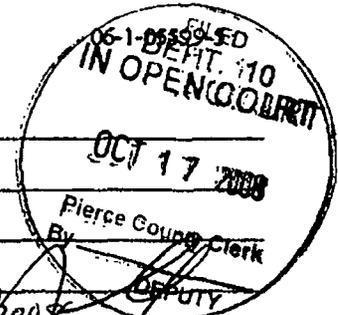
5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 The court finds that Court _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court 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 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____



DONE in Open Court and in the presence of the defendant this date: 10/17/2008

JUDGE

Print name

GARY STEINER

[Signature]

Deputy Prosecuting Attorney

Print name: BRAN WISANKARI

WSB # 28945

[Signature]

Attorney for Defendant

Print name: J A SCHOENBERGER

WSB # 33603

[Signature]

Defendant

Print name: FERNANDO A. IRIZARRY

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]

06-1-05599-5

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-05599-5

I, KEVIN STOCK 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 COURT REPORTER

ANGELA McDOUGALL
Court Reporter

06-1-05599-5

IDENTIFICATION OF DEFENDANT

SID No. WA18531787
(If no SID take fingerprint card for State Patrol)

Date of Birth 10/7/1976

FBI No. 495978VA1

Local ID No. PCSO# 198766

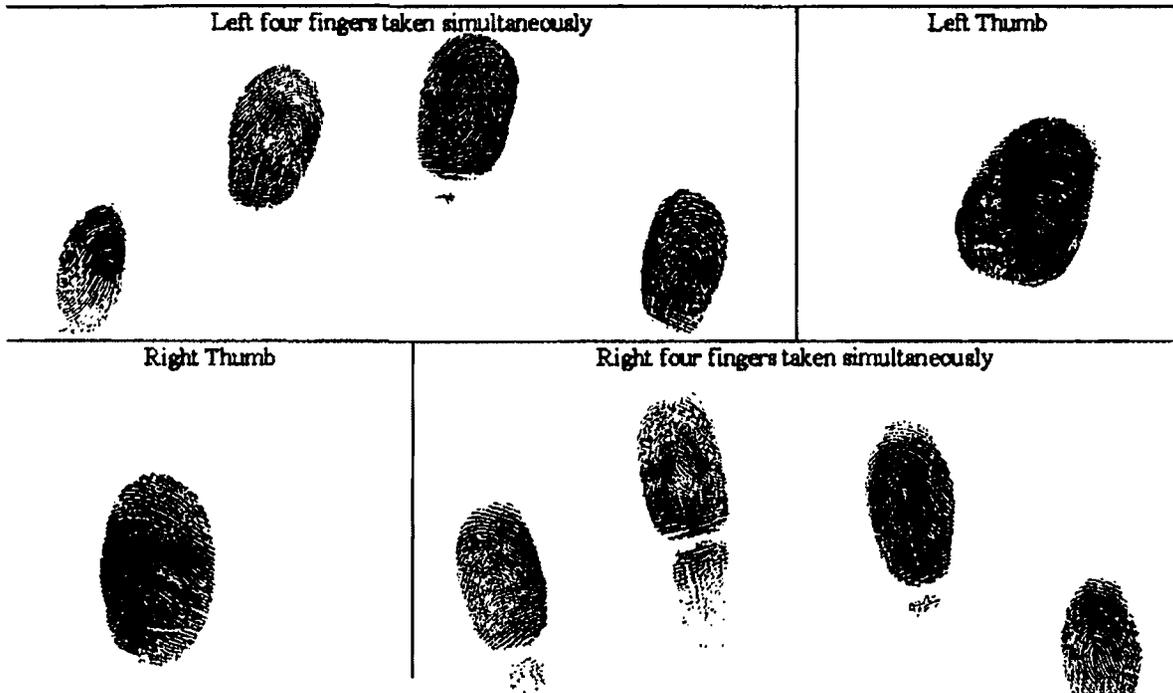
PCN No. 538951935

Other

Alias name, SSN, DOB: _____

| | | | | | | | |
|--------------|---|---|---|-------------------|--|---------------------------------|--|
| Race: | <input type="checkbox"/> Asian/Pacific Islander | <input type="checkbox"/> Black/African-American | <input checked="" type="checkbox"/> Caucasian | Ethnicity: | <input checked="" type="checkbox"/> Hispanic | Sex: | <input checked="" type="checkbox"/> Male |
| | <input type="checkbox"/> Native American | <input type="checkbox"/> Other : | | | <input type="checkbox"/> Non-Hispanic | <input type="checkbox"/> 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, Linda Schramm Dated: 10-17-08

DEFENDANT'S SIGNATURE: Fernando A. Sainz

DEFENDANT'S ADDRESS: 419 So. 69th Street
Tacoma, WA. 98409