

No. **41345-1** _____

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

In re the Personal Restraint of:

RYAN WAYNE ALLEN,

Petitioner.

PETITION FOR RELIEF FROM PERSONAL RESTRAINT IMPOSED
PURSUANT TO JUDGMENT AND SENTENCE ENTERED IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR
THURSTON COUNTY

PERSONAL RESTRAINT PETITION

HARRY WILLIAMS IV
Attorney for Petitioner

Law Office of Harry Williams LLC
P.O. Box 19336
Seattle, WA 98109
(206) 455-9992
harry@harrywilliamsllc.com

FILED
COURT OF APPEALS
DIVISION II
19 OCT 25 PM 12:45
STATE OF WASHINGTON
BY _____
DEPUTY

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

I. STATUS OF PETITIONER 1

II. FACTS RELEVANT TO PETITION..... 1

 A. 2007 CURRENT OFFENSES 1

 B. 1994 PREDICATE OFFENSE 2

 C. 2005 SEIZURE AND RETURN OF ALLEN’S FIREARM..... 4

 D. ALLEN’S DECLARATION 5

III. STANDARD OF REVIEW 6

IV. GROUNDS FOR RELIEF AND ARGUMENT 7

 A. THE PREDICATE OFFENSE COURT’S FAILURE TO PROVIDE
 THE NOTICE MANDATED BY RCW 9.41.047(1) REQUIRES
 DISMISSAL OF ALLEN’S UNLAWFUL FIREARM POSSESSION
 CONVICTIONS. 7

 B. ALLEN’S UNLAWFUL FIREARM POSSESSION CONVICTIONS
 VIOLATE DUE PROCESS BECAUSE HE WAS AFFIRMATIVELY
 MISLED BY THURSTON COUNTY TO BELIEVE THAT HE
 COULD LAWFULLY POSSESS FIREARMS. 12

 C. ALLEN’S CLAIMS ARE NOT BARRED BY THE RULE
 PROHIBITING CONSIDERATION OF CLAIMS RAISED AND
 REJECTD ON DIRECT APPEAL. 18

 D. AT A MINIMUM, ALLEN IS ENTITLED TO A REFERENCE
 HEARING IN THE SUPERIOR COURT..... 24

V. REQUEST FOR RELIEF 26

VI. OATH OF ATTORNEY 27

TABLE OF AUTHORITIES

Cases

<i>Born v. Thompson</i> , 154 Wn.2d 749, 117 P.3d 1098 (2005)	6
<i>Cox v. Louisiana</i> , 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965).....	13, 17
<i>In re Pers. Restraint of Brett</i> , 142 Wn.2d 868, 16 P.3d 601 (2001)	24
<i>In re Pers. Restraint of Cook</i> , 114 Wn.2d 802, 792 P.2d 506 (1990).....	6
<i>In re Pers. Restraint of Crace</i> , 157 Wn. App. 81, 236 P.3d 914 (2010)	25
<i>In re Pers. Restraint of Davis</i> , 142 Wn.2d 165, 12 P.3d 603 (2000).....	6
<i>In re Pers. Restraint of Greening</i> , 141 Wn.2d 687, 9 P.3d 206 (2000).....	19, 21
<i>In re Pers. Restraint of Haverty</i> , 101 Wn.2d 498, 681 P.2d 835 (1984)	19
<i>In re Pers. Restraint of Hews</i> , 99 Wn.2d 80, 88, 660 P.2d 263 (1983)	25
<i>In re Pers. Restraint of Hinton</i> , 152 Wn.2d 853, 100 P.3d 801 (2004).....	23
<i>In re Pers. Restraint of Holmes</i> , 121 Wn.2d 327, 849 P.2d 1221 (1993).....	22
<i>In re Pers. Restraint of Percer</i> , 111 Wn. App. 843, 47 P.3d 576 (2002)	24
<i>In re Pers. Restraint of Percer</i> , 150 Wn.2d 41, 75 P.3d 488 (2003)	24
<i>In re Pers. Restraint of Powell</i> , 92 Wn.2d 882, 602 P.2d 711 (1979).....	6
<i>In re Pers. Restraint of Rice</i> , 118 Wn.2d 876, 828 P.2d 1086 (1992).....	25, 26
<i>In re Pers. Restraint of Skylstad</i> , 160 Wn.2d 944, 162 P.3d 413 (2007).....	1
<i>In re Pers. Restraint of Taylor</i> , 105 Wn.2d 683, 717 P.2d 755 (1986)	passim
<i>Miller v. Commonwealth</i> , 25 Va. App. 727, 492 S.E.2d 482 (1997).....	13
<i>Raley v. Ohio</i> , 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344 (1959).....	13, 17
<i>Roberts v. Maine</i> , 48 F.3d 1287 (1st Cir. 1995)	17

Sanders v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963)..... 22

State v. Allen, 151 Wn. App. 1041, 2009 WL 2437229 (Aug. 11, 2009)..... 1, 2, 21

State v. Allen, 168 Wn.2d 1012, 227 P.3d 852 (Mar. 03, 2010) (Table, No. 83604-3) 1, 21

State v. Breitung, 155 Wn. App. 606, 230 P.3d 614 (2010) passim

State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995) 24

State v. Carter, 127 Wn. App. 713, 112 P.3d 561 (2005)..... 9, 16, 18

State v. Cross, 156 Wn.2d 580, 132 P.3d 80 (2006)..... 13

State v. Leavitt, 107 Wn. App. 361, 27 P.3d 622 (2001) passim

State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995) 21

State v. Meneses, 149 Wn. App. 707, 205 P.3d 916 (2009) 21

State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008) 9, 15, 18

State v. Moore, 121 Wn. App. 889, 91 P.3d 136 (2004), *review denied*, 154 Wn.2d 1012 (2005) 13, 15, 16

State v. Pierce, 155 Wn. App. 701, 230 P.3d 237 (2010)..... 18, 24

State v. Wright, 88 Wn. App. 683, 946 P.2d 792 (1997) 7

Statutes

RCW 10.73.090 1

RCW 9.41.010(16)(a) 7

RCW 9.41.010(3)(a) 7

RCW 9.41.040(1)(a) 2, 7, 21

RCW 9.41.040(3)..... 7

RCW 9.41.047(1)..... passim

Rules

RAP 16.11(a) 25

RAP 16.12..... 25, 26

RAP 16.4(a) 6

RAP 16.4(b) 6

RAP 16.4(c)(2)..... 6

RAP 16.4(d) 19

Constitutional Provisions

U.S. Const. Amend. 14 12

Wash. Const. Art. I, § 3 12

I. STATUS OF PETITIONER

The petitioner, Ryan Wayne Allen (“Allen”), was convicted in the Thurston County Superior Court of two counts of unlawful possession of a firearm in the first degree and one count of bail jumping on April 3, 2008. *See* Appendix A, Judgment and Sentence, *State v. Allen*, Thurston Co. No. 07-1-02163-2. Allen appealed to this Court, which affirmed the firearm offenses but reversed and dismissed the bail jumping conviction. The case was remanded for resentencing. *See* Appendix B, Unpublished Opinion, *State v. Allen*, 151 Wn. App. 1041, 2009 WL 2437229 (Aug. 11, 2009). The Washington Supreme Court subsequently denied Allen’s pro se Petition for Review. *See*, Appendix B, Order, *State v. Allen*, 168 Wn.2d 1012, 227 P.3d 852 (Mar. 03, 2010) (Table, No. 83604-3). Allen was resentenced on April 22, 2010. *See*, Appendix C, Judgment and Sentence after Remand, *State v. Allen*, Thurston Co. No. 07-1-02163-2.¹ Allen completed his original sentence and was released from custody prior to the resentencing hearing. He remains free today. Allen has not previously filed a collateral attack in either state or federal court.

II. FACTS RELEVANT TO PETITION

A. 2007 CURRENT OFFENSES

This Court described the facts underlying Allen’s unlawful firearm possession convictions as follows:

¹ The RCW 10.73.090 one-year time limit for seeking collateral relief begins to run on the date of resentencing if no appeal is filed. *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 162 P.3d 413 (2007). This petition is not time barred.

Sometime past midnight on December 21, 2007, a Thurston County sheriff's deputy responded to a noise complaint. The deputy arrived at Allen's mobile home, located in an isolated area, from which the deputy heard music playing.

The music blared from Allen's mobile home so loudly that all the home's windows shook and the deputy could not hear his dispatch radio even when turned up to its maximum volume. The deputy also noticed two cars parked in front of the home and a sign on the home that read, "No trespassing, violators will be shot and survivors will be prosecuted." Clerk's Papers (CP) at 30.

He knocked on the door twice before Allen answered. Allen aggressively opened the door while holding an assault rifle in his right hand. The deputy, who had come alone, stood face to face with Allen. The deputy later testified that it would have taken 10 to 20 minutes for assistance to arrive if he had called for backup.

The deputy ordered Allen to put down the weapon and Allen complied. The deputy pulled Allen out of the doorway and handcuffed him. The deputy asked Allen if any other persons presently occupied the home and if he had any other guns nearby. Allen answered that no one else was present and that he had a loaded .22 caliber rifle on his bed. The deputy entered the home, went into the bedroom, and secured the .22 caliber rifle.

The deputy radioed headquarters and learned that Allen had a previous felony conviction. As a result, Washington law forbade Allen from owning a gun. RCW 9.41.040(1)(a). The deputy arrested Allen. The State charged Allen with two counts of first degree unlawful possession of a firearm: one count for the assault rifle, the other count for the .22 caliber rifle.

State v. Allen, 2009 WL 2437229 at *1.

B. 1994 PREDICATE OFFENSE

On July 11, 1994, Allen pleaded guilty to one count of residential burglary in the Thurston County Juvenile Court. The court entered a disposition order on that same day, sentencing Allen to 10 days of confinement, 48 hours of

community service and 9 months of community supervision. *See* Appendix D, Juvenile Statement on Plea of Guilty and Disposition Order, *State v. Allen*, Thurston Co. No. 94-8-00455-6. The court's disposition order did not inform Allen that he would lose his right to possess firearms as a result of the juvenile conviction. *See* Appendix D, Disposition Order at 2-3. Moreover, Allen was informed that the conviction would remain a part of his permanent record only if he committed another felony before his 23rd birthday. *See* Appendix D, Juvenile Statement on Plea of Guilty at 2. Allen was not informed that he would lose his right to possess firearms as a result of the plea. *See id.* In fact, neither the plea form nor the disposition order make any mention of Allen's constitutional right to possess firearms.

Thurston County Probation Counselor Dana Gartner wrote a letter confirming that to her knowledge no one, including specifically the superior court and the probation department, informed Allen that his conviction would prevent him from legally possessing firearms. She states:

Ryan W. Allen was adjudicated for Residential Burglary in Thurston County Juvenile Court on 7-11-94. This is a felony level offense. However, during 1994-1995, the period of time Ryan was on community supervision, I can say with total certainty that he was at no time informed by our Court or myself of a firearm prohibition.

In 1994, the firearm prohibition was not listed on the juvenile's Statement of Juvenile Offender on Plea of Guilty nor on their Disposition Order. During that period of time, the juveniles also did not receive any verbal notification by the Court Commissioner or Probation of the prohibition. At that time we were also not informing the Firearm Division at Department of Licensing of felony convictions.

See Appendix E, Letter from Dana Gartner dated March 24, 2008.

C. 2005 SEIZURE AND RETURN OF ALLEN'S FIREARM

On March 21, 2005, Thurston County Sheriff's Deputies responded to a call for assistance at Allen's residence. Allen's then girlfriend, Patricia Willhoite, had Allen's SKS assault rifle pointed at her head and was threatening to kill herself. Deputies eventually calmed her down, placed her under arrest for suspicion of domestic violence and seized Allen's assault rifle as evidence. *See* Appendix F, Incident Report and Supplementary Report.

Once criminal charges against Ms. Willhoite were resolved, Thurston County Deputy Prosecutor Steven Sherman contacted the Sheriff's Office to inform them that the assault rifle could be returned to Mr. Allen. *See* Appendix F, Release of Evidence Memo dated January 27, 2005.² Mr. Allen signed for and received his firearm from the Thurston County Sheriff's Office on June 16, 2005. *See* Appendix F, Evidence/Property Form.

Allen also signed a form stating that he understood that federal law prohibits certain persons from possessing firearms. The form does not indicate that a juvenile adjudication for burglary prohibits someone from possessing a firearm. In fact, the form states that only persons convicted of a felony "punishable for a term exceeding one year" are prohibited from possessing firearms. *See* Appendix F, Firearm Release Form.

² The date on this memo is obviously a scrivener's error because the firearm was not seized until March 21, 2005.

Finally, Judith Russell, Legal Assistant to the Thurston County Sheriff, wrote a letter that explains the procedures the Sheriff's Office follows regarding the return of firearms. The letter provides in pertinent part:

Regarding procedure in relinquishing a firearm in this type of situation, the process is that once the Thurston County evidence department is notified that release is authorized by the prosecutor's office, a criminal history check (NCIC) is run. The owner of the gun is then notified that he or she may pick it up. When the owner arrives to pick up their item, their identification is checked and the owner signs in the "Received by" section of the Evidence/Property form.

Appendix F, Letter from J. Russell dated December 2, 2009.

D. ALLEN'S DECLARATION

Attached to this petition is Allen's declaration: (1) that he was never informed during proceedings in juvenile court for his residential burglary conviction or while on probation for that offense that the juvenile adjudication would prevent him from legally possessing firearms as an adult; (2) that he believed based on paragraph 10 of his juvenile guilty plea that he would no longer have a criminal record once he reached the age of 23 if he remained felony free; (3) that he therefore believed he could legally purchase and possess firearms once he turned 23 and, in fact, purchased firearms after his 23rd birthday; (4) that his belief that he could legally possess firearms was further reinforced when the Thurston County Sheriff's Office returned his assault rifle after running a background check and advising him concerning the requirements of federal law; and (5) based on a combination of the above, he believed in 2007 that he had a

legal right to possess the firearms that formed the basis of his unlawful firearm possession convictions. *See* Appendix G, Declaration of Ryan Wayne Allen.

III. STANDARD OF REVIEW

Relief through a personal restraint petition is available to a petitioner who is under a “restraint” that is “unlawful.” RAP 16.4(a).³ The petitioner must also prove by a preponderance of the evidence constitutional error causing actual and substantial prejudice or non-constitutional error that constitutes a fundamental defect inherently resulting in a complete miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990). Moreover, the petitioner must produce facts or evidence supporting his claim of unlawful restraint and not rely solely on conclusory allegations. *Cook*, 114 Wn.2d at 813-14.

³ “A petitioner is under a ‘restraint’ if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.” RAP 16.4(b). The fact that Allen is no longer incarcerated or on supervision for the convictions challenged herein does not alter the fact that he is restrained within the meaning of RAP 16.4(b). Our Supreme Court has consistently recognized that the collateral consequences of a conviction are sufficient restraint under the rule. *See In re Pers. Restraint of Davis*, 142 Wn.2d 165, 170 n. 2, 12 P.3d 603 (2000); *In re Pers. Restraint of Powell*, 92 Wn.2d 882, 887-88, 602 P.2d 711 (1979); *Born v. Thompson*, 154 Wn.2d 749, 764-65, 117 P.3d 1098 (2005).

Restraint is “unlawful” if the petitioner’s “conviction was obtained . . . in violation of the Constitution of the United States or the Constitution or laws of the State of Washington[.]” RAP 16.4(c)(2). Here, Allen alleges that his unlawful firearm possession convictions were obtained in violation of both state and constitutional law. *See* Section(IV), *infra*.

IV. GROUNDS FOR RELIEF AND ARGUMENT

A. THE PREDICATE OFFENSE COURT'S FAILURE TO PROVIDE THE NOTICE MANDATED BY RCW 9.41.047(1) REQUIRES DISMISSAL OF ALLEN'S UNLAWFUL FIREARM POSSESSION CONVICTIONS.

While Allen concedes that his juvenile adjudication for residential burglary is a qualifying offense for purposes of the unlawful firearm possession statute, the juvenile court's failure to notify him that the adjudication affected his ability to lawfully possess firearms renders his convictions for unlawful possession of a firearm statutorily invalid.

The relevant statute, RCW 9.41.040(1)(a), provides that "[a] person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns . . . any firearm after having previously been convicted . . . of any serious offense as defined in this chapter." RCW 9.41.040(1)(a). A "serious offense" includes any "crime of violence." RCW 9.41.010(16)(a). Residential burglary is a "crime of violence." RCW 9.41.010(3)(a). These definitions apply to both juvenile dispositions and adult convictions. RCW 9.41.040(3); *State v. Wright*, 88 Wn. App. 683, 946 P.2d 792 (1997).

However, "[a]t the time a person is convicted . . . the convicting . . . court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record." RCW 9.41.047(1). The notice provision in this statute has remained unchanged since its

original effective date of July 1, 1994. *See State v. Breitung*, 155 Wn. App. 606, 620 n. 5, 230 P.3d 614 (2010) (collecting relevant session laws). The notice provision was in effect when Allen was sentenced for his juvenile offense on July 11, 1994. *See* Appendix D. However, the Thurston County Juvenile Court did not provide the notice required by RCW 9.41.047(1). *See* Section(II)(B), *supra*. Therefore, under this Court’s recent decision in *Breitung*, Allen’s convictions for unlawful firearm possession must be reversed and dismissed with prejudice.⁴

In *Breitung*, the defendant was convicted of unlawful possession of a firearm in the second degree. The firearm conviction was based on a previous misdemeanor conviction for domestic violence assault. The sentencing order for the domestic violence conviction did not include the notice required by RCW 9.41.047(1). *Breitung* argued on appeal that the predicate offense court’s failure to provide notice that he was prohibited from possessing firearms as a result of the domestic violence conviction rendered his subsequent unlawful firearm possession conviction invalid. *Breitung*, 155 Wn. App. at 619-20.

This Court began by analyzing cases in which the predicate offense court’s order contained the required notice, but the appropriate box next to the notice was not checked. These cases found a due process violation because the defendant had been “affirmatively misled” to believe that the firearm prohibition

⁴ Consideration of the petition for review filed in *Breitung* has been stayed pending our Supreme Court’s decision in *State v. Grier*, 150 Wn. App. 619, 208 P.3d 1221 (2009), *review granted*, 167 Wn.2d 1017, 224 P.3d 773 (2010). *See State v. Breitung*, No. 84580-8 (Wash. 9-7-10). The Court held oral argument in *Grier* on September 21, 2010. *Grier* does not present issues related to a court’s failure to provide the notice required by RCW 9.41.047(1). The outcome in that case is not relevant to the issues raised herein.

did not apply to them. *Breitung*, 155 Wn. App. at 620-21 (discussing *State v. Minor*, 162 Wn.2d 796, 174 P.3d 1162 (2008) and *State v. Leavitt*, 107 Wn. App. 361, 27 P.3d 622 (2001)). In contrast, appellate courts have found no due process violation where the predicate offense court's sentencing order makes no mention of the firearm prohibition provision. *Id.* at 621 (discussing *State v. Carter*, 127 Wn. App. 713, 112 P.3d 561 (2005)). Thus, the *Breitung* court was required to determine as a matter of first impression whether a predicate offense court's failure to include the notice required by RCW 9.41.047(1) rendered a subsequent conviction for unlawful firearm possession invalid as a matter of statutory law. *Id.* at 621-22.

Following the Supreme Court's lead, this Court looked to the purpose underlying RCW 9.41.047(1) to reach the conclusion that notice of the firearm prohibition is required before a person may be convicted of unlawful firearm possession:

Our Supreme Court has explained that the notice requirement of former RCW 9.41.047(1) was the legislature's attempt to balance a citizen's right to possess guns against a perceived need to curb violence. "[I]n enacting this statute, the legislature balanced the concern with escalating violence, which some commentators blamed on the 'ready availability of firearms,' with the concern that restricting firearm availability will infringe upon the right of a law-abiding citizen to keep and bear arms." *Minor*, 162 Wn.2d at 803 (quoting Final B. Rep. on Engrossed Second Substitute H.B. at 2, 53rd Leg. Reg. Sess. (Wash.1994)). Despite such balancing, the *Minor* court made clear that "[former] RCW 9.41.047(1) requires the convicting court to provide oral and written notice. The statute is unequivocal in its mandate." 162 Wn.2d at 803 (emphasis added). *Minor* explained that despite the statute's failure to articulate a remedy for noncompliance with its directives, "[t]he presence of a notice requirement shows the

legislature regarded such notice of deprivation of firearms rights as substantial. Relief consistent with the purpose of the statutory requirement *must* be available where the statute has been violated.” *Minor*, 162 Wn.2d at 803-04 (emphasis added). Consistent with *Minor*, we hold that Breitung was entitled to the notice that former RCW 9.41.047(1) required and, in its absence, he is entitled to an appropriate remedy.

Id. at 622.

Relying on its decision in *Leavitt*, *supra*, the court also recognized the prejudice defendants may suffer as a result of the predicate offense court’s failure to provide notice. The *Leavitt* court noted that prejudice was “demonstrated in part by [Leavitt’s] ‘guileless actions’ of volunteering more information to police than was asked of him.” *Breitung*, 155 Wn. App. at 623 (citing *Leavitt*, 107 Wn. App. at 367-68). Breitung similarly “volunteered information about his various guns, their descriptions, and twice offered to retrieve his guns from his residence.” *Id.* Both Leavitt and Breitung were prejudiced because their “gun possession and [their] candid, unsuspecting comments” about their guns were “direct consequences of the predicate offense court’s failure to comply with former RCW 9.41.047(1)’s notice requirements and [the defendants’] concomitant unlawful possession of a firearm conviction[s] demonstrates the prejudice resulting from the predicate offense court’s omission.” *Id.*

The court also distinguished cases holding that knowledge of the illegality of possessing firearms is not an element of unlawful possession of a firearm. The fact that the crime of unlawful firearm possession does not contain a mens rea element simply does not alter the fact that notice of the prohibition must be given

by the predicate offense court. “For what would be the purpose of a mandatory provision that the convicting court give both oral and written notice of the firearm prohibition to the defendant, if not to impart to him knowledge of the illegality?” *Breitung*, 155 Wn. App. at 624.

This Court therefore concluded that *Breitung*’s unlawful firearm conviction was invalid because he did not receive the notice required by RCW 9.41.047(1) when he was sentenced for domestic violence. This Court held that dismissal was the only appropriate remedy because failure to provide notice “permits sentencing courts (and the State) to ignore the statute’s mandatory directives with impunity. Were we to turn a blind eye to the predicate offense court’s failure to give RCW 9.41.047(1)’s mandatory notice, such result would render the entire statute meaningless.” *Breitung*, 155 Wn. App. at 624.

Allen’s case is legally indistinguishable from *Breitung*. First, the Thurston County Juvenile Court failed to inform him that his residential burglary conviction would prohibit him from possessing firearms as required by RCW 9.41.047(1), even though the statute was in effect at the time of sentencing. Second, Allen was seriously prejudiced by this failure. On at least three separate occasions Allen admitted to law enforcement officials that he owned firearms that later formed the basis of his convictions for unlawful firearm possession.⁵ These

⁵ The first admission occurred when Sheriff’s deputies arrived at his residence in response to his then girlfriend attempting to commit suicide with his assault rifle; the second when he retrieved the gun from the Sheriff’s office following resolution of the case against the former girlfriend; and the third when he told the Sheriff’s deputy responding to the noise complaint in 2007 that there was a loaded .22 caliber rifle in his bedroom. *See generally*, Section(II), *supra*.

“guileless actions” are a direct result of the predicate offense court’s failure to comply with the notice requirements set forth in RCW 9.41.047(1). As in *Breitung*, this Court must reverse and dismiss Allen’s two convictions for unlawful possession of a firearm in the first degree. *Breitung*, 155 Wn. App. at 624.⁶

B. ALLEN’S UNLAWFUL FIREARM POSSESSION CONVICTIONS VIOLATE DUE PROCESS BECAUSE HE WAS AFFIRMATIVELY MISLED BY THURSTON COUNTY TO BELIEVE THAT HE COULD LAWFULLY POSSESS FIREARMS.

Both the Thurston County Juvenile Court and the Thurston County Sheriff’s Office engaged in conduct that affirmatively misled Allen to believe that he could lawfully possess firearms despite his juvenile adjudication for residential burglary. Therefore, it is a violation of Allen’s right to due process of law to convict him for possessing firearms.

Both the federal and state constitutions guarantee the right to due process. U.S. Const. Amend. 14; Wash. Const. Art. I, § 3. “[T]he criminal statute under which the defendant is being prosecuted cannot constitutionally be applied to the defendant without violating due process of law, where government officials have misled the defendant into believing that his conduct was not prohibited.” *State v. Leavitt*, 107 Wn. App. 361, 371-72, 27 P.3d 622 (2001) (internal quotation marks

⁶ The *Breitung* court did recognize that dismissal may not be appropriate if the State can show “the defendant has otherwise acquired actual knowledge of the firearm possession prohibition that RCW 9.41.047(1) is designed to impart[.]” *Breitung*, 155 Wn. App. at 624. Nothing before this court indicates that Allen acquired such knowledge prior to his arrest in 2007. In fact, just two years prior to being charged, the Thurston County Sheriff returned his firearm to him *after* running a background check. As explained in Section(IV)(B)(1), *infra*, Allen was entitled to rely on this misadvice concerning the legality of possessing firearms.

and citations omitted); *see also* *Raley v. Ohio*, 360 U.S. 423, 439, 79 S.Ct. 1257, 3 L.Ed.2d 1344 (1959); *Cox v. Louisiana*, 379 U.S. 559, 571-72, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965).

The ultimate due process inquiry is whether a defendant's conviction, for reasonably and in good faith doing that which he was told he could do, is fundamentally unfair in light of the content of the information he received and its source.

....

Such concerns are implicated only when the source of the information is a public officer or body charged by law with responsibility for defining permissible conduct with respect to the offense at issue.

Leavitt, 107 Wn. App. at 368 (quoting *Miller v. Commonwealth*, 25 Va. App. 727, 492 S.E.2d 482, 487, 488-89 (1997) (citing *Raley*, 360 U.S. at 439)); *accord* *State v. Cross*, 156 Wn.2d 580, 601, 132 P.3d 80 (2006) ("The State, under certain circumstances, may not assure a person that a right exists and then act contrary to that assurance without violating due process of law."). "[E]xpress affirmative assurances" are not required; "[a]ctions, inactions, or a combination of the two may be enough to implicate due process rights." *State v. Moore*, 121 Wn. App. 889, 896, 91 P.3d 136 (2004), *review denied*, 154 Wn.2d 1012 (2005) (citing *Leavitt*, 107 Wn. App. at 372)

Washington courts have applied these principles to unlawful firearm possession convictions in several cases and have held that where, as here, a defendant was affirmatively misled, relief must be granted. For example, in *Leavitt*, this Court held it was a violation of due process to convict the defendant

of unlawfully possessing a firearm where the predicate offense court did not provide the notice required by RCW 9.91.047(1), did not make clear that the firearm prohibition notification contained in the sentencing papers extended beyond the term of probation, and did not require the defendant to relinquish his concealed weapons permit or his firearms. 107 Wn. App. 361. Moreover, the Department of Corrections (DOC) left blank a box on defendant's probation papers explaining the requirements of RCW 9.41.047(1). *Id.* at 363. Although the predicate offense court and DOC did not offer "affirmative assurances" concerning the legality of defendant possessing firearms after his probation ended, this Court concluded that the "combined actions and inactions of the predicate sentencing court misled Leavitt reasonably to understand that his firearm possession restriction was limited to one year." *Id.* at 372. The *Leavitt* court therefore reversed and dismissed the unlawful firearm possession conviction. *Id.* at 373.

In *Moore, supra*, Division III affirmed dismissal of an unlawful firearm possession charge because earlier juvenile sentencing courts had not provided the notice required by RCW 9.41.047(1) and had offered implicit assurances that the defendant could put the matter behind him when he reached the age of majority. These "implicit assurances" included the following statement from the juvenile guilty plea forms:

I have been informed and fully understand that my plea of guilty and the court's acceptance of my plea will become part of my criminal history. I have also been informed and fully understand that *if the offense(s) is a felony and I was 15 years of*

age or older when the offense was committed, then the plea will remain part of my criminal history when I am an adult if I commit another offense prior to my twenty-third birthday.

Moore, 121 Wn. App. at 892 (emphasis in original; record citations omitted).

Citing *Leavitt*, the court affirmed the dismissal because:

Mr. Moore was not advised of the loss of his rights, and affirmatively he was told that he could put the ordeal behind him if he stayed out of trouble. . . . [T]he earlier sentencing courts took pains to explain his legal obligations, the loss of other privileges and prospective consequences, including the creation of a criminal history and community supervision. On one occasion the court required that Mr. Moore mind his mom. The pronouncement of these other terms and consequences coupled with the failure to indicate the loss of eligibility to possess firearms, when considered with the earlier assurance that the announced terms were all he was facing, supports the judge's exercise of discretion here to dismiss.

Moore, 121 Wn. App. at 896-97 (citing *Leavitt*, 107 Wn. App. at 363).

Our Supreme Court reached a similar result in *State v. Minor*, 162 Wn.2d 796, 174 P.3d 1162 (2008). In that case, the defendant was convicted as a minor of residential burglary. During proceedings in that case, the court did not inform defendant that he could no longer possess firearms unless his right to do so was restored by a court. Additionally, the court did not check a box next to the paragraph on a preprinted sentencing order regarding the firearm prohibition. The defendant was subsequently charged with and convicted of unlawful firearm possession based on allegations that he possessed a black revolver on two occasions. *Minor*, 162 Wn.2d at 797-99. Relying on *Leavitt*, the Supreme Court reversed and dismissed the conviction, concluding that the defendant was "affirmatively misled" by the predicate offense court's failure to check the

appropriate box concerning applicability of the firearm prohibition on the sentencing order. *Minor*, 162 Wn.2d at 803-04.

The facts here are different from those in *State v. Carter*, 127 Wn. App. 713, 720-21, 112 P.3d 561 (2005). While Carter was not notified of the firearm prohibition in juvenile court, he could not show prejudice because he was convicted of a later felony and was “notified at that time that he was disqualified from firearms possession.” *Id.* Carter also failed to show that he was affirmatively misled, and together these differences from the *Leavitt*, *Moore* and *Minor*, and the present case, were fatal to his claims. *Id.*

This case is similar to *Leavitt*, *Moore* and *Minor*. As in those cases, Allen was not informed by the predicate offense court that he would not be allowed to possess firearms unless his right to do so was restored by a court. Moreover, his plea form indicated that he would not have a criminal record if he stayed out of trouble until his 23rd birthday. This combination of factors affirmatively misled him to believe that he could legally possess firearms once he turned 23. *Moore*, 121 Wn. App. at 896.⁷ Thus, as in *Leavitt* and *Moore*, the predicate offense court’s actions and inactions affirmatively misled Allen into believing that he could legally possess firearms after remaining crime free and turning 23 years old. Allen was prejudiced by this misinformation because he relied on it to his detriment; he remained crime free until his 23rd birthday, purchased firearms and

⁷ The defendant in *Moore* received the identical notice Allen has relied on concerning his criminal history after reaching the age of 23. *Moore*, 121 Wn. App. at 892. That was enough to convince the court that the defendant had been affirmatively misled concerning his right to possess firearms in the future.

then was convicted for possessing those same firearms. This was a violation of due process under *Minor*, *Leavitt*, and *Moore, supra*.

Even if the predicate offense court's actions and inactions are not enough to establish a due process violation, the actions of the Thurston County Sheriff's Office in 2005 certainly are. The Sheriff's Office affirmatively misled Allen concerning his right to possess firearms when it ran a background check on him, informed him that federal law did not prohibit him from possessing firearms, and then returned his firearm to him. It was reasonable for Allen to assume that the Sheriff's Office would not have allowed him to take possession of a firearm he was not legally permitted to have, especially after informing him that it had run a background check. These facts, in conjunction with the actions and inactions of the juvenile court, clearly make out the type of due process violation recognized in the case law above. *Cf. Cox*, 379 U.S. at 571 (vacating convictions, as violative of procedural due process, on grounds that defendants had been advised by police officials that picketing was permitted at the arrest site); *Roberts v. Maine*, 48 F.3d 1287, 1300-03 (1st Cir. 1995) (Cyr, J., concurring) (holding that police officer's misinformation concerning consequences of refusing breath test following DUI arrest rendered mandatory minimum sentence unconstitutional under *Raley v. Ohio*, 360 U.S. 423).

Allen's case is nothing like the situation in *Carter, supra*. In that case, the predicate offense court's sentencing order simply failed to contain the notice required by RCW 9.41.047(1). Unlike this case and the situation in *Moore*, there

was apparently no additional language in the sentencing order that could have misled the defendant concerning his right to possess firearms as an adult. Moreover, Carter was convicted of another crime after the predicate offense and received the statutorily required notice during those proceedings. *Carter*, 127 Wn. App. at 720-21. None of these facts are present here. The reasoning from the *Carter* decision simply does not apply.

Allen has established that he was prejudiced by the affirmatively misleading information he received from both the Thurston County Juvenile Court and Sheriff's Office concerning his right to possess firearms. Therefore, his current convictions for unlawful firearm possession violate due process. The only appropriate remedy is to reverse the convictions and dismiss the underlying charges. *Minor*, 162 Wn.2d at 804.

C. ALLEN'S CLAIMS ARE NOT BARRED BY THE RULE PROHIBITING CONSIDERATION OF CLAIMS RAISED AND REJECTED ON DIRECT APPEAL.

A personal restraint petitioner generally may not relitigate issues that were raised and rejected on direct appeal. *State v. Pierce*, 155 Wn. App. 701, 712-13, 230 P.3d 237 (2010) (citing *In re Pers. Restraint of Taylor*, 105 Wn.2d 683, 688, 717 P.2d 755 (1986)). However, "the mere fact that an issue was raised on appeal does not automatically bar review in a PRP. Rather, a court should dismiss a PRP only if the prior appeal was denied on the same ground and the ends of justice would not be served by reaching the merits of the subsequent PRP." *Taylor*, 105 Wn.2d at 688.

Allen's claims should not be dismissed under the *Taylor* rule for three reasons. *First*, neither Allen's counsel nor his pro se pleadings from direct appeal presented the same grounds for relief as this petition. *Second*, the claims raised here were not denied on the merits during the prior appeal. And, *third*, even assuming the issues here were raised and adjudicated on appeal, the interests of justice warrant relitigation.

An issue raised in a PRP presents the "same ground" as an issue from direct appeal if it presents the same "distinct legal basis for granting relief." *Taylor*, 105 Wn.2d at 688. "Should doubts arise in particular cases as to whether two grounds are different or the same, they should be resolved in favor of the applicant." *Id.*

Courts have recognized that pro se pleadings are often times so inartfully drafted that they will not be considered as having sufficiently raised a claim for purposes of procedural rules barring successive claims. *See In re Pers. Restraint of Greening*, 141 Wn.2d 687, 699, 9 P.3d 206 (2000) (pro se pleadings did not raise same issue as subsequent application where they "barely articulated the claim").⁸ On direct appeal, Allen attempted to argue in his pro se pleadings that his unlawful firearm possession convictions should be reversed because the juvenile court did not give him notice of the firearm possession prohibition when

⁸ *Greening* addressed whether a claim raised in a second PRP was barred under RAP 16.4(d) because it was previously "heard and determined" in the prior PRP. The *Taylor* court relied on its interpretation of RAP 16.4(d) from *In re Pers. Restraint of Haverty*, 101 Wn.2d 498, 681 P.2d 835 (1984) to create the rule that a PRP may not raise grounds denied on direct appeal. *See Taylor*, 105 Wn.2d at 687-88. Thus, RAP 16.4(d) precedent is relevant in this context as well.

he was convicted of the predicate offense. For example, Allen's handwritten Statement of Grounds for Additional Review (SAG) raised the following issue: "State v. Ryan Cause No. 94-8-455 clearly marked 'middle offence' not serious offence. Nowhere on this document is marked or stated no possession of firearms." Appendix H, Pro Se Statement of Additional Grounds for Review at 2. Allen then cited to RCW 9.41.047(1), but provided no argument or citations to the record to support his assignment of error. *Id.* at 3.

Allen's arguments were somewhat more developed in his pro se Petition for Review, but were nonetheless insufficient. The petition raised the following issue: "As for RCW 9.41.047(1), the appellant [sic] court erred [sic] in stating that the courts are not required in notification of firearm probation [sic]." Appendix H, Pro Se Petition for Review at 5. Although he cited cases applying the principle that a defendant may not be convicted of an offense if state officials affirmatively led him to believe that the criminal conduct was legal, Allen did not articulate his position in such a way as to compel meaningful review. *Id.* at 5-6. While it is true that Allen mentioned in passing that the Thurston County Sheriff affirmatively misled him to believe he could lawfully possess firearms when his SKS was returned to him in 2005, he failed to elaborate upon the claim in a meaningful way and offered no evidence in the appellate record to support the claim. *Id.* at 5. Appellate courts will not review on direct appeal a claim not

supported by the record and meaningful argument.⁹ Thus, Allen did not previously raise the grounds presented herein because his pro se pleadings were “not sufficient to command judicial consideration and discussion [on appeal].” *Greening*, 141 Wn.2d at 700 (internal quotation marks and citations omitted).

In addition to not having raised the claims present here on direct appeal, no court to date has reviewed the merits of Allen’s claims. For a claim to be denied under the *Taylor* rule, “the prior denial must have rested on an adjudication of the merits of the ground presented in the subsequent application.” *Taylor*, 105 Wn.2d at 688 (citation omitted). This Court addressed Allen’s pro se claim as follows:

Next, Allen argues that he could not be convicted of unlawful possession of a firearm because the State did not notify him upon his prior release from prison that law forbade him from owning a gun. The statute under which he was convicted, however, does not require that the State to do so. RCW 9.41.040(1)(a). This argument fails.

State v. Allen, 151 Wn. App. 1041, 2009 WL 2437229 at *4 (Aug. 11, 2009).

Additionally, our Supreme Court denied Allen’s pro se Petition for Review without explaining the basis for its decision. *State v. Allen*, 168 Wn.2d 1012, 227 P.3d 852 (Mar. 03, 2010) (Table, No. 83604-3). These rulings do not address the merits of either the statutory notice or due process claims set forth above. In this petition, Allen does not assert that he was entitled to notice when he was released

⁹ *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (appellate courts do not consider matters outside the record on appeal; such claims must be raised in a PRP); *State v. Meneses*, 149 Wn. App. 707, 716, 205 P.3d 916 (2009) (appellate court will not consider pro se arguments “not sufficiently developed to allow review”).

“from prison” as a juvenile. Rather, he contends that the juvenile court failed to provide the statutorily required notice at sentencing and that Thurston County officials affirmatively misled him to believe that he could lawfully possess firearms once he reached the age of 23 without being convicted of additional felonies. *See* Section(IV)(A) & (B), *supra*.

Finally, the “ends of justice” also compel consideration of Allen’s claims. Our Supreme Court has provided the following guidance in determining whether a claim should be reconsidered under the “ends of justice” exception:

Even if the same ground was rejected on the merits on a prior application, it is open to the applicant to show that the ends of justice would be served by permitting the redetermination of the ground. If factual issues are involved, the applicant is entitled to a new hearing upon showing that the evidentiary hearing on the prior application was not full and fair; we canvassed the criteria of a full and fair evidentiary hearing recently in *Townsend v. Sain* [372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963)], and that discussion need not be repeated here. If purely legal questions are involved, the applicant may be entitled to a new hearing upon showing *an intervening change in the law* or some other justification for having failed to raise a crucial point or argument in the prior application.

Taylor, 105 Wn.2d at 688-89 (emphasis in original) (quoting *Sanders v. United States*, 373 U.S. 1, 16-17, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963)); *see also In re Pers. Restraint of Holmes*, 121 Wn.2d 327, 330, 849 P.2d 1221 (1993) (The “ends of justice” standard “is clearly not a ‘good cause’ standard.”). This standard is met here for several reasons

First, Allen’s statutory notice claim may be reviewed because it is based on an intervening change in the law. *See In re Pers. Restraint of Stenson*, 142

Wn.2d 710, 719-20, 723-24, 16 P.3d 1 (2001) (intervening change in the law satisfied “ends of justice” exception); *Taylor*, 105 Wn.2d at 689 (same). Allen’s statutory notice claim is based squarely on this Court’s recent decision in *Breitung*. In that case, this Court addressed as a matter of first impression whether a conviction for unlawful firearm possession was invalid because the predicate offense court failed to make any mention of the notice required by RCW 9A1.047(1). *Breitung*, 155 Wn. App. at 621-22. This Court’s holding in *Breitung*’s favor is an intervening change in the law. And because the *Breitung* decision is one involving statutory interpretation and application, it is fully retroactive. *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 860 & n. 2, 100 P.3d 801 (2004) (court’s construction of a statute determines its meaning since enactment and is fully retroactive).

Second, Allen’s due process claim falls within the “ends of justice” exception because Allen, through counsel, has obtained and presented significant additional documentary evidence to support his contention that he was affirmatively misled by Thurston County officials to believe that it was lawful for him to possession firearms. *See* Section(II), *supra*. Citing precedent from the United States Supreme Court, our Supreme Court has recognized that relitigation may be appropriate if resolution of factual issues was not “full and fair” during prior proceedings. *Taylor*, 105 Wn.2d at 689. Reconsideration is warranted here in light of the additional evidence, which could not have been presented on direct appeal, supporting Allen’s due process claim.

Finally, it does not appear that Washington courts have ever denied relief based on the *Taylor* rule once the petitioner has demonstrated actual prejudice. In fact, *Taylor* explains that the ends of justice will always be satisfied whenever a petitioner “is actually prejudiced by the error.” 105 Wn.2d at 688.¹⁰ As demonstrated in the preceding arguments, Allen was seriously prejudiced by a combination of the juvenile court’s failure to inform him that his right to possess firearms was revoked as a result of that conviction and the Thurston County Sheriff’s Office affirmative misadvice which led him to believe he could lawfully possess firearms. This Court should therefore reach the merits of Allen’s claims and grant the relief requested below.

D. AT A MINIMUM, ALLEN IS ENTITLED TO A REFERENCE HEARING IN THE SUPERIOR COURT.

This Court recently summarized the options available to it when evaluating the merits of a PRP:

¹⁰ For example, in *In re Pers. Restraint of Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001), the Supreme Court found trial counsel ineffective in failing to present expert testimony concerning the defendant's medical and mental conditions. Brett had previously argued on direct appeal that trial counsel were ineffective, and had specifically relied on counsel's failure to explore Brett's fetal alcohol syndrome. *Id.* at 883 (conc. op. of Talmadge, J.) (citing *State v. Brett*, 126 Wn.2d 136, 203-04, 892 P.2d 29 (1995)). *See also State v. Brett*, 126 Wn.2d at 198-200. Nevertheless, the stronger evidence of ineffectiveness presented in the PRP justified revisiting the issue and granting relief. Similarly, in *In re Pers. Restraint of Percer*, 111 Wn. App. 843, 47 P.3d 576 (2002), the Court of Appeals permitted the petitioner to relitigate an issue simply because the court was convinced it had made a mistake in the direct appeal. The Washington Supreme Court reversed on the merits, but confirmed that the Court of Appeals properly reviewed the claim. *In re Pers. Restraint of Percer*, 150 Wn.2d 41, 54, 75 P.3d 488 (2003). Last, in *State v. Pierce*, 155 Wn. App. 701, 230 P.3d 237 (2010), the petitioner argued that he wrongly received firearm enhancements when the State charged and the jury was instructed on only deadly weapon enhancements. Although he had raised a similar claim on direct appeal, this court nonetheless found that the ends of justice required relitigation and granted relief. *Pierce*, 155 Wn. App. at 714-15.

1. If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error, the petition 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 petition 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 Petition without remanding the cause for further hearing.

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

If “the petitioner makes this threshold showing,” we examine the State's response, which must answer the allegations and “identify all material disputed questions of fact.” [*In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992)]; RAP 16.9. To “define disputed questions of fact, the State must meet the petitioner's evidence with its own competent evidence” and only after “the parties' materials establish the existence of material disputed issues of fact” will we direct the superior court “to hold a reference hearing in order to resolve the factual questions.” *Rice*, 118 Wn.2d at 886-87, 828 P.2d 1086.

In re Pers. Restraint of Crace, 157 Wn. App. 81, 95, 236 P.3d 914 (2010).

While Allen believes that the evidence and arguments he has submitted establishes that he is entitled to relief without further proceedings, this Court may deem it necessary to remand for a reference hearing regarding what the Sherriff's Office told Allen when it returned his firearm to him.

As our Supreme Court has explained,

For allegations “based on matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief.” [*Rice*, 118 Wn.2d at 886]. Where the “petitioner's evidence is based on knowledge in the possession of others, he may not simply state what he thinks those others would say, but must present their affidavits or other corroborative evidence.” *Rice*, 118 Wn.2d at 886. The affidavits ... must contain matters to which the affiants may competently testify.” *Rice*, 118 Wn.2d at 886. The evidence must show that the “factual allegations are based on more than speculation, conjecture, or inadmissible hearsay.” *Rice*, 118 Wn.2d at 886.

Crace, 157 Wn. App at 94-95.

Here, Allen has presented evidence to corroborate his claim that he was affirmatively misled by the Thurston County Sherriff’s Office to believe that he could lawfully possess firearms when his assault rifle was returned to him in 2005. If the State disputes these facts by presenting competent evidence of its own, then a reference hearing pursuant to RAP 16.12 is required to resolve the dispute. *Rice, supra*.

V. REQUEST FOR RELIEF

Mr. Allen requests that the court reverse and dismiss his two convictions for unlawful possession of a firearm in the first degree. In the alternative, Allen requests a reference hearing in the superior court pursuant to RAP 16.12.

VI. OATH OF ATTORNEY

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

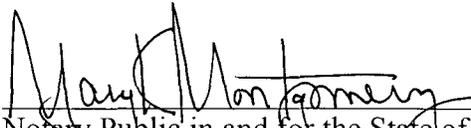
After being first duly sworn on oath, I depose and say that I am the attorney for the petitioner herein, have read this petition, know its contents, and believe the same to be true and correct.



Harry Williams IV, WSBA #41020
Attorney for Ryan Wayne Allen

SUBSCRIBED AND SWORN to before me this 25 day of October
2010.





Notary Public in and for the State of
Washington, residing at Seattle, WA
My commission expires 06/29/2012

COURT OF APPEALS
DIVISION II

10 OCT 26 PM 1:16

STATE OF WASHINGTON
BY [Signature]
DEPUTY

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

In re the Personal Restraint Petition of:

) Case No. 41345-1

RYAN WAYNE ALLEN,

) PETITIONER'S VERIFICATION AND

Petitioner.

) CONSENT TO FILE PETITION (RAP

) 16.7(a)(6)

I, RYAN WAYNE ALLEN, declare under penalty of perjury that I have received a copy of the personal restraint petition prepared by my attorney, Harry Williams IV, and that I consent to the petition being filed on my behalf.

EXECUTED ON this 8 day of October, 2010, in Thurston County, Washington.

[Signature]
RYAN WAYNE ALLEN

Appendix A
Judgment and Sentence

1-11-11

FILED
SUPERIOR COURT
THURSTON, WA

08 APR 18 4 26

11

mb

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs

No 07-1-02163-2

RYAN WAYNE ALLEN,

Defendant.

FELONY JUDGMENT AND SENTENCE (FJS)

SID WA17013312
If no SID, use DOB 07/24/1977
PCN 766942148 BOOKING NO C0148394

Prison (non-sex offense)

I HEARING

1 1 A sentencing hearing was held on APRIL 18, 2008 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 APRIL 3, 2008
by plea jury-verdict bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9 41 040(1)(a)	DECEMBER 21, 2007
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9 41 040(1)(a)	DECEMBER 21, 2007
III	BAIL JUMPING	9A 76 170(1)	FEBRUARY 14, 2008

as charged in the FIRST AMENDED information

Additional current offenses are attached in Appendix 2 1

The court finds that the defendant is subject to sentencing under RCW 9 94A 712

A special verdict/finding for use of firearm was returned on Count(s) _____ RCW 9 94A 602, 9 94A 533

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____
_____ RCW 9 94A 602, 9 94A 533

COPY TO SHERIFF

FELONY JUDGMENT AND SENTENCE (FJS)
(RCW 9 94A 500, 505)(WPF CR 84 0400 (5/2006))

07-1-02163-2

08-9-10699-6

Page 1

SCANNED

COPY TO DOC

57

- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69 50 401 and RCW 69 50 435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district, or in a public park, public transit vehicle, or public transit stop shelter, or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9 94A 605, RCW 69 50 401, RCW 69 50 440
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense RCW 9 94A 030
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A 40 RCW, where the victim is a minor and the offender is not the minor's parent RCW 9A 44 130
- The court finds that the offender has a chemical dependency that has contributed to the offense(s) RCW 9 94A 607
- The crime charged in Count(s) _____ involve(s) domestic violence
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number)

None of the current offenses constitute same criminal conduct except

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 RES BURG	1994	THURSTON CO 94-8-455-6	6-5-94	J	NV
2					
3					
4					
5					

- Additional criminal history is attached in Appendix 2 2
 - The defendant committed a current offense while on community placement (adds one point to score) RCW 9 94A 525
 - The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9 94A 525)
 - The following prior convictions are not counted as points but as enhancements pursuant to RCW 46 61 520
- None of the prior convictions constitutes same criminal conduct except _____

57

23 SENTENCING DATA

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
I	2	VII	26-34 mos	N/A	26-34 mos	10 YRS
II	2	VII	26-34 mos	N/A	26-34 mos	" "
III	2	III	4-12 mos	N/A	4-12 mos	5 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Ven Hom, see RCW 46 b1 520, (JF) Juvenile present Additional current offense sentencing data is attached in Appendix 2 3

2 4 EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence
 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 defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein RCW 9 94A 753
 The following extraordinary circumstances exist that make restitution inappropriate (RCW 9 94A 753)

2 6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows _____

III JUDGMENT

3 1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2 1 and Appendix 2 1

3 2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts

59

IV SENTENCE AND ORDER

IT IS ORDERED

4 1 Defendant shall pay to the Clerk of this Court

JASS CODE

RTN/RJN

\$ RESERVED Restitution to _____

\$ _____ Restitution to _____

\$ _____ Restitution to _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office)

PCV \$ 500 00 Victim assessment RCW 7 68 035

\$ _____ Domestic Violence assessment RCW 10 99 080

CRC \$ 200 00 Court costs, including RCW 9 94A 760, 9 94A 505, 10 01 160, 10 46 190

Criminal filing fee \$ _____ FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ 300 00 Fees for court appointed attorney RCW 9 94A 760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9 94A 760

FCM/MTH \$ _____ Fine RCW 9A 20 021, [] VUCSA chapter 69 50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69 50 430

CDF/LDI/PCD \$ _____ Drug enforcement fund of Thurston County RCW 9 94A 760

NTF/SAD/SDI \$ _____ Thurston County Drug Court Fee

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43 43 690

\$ 100 00 Felony DNA collection fee [] not imposed due to hardship RCW 43 43 7541

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38 52 430

\$ _____ Other costs for _____

\$ 1100 00 TOTAL RCW 9 94A 760

The above total may not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered RCW 9 94A 753. A restitution hearing may be set by the prosecutor or is scheduled for _____

[] RESTITUTION Schedule attached

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

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

RJN

51

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 of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here Not less than \$ _____ per month commencing _____ RCW 9 94A 760

The defendant shall report as directed by the clerk of the court and provide financial information as requested RCW 9 94A 760(7)(b)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments RCW 10 82 090 An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10 73 160

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50 00 per day, unless another rate is specified here (JLR) RCW 9 94A 760

4 2 DNA TESTING The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43 43 754

[] HIV TESTING The defendant shall submit to HIV testing RCW 70 24 340

4 3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

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

4 4 OTHER THE FIREARMS IN EVIDENCE IN THIS
CASE ARE FORFEIT TO THE TCSO AND
SHALL BE DISPOSED OF IN ACCORDANCE WITH
STATE LAW UPON COMPLETION OF ALL
PROCEEDINGS IN THIS MATTER, INCLUDING
APPEALS

51

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

(a) CONFINEMENT RCW 9 94A 589 Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC)

30 months on Count I
30 months on Count II
12 months on Count III

Actual number of months of total confinement ordered is 30 mos
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2 3, Sentencing Data, above)

[] The confinement time on Count(s) contain(s) a mandatory minimum term of

NON-FELONY COUNTS N/A

Sentence on counts is/are suspended for
months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence

days of jail are suspended on Count
days of jail are suspended on Count

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2 3, and except for the following counts which shall be served consecutively

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

but concurrently to any other felony cause not referred to in this Judgment RCW 9 94A 589

Confinement shall commence immediately unless otherwise set forth here

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number RCW 9 94A 505 The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court

4.6 [] COMMUNITY CUSTODY is ordered as follows N/A

Count for a range from to months,
Count for a range from to months,
Count for a range from to months,

or for the period of earned release awarded pursuant to RCW 9 94A 728(1) and (2), whichever is longer, and standard mandatory conditions are ordered [See RCW 9 94A 700 and 705 for community placement offenses, which include serious violent offenses, second degree assault, any cruise against a person with a deadly weapon finding and chapter 69 50 or 69 52 RCW offenses not sentenced under RCW 9 94A 660 committed before July 1, 2000 See RCW 9 94A 715 for community custody range offenses, which include sex offenses not sentenced under RCW 9 94A 712 and violent offenses committed on or after July 1, 2000 Use paragraph 4 7 to impose community custody following work ethic camp]

57

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply

a) the defendant committed a current or prior		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9 94A 411)
iv) Domestic violence offense (RCW 10 99 020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9 94A 745		

While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) not consume controlled substances except pursuant to lawfully issued prescriptions, (4) not unlawfully possess controlled substances while in community custody, (5) pay supervision fees as determined by DOC, and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9 94A 712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations Report as directed to a community corrections officer

Notify the community corrections officer in advance of any change in defendant's address or employment Remain within prescribed geographical boundaries to be set by CCO

The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition

Defendant shall have no contact with _____

The defendant shall undergo evaluation and fully comply with all recommended treatment for the following

- Substance Abuse Mental Health
- Sexual Deviancy Anger Management
- Other _____

The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows _____

The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition

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

Other conditions may be imposed by the court or DOC during community custody, or are set forth here _____

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

54

4 7 [] WORK ETHIC CAMP RCW 9 94A 690, RCW 72 09 410 The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement The conditions of community custody are stated above in Section 4 6

4 8 OFF LIMITS ORDER (known drug trafficker) RCW 10 66 020 The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections _____

V NOTICES AND SIGNATURES

5 1 COLLATERAL ATTACK ON JUDGMENT Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10 73 100 RCW 10 73 090

5 2 LENGTH OF SUPERVISION For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime RCW 9 94A 760 and RCW 9 94A 505(5) 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 760 may be taken without further notice RCW 9 94A 7606

5 4 RESTITUTION HEARING [] Defendant waives any right to be present at any restitution hearing (sign initials) _____

5 5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation RCW 9 94A 634

5 6 FIREARMS You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record (The clerk of the court 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 [] The court finds that Count _____ 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

57

58 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

59 OTHER Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party

DONE in Open Court and in the presence of the defendant this date APRIL 18, 2008

Christine A. Pomeroy
Judge/Print name
Christine A. Pomeroy

[Signature]
Deputy Prosecuting Attorney
WSBA No. 16786
Print name JOHN M "JACK" JONES

[Signature]
Attorney for Defendant
WSBA No 18174
Print name JAMES SHACKLETON

VOTING RIGHTS STATEMENT RCW 10 64 140 I acknowledge that my right to vote has been lost due to felony conviction 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]

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

I, _____, 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 the Court of said county and state, by _____, Deputy Clerk

57

IDENTIFICATION OF DEFENDANT

SID No WA17013312
(If no SID take fingerprint card for State Patrol)

Date of Birth 07/24/1977

FBI No 432801AC2

Local ID No _____

PCN No 766942148

Other _____

Alias name, DOB _____

Race Ethnicity Sex

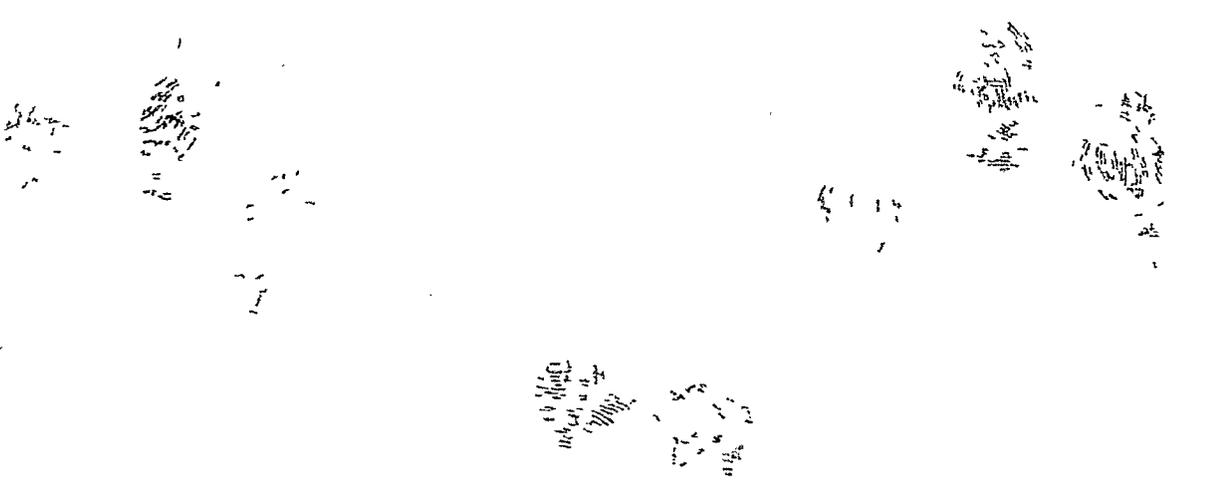
Asian/Pacific Islander Black/African-American Caucasian Hispanic Male

Native American Other _____ Non-Hispanic 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, K. Woods Dated 4/18/08

DEFENDANT'S SIGNATURE X

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
--	------------	-------------	---



51

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON

NO 07-1-02163-2

Plaintiff,

vs

WARRANT OF COMMITMENT ATTACHMENT TO
JUDGMENT AND SENTENCE (PRISON)

RYAN WAYNE ALLEN,

Defendant

DOB 07/24/1977
SID WA17013312 FBI 432801AC2
PCN 766942148
RACE W
SEX M
BOOKING NO C0148394

THE STATE OF WASHINGTON TO

The Sheriff of Thurston County and to the proper officer of the Department of Corrections

The defendant RYAN WAYNE ALLEN has been convicted in the Superior Court of the State of Washington for the crime(s) of
UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (2 COUNTS), BAIL JUMPING

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence

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

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

By direction of the Honorable

Christine A. Pomeroy

BETTY J GOULD
CLERK

By *K. Woods*
DEPUTY CLERK

Appendix B
Unpublished Opinion and Order Denying Review

FILED
COURT REPORTERS

SEPT 11 AM 8:51
STATE BAR OF WASHINGTON
BY _____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 37646-6-II

Respondent,

v.

RYAN WAYNE ALLEN,

UNPUBLISHED OPINION

Appellant.

HOUGHTON, P.J. — Ryan Allen appeals his conviction for two counts of unlawful possession of a firearm, arguing that the trial court erred in denying his motion to suppress evidence seized in an unlawful search. He further appeals his conviction for bail jumping, arguing that the bail jumping statute is impermissibly vague and that the State failed to give him proper notice of a hearing leading to his bail jumping charge. We affirm the unlawful possession conviction but reverse and remand with instructions to dismiss with prejudice the bail jumping conviction.

FACTS

Sometime past midnight on December 21, 2007, a Thurston County sheriff's deputy responded to a noise complaint. The deputy arrived at Allen's mobile home, located in an isolated area, from which the deputy heard music playing.

The music blared from Allen's mobile home so loudly that all the home's windows shook and the deputy could not hear his dispatch radio even when turned up to its maximum volume.

No. 37646-6-II

The deputy also noticed two cars parked in front of the home and a sign on the home that read, "No trespassing, violators will be shot and survivors will be prosecuted." Clerk's Papers (CP) at 30.

He knocked on the door twice before Allen answered. Allen aggressively opened the door while holding an assault rifle in his right hand. The deputy, who had come alone, stood face to face with Allen. The deputy later testified that it would have taken 10 to 20 minutes for assistance to arrive if he had called for backup.

The deputy ordered Allen to put down the weapon and Allen complied. The deputy pulled Allen out of the doorway and handcuffed him. The deputy asked Allen if any other persons presently occupied the home and if he had any other guns nearby. Allen answered that no one else was present and that he had a loaded .22 caliber rifle on his bed. The deputy entered the home, went into the bedroom, and secured the .22 caliber rifle.

The deputy radioed headquarters and learned that Allen had a previous felony conviction. As a result, Washington law forbade Allen from owning a gun. RCW 9.41.040(1)(a). The deputy arrested Allen. The State charged Allen with two counts of first degree unlawful possession of a firearm: one count for the assault rifle, the other count for the .22 caliber rifle.

On December 21, 2007, pending Allen's trial, the court released him on his personal recognizance on his complying with three conditions: (1) submitting to scheduled urinalysis and breath testing, (2) not possessing any weapon or firearm, and (3) appearing in court on three days' notice from the State.

On Monday, February 11, 2008, at 1:07 P.M., the State filed a motion seeking revocation of Allen's conditional release because he had failed to submit to a scheduled urinalysis test.

No. 37646-6-II

That same day the State mailed him a notice of the motion, setting the hearing for Thursday, February 14, 2008, at 9:15 A.M. Allen failed to appear at the hearing. The State then charged him with one count of bail jumping.

Before trial, Allen moved to suppress the .22 caliber rifle as evidence, claiming the deputy obtained it after an illegal search of Allen's home under the Washington and United States Constitutions. The trial court declined to suppress the evidence.

A jury found Allen guilty on both counts of unlawful firearm possession and for bail jumping. He appeals.

ANALYSIS

UNLAWFUL POSSESSION OF A FIREARM

Allen first contends that the trial court erred in denying his motion to suppress the .22 caliber rifle. He asserts that the deputy seized the .22 caliber rifle in a search impermissible under the Fourth Amendment and article I, section 7 of the Washington Constitution.

With certain exceptions, the federal and state constitutions prohibit warrantless searches and seizures. *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127 (2002). One such exception is for exigent circumstances requiring immediate action, such as officer safety. *Cardenas*, 146 Wn.2d at 405; *State v. Smith*, 137 Wn. App. 262, 268; 153 P.3d 199 (2007), *aff'd on other grounds*, 165 Wn.2d 511, 199 P.3d 386 (2009).

Allen argues that the deputy's entry to secure the .22 caliber rifle was constitutionally prohibited because the deputy had no reason to be concerned for his safety. Because the deputy had taken away his assault rifle and because he had been handcuffed, Allen asserts the deputy had rendered him harmless.

To find exigent circumstances existed, the ground for an emergency search may not be merely pretextual. *Smith*, 137 Wn. App. at 269. An officer's belief that an emergency exists must be both subjectively and objectively reasonable. *Smith*, 137 Wn. App. at 269.

Under the subjective test, the deputy would be justified in relying on his own perception of any potential danger. Here, before knocking on Allen's door, the deputy observed a sign warning that trespassers would be shot, and Allen hurriedly opened the door with an assault rifle in hand. Both factors could have reasonably led the deputy to believe that Allen presented a potential, violent danger.

A more removed analysis of the situation also satisfies the objective test. The deputy testified that although Allen stated that no one else was in his home, he observed two cars in the driveway. The second car could have belonged to another potentially dangerous occupant with possible access to a weapon. Furthermore, because the deputy was alone and could not receive support from other deputies for some time, the deputy could have secured the .22 caliber rifle as a precaution in case Allen later attempted to escape or resist arrest. Allen's argument fails.

BAIL JUMPING

Allen further contends that his conviction for bail jumping must be reversed. He raises two arguments. First, that the bail jumping statute is impermissibly vague. Second, he argues that the State failed to give him the notice the trial court required when it imposed conditions for his release pending trial. Therefore, he asserts, insufficient evidence supports his conviction. As the second argument disposes of this issue, we do not address his vagueness claim.

We review a claim based on insufficiency of the evidence under the familiar standard set forth in *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In doing so, we view the

No. 37646-6-II

evidence in the light most favorable to the State to determine whether a rational fact finder could find the crime's essential elements beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201.

To prove that Allen committed bail jumping, the State had to show that with knowledge of the requirement of an upcoming appearance, he failed to appear "as required." RCW 9A.76.170. The trial court released him on his personal recognizance. One condition of release required him to "[a]pppear in court on three (3) days notice." Ex. 7. Another condition required him to report to the State for urinalysis tests. He did not report for urinalysis testing. In response, at 1:07 P.M. on Monday, February 11, the State filed a motion to revoke his release. The notice required him to appear in court on February 14 at 9:15 A.M.

Reviewing the relevant dates here, it becomes readily apparent that the State could not put a notice into the mail on Monday afternoon, February 11, and have Allen receive the required three days' notice of a 9:15 A.M. hearing on Thursday, February 14. At best, he would have had only two days' notice. The State simply did not give him the notice the trial court required, and he did not knowingly fail to appear. The State could not convict him for bail jumping under these circumstances. The conviction must be reversed and the matter remanded with instructions to dismiss. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005) (remedy is reverse and dismiss without retrial where insufficient evidence support an element of the crime).

STATEMENT OF ADDITIONAL GROUNDS

Allen raises additional claims pro se in his statement of additional grounds.¹ His first claims appear to be that he received ineffective assistance of counsel.

¹ RAP 10.10(a).

An ineffective assistance of counsel claim requires a showing of deficient performance with resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Legitimate trial tactics and strategy form no basis for an ineffective assistance of counsel claim. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Moreover, we do not review matters outside the trial court record. *State v. McFarland*, 127 Wn. 2d 322, 335, 899 P.2d 1251 (1995).

Here, Allen's arguments revolve around asking his trial and appellate counsel to do certain things. First, Allen cites several legal authorities he requested his trial counsel present at trial. His trial counsel, Allen states, did not deem these authorities to be useful to Allen's case. The legal authorities cited by Allen in his statement of additional grounds, however, include civil or administrative laws which do not relate to Allen's criminal liability² and a single case pertaining to a municipal noise ordinance which does not relate to the State's charges of unlawful possession of a firearm. *City of Everett ex rel. Cattle v. Everett District Court*, 31 Wn. App. 319, 641 P.2d 714 (1982).

Second, Allen cites evidence he believes trial counsel should have introduced at trial, namely, testimony stating that Allen's gate was closed when the deputy arrived and that the volume of the music coming from his house was less than 45 decibels. These claims comprise matters not related to the charges Allen faced, matters of trial tactics, or are outside the record. As Allen neither demonstrates deficient representation nor any prejudice, his ineffective assistance argument fails.

² Allen cites chapter 10.36 RCW (no such chapter is presently enacted); chapter 70.107 RCW; chapter 173.53 WAC; WAC 173-58-040.

No. 37646-6-II

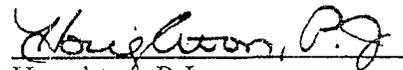
Next, Allen argues that he could not be convicted of unlawful possession of a firearm because the State did not notify him upon his prior release from prison that law forbade him from owning a gun. The statute under which he was convicted, however, does not require that the State to do so. RCW 9.41.040(1)(a). This argument fails.

Allen also asserts that the trial court incorrectly calculated his offender score. As he will be resentenced on remand, we do not address this argument further.

Finally, he raises claims based on the unlawful search and seizure and his bail jumping conviction. We otherwise addressed these same issues and, thus, do not discuss them further.

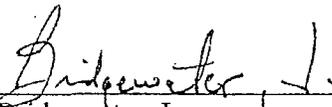
In summary, we affirm the unlawful possession of a firearm conviction and reverse and remand with instructions to dismiss the bail jumping conviction with prejudice.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.



Houghton, P.J.

We concur:



Bridgewater, J.



Kulik, J.

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RYAN WAYNE ALLEN,

Petitioner.

NO. 83604-3

ORDER

C/A NO. 37646-6-II

200 MAR -3 A 009
by h E

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered at its March 2, 2010, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 3rd day of March, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE

Appendix C
Judgment and Sentence after Remand

SUPERIOR COURT OF WASHINGTON
 COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs.

No. 07-1-02163-2

RYAN WAYNE ALLEN,

Defendant.

FIRST AMENDED
 FELONY JUDGMENT AND SENTENCE (FJS)

After Remand from Ct of Appeals
 Prison (non-sex offense)

SID: WA17013312
 If no SID, use DOB: 07/24/1977
 PCN: 766942148 BOOKING NO. C0148394

I. HEARING

1.1 A sentencing hearing was held on APRIL 18, 2008 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present, *AND RE-SENTENCING PURSUANT TO THE COURT OF APPEALS DECISION IN #37646-6-II DATED 8-11-09 WAS HELD ON APRIL 22, 2010.*

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 APRIL 3, 2008
 by plea jury-verdict bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9.41.040(1)(a)	DECEMBER 21, 2007
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9.41.040(1)(a)	DECEMBER 21, 2007

as charged in the FIRST AMENDED information.

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

A special verdict/finding for use of firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533.

- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) **domestic violence**.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

None of the current offenses constitute same criminal conduct except: _____

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 RES. BURG.	1994	THURSTON CO. 94-8-455-6	6-5-94	J	NV
2					
3					
4					
5					

- Additional criminal history is attached in Appendix 2.2.
 - The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
 - The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
 - The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:
- None of the prior convictions constitutes same criminal conduct except _____

2.3 SENTENCING DATA:

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
I	1	VIII	21-27 mos.	N/A	21-27 mos.	10 YRS
II	1	VII	21-27 mos.	N/A	21-27 mos.	10 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

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 defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: _____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court DISMISSES Counts III The defendant is found NOT GUILTY of Counts

PLASANT TO THE COURT OF APPEALS DECISION IN #376 46-6-11
DATE 8-1-09

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

RTN/RJN \$ RESERVED Restitution to: _____

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ 200.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

- Criminal filing fee \$ _____ FRC
- Witness costs \$ _____ WFR
- Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
- Jury demand fee \$ _____ JFR
- Extradition costs \$ _____ EXT
- Other \$ _____

PUB \$ 300.00 Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD \$ _____ Drug enforcement fund of Thurston County RCW 9.94A.760

NTF/SAD/SDI

\$ _____ Thurston County Drug Court Fee

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 1100.00 TOTAL RCW 9.94A.760

The above total may not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing may be set by the prosecutor or is scheduled for _____

[] RESTITUTION. Schedule attached.

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

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

RJN

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 of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____ . RCW 9.94A.760.

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

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here:
(JLR) RCW 9.94A.760.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

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

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

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

4.4 OTHER: THE FINGERPRINTS IN EVIDENCE ARE FORFEIT AND SHALL BE DISPOSED OF IN ACCORD WITH STATE LAW AT THE CONCLUSION OF ALL PROCEEDINGS.

- ALL TIME SERVED AND MONIES PAID PURSUANT TO THE ORIGINAL JUDGMENT AND SENTENCE ARE CREDITED TOWARDS THIS FIRST AMENDED JUDGMENT AND SENTENCE.

- SINCE THE ORIGINAL 30 MONTH SENTENCE HAS ALREADY BEEN SERVED, DEFENDANT IS NOT AGAIN REQUIRED TO BE COMMITTED TO THE DOC

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

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

27 months on Count I _____ months on Count _____
27 months on Count II _____ months on Count _____
_____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: 27 mos.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

NON-FELONY COUNTS: N/A

Sentence on counts _____ is/are suspended for _____ months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

_____ days of jail are suspended on Count _____
_____ days of jail are suspended on Count _____

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

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

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

Confinement shall commence immediately unless otherwise set forth here: _____

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 [] COMMUNITY CUSTODY is ordered as follows: N/A

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

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations

Report as directed to a community corrections officer

Notify the community corrections officer in advance of any change in defendant's address or employment

Remain within prescribed geographical boundaries to be set by CCO

The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition.

Defendant shall have no contact with: _____

The defendant shall undergo evaluation and fully comply with all recommended treatment for the following:

Substance Abuse

Mental Health

Sexual Deviancy

Anger Management

Other: _____

The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows: _____

The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition.

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

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

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

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

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

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). 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.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

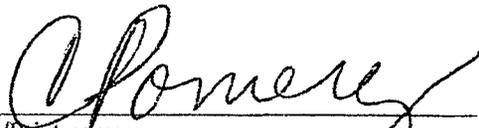
5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

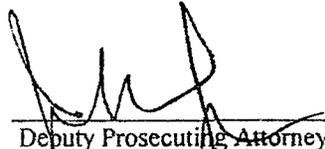
5.7 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

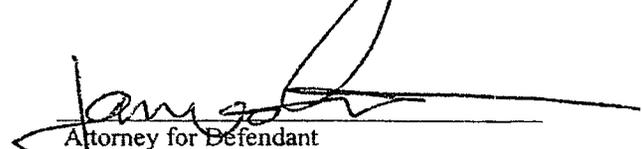
5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

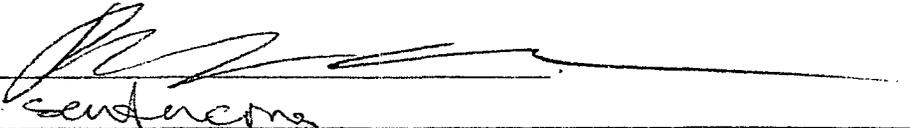
5.9 OTHER: Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

DONE in Open Court and in the presence of the defendant this date: 4-22-10


Judge/Print name: _____


Deputy Prosecuting Attorney
WSBA No. 16786
Print name: JOHN M. "JACK" JONES


Attorney for Defendant
WSBA No. 18174
Print name: JAMES SHACKLETON

Defendant's signature: 
Present for sentencing

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

I, _____, 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 the Court of said county and state, by: _____, Deputy Clerk

Appendix D

Juvenile Statement on Plea of Guilty and Disposition Order

THE SUPERIOR COURT OF THE STATE OF WASHINGTON

For the County of Thurston

FILED SUPERIOR COURT THURSTON COUNTY, WASH.

JUVENILE COURT

PH 1:19 BETTY J. GOULD, CLERK

STATE OF WASHINGTON,

Petitioner,

vs

Respondent,

Ryan Allen

DOB 2/24/27

NO 948-455-6 STATEMENT OF JUVENILE OFFENDER ON PLEA OF GUILTY

THURSTON COUNTY JUVENILE COURT 10200416101000048031

1 My name and date of birth are correctly stated above. I am 16 years old.
2 I know that I have the right to have a lawyer assist me at any time, whether or not I plead guilty to the charge(s) against me. I know that if I cannot afford a lawyer, the Court will give me a lawyer at no cost to me. I know that a lawyer could look at all the files in my case, tell me about the law and my rights, talk with the police, probation counselors, and prosecuting attorney, and assist me at trial and sentencing (disposition). With this knowledge, I have decided to:

[] voluntarily give up my right to a lawyer. [X] be represented by a lawyer. Martin D. Mager

3 I know that I have been charged with committing the following offense(s), having received a copy of the charge(s).
Rs. Burg.

4 I know that if I plead NOT GUILTY to the charge(s), I have the following rights.
(a) To hear and question any witnesses who might testify against me.
(b) To have my own witnesses testify for me, and to have those witnesses required to appear at no cost to me.
(c) To testify myself, or to choose not to testify, and my refusal to testify cannot be held against me.
(d) To have a speedy and public trial in the county where the charged offense(s) allegedly occurred.
(e) To make the prosecuting attorney prove each element of the charged offense(s) beyond a reasonable doubt.
(f) To appeal the case if the Court finds me guilty of the offense(s) at trial.

5 I know that if I plead GUILTY to committing the charged offense(s), I give up the rights set forth in #4, that I will be found to have committed the offense(s), and that I cannot appeal that finding of guilt.

6 I know that if I am found guilty, the Court will then consider my juvenile offense record, which is as follows.
Theft 3rd 11/93 (0-12)

7 I know that the offense(s) I am charged with in this case, combined with my juvenile offense record, will put me in the following classification on each charge.
[] Minor Offender, which would allow the Court to place me on community supervision.
[X] Middle Offender, which would allow the Court to place me on community supervision, and to place me in confinement
[] Serious Offender, which would require the Court give me the sentence in #8 below, unless I show that to be unjust.

I know that Community Supervision may include for each charge (1) up to 12 months of probation-like restrictions, (2) up to \$100 fine, (3) up to 150 hours of community service (working for the public free of charge), (4) counseling and information classes, (5) restrictions on places I can go and on people I can see, (6) curfew, and (7) random drug testing by unanalysis.

8 I know that for a person with my offense record, the standard range sentence guidelines are as follows.

Table with 3 columns: Count One, Count Two, Count Three. Rows for charge, weeks commitment, days detention, fine, hours community service, months community supervision, crime victims fund, court costs.

COPIES TO: [X] P.D., [] PROS. ATTY., [] DEF. ATTY.

MICROFILMED

9. I know that the maximum punishment I can receive is commitment until I am 21 years old, and that I can be sentenced for no longer than the adult maximum sentence for the offense(s) I am charged with
10. I know that my plea of guilty and the Court's acceptance of my plea will become part of my criminal history, and that if the offense is a felony and I was 15 or older when the offense was committed, the plea will remain part of my criminal history if I commit another crime before my 23rd birthday.
11. I know that if I plead guilty or if I am found guilty at trial, my criminal history may cause another court to give me a longer sentence for any offense I commit in the future.
12. I know that if I plead guilty, the Prosecuting Attorney will recommend the following:
 Confinement 5; Community Supervision 900; Community Service hours 48, Fine \$ _____, Costs \$ 6;
 Crime Victim's Fund \$ 100; Restitution to victim(s), if any, and/or

no contact w/ Tom Malanidak & V- Debra Yeager

13. I know that the Probation Officer will recommend the following.
 Confinement 10; Community Supervision 9; Community Service hours 22, Fine \$ _____; Costs \$ 6;
 Crime Victim's Fund \$ 100; Restitution to victim(s), if any, and/or

14. I know that the Court does not have to follow any of the above recommendations, and that I have the right to make my own sentence recommendations. I know that the Court must impose a sentence within the standard range unless the Court finds substantial and compelling reasons not to do so. If the Court goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence itself.

15. I have not been given any promises other than those listed above. I have not been threatened with any harm. Understanding all of the above recommendations, I freely and voluntarily PLEAD GUILTY to the following:

Residential Burglary

16. This is what I did that resulted in my being charged with the offense(s):

On or about June 5, 1994 I entered/ remained unlawfully in a residence belonging to Debra Yeager. While inside we ate some of her food. This occurred in Thurston County.

RA

17. I have read or someone has read to me everything printed above. I know that I may have a copy of this statement and that I may ask any questions I choose before signing it.

Carol S. Case - 17052
 Deputy Prosecuting Attorney WSBAM

Ryan Allen
 Juvenile
Diane S. Stuge
 Defense Attorney WSBAM

JUDGE'S CERTIFICATE

The Court certifies that the juvenile has indicated that the foregoing was read to or by the juvenile, and that the juvenile fully understands the contents.

Date July 11, 1994

Scott R. [Signature]
 Judge/Court Commissioner

I accept the plea

MICROFILMED

wpd112ulhypla5-10-93

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
SUPERIOR COURT OF THE COUNTY OF THURSTON
THURSTON COUNTY, WASHINGTON

STATE OF WASHINGTON

Case no. 94-8-455-6

vs. Ryan W. Alford DEPUTY J. GOULD, CLERK

(DOB: 7-28-77)

DISPOSITION ORDER

Respondent

DEPUTY

At a Disposition Hearing held on 7-11-94

the Respondent waived the right to counsel
 was represented by Martin Meyer.

The Respondent having pled guilty was found guilty
at trial of the offense(s) of: Residential Burglary

as set forth in the
 Original Information as to cause no. 94-8-455-6
 Information as to cause no. _____
 Information as to cause no. _____

and the Respondent having been found to be a
 minor offender,
 middle offender,
 serious offender.

THE COURT REENDERS THE FOLLOWING ORDER:

STATUTORY MITIGATING/AGGRAVATING FACTORS

- The Court finds that the following STATUTORY MITIGATING FACTORS exist:
- The Respondent's conduct neither caused nor threatened serious bodily injury or the Respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury.
 - The Respondent acted under strong and immediate provocation.
 - The Respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense.
 - Prior to his or her detection, the Respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained.
 - There has been at least one year between the Respondent's current offense and any prior criminal offense.

- The Court finds that the following STATUTORY AGGRAVATING FACTORS exist:
- In the commission of the offense, or in flight therefrom, the Respondent inflicted or attempted to inflict serious bodily injury to another.
 - The offense was committed in an especially heinous, cruel, or depraved manner.
 - The victim(s) was particularly vulnerable.
 - The Respondent has recent criminal history or has failed to comply with the conditions of a recent dispositional order or diversion agreement.
 - The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.
 - The Respondent was the leader of a criminal enterprise involving several persons.
 - There are other complaints which have resulted in a diversion or a finding or plea of guilty, but which are not included as criminal history.

DISPOSITION ORDER - page 1 of 3

COPIES TO: PD.
 PROB. ATTY.
 DEE. ATTY.

MICROFILMED

(9)

8

THURSTON COUNTY SUPERIOR COURT

CONFINEMENT

THE COURT HEREBY ORDERS CONFINEMENT IN THE FOLLOWING MANNER:

- Serve 10 days of CONFINEMENT at the Thurston County Youth Service Center. Respondent shall maintain good behavior while in confinement.
- The Respondent shall receive credit for _____ days previously served.
- Confinement may be served via electronic home monitoring conditional upon the Respondent maintaining good behavior while under such electronic home monitoring, including compliance with the terms of the electronic home monitoring agreement.
- The Respondent shall complete 48 hours of COMMUNITY SERVICE at a rate of no less than sixteen (16) hours per month. The Respondent shall be given credit for _____ hours of community service for _____ day(s) of confinement served.

COMMUNITY SUPERVISION

- The Respondent shall submit to COMMUNITY SUPERVISION for a period of 9 months until _____, which shall run CONSECUTIVE to any current community supervision.

THE RESPONDENT SHALL COMPLY WITH ALL OF THE FOLLOWING RULES OF COMMUNITY SUPERVISION:

- * Report to the Probation Department as required by the Probation Department.
- * Maintain good behavior and obey all LAWS.
- * Reside with mother with father with parents only as approved by the Probation Department and comply with the reasonable rules of that residence.
- * ~~Consume~~ no alcohol or non-prescription drugs; Submit to random urinalyses administered by probation staff.
- * Maintain satisfactory effort and attendance at school or Probation-approved employment. School attendance and/or progress reports shall be provided to the Probation Department as requested thereby.
- * Abide by a curfew of _____ p.m. Sunday through Thursday and _____ p.m. Friday and Saturday, except as modified in writing by the Probation Department.
- * Not associate with anyone on probation or parole except as allowed by the Probation Department. Attend and participate in counseling to the satisfaction of his/her Probation Counselor.
- Respondent shall not hold him/her self out to be a gang member or associate with a person who holds him/her self out to be a gang member. The phrase "hold him/her self out to be a gang member" includes: 1) proclaiming gang membership; 2) by words or conduct advocating gang membership or pride in gang activities; 3) wears two or more articles of clothing indicating gang identification; 4) displays any bandanna in a manner consistent with gang membership; 5) wears any gang insignia; 6) shows any gang signs; 7) has any gang related tattoos, including nicknames; 8) writing gang related signs, graffiti or words.
- Have no contact with Debra Yeager-V ; Stern Madaniteki.
- Not enter _____
- Obtain a DRUG/ALCOHOL EVALUATION _____ EVALUATION and comply with all treatment recommendations set forth in that evaluation to the satisfaction of the Probation Department.

THIS DOCUMENT IS UNCLASSIFIED DATE 10/20/04 BY 6161010000738D28

MICROFILMED

10

MONETARY OBLIGATIONS

THE RESPONDENT SHALL MAKE THE FOLLOWING MONETARY PAYMENTS:

- \$ 6 in court costs and a \$ Waive fine within ___ days.
- \$ 100 to the Crime Victims Compensation Fund within ___ days.
- \$ ___ to the Thurston County Interlocal Drug Fund within ___ days.
- Credit shall be given for \$ ___ towards the ___ for ___ days confinement served.
- Restitution as may be set by future order of the Court; Jurisdiction shall be extended until age 21 for purposes of determining and satisfying restitution obligations under this order.

OTHER PROVISIONS

The Respondent shall comply with all terms, conditions, and programming as required under the Thurston County Juvenile Court MAXIMUM SUPERVISION PROGRAM.

Juvenile Court jurisdiction shall be extended as necessary for the execution and enforcement of this Order pursuant to RCW 13.40.300(1)(c).

- DISPOSITION is transferred to ___ County.
 - The Respondent waives speedy disposition per JuCR 7.12.
 - The Respondent shall be transported in custody to ___ County Juvenile Court for purposes of disposition.
 - The Respondent shall remain under the conditions of release previously imposed.

Jurisdiction for community supervision is transferred to ___ County. The Respondent shall report to the ___ County juvenile court within ___ days.

W/ 10 days confinement to be served beginning July 30, 1994.

Restitution obligation to be strictly enforced by probation at more than \$25.00 month.

DATED this 11 day of July, 1994.

[Signature]
 JUDGE/COURT COMMISSIONER

Carol L. Case 17052
 Deputy Prosecuting Attorney WSB#

Mark A. Meyer
 Respondent/Defense Counsel WSB# 18338

(11)

THUCOUR0010209416101000048029

Appendix E

Letter from Probation Counselor Dana Gartner



SUPERIOR COURT OF THE
STATE OF WASHINGTON
THURSTON COUNTY
JUVENILE COURT

Gary Carlyle
Assistant Superior Court Administrator

March 24, 2008

To Whom It May Concern:

Ryan W. Allen was adjudicated for Residential Burglary in Thurston County Juvenile Court on 7-11-94. This is a felony level offense. However, during 1994-1995, the period of time Ryan was on community supervision, I can say with total certainty that he was at no time informed by our Court or myself of a firearm prohibition.

In 1994, the firearm prohibition was not listed on the juvenile's Statement of Juvenile Offender on Plea of Guilty nor on their Disposition Order. During that period of time, the juveniles also did not receive any verbal notification by the Court Commissioner or Probation of the prohibition. At that time we were also not informing the Firearm Division at Department of Licensing of felony convictions.

This practice has since changed and juveniles who are adjudicated of felony level offenses are notified of a felony firearm prohibition and these offenses are being reported to Department of Licensing.

Sincerely,

Dana Gartner
Juvenile Probation Counselor II

Appendix F
Incident Report, Property Form and Letter from
Thurston County Sheriff's Office



THURSTON COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

Year - Case Number
05-2701

DATE AND TIME RECEIVED
03-21-05 / 1831 1834

DATE AND TIME OCC.
03-21-05 / 1831

14C

CLOSED UNFOUNDED FELONY P.A. DOM VIOLENCE
 SUSPENDED IN CUSTODY MISD. JUV PA STATE IMPACT

REPORT-TYPE OF INCIDENT
Domestic Disturbance 5C 450

DISPO. E GRID AA-8 LOCATION OF INCIDENT AND/OR ARREST
18525 Sargent Rd SW

DISTRICT D OFFICER, Serial # A. Clark C7065 ID.NO 1P93 CHARGE/CITATION # / RCW's
Assault 4th degree DV 9A.36.041DV / Booked at the Thurston County Jail

ADDITIONAL POSSIBLE CRIMES INVOLVED WITH RCW CODES:

COMPLAINANT	SEX	DOB/AGE	ADDRESS	PHONE
[REDACTED]	M	[REDACTED]	[REDACTED]	BUS HOME [REDACTED]
VICTIM	SEX	DOB/AGE	ADDRESS	PHONE
Allen Ryan Wayne	M	[REDACTED]	18525 Sargent Rd SW Rochester, Wa 98579	BUS HOME 360-273-9156
WITNESS NO. 1	SEX	DOB/AGE	ADDRESS	PHONE
[REDACTED]	F	[REDACTED]	[REDACTED]	BUS HOME no phone
SUSPECT NO. 1	SEX	DOB/AGE	ADDRESS	PHONE
Willhoite, Patricia A	F	[REDACTED]	18525 Sargent Rd SW Rochester, Wa 98579	BUS 360-273-2082 (message) HOME 360-273-9156

RACE	HEIGHT	WT.	EYES	HAIR	AKA	IDENTIFIERS (SCARS, TAT)
W	5-5	135	Blue	Blonde		
DRIVERS LIC. #/ST.	SOCIAL SECURITY	GANG AFFILIATION			EMPLOYER/SCHOOL	
[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]	

SUSPECT VEHICLE	YEAR	MAKE	MODEL	STY	COLOR	LICENSE	STATE	VEHICLE IMPOUNDED
<input type="checkbox"/>	0000						WA	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
VICTIM VEHICLE	YEAR	MAKE	MODEL	STY	COLOR	LICENSE	STATE	VEHICLE IMPOUNDED
<input type="checkbox"/>								<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

OK TO DISCLOSE? YES: C/P V W ADDITIONAL VICTIM-#'S: ADDITIONAL WITNESS-#'S:
NO: C/P V W ADDITIONAL VICTIM-#'S: ADDITIONAL WITNESS-#'S:

Person(s)/Item(s) Entered WACIC NCIC APPROVED BY:
ASSIGNED TO: INFO. ONLY: COPY TO: REFERRED TO:

- 1. Additional Victims
- 2. Additional Witnesses
- 3. Additional Suspects
- 4. Other Suspect Info
- 5. Description Property Taken / Value
- 6. Description Physical Evidence
- 7. Description Victim Injuries
- 8. Property Damage/Loss
- 9. Description Premises
- 10. Entry, where, how, tools used
- 11. Relationship Between Victim / Suspect
- 12. Reconstruct Incident

NARRATIVE

(2) Additional witness-
[REDACTED]

(6) Description of physical evidence-
1-SKS rifle / black in color
(See Deputy Goheen's supplemental report and evidence sheet for further details.)

Digital photographs.
Taped statement from Ryan Allen
DV observation form.

(7) Description of victim injuries-
No injuries reported or observed.

(9) Description of premise-
This incident occurred at 18525 Sargent RD SW which is a single wide mobile home.

(11) Relationship-
Ryan and Patricia have been in a dating relationship for the past month. According to Ryan they have also been residing together off and on for the past month.

12) Incident body-

On 03-21-05 at 1831 hours I was dispatched to 18525 Sargent Rd SW regarding a man with a gun call. While en-route dispatch advised that a 36 year old female has a SKS rifle with a clip pointed at her head. Dispatch also advised not to respond with sirens according to the complainant due to the female possibly pulling the trigger if she heard them.

Upon arrival I observed a male and female walking in the driveway near a vehicle at which time I requested to see hands and requested them walk towards me. As they walked toward me the female informed me that Patricia is inside with a rifle to her head. The male identified himself as Ryan Allen and the female as [REDACTED]. [REDACTED] said her boyfriend is inside trying to calm Patricia down. [REDACTED] informed me that Patricia is in the back bedroom with the door closed and her husband is standing outside the door talking to her. At this time I requested Ryan and [REDACTED] to stay back away from the residence.

Upon walking up to the residence I noted clothing scattered around near the front porch steps and noted the front door standing open. Upon walking closer I could hear a male and female talking. Upon clearing the kitchen area and living room area I walked in the living room near the hall way. Upon looking down the hall way I noted the end bedroom door closed and noticed the male was actually inside the room at this time talking with the female. I heard the female talking about how she is tired of things and tired of getting wronged. At this time to my knowledge the female was unaware that law enforcement had arrived. I was concerned about the safety of the male inside the room however noted a calm conversation going on between the two of them. At this time I held my position until cover Deputies arrived on scene to assist. While waiting I noted the bedroom door to come open and a male start to walk down the hallway at which time I motion for him to come with me however he turned back around and went back in the bedroom with the female.

Upon Deputy Esslinger, Deputy Goheen and Deputy King arriving on scene a perimeter was made around the house. Deputy Esslinger and I then stood by the front door and instructed the male to come out of the bedroom. After several requests the male walked out of the residence with the female walking behind. The female did not have any weapons in her possession at this time. The female was detained and escorted to my patrol vehicle by Deputy King. At this time Deputy Esslinger conducted a security sweep of the residence and noted no one else inside. Deputy Esslinger located the SKS rifle in the back bedroom where the male and female were. Deputy Esslinger and I noted the rifle to have a round in the chamber along with a magazine as well. Deputy Esslinger and I also noticed one round lying on the bed. Deputy Esslinger cleared the weapon and took it outside to the patrol vehicles.

Upon speaking with the male who had been in the bedroom with the female he identified himself as [REDACTED]. He said while talking with [REDACTED] outside he observed Patricia walk out on to the front porch holding the SKS rifle up to her head. He said after a few moments she went back inside and he decided to go inside as well to try and talk with her.

Upon speaking with Ryan Allen he informed me that they had been arguing all day over little things. He said he told her if she is going to act this way to just leave at which time she started throwing her clothes into the front yard off the front porch. He said at one point she left and had gone to a friends where she started drinking. He said upon her coming back home she started kicking the front door because it was locked. Ryan said at this time he was on the phone. He said upon ending the conversation he walked over and opened the door. He said Patricia was very angry with him at this time. He said upon him opening the door Patricia "charged" him and with both of her hands pushed him back as she was coming inside. He said he was not blocking her way or preventing her from coming inside the house. He said at this time she appeared to be intoxicated.

He said upon her inside she started throwing things around in the living room and threw her phone across the living room and into the kitchen where the antenna broke off. He said she started walking into his room however at this

ime he said he grabbed her sleeve to try and hold her from throwing any more of his things around. He said at this ime she threw her self down on the ground at which time he tried to hold on to her to keep her from hitting the floor. He said he told her that he is leaving. He said he then went outside and decided to take his car battery out of her vehicle so she wouldn't drive any where else due to her being intoxicated. He said as soon as he took the battery out she came outside and took it out of his hands and took it inside the house. Ryan said he then walked over and started alking with [REDACTED]. Ryan said a few moments later [REDACTED] walked out onto the front porch with his SKS rifle pointed at her head. He said she told him that she would put a bullet into her head and that she wanted him to watch it. Ryan said after approximately 15-30 seconds she went back inside at which time [REDACTED] went in to talk to her. Upon asking Ryan if at any point had she pointed it at him or anyone else other than herself which he said no.

Upon contacting Patricia Willhoite I asked her why she walked out on to the front porch with the rifle pointed at her head which she said she didn't. I asked her if she had the rifle in the bedroom while talking with [REDACTED] which she said yes she was holding it and was not sure if it was loaded or not. Upon asking her why she put the rifle to her head in the bedroom, she started crying while she informed me that she had went to her domestic violence counseling today. I asked her if she pushed Ryan which she said no. She said he pushed her down in the hall way. She said he had been verbally abusive all day towards her. Ms. Willhoite informed me that she will not go to the hospital and doesn't need to go to the hospital.

At this time It was determined that Patricia would be placed under arrest for assault 4th degree domestic violence. Deputy Goheen then transported Ms. Willhoite to the Thurston County Jail. Deputy Goheen also took the SKS rifle as safe keeping evidence in this case. Please see Deputy Goheen's supplemental report for further details.

I then re-contacted Ryan Allen and obtained a taped statement and a partially completed observation form. Mr. Allen informed me that he does not want her to return to his house. I provided a domestic violence resource pamphlet and cleared without further incident.

DEPUTY PREPARING REPORT	DEPUTY ID#	DATE
A. Clark C7065	1P93	03-21-05

[Handwritten notes and signatures]
 12-20-07
 Ryan Allen
 [Signature]
 [Signature]



SUPPLEMENTARY REPORT

By: B. GOHEEN

DATE: 03-21-05

CASE NO. 05-2701

Please list previously unknown information on involved parties:

Involvement (S/V/W/I)	Name	DOB	Address	Phone XXX XXX-XXXX
--------------------------	------	-----	---------	-----------------------

NARRATIVE:

6) DESC. PHYSICAL EVIDENCE:

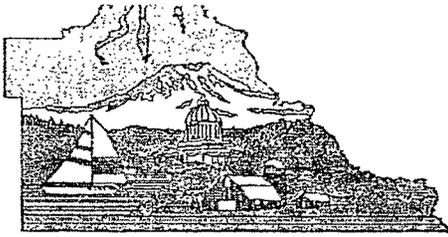
Black Norinco SKS 7.62 x 39 rifle, Serial #1806144.

Black magazine to Norinco rifle containing numerous bullets.

12) On 03-21-05, I assisted Deputy Clark on a person with a gun call. The female involved was holding a SKS rifle to her head. Upon arrival I covered the back of the residence while Deputy Clark and Deputy Esslinger were inside the residence. Deputy Clark was able to get the female out of the residence and was able to determine probable cause to arrest her for Assault 4th DV. Deputy Esslinger obtained the SKS rifle that the female was holding to her head from the bedroom she was in. The female identified as Patricia Willhoite was placed under arrest. I transported Patricia to the Thurston County Jail and booked her for Assault 4th DV. While I was en route to the jail, Patricia told me that she wanted to kill herself. She told me that she had cut her wrists earlier in the day. Patricia got very angry in the back of my patrol vehicle and said that when she gets out of jail she will kill herself. I had a suicide watch placed on Patricia in the jail. I entered the SKS rifle into evidence.

Nothing further.

26



THURSTON COUNTY

WASHINGTON

SINCE 1882

**EDWARD G. HOLM
PROSECUTING ATTORNEY**

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540
Fax: (360) 754-3358

RELEASE OF EVIDENCE

TO: Thurston County Sheriff's Office
Evidence Section

From: Steven C. Sherman, Senior Deputy Prosecuting Attorney

Date: January 27, 2005

RE: Patricia Ann Willhoite
TCSO 05-2701

The black Norinco SKS 7.26 x 39 Rifle, serial #1806144 and magazine currently held in evidence in the above-referenced case can be returned to the owner, Allen R. Wayne. Please contact Mr. Allen at 273-9156 when it is available for pick up. Thank you!



HURST COUNTY SHERIFF'S OFFICE

EVIDENCE/PROPERTY FORM

CASE NUMBER

05-2701

E

TYPE OF CRIME DOMESTIC DISTURBANCE

EVID PERS PROP SAFEKEEPING RECOV PROP FOUND CONTRA

OW/VI/FI/SU/WI LAST, FIRST MI DOB SUSPECT: LAST NAME, FIRST MI DOB ALLEN, RYAN WADL WILLHOITE, PATRICIA A.

ADDRESS/P.O. BOX 18525 SARGENT RD SW 18525 SARGENT RD SW

CITY/STATE/ZIP CODE PHONE ROCHESTER, WA 98579 273-9156

Item Number ITEM (NOUN NAME, THEN DESCRIBE: MANUFACTURER, CALIBER, MODEL, SERIAL NUMBER, CONDITION, QUANTITY, ECT.)

Table with 2 columns: Item Number, Item Description. Includes handwritten entry: RIFLE CAL BLACK NORINCO SKS 7.62 X 39 RIFLE, SERIAL #1806144. Includes vertical text: EVIDENCE USE, 05-02701-03 EVIDENCE

AFTER ADJUDICATION RETURN TO OWNER DISPOSE/DESTROY PHOTOGRAPH LAB TEST FINGERPRINT NARCOTICS FIELD TEST POSITIVE

REMARKS/TYPE OF TESTING REQUESTED

Handwritten notes: rec'd at AT-041505

RECOVERED BY: B. GOHEEN SSN: G7557 DATE: 03-21-05 TIME: 1945

PLACED IN EVIDENCE LOCKER DIRECT TO EVIDENCE OFFICER

RECEIVED IN EVIDENCE BY: [Signature] DATE: 032205 TIME: 1936

Table with 5 columns: ITEM(S), RELEASED BY, RECEIVED BY, DATE, TIME. Includes handwritten entry: 1, [Signature], [Signature], 03/22/05, 1936.



**THURSTON COUNTY SHERIFF'S OFFICE
EVIDENCE SECTION**

FIREARM RELEASE FORM

CASE NUMBER: 05-02701-03

DATE: 06/16/05

PLEASE READ AND SIGN AT BOTTOM PRIOR TO ACCEPTING WEAPONS:

The following persons are prohibited from receiving a firearm in interstate or foreign commerce under 18 U.S. Chapter 44 and Title VII of Public Law 90-351, as amended, (18 USC Appendix):

- 1) Fugitives from justice – (any crime);
- 2) Persons under indictment for, or who have been convicted of, a crime punishable for a term exceeding one year;
- 3) Narcotic addicts or drug users;
- 4) Persons adjudicated as mental defectives or mentally incompetent, or who have been committed to any mental institution;
- 5) Veterans discharged under dishonorable conditions;
- 6) Persons who have renounced US citizenship;
- 7) Aliens illegally or unlawfully in the US, and;
- 8) Persons under 21 years of age in the case of any firearm other than a shotgun or rifle, and under 18 years of age in the case of a shotgun or rifle.

I certify that I am a citizen of the United States or have declared intent to become a citizen and that I have never been convicted in Washington or elsewhere of any crime of violence, (i.e. murder, manslaughter, rape, riot, mayhem, first-degree assault, second-degree assault, robbery, burglary, kidnapping). I certify that I am not drug addicted or habitually drunk and that I have not been confined to a mental institution. I certify that I am not prohibited by the provisions of Chapter 44 Title 18, United States Code or Title VII of Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351, as amended, 18 USC Appendix) from receiving a firearm in interstate or foreign commerce.

I have read the entire text of this form and my statements are true and correct.

Signature: _____

A handwritten signature in black ink, appearing to be "X. J. [unclear]", written over a horizontal line.



THURSTON COUNTY SHERIFF'S OFFICE

WASHINGTON COUNTY

SINCE 1852

Brad Watkins, Undersheriff
Jim Chamberlain, Chief Deputy
Dave Pearsall, Chief Deputy
Todd Thoma, Chief Deputy

DANIEL D. KIMBALL
Sheriff

2000 Lakeridge Drive SW • Olympia, Washington 98502-6045 • (360) 786-5500

December 2, 2009

Mr. Ryan Allen
PO Box 1231
Rochester, WA 98579

RE: Case #05-2701-03

Dear Mr. Allen:

Pursuant to your request, I am providing you a copy of our Evidence/Property form and Firearm Release form, along with the Release of Evidence issued by the Thurston County Prosecuting Attorney's Office. I have also enclosed a copy of the report as in the body of the report mention is made of the rifle's ownership.

According to the signature block on the Evidence/Property form, it was received by Ryan W. Allen. The items which were picked up are listed on the form.

Regarding procedure in relinquishing a firearm in this type of situation, the process is that once the Thurston County evidence department is notified that release is authorized by the prosecutor's office, a criminal history check (NCIC) is run. The owner of the gun is then notified that he or she may pick it up. When the owner arrives to pick up their item, their identification is checked and the owner then signs in the "Received by" section of the Evidence/Property form.

Please feel free to contact me if you have questions.

Sincerely yours,

DANIEL D KIMBALL, SHERIFF

Judith Russell, Legal Asst.
Records



Appendix G
Declaration of Ryan Wayne Allen

Appendix H

Statement of Additional Grounds for Review and Pro Se Petition for Review

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

COURT OF APPEALS
CR003-3 0112:01
STATE OF WASHINGTON
BY: *CM*
RECEIVED

CERTIFICATE OF SERVICE
STATE OF WASHINGTON
to: *ABU, Rob. & Larone*
& Respondent
Date: *12/2/08* Signed: *SAC*

ORIGINAL

No. *37646-4*

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

v.
Ryan Allen
(your name)

Appellant.

I, Ryan Allen, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

my new address

*Ryan Allen 317570
Silverstar
Larch Correction Center
15314 NE Dole Valley Rd
Yacolt, WA 98675-2953*

*Attached
this
6 pages*

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: *12-3-08*

Signature: *[Signature]*

Additional Grounds

①

1. I have witnesses that will testify in court that I had my gate closed prior to the arrival of the Thurston County Sheriff.
2. Chapter 10.36 Public Disturbance Noise
3. Statutory Authority Chapter RCW 70.107
4. WAC Section 173-58-040 Ambient conditions
5. Chapter 173.53 Wac. (order 13378 (part) 2005)
6. City of Everett v. O'brien, 31 Wash. App. 319, 641 P.2d 714 (WA. App 1-11-82)
7. State v. Ryan Allen Cause ~~No.~~ No. 94-8-456 clearly marked "middle offence" not serious offence. Nowhere on this document is marked or stated no possession of firearms.

(2)

8. RCW 9A.047(1) effective Jun 13
1994

9. State V. Minor Docket No 79003-5
filed 1-17-2008

10. A letter from Dana ~~Gartner~~ Gartner,
probation officer for cause No. 94-8-455-6
stating ~~officer from for~~ "... I can
say with total certainty that he was
at no time informed by our courts or
myself of a firearm probation."

I would like to state for the record
that Mr. Shackton refused to submit
any of this in my first case trial.
He told me it was not relevant
to my case. I tried to fire him
which are in the verbatim transcripts
also I tried to speak on my
behalf and was not allowed till
the end when it was "Too late now".
I would also let it be known

③

that I have had no legal assistance with this grounds for appeal. I believe it is a poor ~~to~~ representation to my behalf from Patricia A. Pettlick who refuses to schedule a phone call about these matters. I have repeatedly asked for legal assistance & have been refused. I protest this ill assistance!

Sincerely,

Ryan
Allen

(4)

In addition I would like the Courts to know that on Dec 21 2007 the Thurston County Sheriffs had ~~no~~ ~~probable~~ ~~no~~ right to enter my property ~~with~~ without a search warrant under Chapter 10.36 Public Disturbance Noise, a Thurston County ordinance that Thurston County Sheriffs should well know considering the length in which they've worked & had training. In the evidence log they have no proof of a 911 call. In fact if there was WAC Section 173-58-040 Ambient conditions should be even more clear as to what their procedure should be. As of City of Everett v. O'Brien should make that very clear in the light of the situation. If I indeed was making a public disturbance at the time given what ~~proof~~ proof do they have that the bass from my house exceeded 45 dBA when measured at ~~any~~ ~~any~~ any point on the affected property! There for without

(5)

This prout there is in fact no probable cause to enter my property without a search warrant to even knock on my door to begin with. Even had they unlawfully entered a property without a warrant or a search warrant Under RCW 9A.047(1) & State V. Minor I have full right to possession a firearm or have in my ~~domination~~ dominion or control. Also the fact I have a sign posted at the gate No trespassing along with a closed latched gate for reasons that I had livestock on the property. My place is fully fenced. And last but not least State V. Ryan Allen Cause No 94-8-455-6 clearly marked middle offence & nowhere is it marked no possession of firearms & if you chuck in the verbatim you will find the same.

I would also like to take a look at the bail jumping. If in fact I was court order to have a three-day notice if it was mailed on the

(6)

the 11th if it in fact was not late to make it to the post man in time it would at least take a day to make it to the post office in Rochester. The mail would then be sorted & put in the P.O. Box which would not make the P.O. Box until about Noon. Leaving me with about two day notice if I was there standing at my P.O. Box.

And I do believe a day is 24hrs, correct? So this would not have been 72 hrs of notice. And just for the record, I do have a witness to testify it was not in my po Box.

Further more, if the first two charge charges are dropped which I've ~~so~~ most certainly have proven, the bail jumping should ~~at~~ automatically be dropped.

And this is merely all that was needed to be said in court to begin with, which I was not allowed to speak, and my attorney would not ~~do~~ this.

Say

My

other side →

Also if you check the offender score sheet you can plainly see that my score was not done properly to get my sentence range. If you look at "other current offences" there is a double asteric then if you refer to the bottom of the page there is a key that explains further on what was in perinthesies. I should have been at ~~15-20~~ rather than 26-34 ~~+~~ @ 0 points not 2 points. At this point in time I've had no legal advise or council since my appeal started.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

83604-3

09 NOV 13 AM 9:04

BY RONALD D. CARPENTER

Supreme Court Case No. 83604-3

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
NOV 13 2009
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

State Of Washington,

Respondent,

v.

Ryan W. Allen,

Petitioner,

Petition For Review

Ryan W. Allen
Pro Se

Table Of Contents

Issues presented for review, statement of the case, argument why review should be accepted 1-6

Conclusion..... 6

Appendix starts..... 7

Letter from Dana Gartner probation officer..... 7

Evidence tag from Thurston County Sheriff's Office of SKS's release to Ryan Allen..... 8

Mr. Allen's disposition from which charge bases it's case..... 9-11

Full copy of Thurston County Sound Ord..... 12-16

Copy of case law of State v. Leavitt..... 17-23

Copy of case law State v. Minor..... 24-35

*25-28
Missing*

*↑
Very important case law*

Table of Authorities

City of Everett v. O'Brien, 31 Wash. App. 319, 641 P.2d 714 (Wa. App. 1-11-82).....2

State v. Gare, 77 Wn. App. 333, 890 P. 2d 1088 (1995).....2

State v. Dodson 110 Wn. App. 112, 39 P. 3d. 324 (2002).....2

State v. Richards, 136 Wn. 2d. 361, 962 P.2d 118 (1998).....4

U.S. v. Ramires, 91 F. 3d 1297 (1996).....4

U.S. v. Bustamante-Gamez, 488 F. 2d 4, 10-11 (1973).....4

State v. Richards, 87 Wn. App. 285, 941 P. 2d 710 (1997).....4

State v. Myers, 102 wn 2d 584, 689 P. 2d 38 (1984).....4

State v. Cunningham, 116 Wn. App. 219, 65 P. 3d 325 (2003).....4

State v. Williams 34 Wn. App. 662, 663, P.2d 1368 (1983).....4

Minnesota v. Murphy, 465 U.S. 420, 429, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984).....4

Rhode Island v. Innis, 446 U.S. 291, 301, 64 L. Ed. 2d 257, 100 S. C.T. 1682 (1980)....4

State v. Leavitt 107 Wn. App. 361, 26 P.3d 622 (2008).....5

State v. Minor 162 Wn.2d 796, 172 P.3d 1162 (2001).....5

Statutes

RCW 70.107.050. (ord. 9219 (part), 1989).....3

RCW Chapter 70.107.....3

RCW 4.28.080.....3

RCW 10.30.....3

RCW 9. 41. 047 (1).....5

Civil Ord.

Chapter 10.36 PUBLIC DISTURBANCE NOISE1

Chapter 10.38 CIVIL PENTALTIES FOR NOISE VIOLATIONS.....2

Court Rule

CrR Retrial Rule 7.5 New Trial.....6

RAP Rule 9.11 Additional Evidence On Review.....6

Amendments

4th Amendment.....4

5th Amendment.....4

A. IDENTITY OF MOVING PARTY

Petitioner Ryan Allen, the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Mr. Allen seeks review of division Two's unpublished opinion in State v. Ryan Allen No. 37646-6-II. A copy of the opinion is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW, D. STATEMENT OF THE CASE, E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Can a respondent be convicted of first degree unlawful possession of a firearm in two counts where the arresting officer did not follow procedure in a sound ordinance violation which is a civil matter? In accordance with the Chapter 10.36 PUBLIC DISTURBANCE NOISE under subsection .010 states in the declaration of the policy that the purpose of this chapter is to protect to the greatest extension possible both the right of free speech and the right to privacy within the home and upon real property. Its purpose is to guarantee ample channels of communication for all ideas, whether welcome or unwelcome by the recipients, yet also secure the privacy as a refuge from unwelcome noise. (Ord. 13378 (part), 2005; Ord. 9189 ss 1, 1989; Ord. 8072 ss 2 (part), 1985).

Under subsection .030 B. states this: is caused by the operation of any devise designed for sound production or reproduction, such as but not limited to radios, televisions, musical instruments phonographs and loudspeakers that exceed fifty-five dBA between the hours of seven a.m. and ten p.m. and forty-five dBA between the hours of ten p.m. and seven a.m., measured at any adjacent parcel or public right-of-way, or is caused by any source described in subsections A, B, and C of this section, which unreasonably disturbs or interferes with the peace, comfort or repose of owners of possessors of real

property determined at any point on the affected property.

For the purpose of this chapter, noise complaints may only be initiated by a person who resides, or owns property in the area affected by the noise complaint of.

(Ord. 13378 (part), 2005; Ord. 9189 ss 3, 1989; Ord. 8072 ss 2 (part), 1985). Apparently officer Simper did not feel that the law applied to him to follow. If he had I'm sure that officer Simper would have at the very least brought a decibel meter with him on his call of a noise complaint. Next he would have gone to the affected landowners residence that had called in the first place as described in the ordinance. It would be reasonable to believe that officer Simper was quite aware of the sound ordinance in it's entirety as with the experiance in which officer Simper has claimed to had through out his career as so stated in CP-5 of the direct examination by Mr. Jones. And had he known that, he would have also known that it is also not procedure as he had stated he did in CP-6, *Upon coming into the area -- well, a neighbor had called reporting excessive noise, music, coming from a residence, and I was driving down Sargent Road, slowed, rolled down my windows, and I could hear very loud music coming from the residence in question.* If officer Simper had known the procedure that he **must** follow he would have gone to the residence of the afflicted property. As in *City of Everett v. O'brien*, 31 Wash. App. 319, 641 P.2d 714 (Wa. App. 1-11-82), nowhere in the ordinance does it state anything about *officer's judgment*. Officer Simper, without taking a decibel reading enters Mr. Allen's private property in which he has a right to privacy because his property was fully fenced, a closed gate with *no trespassing* signs conspicuously on it; see *State v. Gare*, 77 Wn. App. 333, 890 P. 2d 1088 (1995); *State v. Dodson* 110 Wn. App. 112, 39 P. 3d. 324 (2002). Therefore officer Simper did not have legal justification to enter Mr. Allen's property; because a violation or *infraction* was not proven officer Simper did not have probable cause as a result and thusly proceeded to enter Mr. Allen's property. Therefore, officer Simper violated Mr. Allen's fourth amendment right against *unreasonable search and seizure*.

Chapter 10.38 CIVIL PENTALTIES FOR NOISE VIOLATIONS, clearly states the *policy* under subsection .010 as follows: It is the policy of Thurston County to enforce, to the extent resources permit, the rules setting maximum noise levels established

by the State Department of Ecology pursuant to RCW Chapter 70.107. Local government may enforce these rules only through imposition of a *civil* penalty pursuant to RCW 70.107.050. (Ord. 9219 (part), 1989). It further goes on to say in subsection .030 *service of notice of violation: The civil penalty is imposed by the service of a notice of violation on the person committing the violation. Service of the notice shall be as provided in RCW 4.28.080. However, if, in the exercise of reasonable diligence, service cannot be made as provided in RCW 4.28.080, service may be accomplished by mailing the notice of violation to the person to be served at the last known address by certified mail with return receipt requested. (Ord. 9219 (part), 1989).* If in fact officer Simper had obtained a decibel reading and it had been over the the dBA level stated in the ordinance officer Simper still did not execute the *service of notice in violation* properly either. If he is not able to access the residence in which he is trying to give notice he is to mail it as stated in the subsection .040 and have the information in the notice as specified in subsection .050, which is also an incorporation of state law, see RCWs listed above. As a direct result of procedure not followed unlawful search and seizure was committed causing all evidence from this point inadmissible in a court of law for the evidence was unlawfully obtained and should have been suppressed during the suppression hearing before trial. This also directly related to ineffective counsel, since Mr. Allen did expressed his concerns of the incompetency of Mr. Shackleton and was denied motion to receive new counsel.

2. Officer Simper then goes on to violate the *knock and announce* statute also known as RCW 10.30. Officer Simper proceeded up to Mr. Allen's mobile, CP-6, which was dark and knocked once, and waited for a response -- nowhere did he announce that he was law enforcement. The officer then knocked louder a second time, but again nowhere in either the clerk's papers in the motion to suppress CP-7-8 or trial and sentencing CP-11 did he announce himself as any kind of law enforcement, *police-open-up* or *sheriff-open-up*. As a result the defendant answered the door, which has no peephole, armed with the weapon pointed down. It wasn't until then that the defendant Mr. Allen saw the person who was knocking, and that he was law enforcement. The officer, fearing for his safety, ordered the defendant to *put down the weapon*, which he did quickly; and

was immediately handcuffed by the officer. See trial CP-11. In *State v. Richards*, 136 Wn. 2d 361, 962 P.2d 118 (1998) the police or law enforcement ***must*** #1 knock and #2 announce their identity and then #3 announce their purpose for being there, and finally #4 allow a ***brief*** waiting period prior to entry. See *U.S. v. Ramires*, 91 F. 3d 1297 (1996); *U.S. v. Bustamante-Gamez*, 488 F. 2d 4, 10-11 (1973), strict compliance with the ***knock and announce*** statute is required, *State v. Richards*, 87 Wn. App. 285, 941 P. 2d 710 (1997). This statute and doctrine was enacted so as to avoid the exact situation that happened - endangering law enforcement personnel, while also protecting persons from 4th amendment violations of unreasonable search and seizure. See *State v. Myers*, 102 Wn 2d 584, 689 P. 2d 38 (1984). This again should have been suppressed during the suppression hearing and was allowed into court at fault of ineffective counsel.

3. Mr. Allen's Fifth Amendment rights were also violated by an unwarranted ***custodial interrogation***. Mr. Allen was immediately handcuffed on his porch after obeying the offer's command to *lay down the weapon*. Upon doing so the officer asked Mr. Allen if there were more weapons in the house, CP-11-12. Since this appearance by officer Simper was for noise, and Mr. Allen was handcuffed, there was absolutely no need to ask if anymore weapons were in the house. There was no ***felony in progress***; see *State v. Cunningham*, 116 Wn. App. 219, 65 P. 3d 325 (2003) or a ***completed felony***; see *State v. Williams* 34 Wn. App. 662, 663, P.2d 1368 (1983). The question about more firearms was therefore, unwarranted, given Mr. Allen being handcuffed and alone. Mr. Allen was in custody - being handcuffed because he was not free to *just leave and end the contact*. See *State v. Sargent*, the court stated: *Once a person is taken into custody, the presumption of volunteer ness disappears*; *Minnesota v. Murphy*, 465 U.S. 420, 429, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984). The officer then proceeded to ask questions regarding as to how many, and where anymore guns were located while Mr. Allen was handcuffed, CP-16-17. This fits the definition of ***custodial interrogation*** as stated on P650 of *Sargent* quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 64 L. Ed. 2d 257, 100 S. C.T. 1682 (1980); officer Simper was looking for ***possible*** incriminating information, so by the *Innis definition* this questioning is considered a ***custodial interrogation***; Miranda rights should have been given to Mr. Allen by officer Simper, they were not and the

presumption that the statement given to a law enforcement officer while in physical custody of him *handcuffed* was completely voluntary is absurd. Mr. Allen's 5th amendment rights were clearly violated when officer Simper asked him questions while Mr. Allen was handcuffed, unrelated to the *noise complaint* is unconstitutional and a result, any statement so obtained is inadmissible, and again this not being suppressed is a direct result of ineffective counsel.

4. As for RCW 9. 41. 047 (1), the appellant court erred in stating that the courts are not required in notification of firearm probation. In fact according to the law the courts are mandated to notify the defendant of any firearm probations *written and verbally*. *The rule that ignorance of the law is not a defense to a criminal charge does not automatically apply to malum prohibitum offense (viz., an act that is wrong because it is prohibited) if the person committing the offense reasonably and in good faith relied on legally erroneous and actively misleading information imparted by an authoritative government official.* If we look in depth at the cases: Stat v. Leavitt 107 Wn. App. 361, 26 P.3d 622 (2001); State v. Minor 162 Wn.2d 796, 172 P.3d 1162 (2008); we will see that it has been defined in these two cases that there is a mandate that requires exactly that, notification written and verbally. Under the law it would make no sense to get back a right of possessing a firearm if the right was never lost. Not to mention that there were in fact probations notified at the sentencing in the case on Mr. Allen's previous case in which this all stems from and did not include any firearm probations. These probations were no contacts between curtain people. Also see appendix including letter from probation officer stating her *total certainty that Mr. Allen was at no time informed by our Court or myself of firearm probation.* And at no time has this either been reported to the Department of Licensing. Furthermore also in the appendix is a copy of a tag from the Thurston County Sheriffs Department that they can say for certain that they had released this very firearm to Mr. Allen a few years prior after a background check and then confirming that in fact Mr. Allen could possess a firearm. Now if that is not misleading information by an authoritative government official please define what is. So if at no time Mr. Allen has been notified by the courts or a law enforcement agency in accordance with 9.41.047(1) while Mr. Allen was a juvenile during sentencing and knowing that at this

time that Mr. Allen probably did not have any extensive knowledge of the law at the time than it is affirmative that Mr. Allen was in fact misled in good faith by a authoritative government official. Mr. Allen's two charges of unlawful possession of firearm should be reversed.

5. Failure by trial attorney to notify Mr. Allen of a re-trial under CrR Retrial Rule 7.5 New Trial (3), (6), (7), (8); and then the appellat court to consider RAP Rule 9.11 Additional Evidence On Review.

F. CONCLUSION

1. The relief sought here is the reversal of the charge unlawful possession of firearm in the first degree in count 1 & 2 as of 11-13-09.

Respectfully submitted,



Ryan W. Allen