Mr. Sylvester Mahone 2010113031
PCDCC
910 Tacoma Avenue S.,
Tacoma, WA. 98402

August 12, 2010

RECEIVED
AUG 18 2010
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

David Ponzoha - Clerk,
Court of Appeals - II
950 Broadway Ste., 300
Tacoma, WA. 98402

In re: St. v. Mahone, No. 40689-6-II;

Dear Clerk:

Enclosed is my Statement of Additional Grounds. There are a few errors I must point out in my attorney's opening brief:

(1). Judge Vicki Hogen was the presiding Judge in my Revokation Hearing in the Superior Court to which this appeal birth from. NOT Judge Bryan Chushcoff; See (Cover Page of Opening Brief By Attorney Selk).

(2). Within my attorney's opening brief on page 2, the fourteenth sentence line that starts, "Sometime before March of 2009, Mahone was released from ..." well this date should be September of 2009, because I released from prison on August 2, 2009.

Lastly, I ask that this letter be attached to my "Statement Of Additional Grounds" as I ask that the Court Of Appeals - II panel Judges allow me to INCORPORATE MY ATTORNEY'S STATEMENT OF THE CASE, on pages 1-4, section C, 1, and 2, into my own Statement Of Additional Grounds to prevent over redundency and a needless waste of judicial time. Can you give me a guestimate on how long a court decision may take on my appeal?

I impatiently await your response.
Have a wonderful day.

Sincerely,

Mr. Sylvester James Mahone
Appellant herein

Encl. Affid. of Mail.
Statement of Additional Grounds

Court of Appeals - II
No. 40689-6-II
(consolidated)

A. STATEMENT OF ADDITIONAL GROUNDS

(1). FACTS RELEVANT TO APPEAL

Sylvester James Mahone (hereinafter Mahone), is the Appellant herein and does file his Statement of Additional Grounds as provided below:

In 1994, Mahone pled guilty to one count of Assault In The Third Degree and given two years of Probation under the Department Of Corrections.

In 1995, Mahone pled guilty to one count of Murder In The Second Degree and given two years of Community Supervision under the Department Of Corrections (hereinafter DOC).

Both of Mahone's convictions fell under the 1984 Sentencing Reform Act. RCW 9.94A.030 (1995). Both convictions were not drug related nor was Mahone under the influence of drugs concerning his two convictions. Mahone has no drug convictions or drug related arrest history. See (Mahone's Judgment & Sentence Documents).

On Mahone's Judgment & Sentence Documents for both convictions there is:

(a). No Stipulations Requiring Mahone To Submit His Bodily Fluids For Random Drug Testing By The DOC;

(b). No Court Order - Ordering Mahone To Submit His Bodily Fluids For Random Drug Testing By The Courts Or The DOC;

(c). No Court Order Or Search Warrants Obtained By DOC To Legally Seize And Search Mahone's Bodily Fluids For Drug Testing Results.

Here, from January 1994 - December 1994, and from August 2009 - April 2010, the DOC, has forced Mahone to submit his bodily fluids for random drug testing over Mahone's objections, without any warrants, lawful authority, and under threat of liberty deprived through incarceration by the DOC for a probation - community supervision violation.

The Superior Court has sentenced and Mahone will have served over two years of total confinement for probation and community supervision violations soley on positive drug test results obtained WITHOUT COURT APPROVED STIPULATIONS, COURTORDERS, OR SEARCH WARRANTS OBTAINED, from 1994 - 1995, and from 2010 - 2011, by the DOC.

Secondly, RCW 9.94A.120 (1995), was misapplied to both Mahone's Judgment and Sentence Orders as probation and community supervision conditions in which requires Mahone to abstain from the use of illegal narcotic drugs and non-prescription drugs in a measure of "COERCIVE REHABILITATION" of Mahone by the Superior Courts. Id.

Although all parties signed both Mahone's Judgment and Sentence Orders, "Mahone 'WAS NOT CONVICTED OF SELLING, TRAFFICKING, POSSESSING, OR MANUFACTURING DRUGS. NO EVIDENCE MAHONE'S CONVICTIONS WERE DRUG RELATED, AND NO EVIDENCE MAHONE WAS UNDER THE INFLUENCE OF DRUGS WHEN HIS CRIMES WERE COMMITED.'" Id.

Here, when the Superior Court sentenced Mahone to 240, days of total confinement for two positive drug test results then applied the two drug test results to both Mahone's Probation and Community Supervision Conditions, under RCW 9.94A.120 (1995), as violations, then Ordered the two violations to be ran consecutive to Mahone's probation and community supervision making Mahone have four violations, then sentencing Mahone to 60 days for each violation totalling 240 days total confinement; Mahone claims the Superior Court erred and these facts provide herein

establish all Mahone's drug testing results obtained are INVALID warranting relief as sought in section C, below.

(2). CONSTITUTIONAL ANALYSIS

Mahone asks this Court to adopt the state constitutional analysis provided in State v. Gunwall, 106 Wash.2d 54, (1986), in deciding his claims below.

(3). ASSIGNMENTS OF ERROR

(a). Is The DOC Imposed Drug Testing Of Mahone A "Crime-Related Prohibition?"

(b). Was Mahone Advised His Right To Receive A Probation-Community Supervision Hearing To Review Specific Conditions, Terms, Or Drug Testings Imposed On Mahone By The Courts Or DOC?

(c). Was The Court Imposed Proscription That Mahone Not Possess Or Consume Controlled Substances Without A Lawfully Prescribed Prescription Under RCW 9.94A.120, Unconstitutionally Applied To Mahone Since Mahone's Crimes Were Not Drug Related?

(d). Did The April 23, 2010, Revokation Hearing Court Abuse Its Discretion By Ordering Mahone To Obtain A Drug Evaluation And Complete Treatment As Recommended?

(e). Was Mahone's State And Federal Constitutional Rights To Be Free From Unlawful And Unreasonable Search And Seizures Of His Bodily Fluids Violated By The DOC And The Superior Courts?

(4). ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

(a). The Revokation Hearing Court Abused Its Discretion When It Sentenced Mahone To 240 Days Confinement for Two Positive Urinalysis Drug Tests Because The DOC Requirement That Mahone Submit To Urinalysis Drug Testing To Find Out If Mahone Had Consumed Illegal Drugs — When Drugs Was Not Directly Related To Mahone's Crimes For Assault In The Third Degree And Murder In The Second Degree — Nor Was There Any Evidence Of Drug Use Or Possession By Mahone When These Crimes Occurred.

(b). The Original Sentencing Courts Of 1994 & 1995, And The 2010, Revokation Hearing Court violated Mahone's State And Federal Rights To Due Process When They Failed To Advise Mahone Of His Right To A Supervision Hearing To Review His Drug Prohibition Condition And Drug Testing Requirements Imposed On Mahone By These Courts And The DOC.

(c). The 1994, 1995, Trial Courts Imposed Drug Prohibition Conditions That Mahone Not Consume Controlled Substances Without A Lawfully Prescribed Prescription Under Former RCW 9.94A.120 (1994-1995), Was Unconstitutionally Applied To Mahone's Convictions And Was A Form Of Coercive Rehabilitation In Violation Of (Former) RCW 9.94A.030(7) (1994-1995); 9.94A.505; 9.94A.700(5)(e).

(d). The April 23, 2010, Revokation Hearing Court - Judge Vicki Hogen, Abused Her Discretion When It Ordered Mahone To Obtain A Drug Evaluation And Complete Treatiment As Recommended Following Mahone's 480 Days Of Confinement Forcing Mahone Into Coercive Rehabilitation To Perform An Affirmative Conduct In Violation Of RCW 9.94A.500(8).

(e). Mahone's Rights Under The State And Federal Constitution To Be Free From Unlawful And Unreasonable Search And Seizures Were Violated By The DOC And The Pierce County Superior Courts From 1994-1995. And In 2009-10, When The DOC Forced Mahone To Submit His Bodily Fluids For Urinalysis Drug Testing Without Any Seach Warrants Or Lawful Authority Which Caused Mahone To Be Unlawful Restained In Jail For Positive Urinalysis Drug Tests From 1994-1995, And 2010.

(B). ARGUMENT

(i). MAHONE CONTENDS IT WAS ERROR FOR THE ORIGINAL SENTENCING COURTS AND THE REVOKATION HEARING COURT TO ALLOW THE DOC TO IMPOSE A DRUG MONITORING CONDITION REQUIRING MAHONE TO SUBMIT TO DRUG URINALYSIS TESTING THEN SENTENCING MAHONE TO 240 DAYS CONFINEMENT FOR TWO POSITIVE DRUG TESTS WHEN DRUGS WERE NOT DIRECTLY OR INDIRECTLY RELATED TO MAHONE'S CRIMES WARRANTING VACATION.

The Sentencing Reform Act of 1981, provides in pertinent part:
"Under Sentencing Reform Act, Community Supervision Conditions Must Relate Directly To The Crime For Which The Offender Was Convicted And Not Coerced Into Doing Things Which Are Believed Will Rehabilitate Them."

RCW 9.94A.505. St. v. Parramore, 53 Wn. App. 527, 529-30 (Div. 1, 1989).

Mahone argues, the drug testing conditions the DOC imposed

on Mahone from 1994 – 2010, are invalid because they were not authorized by statute, drugs were not related to Mahone's crime/conviction, there were no Court Ordered stipulations by plea agreement, or found within Mahone's Judgment and Sentencing Orders. RCW 9.94A.715.

Mahone further argues, without a connection between drug use and the crimes to which Mahone pleaded guilty to, the DOC imposed drug testing conditions of Mahone's probation and community supervision were a form of "COERCED REHABILITATION" disapproved by the legislature when they enacted the Sentencing Reform Act (hereinafter SRA). Id. See RCW 9.41.010 et seq.

The Court stated, "Persons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes" BUT THEY MAY NOT BE COERCED INTO DOING THINGS WHICH ARE BELIEVED WILL REHABILITATE THEM." Parramore, 53 Wn. App. at 530. The SRA rule discussed in Parramore, supra, applies only to the sentencing of felony Offenders. St. v. Priest, 147 Wash. App. 662 (2008).

Mahone argues, by the DOC forcing Mahone to submit his bodily fluids for drug testing over Mahone's objections and the

threat of depriving Mahone of his liberty by incarceration as a probation-community supervision violation violated Mahone's rights under Article 1§3, of the Washington Constitution and the Fourteenth Amendment to the United States Constitution rendering all of Mahone's prior drug tests, results, and restraint unlawful.[1] This condition must be vacated pursuant to Parramore, supra, at 531-33, and as sought in section C, below. Mahone has been prejudiced.

(ii). MAHONE OBJECTS TO THE COURT'S PRACTICE OF REFERRING CASES TO THE DEPARTMENT OF CORRECTIONS TO ESTABLISH SPECIFIC TERMS OF SUPERVISION NOT IDENTIFIED AT THE SENTENCING HEARING VIOLATING MAHONE'S RIGHTS TO DUE PROCESS WARRANTING RELIEF.

In St. v. Campbell, 95 Wn. 2d 954 (1981), the Supreme Court provided that:

"Due Process Is Satisfied When The Court Advises Probationers That They Have A Right To A Hearing

[1] When Mahone plead guilty in 1994, to Assault In The Third Degree and in 1995, to Murder In The Second Degree, Mahone Did Not Waive His Future Rights Or Lose His Future Rights Under Article 1§3

And When The Conditions Of Probation [And Supervision] Are Clear And Understandable."

Cambell, 95 Wn. 2d at 958-59 (1981); See also, St. v. Playter, 12 Wn. App. 388, 390-91 (1974).

Mahone argues, the original sentencing Court and the probation-community supervision revokation hearing Court "did not advise" Mahone of his right to a hearing to review the specific conditions of probation-community supervision, i.e., drug testing conditions, that was imposed on Mahone and set by Department of Corrections (hereinafter DOC); nor was there any sentencing order or plea agreement stipulation Mahone signed in 1994, or 1995, that notified Mahone of his "right to request" a hearing at anytime to review its terms. Prejudice is presumed and due process was denied.

It was the absence of this hearing and authority that made the drug testing conditions invalid, unlawful, and unclear in the least. Furthermore, the absence of this hearing allowed the DOC to force Mahone

of the Washington Constitution or the Fourteenth Amendment of the United States Constitution.

to submit his bodily fluids as often as the DOC / Community Corrections officer wanted without a search warrant.[2]

Mahone argues, that by the Courts allowing the DOC to establish the drug testing conditions of his probation and community supervision (hereinafter Supervision), was an unlawful delegation of judicial authority, pursuant to the Washington Supreme Court's ruling in St. v. Summers, 60 Wash. 2d 702, at 708 (1962). In Summers, the trial Court authorized a probation officer to fix the amount of restitution. In reversing, the Supreme Court held:

> "The Authorization To Set Restitution Was An Unlawful Delegation Of Judicial Authority." Id.

See also, St. v. Forbes, 43 Wn. App. 793, 800 (1986).

The Summers, ruling is consistant with authorities from other jurisdictions holdings that the precise delineation of the terms of supervision is a core judicial function. This task cannot be delegated to the DOC or Community Corrections Officer. See, e.g., St. v. Sazvedra, 406 N.W.

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[2] DOC forced Mahone to submit his bodily fluids up to two times per week for several months at a time.

2d 667, 669-70 (N.D. 1987) (probation officer may not enlarge the probation agreement by requiring submission to drug testing without explicit directions from the Court). See also, St. v. Nelson, 417 N.W. 2d 814, 818 (N.D. 1987); McDonald v. State, 442 S.W. 2d 386, 387 (Tex., Crim., App., 1969); United States v. Johnson, 48 F.3d 806, 808-09 (4th Cir. 1995); St. v. Salyers, 239 Neb. 1002, 1005, 480 N.W. 2d 173 (1992). See Washington States Criminal Rules of Limited Jurisdiction.[3]

Mahone argues, these authorities mandate that all the terms of a sentence, including the precise terms and conditions of supervision, "MUST BE ORALLY PRONOUNCED BY THE JUDGE IN OPEN COURT, with the Defendant present and, MUST BE CLEARLY SET FORTH IN A SENTENCING ORDER." See CrR 7.2 (a).

Mahone was denied this hearing, as pled, and Mahone has been prejudiced and is entitled to the relief he seek in section C, below.

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[3] CrRLJ 7.2(a) requires a Court to state the precise terms of the sentence. CrRLJ 7.3, requires a judgment of conviction that sets forth the sentence including any "special conditions or requirements."

(iii). MAHONE'S 1994 AND 1995, PROBATION AND COMMUNITY CUSTODY-SUPERVISION PROHIBITIONS THAT MAHONE NOT POSSESS OR CONSUME CONTROLLED SUBSTANCES WITHOUT A LAWFUL PRESCRIPTION, UNDER FORMER RCW 9.94A.120, WAS UNCONSTITUTIONALLY APPLIED TO MAHONE BECAUSE SAID CRIME RELATED PROHIBITIONS ARE NOT SUPPORTED BY THE RECORD.

RCW 10.73.100(2) provides:

"The Statute The Offender Was Convicted Of Violating Is Unconstitutional On Its Face Or 'AS APPLIED TO THE OFFENDERS CONDUCT.'"

Mahone adopts St. v. Zimmer, 146 Wn. App. 405, 190 P.3d 121 (Div. 2, 2008), where this Court examined whether the trial court could prohibit Zimmer from possessing a cellular phone and a hand-held electronic scheduling and data storage device as a constitutional challenge to whether the prohibition is crime-related, as required by statute. Id. at 412.

This Court furthered that "Only the Legislature may establish potential legal punishments. . . Under RCW 9.94A.700(5)(e), the legislature has authorized the trial court to impose crime-related prohibitions. 'A crime-related prohibition is an order prohibiting conduct

that directly relates to the circumstances of the crime.'" Id. at 413. RCW 9.94A.030(10).

Mahone also provides St. v. Barclay, 51 Wn. App. 404 at 405 (1988), where this defendant was convicted of first degree vehicle prowl and received a community supervision sentence subject to the condition that he not "'violate any local, state, or federal criminal statute, law, or ordinance.'"

The Court Of Appeals reversed, concluding that the conditions of sentence did not directly relate to Mr. Barclay's conviction of First Degree Vehicle Prowl. This Court held that "the Court's condition of sentence is of a general nature and not directly related to Mr. Barclay's conviction of vehicle prowling in the first degree." Barclay, at 407. RCW 9.94A.505.

Mahone argues, because his conviction for Assault 3 and Murder 2, were NOT drug convictions, NOT drug related, Nor was there any evidence in the record Mahone was under the influence of drugs when these crimes occurred rendered the trial courts' supervision condition prohibition invalid, unconstitutionally applied to Mahone's convictions, and an Abuse Of Discretion. Zimmer, supra, at 413-14.

Mahone argues his Supervision conditions prohibiting Mahone from possessing and consuming controlled substances without a lawful prescription (invoking the DOC to require Mahone to submit to urinalysis drug testing), was erroneously imposed by the 1994, and 1995, trial courts and must be vacated i.e., struck from Mahone's two sentences with prejudice pursuant to THE SENTENCING REFORM ACT OF 1981; RCW 9.94A.700(5)(e); 9.94A.030(10). Adopting as Star Decisis: St. v. Sou, 2009 WL 151667 (Wash., App. Div. 1) at pages 1; 6. Relief is warranted as sought in section C, below.

(iv). THE APRIL 23, 2010, REVOKATION HEARING ERRED WHEN IT ORDERED APPELLANT TO COMPLETE A DRUG EVALUATION AND TREATMENT AS RECOMMENDED FOLLOWING MAHONE'S 480 DAY SUPERVISION VIOLATION SENTENCE WARRANTING SAID ORDER BE VACATED.

Mahone argues, the Revokation Hearing Court, Judge Vicki Hogan presided, erred when she ordered Mahone to complete a drug evaluation and obtain follow up treatment as recommended which equates to "Coerced Rehabilitation," in "Affirmative Conduct," in violation of RCW 9.94A.500(8).

Mahone asks this Court to strike this Order from Mahone's sentence pursuant to RCW 9.94A.500(8); 9.94A.505;

9.94A.700(5)(e); and State v. Parramore, 53 Wn. App. at 529-30 (Div. 1, 1989). As all conditions of supervision must be crime-related in order to satisfy state and federal constitutional requirements of due process of law. Relief is warranted as sought in section C, below.

(v). MAHONE'S STATE AND FEDERAL RIGHTS TO BE FREE FROM UNLAWFUL SEARCH AND SEIZURE OF HIS BODILY FLUIDS BY THE DEPARTMENT OF CORRECTIONS WITHOUT LAWFULL AUTHORITY WARRANTS RELIEF.

The Washington State and United States Constitution provides:

"The Right Of The People To Be Secured In Their Persons, Houses, Papers, And Effects Against Unreasonable Searches And Seizures SHALL NOT BE VIOLATED, And No Warrants SHALL Issue But Upon Probable Cause, Supported By Oath Or Affirmation, And Particularly Describing The Place To Be Searched, And The Person Or Things To Be Seized."

U.S. Constitution's Fourth Amendment. Washington Constitution Article I §7.

Mahone argues, "the DOC violated his 'state and federal constitutional rights to be free from unlawful and unreasonable searches and seizures' when the DOC forced Mahone to submit his bodily fluids for urinalysis drug testing without a Court Ordered search warrant or lawful authority 'over Mahone's objections' and subjected Mahone to unlawful restraint imposed by the Pierce County Superior Courts from 1994-1995, and 2010, for positive drug test results." Relief is warranted as sought in section C, below.

(vi). MAHONE HAS BEEN PREJUDICED

Mahone argues, he has been Constitutionally prejudiced by the actions of both 1994, and 1995, trial courts and the 2010, sentencing revokation hearing Court when they imposed drug related prohibition supervision conditions on Mahone WITHOUT LAWFUL AUTHORITY.

Mahone's crimes were NOT drug related, No evidence was presented in the record that Mahone was under the influence or in possession of drugs when he committed his crimes.

Such conditions allowed the DOC to force Mahone to submit his bodily fluides for drug testing, Mahone's liberty unlawfully deprived in 1994-1995, and 2010, in which resulted in Mahone's past, present, and future restraint constitutionally unlawful. Thus relief is warranted as sought in section C, below:

(C). RELIEF SOUGHT

Mahone seeks the Court of Appeals-II to:

(1). Invalidate All Mahone's Past Drug Test Results And Strike The Drug Prohibition Condition From Both

Mahone's Judgment & Sentencing Orders Pursuant To RCW 9.94A.505; St.v. Sou, 2009 WL 151667 (Wa. App. Div. 1), page 6;

(2). Order The Department Of Corrections To Stop Imposing Drug Tests On Mahone Since Mahone's Convictions Are Not Drug Related, Statutorily Authorized, Or Court Ordered On Mahone's Judgment And Sentencing Documents, Pursuant To RCW 9.94A.505; 9.41.010 et seq; St.v. Parramore, supra, at 531-33; and St.v. Saavedra, supra, at 669-70;

(3). Issue A Declaration On Which Of Mahone's State And Federal Constitutional Rights Were Violated By The Courts And DOC;

(4). Order The Trial Court To Calculate All The Jail Time Mahone Has Served Under Unlawful Restraint Behind The Unauthorized Drug Tests Done By The DOC From 1994-1995, And 2010-2011, And Credit That Time Toward Mahone's Supervision Completion Time;

(5). Order Mahone's Immediate Release From Total Confinement And/Or Terminate Mahone's Probation And Community Supervision With Prejudice For The Superior Court And DOC Violating Mahone's State And Federal Constitutional Rights And The Sentencing Reform Act Of 1981.

Dated this 12, day of August, 2010.

Respectfully,
Mr. S.J.M. 201011303I
Mr. Sylvester James Mahone
PCDCC
910 Tacoma Avenue S.,
Tacoma, WA 98402.

I, Sylvester James Mahone, affirm that the facts herein are true and correct under the penalty of perjury of the laws of the state of Washington.

Court of Appeals - II
No. 40689-6-II
(consolidated)

A). STATEMENT OF ADDITIONAL GROUNDS

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(1). FACTS RELEVANT TO APPEAL

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In 1995, Mahone pled guilty to one count of Murder In The Second Degree and given two years of Community Supervision under the Department Of Corrections (hereinafter DOC).

Both of Mahone's convictions fell under the 1984, Sentencing Reform Act. RCW 9.94A.030 (1995). Both convictions were not drug related nor was Mahone under the influence of drugs concerning his two convictions. Mahone has no drug convictions or drug related arrest history. See (Mahone's Judgment & Sentence Documents).

On Mahone's Judgment & Sentence Documents for both convictions there is:

(a). No Stipulations Requiring Mahone To Submit His Bodily Fluids For Random Drug Testing By The DOC;

(b). No Court Order - Ordering Mahone To Submit His Bodily Fluids For Random Drug Testing By The Courts Or The DOC;

(c). No Court Order Or Search Warrants Obtained By DOC To Legally Seize And Search Mahone's Bodily Fluids for Drug Testing Results.

Here, from January 1994 - December 1994, and from August 2009 - April 2010, the DOC, has forced Mahone to submit his bodily fluids for random drug testing over Mahone's objections, without any warrants, lawful authority, and under threat of liberty deprived through incarceration by the DOC for a probation - community supervision violation.

The Superior Court has sentenced and Mahone will have served over two years of total confinement for probation and community supervision violations soley on positive drug test results obtained WITHOUT COURT APPROVED STIPULATIONS, COURTORDERS, OR SEARCH WARRANTS OBTAINED, from 1994 - 1995, and from 2010 - 2011, by the DOC.

Secondly, RCW 9.94A.120 (1995), was misapplied to both Mahone's Judgment and Sentence Orders as probation and community supervision conditions in which requires Mahone to abstain from the use of illegal narcotic drugs and non-prescription drugs in a measure of "COERCIVE REHABILITATION" of Mahone by the Superior Courts. Id.

Although all parties signed both Mahone's Judgment and Sentence Orders, "Mahone 'WAS NOT CONVICTED OF SELLING, TRAFFICKING, POSSESSING, OR MANUFACTURING DRUGS. NO EVIDENCE MAHONE'S CONVICTIONS WERE DRUG RELATED, AND NO EVIDENCE MAHONE WAS UNDER THE INFLUENCE OF DRUGS WHEN HIS CRIMES WERE COMMITTED.'" Id.

Here, when the Superior Court sentenced Mahone to 240, days of total confinement for two positive drug test results then applied the two drug test results to both Mahone's Probation and Community Supervision Conditions, under RCW 9.94A.120 (1995), as violations, then Ordered the two violations to be ran consecutive to Mahone's probation and community supervision making Mahone have four violations, then sentencing Mahone to 60 days for each violation totalling 240 days total confinement; Mahone claims the Superior Court erred and these facts provide herein

establish all Mahone's drug testing results obtained are INVALID warranting relief as sought in section C, below.

(2). CONSTITUTIONAL ANALYSIS

Mahone asks this Court to adopt the state constitutional analysis provided in State v. Gunwall, 106 Wash.2d 54, (1986), in deciding his claims below.

(3). ASSIGNMENTS OF ERROR

(a). Is The DOC Imposed Drug Testing Of Mahone A "Crime-Related Prohibition?"

(b). Was Mahone Advised His Right To Receive A Probation-Community Supervision Hearing To Review Specific Conditions, Terms, Or Drug Testings Imposed On Mahone By The Courts Or DOC?

(c). Was The Court Imposed Proscription That Mahone Not Possess Or Consume Controlled Substances Without A Lawfully Prescribed Prescription Under RCW 9.94A.120, Unconstitutionally Applied To Mahone Since Mahone's Crimes Were Not Drug Related?

(d). Did The April 23, 2010, Revokation Hearing Court Abuse Its Discretion By Ordering Mahone To Obtain A Drug Evaluation And Complete Treatment As Recommended?

(e). Was Mahone's State And Federal Constitutional Rights To Be Free From Unlawful And Unreasonable Search And Seizures Of His Bodily Fluids Violated By The DOC And The Superior Courts?

(4). ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

(a). The Revokation Hearing Court Abused Its Discretion When It Sentenced Mahone To 240 Days Confinement for Two Positive Urinalysis Drug Tests Because The DOC Requirement That Mahone Submit To Urinalysis Drug Testing To Find Out If Mahone Had Consumed Illegal Drugs — When Drugs Was Not Directly Related To Mahone's Crimes For Assault In The Third Degree And Murder In The Second Degree — Nor Was There Any Evidence Of Drug Use Or Possession By Mahone When These Crimes Occurred.

(b). The Original Sentencing Courts Of 1994 & 1995, And The 2010, Revokation Hearing Court violated Mahone's State And Federal Rights To Due Process When They Failed To Advise Mahone Of His Right To A Supervision Hearing To Review His Drug Prohibition Condition And Drug Testing Requirements Imposed On Mahone By These Courts And The DOC.

(c). The 1994, 1995, Trial Courts Imposed Drug Prohibition Conditions That Mahone Not Consume Controlled Substances Without A Lawfully Prescribed Prescription Under Former RCW 9.94A.120 (1994-1995), Was Unconstitutionally Applied To Mahone's Convictions And Was A Form Of Coercive Rehabilitation In Violation Of (Former) RCW 9.94A.030(7) (1994-1995); 9.94A.505; 9.94A.700(5)(e).

(d). The April 23, 2010, Revokation Hearing Court - Judge Vicki Hogen, Abused Her Discretion When It Ordered Mahone To Obtain A Drug Evaluation And Complete Treatment As Recommended Following Mahone's 480 Days Of Confinement Forcing Mahone Into Coercive Rehabilitation To Perform An Affirmative Conduct In Violation Of RCW 9.94A.500(8).

(e). Mahone's Rights Under The State And Federal Constitution To Be Free From Unlawful And Unreasonable Search And Seizures Were Violated By The DOC And The Pierce County Superior Courts From 1994-1995, And In 2009-10, When The DOC Forced Mahone To Submit His Bodily Fluids For Urinalysis Drug Testing Without Any Seach Warrants Or Lawful Authority Which Caused Mahone To Be Unlawful Restained In Jail For Positive Urinalysis Drug Tests From 1994-1995, And 2010.

(B). ARGUMENT

(i). MAHONE CONTENDS IT WAS ERROR FOR THE ORIGINAL SENTENCING COURTS AND THE REVOKATION HEARING COURT TO ALLOW THE DOC TO IMPOSE A DRUG MONITORING CONDITION REQUIRING MAHONE TO SUBMIT TO DRUG URINALYSIS TESTING THEN SENTENCING MAHONE TO 240 DAYS CONFINEMENT FOR TWO POSITIVE DRUG TESTS WHEN DRUGS WERE NOT DIRECTLY OR INDIRECTLY RELATED TO MAHONE'S CRIMES WARRANTING VACATION.

The Sentencing Reform Act of 1981, provides in pertinent part:
"Under Sentencing Reform Act, Community Supervision Conditions Must Relate Directly To The Crime For Which The Offender Was Convicted And Not Coerced Into Doing Things Which Are Believed Will Rehabilitate Them."

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on Mahone from 1994 - 2010, are invalid because they were not authorized by statute, drugs were not related to Mahone's crime/conviction, there were no Court Ordered stipulations by plea agreement, or found within Mahone's Judgment and Sentencing Orders. RCW 9.94A.715.

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The Court stated, "Persons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes" BUT THEY MAY NOT BE COERCED INTO DOING THINGS WHICH ARE BELIEVED WILL REHABILITATE THEM." Parramore, 53 Wn. App. at 530. The SRA rule discussed in Parramore, supra. applies only to the sentencing of felony offenders. St. v. Priest, 147 Wash. App. 662 (2008).

Mahone argues, by the DOC forcing Mahone to submit his bodily fluids for drug testing over Mahone's objections and the

threat of depriving Mahone of his liberty by incarceration as a probation-community supervision violation violated Mahone's rights under Article 1§3, of the Washington Constitution and the Fourteenth Amendment to the United States Constitution rendering all of Mahone's prior drug tests, results, and restraint unlawful.[1] This condition must be vacated pursuant to Parramore, supra, at 531-33, and as sought in section C, below. Mahone has been prejudiced.

(ii). MAHONE OBJECTS TO THE COURT'S PRACTICE OF REFERRING CASES TO THE DEPARTMENT OF CORRECTIONS TO ESTABLISH SPECIFIC TERMS OF SUPERVISION NOT IDENTIFIED AT THE SENTENCING HEARING VIOLATING MAHONE'S RIGHTS TO DUE PROCESS WARRANTING RELIEF.

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of the Washington Constitution or the Fourteenth Amendment of the United States Constitution.

to submit his bodily fluids as often as the DOC/Community Corrections officer wanted without a search warrant.[2]

Mahone argues, that by the Courts allowing the DOC to establish the drug testing conditions of his probation and community supervision (hereinafter Supervision), was an unlawful delegation of judicial authority, pursuant to the Washington Supreme Court's ruling in St. v. Summers, 60 Wash. 2d 702, at 708 (1962). In Summers, the trial Court authorized a probation officer to fix the amount of restitution. In reversing, the Supreme Court held:

> "The Authorization To Set Restitution Was An Unlawful Delegation Of Judicial Authority." Id.

See also, St. v. Forbes, 43 Wn. App. 793, 800 (1986).

The Summers, ruling is consistant with authorities from other jurisdictions holdings that the precise delineation of the terms of supervision is a core judicial function. This task cannot be delegated to the DOC or Community Corrections Officer. See, e.g., St. v. Sazvedra, 406 N.W.

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[2] DOC forced Mahone to submit his bodily fluids up to two times per week for several months at a time.

2d 667, 669-70 (N.D. 1987) (probation officer may not enlarge the probation agreement by requiring submission to drug testing without explicit directions from the Court). See also, St. v. Nelson, 417 N.W. 2d 814, 818 (N.D. 1987); McDonald v. State, 442 S.W. 2d 386, 387 (Tex., Crim., App., 1969); United States v. Johnson, 48 F.3d 806, 808-09 (4th Cir. 1995); St. v. Salyers, 239 Neb. 1002, 1005, 480 N.W. 2d 173 (1992). See Washington States Criminal Rules of Limited Jurisdiction.[3]

Mahone argues, these authorities mandate that all the terms of a sentence, including the precise terms and conditions of supervision, "MUST BE ORALLY PRONOUNCED BY THE JUDGE IN OPEN COURT, with the Defendant present and, MUST BE CLEARLY SET FORTH IN A SENTENCING ORDER." See CrR 7.2 (a).

Mahone was denied this hearing, as pled, and Mahone has been prejudiced and is entitled to the relief he seek in section C, below.

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[3] CrRLJ 7.2(a) requires a Court to state the precise terms of the sentence. CrRLJ 7.3, requires a judgment of conviction that sets forth the sentence including any "special conditions or requirements."

(iii). MAHONE'S 1994 AND 1995, PROBATION AND COMMUNITY CUSTODY-SUPERVISION PROHIBITIONS THAT MAHONE NOT POSSESS OR CONSUME CONTROLLED SUBSTANCES WITHOUT A LAWFUL PRESCRIPTION, UNDER FORMER RCW 9.94A.120, WAS UNCONSTITUTIONALLY APPLIED TO MAHONE BECAUSE SAID CRIME RELATED PROHIBITIONS ARE NOT SUPPORTED BY THE RECORD.

RCW 10.73.100(2) provides:

"The Statute The Offender Was Convicted Of Violating Is Unconstitutional On Its Face Or 'AS APPLIED TO THE OFFENDERS CONDUCT.'"

Mahone adopts St. v. Zimmer, 146 Wn. App. 405, 190 P.3d 121 (Div. 2, 2008), where this Court examined whether the trial court could prohibit Zimmer from possessing a cellular phone and a hand-held electronic scheduling and data storage device as a constitutional challenge to whether the prohibition is crime-related, as required by statute. Id. at 412.

This Court furthered that "Only the Legislature may establish potential legal punishments. . . . Under RCW 9.94A.700(5)(e), the legislature has authorized the trial court to impose crime-related prohibitions. "A crime-related prohibition is an order prohibiting conduct

that directly relates to the circumstances of the crime." " Id. at 413. RCW 9.94A.030(10).

Mahone also provides St. v. Barclay, 51 Wn. App. 404 at 405 (1988), where this defendant was convicted of first degree vehicle prowl and received a community supervision sentence subject to the condition that he not "'violate any local, state, or federal criminal statute, law, or ordinance.'"

The Court of Appeals reversed, concluding that the conditions of sentence did not directly relate to Mr. Barclay's conviction of First Degree Vehicle Prowl. This Court held that "the Court's condition of sentence is of a general nature and not directly related to Mr. Barclay's conviction of vehicle prowling in the First degree." Barclay, at 407. RCW 9.94A.505.

Mahone argues, because his conviction for Assault 3 and Murder 2, were NOT drug convictions, NOT drug related, Nor was there any evidence in the record Mahone was under the influence of drugs when these crimes occurred rendered the trial courts' supervision condition prohibition invalid, unconstitutionally applied to Mahone's convictions, and an Abuse Of Discretion. Zimmer, supra at 413-14.

Mahone argues his Supervision conditions prohibiting Mahone from possessing and consuming controlled substances without a lawful prescription (invoking the DOC to require Mahone to submit to urinalysis drug testing), was erroneously imposed by the 1994, and 1995, trial courts and must be vacated i.e., struck from Mahone's two sentences with prejudice pursuant to THE SENTENCING REFORM ACT OF 1981; RCW 9.94A.700(5)(e); 9.94A.030(10). Adopting as Star Decisis: St. v. Sou, 2009 WL 151667 (Wash., App. Div. 1) at pages 1; 6. Relief is warranted as sought in section C, below.

(iv). THE APRIL 23, 2010, REVOKATION HEARING ERRED WHEN IT ORDERED APPELLANT TO COMPLETE A DRUG EVALUATION AND TREATMENT AS RECOMMENDED FOLLOWING MAHONE'S 480 DAY SUPERVISION VIOLATION SENTENCE WARRANTING SAID ORDER BE VACATED.

Mahone argues, the Revokation Hearing Court, Judge Vicki Hogan presided, erred when she ordered Mahone to complete a drug evaluation and obtain follow up treatment as recommended which equates to "Coerced Rehabilitation," in "Affirmative Conduct," in violation of RCW 9.94A.500(8).

Mahone asks this Court to strike this Order from Mahone's sentence pursuant to RCW 9.94A.500(8); 9.94A.505;

9.94A.700(5)(e); and State v. Parramore, 53 Wn. App. at 529-30 (Div. 1, 1989). As all conditions of supervision must be crime-related in order to satisfy state and federal constitutional requirements of due process of law. Relief is warranted as sought in section C, below.

(v). MAHONE'S STATE AND FEDERAL RIGHTS TO BE FREE FROM UNLAWFUL SEARCH AND SEIZURE OF HIS BODILY FLUIDS BY THE DEPARTMENT OF CORRECTIONS WITHOUT LAWFULL AUTHORITY WARRANTS RELIEF.

The Washington State and United States Constitution provides:

"The Right Of The People To Be Secured In Their Persons, Houses, Papers, And Effects Against Unreasonable Searches And Seizures SHALL NOT BE VIOLATED, And No Warrants SHALL Issue But Upon Probable Cause, Supported By Oath Or Affirmation, And Particularly Describing The Place To Be Searched, And The Person Or Things To Be Seized."

U.S. Constitution's Fourth Amendment. Washington Constitution Article I §7.

Mahone argues, "the DOC violated his 'state and federal constitutional rights to be free from unlawful and unreasonable searches and seizures' when the DOC forced Mahone to submit his bodily fluids for urinalysis drug testing without a Court Ordered search warrant or lawful authority 'over Mahone's objections' and subjected Mahone to unlawful restraint imposed by the Pierce County Superior Courts from 1994-1995, and 2010, for positive drug test results." Relief is warranted as sought in section C, below.

(vi). MAHONE HAS BEEN PREJUDICED

Mahone argues, he has been Constitutionally prejudiced by the actions of both 1994, and 1995, trial courts and the 2010, sentencing revokation hearing Court when they imposed drug related prohibition supervision conditions on Mahone WITHOUT LAWFUL AUTHORITY.

Mahone's crimes were NOT drug related, No evidence was presented in the record that Mahone was under the influence or in possession of drugs when he committed his crimes.

Such conditions allowed the DOC to force Mahone to submit his bodily fluides for drug testing, Mahone's liberty unlawfully deprived in 1994-1995, and 2010, in which resulted in Mahone's past, present, and future restraint constitutionally unlawful. Thus relief is warranted as sought in section C, below:

(C). RELIEF SOUGHT

Mahone seeks the Court of Appeals-II to:

(1). Invalidate All Mahone's Past Drug Test Results And Strike The Drug Prohibition Condition From Both

Mahone's Judgment & Sentencing Orders Pursuant To RCW 9.94A.505; St.v. Sou, 2009 WL 151667 (Wa. App. Div. 1), page 6;

(2). Order The Department Of Corrections To Stop Imposing Drug Tests On Mahone Since Mahone's Convictions Are Not Drug Related, Statutorily Authorized, Or Court Ordered On Mahone's Judgment And Sentencing Documents, Pursuant To RCW 9.94A.505; 9.41.010 et seq; St.v. Parramore, supra, at 531-33; and St.v. Saavedra, supra, at 669-70;

(3). Issue A Declaration On Which Of Mahone's State And Federal Constitutional Rights Were Violated By The Courts And DOC;

(4). Order The Trial Court To Calculate All The Jail Time Mahone Has Served Under Unlawful Restraint Behind The Unauthorized Drug Tests Done By The DOC From 1994-1995, And 2010-2011, And Credit That Time Toward Mahone's Supervision Completion Time;

(5). Order Mahone's Immediate Release From Total Confinement And/Or Terminate Mahone's Probation And Community Supervision With Prejudice For The Superior Court And DOC Violating Mahone's State And Federal Constitutional Rights And The Sentencing Reform Act Of 1981.

Dated this 12, day of August, 2010.

Respectfully,
Mark.E.G.M. 20100113031
Mr. Sylvester James Mahone
PCDCC
910 Tacoma Avenue S.,
Tacoma, WA 98402.

I, Sylvester James Mahone, affirm that the facts herein are true and correct under the penalty of perjury of the laws of the state of Washington.

CERTIFICATE OF SERVICE BY MAIL

I, Sylvester James Mahone, certify that I sent a true and correct copy of: One-Letter To David Ponzoha of the Court Of Appeals-II And Two Statement Of Additional Grounds For Review, to the Court Of Appeals-II and One Letter And One Statement Of Additional Grounds For Review to Appellant's Counsel by depositing such in the Pierce County Jail Mail System addressed to:

David Ponzoha-Clerk of the-
Court Of Appeals-II
950 Broadway Ste., 300.
Tacoma, WA. 98402;

Kathryn Selk-Attorney For Appellant-
Russell Selk Law Offices
1037 Northeast 65th Street Box 135
Seattle, Washington 98115

Dated this 12, day of August, 2010.

2010113031
Sylvester James Mahone
PCDCC
910 Tacoma Ave., S.,
Tacoma, Wash., 98402