

NO. 41736-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND HERNANDEZ, JR.,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF LEWIS COUNTY

Before the Honorable James Lawler, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in reimposing the exceptional sentence. Clerk's Papers (CP) 59.

2. The evidence was insufficient to support the aggravating factors.

3. The court did not find all necessary legal requirements for imposing an exceptional sentence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under the Sentencing Reform Act, as well as the Washington and United States Constitutions, facts supporting an exceptional sentence must be proved to a jury beyond a reasonable doubt. Where the jury found that the appellant used his position to (1) violate a position of trust and (2) engaged an ongoing pattern of sexual abuse involving multiple incidents over a prolonged period of time pertaining five counts of first degree child molestation, and where four counts were subsequently vacated on appeal, was the evidence sufficient to support the aggravating factors where the trial court impose an exceptional sentence based on the aggravating factors in the sole remaining count? Assignments of Error 1 and 2.

2. Imposing an exceptional sentence requires the court to find a valid aggravating circumstance and then determine whether that

circumstance provides a substantial and compelling justification for a sentence greater than the standard range. The court relied on the two aggravating circumstances found by the jury in reimposing an exceptional sentence. The jury considered five counts of first degree child molestation, four of which were subsequently vacated on appeal. Where the court reimposed an exceptional sentence but did not enter written findings that the aggravating circumstances presented a substantial and compelling justification for an exceptional sentence, did the court neglect the finding of substantial and compelling justification required for imposition of an exceptional sentence above the standard range? Assignment of Error 3.

C. STATEMENT OF THE CASE

In October, 2008, the Lewis County Prosecutor's Office charged Raymond Hernandez, Jr. (Hernandez) in an amended information with five counts of first-degree child molestation. CP 36; RCW 9A.44.083. The State also alleged that each count was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time; and the defendant used his position of trust or confidence to facilitate the commission of the offense. CP 59.

A jury convicted Hernandez of all five counts, and also found for

each count the aggravating factors that Hernandez used a “position of trust” and engaged in an “ongoing pattern of sexual abuse manifested by multiple offenses over a prolonged period of time.” CP 15.

The court ordered an aggravated exceptional sentence by imposing a minimum sentence 198 months on each count, and also ordered the sentences for Counts 1, 2, and 3 to be served consecutively to each other, for a total sentence length of 594 months. CP 5, 15.

Hernandez appealed four of the five convictions, arguing that the jury instructions violated double jeopardy. This Court, following *State v. Borsheim*, 140 Wn. App. 357, 165 P.3d 417 (2007), vacated four of the convictions, finding that the instructions “failed to make manifestly apparent to the jury that each of the five counts had to be based on a different underlying act.” (Footnote omitted). CP 43. This Court found that for double jeopardy violations the remedy “is to vacate the additional convictions.” CP 45. This Court remanded the case with instructions to vacate four of the five convictions. CP 45. This Court did not specify which counts would be dismissed and did not address the exceptional sentence, which was not challenged on appeal.

The resentencing proceedings were held before the Honorable James Lawler on January 25, 2011. Report of Proceedings (RP) at 6-19. The court dismissed counts 2, 3, 4, and 5. CP 46. Defense counsel argued

that because the court could not be certain which facts the jury relied on when finding the two aggravating factors, the court could not be assured that the jury would have made the same findings regarding the sole remaining count. RP at 11, 12. Defense counsel argued that the court could not impose an exceptional sentence and argued for a standard range sentence of 51 to 68 months. RP at 12.

The court ordered an aggravated exceptional sentence and imposed a minimum sentence of 500 months. RP at 14. The court found that either of the aggravating factors would be sufficient to support the exceptional sentence. RP at 14.

Timely notice of appeal was filed on January 25, 2011. CP 63. This appeal follows.

D. ARGUMENT

1. THE COURT ERRED BY REIMPOSING AN EXCEPTIONAL SENTENCE BECAUSE THE JURY'S FINDINGS WERE BASED ON FIVE COUNTS OF FIRST DEGREE CHILD MOLESTATION, FOUR OF WHICH WERE SUBSEQUENTLY VACATED.

“[U]nder both the Sixth Amendment to the United States Constitution and article I, §21 and 22 of the Washington Constitution, the jury trial right requires that a sentence be authorized by the jury’s verdict.” *State v. Williams-Walker*, 167 Wn.2d 889, 896, 225 P.3d 913, (2010). An

exceptional sentence should be reversed on appeal when “the reasons supplied by the sentencing court are not supported by the record which was before the judge,” or “those reasons do not justify a sentence outside the standard sentence range for that offense.” RCW 9.94A.585(4).

The jury ordinarily must find the facts supporting an aggravated sentence beyond a reasonable doubt. RCW 9.94A.535(3); RCW 9.94A.537(3), (6). If the jury unanimously finds the alleged aggravating circumstances beyond a reasonable doubt, the trial court may depart from the standard range “if it finds . . . that the facts found are substantial and compelling reasons justifying an exceptional sentence.” RCW 9.94A.537(6).

The requirement of a jury finding is constitutionally mandated. Under the Sixth Amendment, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)). When an aggravating factor is used to increase the available punishment for a crime, that factor becomes an element of a greater offense that must be charged and proved to the jury beyond a reasonable doubt. *Blakely*, 542 U.S. at

302 n.5; *Ring v. Arizona*, 536 U.S. 584, 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002).

Washington's constitution provides even greater protection of the jury trial right and also requires aggravating factors be proved to a jury beyond a reasonable doubt. *State v. Williams-Walker*, 167 Wn.2d at 921.

Under RCW 9.94A.535, an exceptional sentence above the standard range may be justified based on a jury finding of one of a list of exclusive factors, including a pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and use of a position of trust or confidence to facilitate a crime. RCW 9.94A.535(3)(g), (n).

The State must prove aggravating factors beyond a reasonable doubt. *State v. Mills*, 154 Wn.2d 1, 7-8, 109 P.3d 415 (2005); U.S. Const. amend. 14. The aggravating factor statute was designed to codify existing common law, Laws of 2005, Ch. 68 sections 1, 3, and that requires that all aggravating factors relate to the offense(s), not other matters. See, e.g., *State v. Barnes*, 117 Wn.2d 701, 711-14, 818 P.2d 1088 (1991). Here, the jury found aggravating factors under RCW 9.94A.535(3)(g) and (n), respectively. The jury however, considered five separate counts, four of which were later vacated. It cannot be said that the jury would have found

either of the aggravating circumstances if Hernandez had faced only a single count of child molestation when the jury considered the factors. The finding that Hernandez engaged in a pattern of sexual abuse of the same victim “manifested by multiple incidents over a prolonged period of time” is particularly suspect where there is a single remaining count of child molestation, particularly where the finding is seemingly predicated upon multiple counts. Here, the vacated charges manifestly does not satisfy the requirement that the crime charged was a pattern of abuse over a prolonged period of time. Similarly, it cannot be said with certainty that the jury would have found Hernandez used a position of trust based solely on Count 1. Therefore the exceptional sentence must be reversed and the case remanded for resentencing within the standard range.

2. **THE COURT FAILED TO ANALYZE WHETHER THE AGGRAVATING FACTORS SUFFICIENTLY JUSTIFIED AN EXCEPTIONAL SENTENCE.**

Assuming *arguendo* the court could consider the aggravating factors to support an exceptional sentence after counts 2 through 5 were vacated, the court failed to comply with RCW 9.94A.537(5).

When a case is on remand for resentencing, the trial court is vested with broad discretion to change any part of the sentence, even parts which were never addressed on appeal, provided due process mandates against

“vindictiveness” are not offended. *State v. Kilgore*, 167 Wn.2d 28, 41, 216 P.3d 393 (2009); see *State v. McNeal*, 142 Wn. App. 777, 175 P.3d 1139 (2008); *State v. White*, 123 Wn. App. 106, 97 P.3d 34 (2004). A resentencing is “an entirely new sentencing proceeding,” as compared with a remand for simple amendment of a judgment. *McNeal*, 142 Wn. App. at 787 n. 13. Where the Court remands for resentencing, that means a full resentencing, with all parts of the sentence and all sentencing issues again before the lower court. See *Kilgore*, 167 Wn.2d at 41. As discussed in § 1, *supra*, defense counsel challenged the applicability of an exceptional sentence in light of the dismissal of counts 2 through 5. RP at 10, 11-12. Despite the objection, the court reimposed a nearly identical exceptional sentence.

RCW 9.94A.535 requires a court to find “substantial and compelling reasons justifying an exceptional sentence.” The same requirement applies when a jury finds the aggravating circumstance. RCW 9.94A.537(6). The court must supply its reasons for imposing an exceptional sentence in written findings. RCW 9.94A.535; RCW 9.94A.585. Here, Judge Lawler did not make written findings that substantial and compelling reasons justified the exceptional sentence. The court, in reimposing an exceptional sentence, stated that this was an egregious case, that it had been “horrendous testimony to listen to,” and

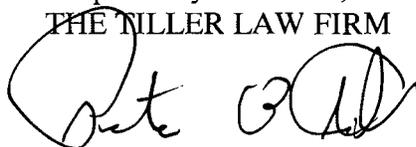
that “[t]he facts of the case well support this type of exceptional sentence” RP at 14. The court entered the conclusion of law that there are substantial and compelling reasons to impose an exceptional sentence, but the court’s written findings are silent on this necessary element of an exceptional sentence. CP 59. When required written findings are silent on a necessary element, that silence is construed as evidence that the factor was not sufficiently proven. *State v. Armenta*, 134 Wn2d 1, 14, 948 P.2d 1280 (1997). Without an explicit finding that there are substantial and compelling reasons justifying the exceptional sentence, the reasons supplied by the sentencing court do not justify an exceptional sentence. See RCW 9.94A.585(4).

F. CONCLUSION

For the reasons stated above, Raymond Hernandez respectfully asks this Court to reverse his sentence and remand this case for a new sentencing.

DATED: May 27, 2011.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", is written over a horizontal line. The signature is stylized and cursive.

PETER B. TILLER-WSBA 20835
Of Attorneys for Raymond Hernandez

EXHIBIT A

STATUTES

RCW 9A.44.083

Child molestation in the first degree.

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony.

RCW 9.94A.535

Departures from the guidelines.

***** CHANGE IN 2011 *** (SEE 5011.SL) *****

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to

review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal

use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant

established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

RCW 9.94A.537

Aggravating circumstances — Sentences above standard range.

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be

based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

RCW 9.94A.585

Which sentences appealable — Procedure — Grounds for reversal —
Written opinions.

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court

of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

APPELLANT'S
BRIEF
FILED
MAY 27 2011
BY
COURT CLERK

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	COURT OF APPEALS NO.
	41736-7-II
Respondent,	
vs.	LEWIS COUNTY NO.
	07-1-00387-2
RAYMOND HERNANDEZ, JR.,	CERTIFICATE OF HAND
Appellant.	DELIVERY AND MAILING

The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant was hand delivered to the Court of Appeals, Division 2, a copy was hand delivered to Sara Beigh, Deputy Prosecuting Attorney, and a copy was mailed to, Raymond Hernandez, Jr., Appellant, and by first class mail, postage pre-paid on May 27, 2011, at the Centralia, Washington post office addressed as follows:

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Deputy Prosecuting Attorney
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Mr. David Ponzoha
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CERTIFICATE OF HAND
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Dated: May 27, 2011.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', written over a horizontal line.

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

CERTIFICATE OF HAND
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2

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