

NO. 41815-1 (Consolidated with 42142-9)

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

BENJAMIN HENNIGAN, APPELLANT

IN RE: THE PERSONAL RESTRAINT PETITION OF:

BENJAMIN HENNIGAN, PETITIONER

Appeal from the Superior Court of Pierce County
The Honorable Linda CJ Lee, Judge, No. 10-1-01945-1

BRIEF OF RESPONDENT

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

1. Should this Court reject defendant's claim that the trial court erroneously admitted unduly prejudicial evidence in violation of ER 403 when defendant failed to preserve an objection based on ER 403 at trial?
2. Has defendant failed to prove the trial court erroneously admitted evidence detailing the fraudulent use of the victim's financial instruments when that evidence was relevant to prove the charged offenses occurred and put defendant's other-suspect evidence in context?
3. Has defendant failed to prove the sentencing court erred by including his prior convictions in his offender score when the court's decision was supported by substantial evidence?

B. ISSUES PERTAINING TO PETITIONER'S PERSONAL RESTRAINT PETITION.

1. Should this Court deny petitioner's personal restraint petition when petitioner has failed to present evidence sufficient to support his claim of sentencing error?

C. STATEMENT OF THE CASE.

1. Procedure

On March 09, 2010, the Pierce County Prosecutor's Office filed an information in Pierce County Cause No. 10-1-01045-1, charging appellant, BENJAMIN DEAN HENNIGAN ("defendant"), with second degree identity theft and forgery. CP 1-2. Both counts arose out of the fraudulent use of John Malich's personal check at the Les Schwab tire center in Puyallup, Washington. CP 1-3, 11-12. An amended information filed on January 31, 2011, corrected the offense date on count II. CP 11-12. The Honorable Linda C.J. Lee presided over the trial. RP 1. The jury found defendant guilty as charged. CP 71-72. The court imposed a high-end sentence of 29 months for the identity theft conviction, which the court ran concurrently with the 18 month sentence it imposed for the forgery conviction. CP 78, 80. Defendant filed a timely notice of appeal from the entry of his judgment. CP 91-105.

2. Facts

At 0700 hours on April 6, 2009, math teacher John Malich ("Malich") parked his truck in the Stadium High School parking lot on his way to a student-teacher meeting. RP 51-53. Malich returned two hours later to find that someone had broken into his truck. *Id.* Upon closer inspection, Malich discovered that his wallet had been stolen along with his credit cards, checks, and assorted financial documents. *Id.* Malich

immediately reported the crime to police. RP 55. Malich closed his checking account and reported the theft to his credit card company within forty five minutes of first discovering the break in. RP 55-56. The credit card company informed Malich that his card had already been used to make several purchases in Tacoma. RP 57. Malich later learned that his stolen checks had also been used to make three purchases in Puyallup. RP 59-60, 94. Malich provided the information he obtained from the credit card company and the bank to police. RP 58, 94.

The only definitive suspect information emerged from a \$1,155 tire purchase that occurred at a Puyallup Les Schwab two days after Malich's truck was prowled. RP 95, 114, 186. Les Schwab's records showed that one of the Malich's stolen checks was used to purchase new tires for a 1995 Honda Civic. RP 98, 116, 166, 180. Detective Goetz confirmed defendant was the Honda's registered owner. *Id.* Malich testified that he did not write the check used to buy the new tires for defendant's car. RP 62-63. Malich also testified that he did not know defendant and did not give defendant permission to use his personal check. RP 64. Les Schwab assistant manager Michael James ("James") accepted the check when the new tires were purchased. RP 96, 181-182. Detective Goetz presented to James a standard six person montage that contained defendant's photograph. RP 98. James positively identified defendant as the man who

used Malich's check to buy the tires; James also identified defendant as the perpetrator at trial. RP 109-110, 186.

The stolen check was sent to the Washington State Patrol Crime lab for forensic comparison with known handwriting samples from defendant and Malich. RP 200, 210-211. Washington State Patrol ("WSP") document examiner Brett Bishop ("Bishop") could neither exclude nor include defendant as the author of Malich's signature, but did observe similarities indicating that defendant wrote the check's payee information. RP 231. Bishop concluded that Malich probably did not author the check. RP 233.

Defendant called three witnesses. RP 247, 322, 368. Defendant first called purported document examiner Hannah McFarland ("McFarland"). RP 247-248, 261, 269, 279-280, 282-284. McFarland testified that she obtained her training through "distance learning." RP 282. McFarland also admitted that one of her two distance-learning instructors is a graphologist, or a person who assesses handwriting for the purpose of determining the personality traits of the writer. RP 284. McFarland testified that there were "indications" defendant's handwriting did not appear on the stolen check. *Id.* On cross-examination, McFarland admitted that she could not exclude defendant as the stolen check's author. *Id.* Defendant's then called Khary Beach ("Beach"). RP 323. Beach was

defendant's long-time roommate and described himself as defendant's "very good" friend. RP 325-326. Beach testified defendant loaned his car to a man named Gerald Cassell ("Cassell") around the time of the offense. RP 4-6, 323-324. On cross-examination, Beach admitted that he did not have personal knowledge of the car loan. RP 333. Defendant's last witness was Reagan Zin ("Zin"). RP 368. Zin is Beach's girlfriend, as well as the person who originally introduced Beach to defendant. RP 325-326. Zin initially testified that defendant loaned his car to Cassell around the time of the incident, but later admitted that she was not sure when the loan occurred. RP 368-370, 381.

D. ARGUMENT.

1. THIS COURT SHOULD REJECT DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRONEOUSLY ADMITTED UNDULY PREJUDICIAL EVIDENCE IN VIOLATION OF ER 403 BECAUSE DEFENDANT FAILED TO PRESERVE AN OBJECTION BASED ON ER 403 AT TRIAL.

"RAP 2.5(a) states the general rule for appellate disposition of issues not raised in the trial court: appellate courts will not entertain them." *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) (citation omitted); *see also DeHavan v. Gant*, 42 Wn. App. 666, 669, 713 P.2d 149 (1986) (*citing Symes v. Teagle*, 67 Wn.2d 867, 873, 410 P.2d 594 (1966)) "The rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point

out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial. *Id.* (citation omitted). “[The Washington Supreme Court] has steadfastly adhered to the rule that a litigant cannot remain silent as to claimed error during trial and later, for the first time, urge objections thereto on appeal.” *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985). Accordingly, a party may only assign nonconstitutional error in the appellate court on the specific ground of the evidentiary objection made at trial. *Id.* (citing *State v. Boast*, 87 Wn.2d 447; 553 P.2d 1322 (1967); see also *State v. Elmore*, 139 Wn.2d 250, 283, 985 P.2d 289 (1999); ER 103.¹ A violation of ER 403² is not an error of constitutional magnitude; therefore, it cannot be raised for the first time on appeal. *Elmore*, 139 Wn.2d at 283 (citing *State v. Chase*, 59 Wn. App. 501, 508, 799 P.2d 272 (1990); see also *State v. Zwicker*, 105 Wn.2d 228, 243, 713 P.2d 1101 (1986); *State v. Jackson*, 102 Wn.2d 689, 695, 689 P.2d 76 (1984); *State v. Cole*, 54 Wn. App. 93, 97, 772 P.2d 531 (1989).

¹ ER 103: “(a) Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked....”

² ER 403: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Defendant claims the trial court abused its discretion when it admitted all testimony relating to the fraudulent use of Malich's financial instruments other than the stolen check underlying the charged offenses. Testimony regarding this information appears throughout the record. RP 57-68, 87-94, 114-117, 134-138. Most of this testimony was adduced at trial without objection. *Id.* None of the testimony was objected to pursuant ER 403. *Id.* Defendant's improperly preserved challenges to the trial court's evidentiary rulings should be rejected.

At trial, Malich testified several unauthorized purchases were made in the forty five minutes that followed the theft of his financial instruments. RP 55. Malich explained his credit cards were used at a car wash, convenience store, auto parts store, drug store, and grocery store. RP 57. Malich also testified that his stolen checks had been used to purchase items at Best Buy and Les Schwab. RP 58-60. Defendant did not object during Malich's testimony. RP 49-64. Defendant then cross-examined Malich about the steps he took to investigate the fraudulent transactions and provide his results to police. RP 65-68.

Detective Goetz testified she attempted to recover evidence at the businesses listed in the information Malich provided to police. RP 87-88. Detective Goetz testified she visited the drug store and grocery store where Malich's credit cards were used. RP 88. Defendant did not object to this testimony. RP 87-88. Detective Goetz testified she did not investigate the convenience store where Malich's card was used. RP 89.

Defendant did not object to the content of this testimony but made one objection to the detective using her police report to refresh her recollection; defendant's objection was overruled. RP 89-90. When Detective Goetz testified that two charges occurred at the "Splash-N-Dash car wash, defendant made the following objection: "Also objection to all of these incidents that are irrelevant to this case." RP 90. Defendant did not ask the court to strike the previous testimony from the record or claim that any of Detective Goetz's testimony was unduly prejudicial. RP 90. The court overruled defendant's objection. RP 90. Detective Goetz then testified to the apparent use of Malich's card at the auto parts store. RP 91. Defendant did not object. RP 91. When the State asked if the card had been used elsewhere, defendant objected without expressing a basis for his objection. RP 91. For reasons not apparent in the record, the court did not respond to defendant's objection and the witness answered: "Bartell's, 6th and Union." RP 91. Defendant did not renew his objection or ask the court to strike the witness's answer from the record. RP 91.

Detective Goetz then testified about her investigation into the stolen checks used at Best Buy and Les Schwab. RP 94. When Detective Goetz was asked whether there were "any other transactions that [she] looked into," Detective Goetz testified that there were. RP 114. Defendant did not object. RP 114. The State then asked Detective Goetz whether it is possible that more than one person might be responsible for the fraudulent transactions on Malich's accounts. RP 114. Detective

Goetz testified that it was “very possible.” RP 114. Defendant did not object. RP 114. When asked to elaborate, Detective Goetz testified that financial crimes are often committed by “rings of criminals.” RP 114. Defendant objected stating: “assumes there’s a ring of criminals. Facts not in evidence.” RP 114. Defendant did not articulate an objection pursuant to ER 403. RP 114. The court overruled defendant’s objection. RP 114. Detective Goetz provided the following testimony:

“And they just spread the cards out and all the, you know, financial instruments out as fast as they can because they know accounts are going to get closed down.”

Defendant objected stating: “Objection as to what other people think.” RP 115. Defendant did not make an objection under ER 403. RP 115. The State argued that the detective was testifying from her experience investigating similar crimes. RP 115. The court overruled defendant’s objection. RP 115. Detective Goetz then explained that she had previously interviewed suspects involved in similar incidents and added that:

“This type of crime, and from those people, I’ve been able to learn that a lot of times they do pass them out, and some of their methods of operation, for example, go straight to a gas station, because that’s the easiest swipe they can get, without a clerk looking at them, to find out if the card works. A lot of times you’ll see the gas pump is the first one they’ll go to. They know what stores don’t check. Like I said, multiple suspects, spread out, just get used to different locations, different people.”

RP 116-117. Defendant did not object to this testimony. RP 116-117.

During cross-examination defendant questioned Detective Goetz about the investigative steps she took to identify a suspect responsible for the fraudulent use Malich's credit card at the drug store. RP 136. On redirect Detective Goetz testified she followed up on about eight fraudulent uses of Malich's accounts over the course of three months. RP 138. Defendant objected, stating a basis of relevance and speculation. RP 138. For reasons that are not apparent in the record, the court did not rule on defendant's objection. RP 138. The State instructed the witness to refer to her report rather than guess, and the witness reaffirmed her testimony. RP 138. Defendant did not renew his objection, request the court to strike the witness's testimony from the record, or articulate an objection under ER 403. RP 138.

Defendant preserved three specific objections to the testimony he assigns error to on appeal:

- I. Defendant preserved an objection to the sufficiency of the foundation underlying Detective Goetz's testimony that financial crimes are often committed by a ring of criminals, when defendant asserted that this testimony "assume[d] ... facts not in evidence. RP 114.
- II. Defendant preserved an objection as to the Detective Goetz's competency to testify that financial criminals use stolen financial instruments quickly because they know the victims will close the accounts, when defendant objected "as to what other people think." RP 115.

- III. Defendant preserved an objection to the relevance of Detective Goetz's testimony that two fraudulent charges on the victim's account occurred at the "Splash-N-Dash" car wash. RP 90.

On appeal, defendant improperly attempts to augment the foregoing objections with a claim that the challenged testimony was also unduly prejudicial pursuant to ER 403. This claim has not been properly preserved and should be rejected since violations of ER 403 are not errors of constitutional magnitude that can be raised for the first time on appeal. *Elmore*, 139 Wn.2d at 283 (citing *State v. Chase*, 59 Wn. App. 501, 508, 799 P.2d 272 (1990)); ER 103; RAP 2.5(a)(3).

Defendant does not assign error to the trial court's ruling as to his specific objections regarding improper foundation and witness competency. RP 114-115. Consequently, the only evidentiary issue properly before this Court is whether the trial court abused its discretion by admitting allegedly irrelevant evidence pertaining to credit card charges made at the "Splash and Dash" car wash. RP 90. For reasons set forth below, defendant has failed to show that the trial court erred in admitting that evidence.

2. THE COURT PROPERLY ADMITTED TESTIMONY
DETAILING THE FRAUDULENT USE OF MALICH'S
FINANCIAL INSTRUMENTS BECAUSE THAT
EVIDENCE WAS RELEVANT TO PROVE THE
CHARGED OFFENSES OCCURRED AND PUT
DEFENDANT'S OTHER-SUSPECT EVIDENCE IN
CONTEXT.

“The decision to admit evidence of other crimes or misconduct lies within the sound discretion of the trial court and [appellate courts] will not disturb it absent abuse of discretion.” *State v. Hughes*, 118 Wn. App. 713, 724, 77 P.3d 681 (2003) citing *State v. Brown*, 132 Wn.2d 529, 571-572, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S.Ct. 1192, 140 L.Ed.2d 322 (1998). “A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons.” *Id.*

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). At a minimum, this requires the State to produce enough evidence to support the elements of each crime. *State v. Dolan*, 118 Wn. App. 323, 331, 73 P.3d 1011 (2003). To this end “[r]elevant evidence” is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401; *State v. Beeb*, 44 Wn. App. 893, 723 P.2d 512 (1986), *aff’d* 108 Wn2d 515, 740 P.2d 829 (1987) (this rule

requires only a showing of minimal logical relevance); *see also* 5D Karl B. Tegland, Wash.Prac: Evid, author's cmts. at 209 (2010-11 ed.) ("Evidence may be relevant even though it is undisputed. So-called background information may be relevant and, its admissibility turns on Rule 403 rather than 401.") (*citing United States v. Provenzano*, 620 F.2d 985 (3d Cir. 1980)). Generally, all relevant evidence is admissible, except as limited by constitutional requirements or the rules of evidence. ER 402. Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...." ER 403.

Since credibility determinations are for the trier of fact³ "it [i]s important for the jury to see the whole sequence of events...." *State v. McBride*, 74 Wn. App. 460, 464, 873 P.2d 589 (1994). For this reason, "[a]n officer may appropriately describe the context and background of a criminal investigation, so long as the testimony does not incorporate out-of-court statements." *State v. O'Hara*, 141 Wn. App. 900, 910, 174 P.3d 114 (2007) (*citing State v. Lliard*, 122 Wn. App. 422, 437, 93 P.3d 482 (2005), *review denied*, 154 Wn.2d 1002, 113 P.3d 482 (2005)) *reversed on other grounds*, 167 Wn.2d 91, 217 P.3d 756 (2009); *see also Hughes*, 118 Wn. App. at 725 ("Under the *res gestae* exception, evidence of other crime or misconduct is admissible to complete the story by establishing the immediate time and place of its occurrence. Where another offense

³ *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

constitutes a link in the chain of an unbroken sequence of events surrounding the charged offense, evidence of that offense is admissible in order that a complete picture be depicted for the jury.”) (*citing Brown*, 132 Wn.2d at 571-572 (internal quotations omitted).

Defendant preserved an objection to the relevance of Detective Goetz’s testimony that two fraudulent charges on the victim’s account occurred at the “Splash-N-Dash” car wash. RP 90. The trial court did not abuse its discretion when it admitted that testimony. Testimony regarding the “Splash-N-Dash” purchases was relevant to prove the charged financial crimes occurred. The identity theft charge required the State to prove defendant used the financial information of John Malich with intent to commit any crime. CP 1-2, 55; Instruction No. 11. The forgery charge required the State to prove defendant offered a forged check with the intent to defraud. CP 1-2, 69 Instruction No. 15. Defendant entered a plea of not guilty which made it the State’s burden to prove every element of each charge. CP 50 Instruction No. 2. The State was consequently tasked with proving that the check underlying the charged offenses was misappropriated. The “Splash-N-Dash” credit card purchases were relevant to establishing the criminal use of Malich’s check because both were part of a series of unauthorized purchases made with the financial instruments stolen from Malich’s truck. RP 54-59, 95, 114, 186. Proof that Malich’s credit cards were fraudulently used made it more likely the use of Malich’s check was fraudulent than it would have been without that

proof. The charges on Malich's credit cards occurred in Tacoma within forty five minutes of the vehicle prowl when Malich was contacting police and attempting to close his accounts. RP 54-59. Whereas the check purchase underlying the charged offenses occurred two days later in Puyallup when Malich's activities were generally unaccounted for. *Id.* It is only when the charges are viewed in their entirety that they match Detective Goetz's description of financial crimes in which thieves disperse financial instruments so that multiple purchases can be made before victim accounts close. RP 114-115. The combined affect of this evidence made it considerably less likely that Malich was complicit in his check's use and alleged theft to avoid financial responsibility for the tires. The fact that defendant focused his defense on challenging the issue of identity rather than the fraudulent use of Malich's check did not make evidence of fraud less relevant to the jury's decision as to whether the charged offenses occurred.

The "Splash-N-Dash" charges were also a relevant part of the evidence that put defendant's other-suspect defense in context. "[I]t [i]s reasonable for the State to anticipate the attack and pull the sting of cross-examination" *State v. Bourgeois*, 133 Wn.2d 389, 402, 945 P.2d 1120 (1997) ("A trial is not just combat; it is also truth-seeking; and each party is entitled to place its case before the jury at one time in an orderly, measured, and balanced fashion, and thus spare the jury from having to

deal with bombshells later on. It is on this theory that defense counsel, in beginning their examination of a defendant, will often ask him about his criminal record, knowing that if they do not ask, the prosecutor will do so on cross-examination.”).

Identity was disputed at trial. RP 49-68, 136. Defendant provided the State pretrial notice that he would present other-suspect evidence and claimed a man named Gerald Cassell committed the charged offenses. RP 4-6, 9, 247-388. Defendant pursued this defense through cross-examination of the State’s witnesses before putting on his own case. RP 64-71, 119-131, 137, 167-169, 187-191,193. The defense vigorously challenged thoroughness of the police investigation leading to defendant being identified as the perpetrator. RP 120-124, 139-140. Defendant also urged an inference that the police were negligent for deciding not to follow up on what defendant interpreted as another suspect who used Malich’s credit card at a separate crime scene. RP 134-137, 139-140. To put defendant’s other-suspect evidence in context the jury needed to understand that financial crimes can be simultaneously perpetrated by multiple individuals acting independently of one another. Failure to present such evidence would have left the jury with an erroneous impression that the existence of another suspect with Malich’s credit card at a separate crime scene negated the identification of defendant as the person who used Malich’s check to commit the charged offenses. The

State countered this fallacy by presenting the challenged evidence with testimony detailing the criminal practice of increasing the draw on victim accounts by dispersing stolen financial instruments to multiple individuals willing to make illicit purchases. RP 114-115.

Any error in admitting Detective Goetz's testimony regarding the "Splash-N-Dash" charges would be harmless since evidence of that transaction had already been presented to the jury. RP 57. The admission of irrelevant evidence that does not implicate a constitutional right is not error of a constitutional magnitude. *State v. Read*, 147 Wn.2d 238, 53 P.3d 26 (2002); *Cole*, Wn. App. at 97. Such evidentiary error is only ground for reversal if it results in prejudice. *State v. Neal*, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001) (citation omitted). An error is prejudicial if, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred. *Id.* Improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the evidence as a whole. *Id. see also State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981); *State v. Cunningham*, 93 Wn.2d 823, 613 P.2d 1139 (1980).

Defendant did not object when Malich described the illegal activity on his account, which included the use of his credit card at a car wash. RP 57-68, 87-94. Other than Detective Goetz's reference to the charges at the "Splash-N-Dash" car wash, defendant did not preserve an objection to the testimony describing her investigation into that activity. *Id.* Since

Detective Goetz's reference to the "Splash-N-Dash" merely commented on facts already in evidence, it could not have materially affected the outcome of defendant's case. Furthermore, any prejudice that may have resulted from the inclusion of challenged testimony was neutralized when the court instructed the jury that the evidence was only to be considered for the purpose of understanding the investigation in the case; the instruction also stated that defendant was not alleged to have been involved in the other transactions. CP 59 Instruction No. 7; *see State v. Post*, 59 Wn. App. 389, 396, 797 P.2d 1160 (1990) (appellate courts presume that the juries follow a trial court's instructions..."); *see also State v. Mason*, 127 Wn. App. 554, 40-41, 126 P.3d 34 (2005). The jury's verdicts should be affirmed.

3. DEFENDANT FAILED TO PROVE THE SENTENCING COURT ERRED BY INCLUDING HIS PRIOR CONVICTIONS IN HIS OFFENDER SCORE BECAUSE THAT DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

"[O]nce a defendant has been convicted of a felony, the sentencing judge determines the defendant's standard range sentence based on the seriousness level of the current offense and the defendant's offender score." *State v. Jones*, 159 Wn.2d 231, 236, 149 P.3d 636 (2006) (*citing* 9.94A.530(1)). "The defendant's offender score is determined by his or her other convictions, with the scoring of those prior convictions

dependant upon the nature of the current offense.” *Id.* at 235 (*citing* RCW 9.94.525). Generally, “[c]lass B prior felony convictions ... shall not be included in the offender score, if ... the offender ha[s] spent ten consecutive years in the community without committing any crime that subsequently results in a conviction;”⁴ whereas “class C prior felony convictions ... shall not be included in the offender score, if ... the offender ha[s] spent five consecutive years in the community without committing any crime that subsequently results in a conviction. RCW 9.94A.525(2)(c). “Confinement means total or partial confinement.” RCW 9.94A.030(8) (internal quotation marks omitted). “Partial confinement ... includes work release” RCW 9.94A.030(35) (internal quotation marks omitted).

“[W]ashington’s sentencing courts must be allowed as a matter of law to determine not only the fact of a prior conviction but also those facts intimately related to the prior conviction” *State v. Jones*, 159 Wn.2d 231, 241, 149 P.3d 636 (2006); *see also State v. Giles*, 132 Wn. App. 738, 743, 132 P.3d 1151 (2006). The use of prior convictions as a basis for sentence is constitutionally permissible if the State proves their existence by a preponderance of the evidence. *See State v. Ford*, 137 Wn.2d 472, 479-480, 973 P.2d 452 (1999) (*citing* RCW 9.94A.110 recodified as RCW 9.94A.500). “The State must introduce evidence of some kind to support

⁴ RCW 9.94A.525 (2)(b).

the alleged criminal history” *Ford*, 137 Wn.2d at 481. “The best evidence of a prior conviction is a certified copy of the judgment.” *State v. Mendoza*, 165 Wn.2d 913, 920, 205 P.3d 113 (2009). A sentencing court’s calculation of a defendant’s offender score is reviewed de novo. *State v. Mendoza*, 139 Wn. App. 693, 698, 162 P.3d 439 (2007). “[T]he remedy for a miscalculated offender score is resentencing using [the] correct offender score.” *State v. Ross*, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004) (citing *Ford*, 137 Wn.2d at 479-480.); see also *State v. Hunley*, 161 Wn. App. 919, 929-930, 253 P.3d 448 (2011) (citing *Mendoza*, 165 Wn.2d at 930).

A sentencing court’s findings of fact are reviewed to determine whether substantial evidence supports the court’s findings of fact and whether the findings of fact support the conclusions of law. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). “Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the finding’s truth.” *Id.* at 193. Challenges to a sentencing court’s findings of fact should contain a fair statement of the facts and reference to the record must be included for each factual statement.” See RAP 10.3(a)(5); see also *Sherry v. Financial Indem. Co.*, 160 Wn.2d 611, 614, 160 P.3d 31 (2007) (appellate courts will not consider facts recited in briefs but not supported by the record). “If a defendant wishes to raise issues on appeal that require evidence or facts not in the existing ... record, the appropriate means of doing so is through a personal restraint

petition....” *State v. Contreras*, 92 Wn. App. 307, 314, 966 P.2d 915 (1998) (citing *State v. McFarland*, 127 Wn.2d 322, 335, 889 P.2d 1251 (1995)); *State v. Byrd*, 30 Wn. App. 794, 800, 638 P.2d 601 (1981).

Petitioner was sentenced for the instant case on February 18, 2011, for an offense that occurred on April 8, 2009. RP (Feb. 18, 2011) at 1; CP 77. The Sentencing court found defendant had an offender score of seven, which included 6 points for his prior felony convictions, and 1 point for his other current offense. RP (Feb. 18, 2011) at 2-9; CP 78. The existence of defendant’s prior felony convictions was established through certified copies of his judgments. RP (Feb. 18, 2011) at 2; Ex. 1-4.⁵ Defendant’s prior convictions are as follows:⁶ CP 78. Defendant’s base sentence for second degree identity theft at a score of seven was 22-29 months, and his base sentence for forgery at a score of seven was 14-18 months. *Id.* The sentencing court imposed a high end sentence of 29 months for the identity theft conviction to run concurrent with the 18 month sentence imposed for the forgery conviction. CP 81.

⁵ Sentencing Exhibit (“Ex.”)

⁶ Attempt to elude a police vehicle is a class C felony pursuant to RCW 46.61.024; Bail jump is a class C felony pursuant to RCW 9A.76.170(c); First degree escape is a class B felony pursuant to RCW 9A.76.110; Third degree assault is a class C felony pursuant to RCW 9A.36.031; Second degree possession of stolen property is a class C felony pursuant to RCW 9A.56.160; and Unlawful possession of methamphetamine is a class C felony pursuant to RCW 69.50.4013.

Defendant's offender score reflects an accurate calculation of the prior convictions proved at sentencing. The court's finding that defendant's six prior felony convictions proved through the admission of four certified judgments. RP (Feb. 18, 2011) at 2, 5-6, 8-9; Ex. 1-4. Defendant did not object when the court included these convictions in his offender score. RP (Feb. 18, 2011) at 2-9. Instead, both defendant and his counsel implicitly conceded the accuracy of the court's finding as to his offender score by requesting the court to impose a DOSA⁷ sentence within the resulting standard range. *Id.* Defendant now claims the sentencing court factually erred when it included his prior class C felony convictions by arguing those convictions "washed out" pursuant to RCW 9.94A.525(2)(c). App.Supp. at 1.⁸

There is nothing in the record to suggest that the sentencing court miscalculated defendant's offender score. The "wash out" rule would only have operated to require the exclusion of the challenged convictions from defendant's offender score if defendant had spent five consecutive years in the community after his January 23, 2004, release date without committing a subsequent offense that resulted in conviction. RCW 9.94A.525(2)(c); Ex. 1-4. Since defendant did not claim that any of his convictions had "washed out" at sentencing, the record is devoid of any evidence establishing defendant spent five crime free years in the

⁷ Drug Offender Sentencing Alternative ("DOSA")

community prior to his 2009 convictions. RP (Feb. 18, 2011) at 2-9. Proof of the alleged miscalculation, if it exists, must come from outside the record. Defendant's claim of sentencing error can only be properly addressed through his consolidated personal restraint petition.

E. STATE'S RESPONSE TO PETITIONER'S PERSONAL RESTRAINT PETITION.

1. STATUS OF PETITIONER:

Petitioner filed a timely motion pursuant to CrR 7.8, challenging the sentencing court's calculation of his offender score. Appendix A. This Court accepted petitioner's motion as a personal restraint petition ("PRP") and consolidated the petition with petitioner's pending direct appeal (No. 41815-1-II). The PRP specifically claims petitioner's prior felony convictions from 2001 and 2002 "washed-out," reducing his offender score for the sentence for which he is restrained from seven to zero. PRP at 2.⁹

⁸ Appellant's supplemental Brief ("App.Supp.")

⁹ Petitioner's personal restraint petition ("PRP")

2. THIS COURT SHOULD DENY PETITIONER'S PERSONAL RESTRAINT PETITION BECAUSE PETITIONER HAS FAILED TO PRESENT EVIDENCE TO SUPPORT HIS CLAIM OF SENTENCING ERROR.

Personal restraint procedure has its origins in the State's habeas corpus remedy, guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal. *In re Hagler*, 97 Wn.2d 818, 823 24, 650 P.2d 1103 (1982). Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders. These are significant costs, and they require that collateral relief be limited in state as well as federal courts. *Id.*

In this collateral action, the petitioner has the duty of showing constitutional error, and that such error was actually prejudicial. The rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in the context of personal restraint petitions. *In re Mercer*, 108 Wn.2d 714, 718 21, 741 P.2d 559 (1987); *In re Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient in a collateral action to demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of the judgment and sentence and not

against it. *In re Hagler*, 97 Wn.2d at 825 26. To obtain collateral relief from an alleged nonconstitutional error, a petitioner must show “a fundamental defect which inherently results in a complete miscarriage of justice.” *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than the constitutional standard of actual prejudice. *Id.* at 810.

Reviewing courts have three options in evaluating personal restraint petitions:

1. If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error or a fundamental defect resulting in a miscarriage of justice, the 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 Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

The petition must include a statement of the facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2); *Petition of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988). Personal restraint petition claims must be

supported by affidavits stating particular facts, certified documents, certified transcripts, and the like. *Williams*, 111 Wn.2d at 364; *see also In re Connick*, 144 Wn.2d 442, 28 P.3d 729 (2001). If the petitioner fails to provide sufficient evidence to support his challenge, the petition must be dismissed. *Williams* at 364.

In the instant case, petitioner claims that the sentencing court miscalculated his offender score by including class C felony convictions that “washed out” pursuant to RCW 9.94A.525(2)(c). Miscalculation of a petitioner’s offender score is a nonconstitutional error that requires petitioner to show “a fundamental defect which inherently results in a complete miscarriage of justice.” *In re Goodwin*, 146 Wn.2d 861, 867, 50 P.3d 618 (2002); *In re Cook*, at 812. Petitioner has failed make the threshold showing that a fundamental defect occurred. To establish the alleged sentencing error, petitioner would have to establish that he spent five consecutive years in the community after being released from custody on January 23, 2004, without committing any crime that subsequently resulted in a conviction. RCW 9.94A.525(2)(c). The record is silent on the manner in which petitioner conducted himself in the community between convictions, because petitioner did not claim that any of his convictions had “washed out” below. RP (Feb. 18, 2011) at 2, 5-6, 8-9. His petition is similarly devoid of any evidence that petitioner spent five consecutive crime free years in the community between convictions. PRP at 1-6. “If [a] petitioner's allegations are 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.” *In re Connick*, at 451. Petitioner could have provided a sworn declaration averring facts that would show he spent requisite time in the community. He did not. Since petitioner has not carried his threshold burden of proving that the sentencing court’s calculation of his offender score amounted to a fundamental defect, he has failed to state grounds upon which relief can be granted by way of this personal restraint petition.

Petitioner’s claim would have failed on the merits if it were not already procedurally barred. According to the Department of Corrections, petitioner was admitted to prison on September 25, 2001, and reentered the community after completing “work release” on January 23, 2004. Ex. 1; Appendix B at 7, 10. On December 5, 2007, petitioner was convicted of driving while license suspended in the third degree (a misdemeanor pursuant to RCW 46.20.342(c)) for an offense that occurred on August 23, 2007. Appendix C. Petitioner’s 2007 misdemeanor conviction extended the “wash out” date for the challenged prior convictions to 2012. Defendant committed his next offense on March 11, 2009. Ex. 1. Consequently, none of petitioner’s C felony convictions “washed out” before petitioner committed the offenses for which he is restrained, less than one month later on April 8, 2009. Petitioner’s offender score is correct. CP 11-12; RP 95, 114, 186.

F. CONCLUSION.

The challenged testimony was relevant and defendant's offender score is accurate; petitioner's convictions and sentence should be affirmed.

DATED: October 21, 2011.

MARK LINDQUIST
Pierce County
Prosecuting Attorney

Jason Ruyf by K. Proctor
JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

Certificate of Service:

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

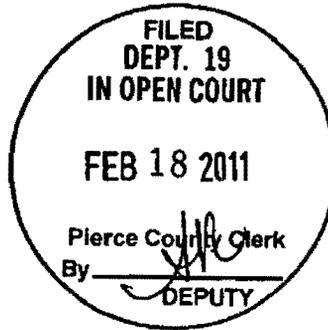
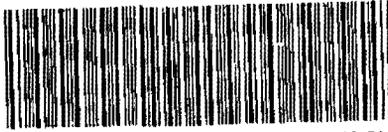
10-21-11 *[Signature]*
Date Signature

*to Hennigan
efw counsel*

APPENDIX “A”

Judgment and Sentence

Case Number: 10-1-01045-1 Date: October 21, 2011
SerialID: 28627B1A-F20F-6452-DF7D66BA0C46E134
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 10-1-01045-1

vs.

BENJAMIN DEAN HENNIGAN,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY.

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

A 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody).

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[] 3 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 2-18-11

By direction of the Honorable

[Signature]
JUDGE
KEVIN STOCK

[Signature]
By: CLERK
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date: 2/23/11 By: [Signature] Deputy

STATE OF WASHINGTON

ss.

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

A





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-01045-1

vs.

BENJAMIN DEAN HENNIGAN

Defendant.

JUDGMENT AND SENTENCE (FJS)

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

SID: 14854449
DOB: 12/24/70

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2-8-11
by [~~IL~~] plea [X] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	IDENTITY THEFT IN THE SECOND DEGREE	9 35 020(3)		4/8/09	090960510
II	FORGERY	9A.60.020(1)(a)(b)		4/6/09	090960510

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9 94A. 533(8) (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

11-9-02163.2

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ATT ELUDE PURSUING POLICE VEHICLE	9/13/01	SNOHOMISH	4/5/00	A	NV
2	BAIL JUMPING	9/13/01	SNOHOMISH	4/5/00	A	NV
3	PSP 2	5/6/02	SNOHOMISH	10/3/00	A	NV
4	ESCAPE 1	9/13/01	SNOHOMISH	5/22/01	A	NV
5	ASLT 3 W/DEADLY WEAPON	9/13/01	SNOHOMISH	5/22/01	A	NV
6	UPCS METH	1/22/10	PIERCE	3/11/09	A	NV
7	FORGERY	CURRENT	PIERCE	4/6/09	A	NV

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

2.3 SENTENCING DATA:

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	7	II	22-29 MOS	NONE	22-29 MOS	5 YRS
II	7	I	14-18 MOS	NONE	14-18 MOS	5 YRS

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

within below the standard range for Count(s) _____

above the standard range for Count(s) _____

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows. N/A

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

- RTN/RJN \$ _____ Restitution to: _____
- \$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
- PCV \$ 500.00 Crime Victim assessment
- DNA \$ 100.00 DNA Database Fee
- PUB \$ 2,000.00 Court-Appointed Attorney Fees and Defense Costs
- FRC \$ 200.00 Criminal Filing Fee
- FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$2,800.00 TOTAL

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

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

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

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
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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, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ 100 on clerk per month commencing CCO on clerk RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

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

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

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

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

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

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

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

4.3 **NO CONTACT**
The defendant shall not have contact with JOHN MALICH (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

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

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law

[Empty rectangular box]

4.4a BOND IS HEREBY EXONERATED

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):

<u>29</u>	months on Count	<u>1</u>	months on Count	_____
<u>18</u>	months on Count	<u>2</u>	months on Count	_____
_____	months on Count	_____	months on Count	_____

Actual number of months of total confinement ordered is: 29 months

(Add mandatory firearm, deadly weapons, and sexual motivation 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 _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 10 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

COMMUNITY CUSTODY is ordered as follows:

Count 1 for a range from: 12 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 offense 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. Community custody follows a term for a sex offense -- RCW 9.94A. 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) notify DOC of any change in defendant's address or employment, (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed 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.

[] The defendant shall not consume any alcohol.

[] Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

per DOC

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

The defendant shall participate in the following crime-related treatment or counseling services: _____

per DOC

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

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

Law abiding behavior

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

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

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

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING.

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

5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

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

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

N/A

5.8 The court finds that 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

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

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 2-18-11

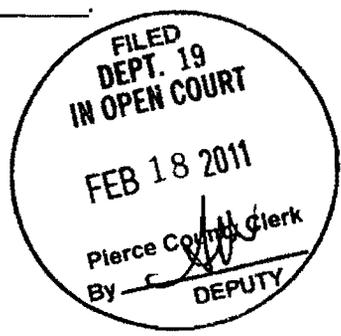
Rosanne Martinelli
Deputy Prosecuting Attorney
Print name: Rosanne Martinelli
WSB #: 25074

JUDGE [Signature]
Print name: LINDA C. LEE
Kent Underwood
Attorney for Defendant
Print name: Kent Underwood
WSB #: 27250

[Signature]
Defendant
Print name: [Signature]

VOTING RIGHTS STATEMENT: RCW 10 64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]



Case Number: 10-1-01045-1 Date: October 21, 2011
SerialID: 28627B1A-F20F-6452-DF7D66BA0C46E134
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

10-1-01045-1

IDENTIFICATION OF DEFENDANT

SID No. 14854449 Date of Birth 12/24/70
(If no SID take fingerprint card for State Patrol)

FBI No. 53016ZLA5 Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB: _____

Race:					Ethnicity:		Sex:	
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/>	<input type="checkbox"/> Other: .			<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/>	<input type="checkbox"/> Female	

FINGERPRINTS

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

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. Marion Rodmendo Dated: 2-18-11

DEFENDANT'S SIGNATURE: XTS [Signature]

DEFENDANT'S ADDRESS: _____

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: 28627B1A-F20F-6452-DF7D66BA0C46E134 containing 13 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/ Joseph Sonntag, Deputy.

Dated: Oct 21, 2011 2:28 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter SerialID: 28627B1A-F20F-6452-DF7D66BA0C46E134. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

DOC INMATE RECORD

Inmate: HENNIGAN, Benjamin Dean (830617)

Gender: Male	DOB: 12/24/1970	Age: 40	Category: Regular Inmate	Body Status: Active Inmate
RLC: HNV	Wrap-Around: No	Comm. Concern: No	Custody Level: Minimum 2 - Camp	Location: CRCC -- D / DA302U
ERD: 09/18/2012	Victim Sensitive: No	CC/CCO: Gunter, Joe A		

Offender Information (Combined)

Prison Max Expiration Date: 07/09/2013 Last Static Risk Assessment Date: 03/08/2011 DOSA:

Planned Release Date: Last Offender Need Assessment Date: 03/29/2011 ISRB? No

Earned Release Date: 09/18/2012 RLC Override Reason: CCB? No

ESR Sex Offender Level: SOSSA? No

ESR Sex Offender Level Date: Offender Release Plan: Investigation WEP? No

County Sex Offender Level: Victim Witness Eligible? Yes

Registration Required? County Of First Felony Conviction: Snohomish

ORCS? Unknown P U L H E S D X T
1 1 1 1 1 1 2 1 1

DD? Unknown

SMIO? N

Personal Characteristics

Aliases, Dates of Birth and Places of Birth

Aliases			
*Last Name:	First Name:	Middle Name or Initial:	Suffix:
HENNIGAN	Benjamin		
HENNIGAN	Benjamin	D	
CODY	Sean	Patrick	
HENNIGAN	Benamin	Dean	
SCHRADER	Richard	Allen	
HENNINGAN	Benjamin	Dean	
HENNIGAN	Benjamin	Dean	
SCHRADER	Richard		

Dates of Birth		Places of Birth		
*Dates of Birth:	Use for Age Calculation?	City:	State / Province:	Country:
11/04/1968	No	Puyallup	Washington	United States
12/24/1970	Yes			

Identifications

General

FBI Number: 530162LA5	FBI Fingerprint Code: 05590914100861111410	WA State ID Number: WA14854449	ICE Registration Number:
Social Security Social Security Number: Validated with SSA? ██████████ N		Driver's License Driver's License Number: State / Province: Country: ██████████ Washington United States	
Jurisdiction *Type of Jurisdiction: County/State/Country: *Other Jurisdiction Number:			

Physical Description / Marital Status				
*Gender:	Hair Color:	Eye Color:	Complexion:	Marital Status:
Male	Brown	Blue	Medium	Single
Height:	Weight:	*Person Type:	*Twin or Multiple Births?	
6 Ft. 1 In.	240 Lbs	DOC	N	

Race, Hispanic Origin and Citizenship				
*Race:	Ethnic Affiliation:	Use for Documentation?	Hispanic Origin?	Citizenship:
White	European/N.Am./Austr	Y	N	United States

Languages			
Language:	Comprehend?	Read?	Prefers:
English	Yes	No	Yes

Scars, Marks and Tattoos			
SMT Type:	SMT Subtype:	Body Part:	Description:
Tattoo	Arm	Hand, Right	Dot,
Tattoo	Torso	Back	Wizard,
Tattoo	Arm	Arm, Upper Right	Yosemite Sam, "Bang",
Scar	Arm	Arm, Upper Left	2" Sc,
Scar	Arm	Wrist, Left	1" Sc,
- - Remarks - -			

Diet				
Diet Name:	Approved By:	Effective Date:	End Date:	
Metabolic (Lean Or Lite) Diet	Remy, Kelly J	03/04/2011	03/04/2012	
Mainline Alternative Diet	Neau, Jonathan A	06/24/2011		

Primary, Mailing and Other Addresses						
Role:	Name and Address:	Current Residence?	Valid for Mailing?	Disclosable?	Effective Date:	End Date:
Offender Primary Address	██████████ ██████████ ██████████	Y		N	08/25/2010	

Offender Mailing Address	[REDACTED]	Y	Y	08/25/2010
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Emergency Contacts

Relationship:	Emergency Contact Name and Address:	Phone Number:	Effective Date:	End Date:
Grandparent	Ilene Owens Washington United States	[REDACTED]	02/08/2010	
Friend	Lashonda Craig-Conover Washington United States	[REDACTED]	03/02/2011	
Mother	OBTS Emergency Contact Info Follows: TONI HENNIGAN OBTSConversion	[REDACTED]	07/01/2008	

Email Addresses and Phone Numbers

Email Addresses				
Role:	Name:	Email Address:	Effective Date:	End Date:
Phone Numbers				
Role:	Name:	Phone Number:	Effective Date:	End Date:
Offender Primary Telephone		[REDACTED]	01/23/2010	
Offender Primary Telephone		[REDACTED]	01/23/2010	

Employers

Employer Name:	Occupation:	Contact Name:	Address:	Employer Email:	Phone Number:	Monthly Income:	Effective Date:	End Date:
Other Monthly Income								
Other Monthly Income Description (Current):						Other Monthly Income Amount (Current):		
						Monthly Income From All Sources (Current): \$0.00		

Military Service

Claim Number:	Branch:	Start Date:	End Date:	Served In:	Service Number:	Type of Discharge:	DD214 Verified?	War Zones:

Vehicles						
Year:	Make:	Model:	Type:	Color:	License Plate Number:	State: Country:

Sentence Structure (Field)

Cause: AH – 101010451 – Pierce

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Benjamin Hennigan	02/18/2011	Active	Property
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
CCP	09/18/2012	09/18/2013	

Count: 1 – RCW 9.35.020(3) – Identity Theft 2

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
09/18/2012	0Y, 12M, 0D	365	09/18/2013	02/07/2016
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
No	N			

Cause: AI – 101010451 – Pierce

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Benjamin Hennigan	02/18/2011	Active	Property
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
MON	09/18/2012		

Count: 2 – RCW 9A.60.020 – Forgery

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
09/18/2012	0Y, 0M, 0D	0		09/16/2016
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
No	N			

Sentence Structure (Inmate)

Cause: AH – 101010451 – Pierce

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Benjamin Hennigan	02/18/2011	
Time Start Date:	Confinement Length:	Earned Release Date:	
03/01/2011	0Y, 29M, 0D	09/18/2012	

Count: 1 – RCW 9.35.020(3) – Identity Theft 2

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 29M, 0D	33.33%	09/18/2012	07/09/2013	02/07/2016	No
Supervision Type:	Supervision Length:	Consecutive Count:						Hold To Stat Max Expiration:	
CCP	0Y, 12M, 0D								

Cause: AI – 101010451 – Pierce

State: Washington Convicted Name: Benjamin Hennigan Date Of Sentence: 02/18/2011 Consecutive Cause:
 Time Start Date: 03/01/2011 Confinement Length: 0Y, 18M, 0D Earned Release Date: 02/08/2012

Count: 2 - RCW 9A.60.020 - Forgery

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 18M, 0D ERT %: 33.33% ERD: 02/08/2012 MaxEx: 08/09/2012 Stat Max: 09/16/2016 Violent Offense? No

Supervision Type: MON Supervision Length: 0Y, 0M, 0D Consecutive Count: Hold To Stat Max Expiration:

Conditions

Cause: AH - 101010451 - Pierce

Condition Name	Narrative	Imposing Authority	Start Date	End Date
Advise CCO-Prescribed Meds		Court Ordered	03/01/2011	
CCO-Report		Court Ordered	03/01/2011	
Comply-Affirmative Acts		Court Ordered	03/01/2011	
Controlled Substance- Consume		Court Ordered	03/01/2011	
Controlled Substance-Possess		Court Ordered	03/01/2011	
Maintain Fd/Voc		Court Ordered	03/01/2011	
Maintain Employment		Court Ordered	03/01/2011	
No Contact- Victim(S)	JOHN MALICH	Court Ordered	03/02/2011	03/01/2016
No Firearms/Deadly Weapon		Court Ordered	03/01/2011	
Non-Sex Offender/Living		Court Ordered	03/01/2011	
Pay Supervision Fees		Court Ordered	03/01/2011	

Violations Summary

Offender Violations	Level of Response	Response Date
Violation Group Number	There is no data to display.	

Gain-Loss

Cause - 101010451 - Pierce

Cause Info					
Convicted Name: Benjamin Hennigan Date Of Sentence: 02/18/2011 Schedule End Date: 09/18/2013 Cause Status:					
Offense Type: Forgery		DOSA: No		Intake Complete: No EM Flag: No	
Distinct Supervision Info					
Cause Prefix:	Type:	Statutory Max Date:	Schedule End Date:	Tolling Indicator:	
AH	CCP	02/07/2016	09/18/2013	No	
Supervision Activities					
Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office

There is no data to display.

[Reorder](#) [Include Transfer Activities](#)

Distinct Supervision Info

Cause Prefix: AI Type: MON Statutory Max Date: 09/16/2016 Schedule End Date: Tolling Indicator: No

Supervision Activities

Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

[Reorder](#) [Include Transfer Activities](#)

External / Internal Movements

Movement Date/Time	From Location	To Location	Movement Type		Movement Reason		Created By	
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
CRCC	07/27/2011	DA302U	Gunter, Joe A	71020702	08/02/2011			Gunter, Joe A
CRCC	07/27/2011	DA302U	Etheridge, Josh L	71017012	07/11/2011			Ferguson, Justin A
CRCC	05/11/2011	CA571L	Etheridge, Josh L	71017012	07/11/2011			Ferguson, Justin A
CRCC	04/14/2011	CA132U	Etheridge, Josh L	71017012	07/11/2011			Ferguson, Justin A
CRCC	04/14/2011	CA132U	Brown, Winston A	71017012	04/18/2011			Ferguson, Justin A
CRCC	04/14/2011	CA132U	Mango, Moshe K	71016505	04/15/2011			Weems, Bobbie Jo L
CRCC	04/14/2011	CA132U	Mango, Moshe K	71016505	04/15/2011			Murphy, Brenda L
04/14/2011 01:39:11	WCC-RC	CRCC		Transfer Between Prisons		Initial Classification		Lang, Julia M
04/14/2011 06:47:52	WCC-RC	CRCC		Transfer Between Prisons		Initial Classification		Ricker, Eugene K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	03/21/2011	5B10L	Hanson, Melissa A	71007712	03/15/2011			Ricker, Eugene K
WCC-RC	03/15/2011	5G02L	Hanson, Melissa A	71007712	03/15/2011			Ricker, Eugene K
WCC-RC	03/15/2011	5G02L	Hanson, Melissa A	71007712	03/15/2011			Flores, Patricia N
WCC-RC	03/01/2011	2E08L	Hanson, Melissa A	71007712	03/15/2011			Walker, Patrick R

03/01/2011 10:52:28	Pierce	WCC-RC		Admission To Prison		Initial Classification		Brunetti, Melanie S	
01/23/2004 06:45:00	Lincoln Park Work Release	Pierce		Release From Prison		Normal Release		System, Obts	
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	Lincoln Park Work Release	10/22/2003	07C	(Vacant)	70117087	10/22/2003			System, Obts
	Lincoln Park Work Release	10/22/2003	07C	(Vacant)	70117087	10/22/2003			System, Obts
10/22/2003 10:56:00	WCC-RC	Lincoln Park Work Release		Transfer Between Prisons		Accepted In Work Release		System, Obts	
10/22/2003 08:45:00	WCC-RC	Lincoln Park Work Release		Transfer Between Prisons		Accepted In Work Release		System, Obts	
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	WCC-RC	10/21/2003	4D10U	(Vacant)	70045302	10/21/2003			System, Obts
	WCC-RC	10/21/2003	4D10U	(Vacant)	70045302	10/21/2003			System, Obts
	WCC-RC	10/20/2003	4F06F	(Vacant)	70044430	04/05/2003			System, Obts
10/20/2003 11:45:00	SCCC	WCC-RC		Transfer Between Prisons		Accepted In Work Release		System, Obts	
10/20/2003 09:27:00	SCCC	Lincoln Park Work Release		Transfer Between Prisons		Accepted In Work Release		System, Obts	
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	SCCC	08/11/2003	H6002L	(Vacant)	70044430	04/05/2003			System, Obts
	SCCC	04/05/2003	H6002U	(Vacant)	70044338	04/05/2003			System, Obts
	SCCC	04/05/2003	H6002U	(Vacant)	70044430	04/05/2003			System, Obts
	SCCC	04/05/2003	H6002U	(Vacant)	70044430	04/05/2003			System, Obts
	SCCC	02/02/2003	GC09L	(Vacant)	70044323	01/06/2003			System, Obts
	SCCC	01/06/2003	GC09U	(Vacant)	70044323	01/06/2003			System, Obts
	SCCC	01/06/2003	GC09U	(Vacant)	70044323	01/06/2003			System, Obts
01/06/2003				Transfer Between					System,

08:15:00	WCC-RC	SCCC		Prisons		Protection		Obts
01/06/2003 07:00:00	WCC-RC	SCCC		Transfer Between Prisons		Protection		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	01/02/2003	4F07U	(Vacant)	70045302	12/30/2002			System, Obts
WCC-RC	12/30/2002	4F01F	(Vacant)	70045302	12/30/2002			System, Obts
WCC-RC	12/30/2002	4F01F	(Vacant)	70045302	12/30/2002			System, Obts
12/30/2002 11:45:00	MCC-WSR	WCC-RC		Transfer Between Prisons		Protection		System, Obts
12/30/2002 09:51:00	MCC-WSR	SCCC		Transfer Between Prisons		Protection		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC-WSR	12/01/2002	S323L	(Vacant)	70047213	06/10/2002			System, Obts
MCC-WSR	11/18/2002	B435L	(Vacant)	70047213	06/10/2002			System, Obts
11/18/2002 10:01:00	Snohomish	MCC-WSR		Temporary Absence From Prison		Dental Completed		System, Obts
11/18/2002 07:50:00	MCC-WSR	Snohomish		Temporary Absence From Prison		Dental Needs		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC-WSR	11/17/2002	H014B	(Vacant)	70047213	06/10/2002			System, Obts
MCC-WSR	10/28/2002	B435L	(Vacant)	70047213	06/10/2002			System, Obts
MCC-WSR	06/10/2002	B435U	(Vacant)	70047213	06/10/2002			System, Obts
MCC-WSR	06/10/2002	B435U	(Vacant)	70047213	06/10/2002			System, Obts
06/10/2002 09:15:00	WCC-RC	MCC-WSR		Transfer Between Prisons		Protection		System, Obts
06/10/2002 06:00:00	WCC-RC	MCC-WSR		Transfer Between Prisons		Protection		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	06/07/2002	5E05L	(Vacant)	70045071	06/05/2002			System, Obts
								System,

WCC-RC	06/05/2002	5A02F	(Vacant)	70045071	06/05/2002			Obts
WCC-RC	06/05/2002	5A02F	(Vacant)	70045071	06/05/2002			System, Obts
06/05/2002 02:30:00	WSP-Main	WCC-RC		Transfer Between Prisons		Protection		System, Obts
06/05/2002 05:30:00	WSP-Main	WCC-RC		Transfer Between Prisons		Protection		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WSP-Main	06/02/2002	4B122	(Vacant)	70046066	05/20/2002		Yes	System, Obts
WSP-Main	05/20/2002	1B16N	(Vacant)	70046066	05/20/2002			System, Obts
WSP-Main	05/20/2002	1B16N	(Vacant)	70046066	05/20/2002			System, Obts
WSP-Main	05/16/2002	8E172	(Vacant)	70046138	05/16/2002			System, Obts
05/16/2002 02:00:00	WCC-RC	WSP-Main		Transfer Between Prisons		Return From Court		System, Obts
05/16/2002 06:00:00	WCC-RC	WSP-Main		Transfer Between Prisons		Return From Court		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
			(Vacant)	70046138	05/16/2002			System, Obts
WCC-RC	05/09/2002	5D02L	(Vacant)	70045071	01/23/2002			System, Obts
WCC-RC	05/07/2002	5D14F	(Vacant)	70045071	01/23/2002			System, Obts
05/07/2002 02:30:00	Snohomish	WCC-RC		Temporary Absence From Prison		Return From Court		System, Obts
02/19/2002 06:00:00	WCC-RC	Snohomish		Temporary Absence From Prison		Court Order		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	02/08/2002	5F01L	(Vacant)	70045071	01/23/2002			System, Obts
WCC-RC	02/05/2002	5A01F	(Vacant)	70045071	01/23/2002			System, Obts
02/05/2002 04:30:00	Snohomish	WCC-RC		Temporary Absence From Prison		Return From Court		System, Obts
01/29/2002 06:00:00	WCC-RC	Snohomish		Temporary Absence From Prison		Court Order		System, Obts
Facility	Bed		Assigned	Position	Counselor	Segregation	Segregation	

Name	Assignment	Bed ID	Counselor	ID	Assignment	Placement	Narrative	Created By
WCC-RC	01/24/2002	5H02L	(Vacant)	70045071	01/23/2002			System, Obts
WCC-RC	01/23/2002	5H04F	(Vacant)	70045071	01/23/2002			System, Obts
WCC-RC	01/23/2002	5H04F	(Vacant)	70045071	01/23/2002			System, Obts
01/23/2002 02:00:00	WSP-Main	WCC-RC		Transfer Between Prisons		Court Order		System, Obts
01/23/2002 05:30:00	WSP-Main	WCC-RC		Transfer Between Prisons		Court Order		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WSP-Main	12/27/2001	8F142	(Vacant)	70046138	11/06/2001			System, Obts
WSP-Main	11/06/2001	8F143	(Vacant)	70046138	11/06/2001			System, Obts
			(Vacant)	70046138	11/06/2001			System, Obts
WSP-Main	11/01/2001	7A051	(Vacant)	70046141	11/01/2001			System, Obts
11/01/2001 01:00:00	WCC-RC	WSP-Main		Transfer Between Prisons		Initial Classification		System, Obts
11/01/2001 06:00:00	WCC-RC	WSP-Main		Transfer Between Prisons		Initial Classification		System, Obts
			(Vacant)	70046141	11/01/2001			System, Obts
WCC-RC	10/23/2001	5D08U	(Vacant)	70045071	10/23/2001			System, Obts
WCC-RC	10/23/2001	5D08U	(Vacant)	70045071	10/23/2001			System, Obts
WCC-RC	10/18/2001	1G04U	(Vacant)	70045087	09/25/2001			System, Obts
WCC-RC	09/25/2001	3D10U	(Vacant)	70045087	09/25/2001			System, Obts
WCC-RC	09/25/2001	3D10U	(Vacant)	70045087	09/25/2001			System, Obts
09/25/2001 02:00:00	Snohomish	WCC-RC		Admission To Prison		Initial Classification		System, Obts

Earned Time

Start Date	End Date	Action Date	Type	Reason	Days
03/01/2011	07/01/2011	07/05/2011	Earned		20.33

Infraction Summary

Offender Infraction					
Infraction Group Number	Overall Infraction Report Status	Hearing Type	Infraction Data Indicator	Incident Date	Violation Codes
There is no data to display.					

Offender Holds

Start Date/Time	Hold Reason	Hold Location	Notes Exist	Authorizing Staff	Hold Until Date	Closed Date	Closed By
09/19/2011 15:23:31	Industries	CRCC	Yes	Proctor, Tara L	07/27/2012		
09/19/2011 10:34:15	Facility Plan Review	CRCC		Gunter, Joe A	10/19/2011	09/21/2011	Gunter, Joe A
04/18/2011 11:46:54	Facility Plan Review	CRCC		Brown, Winston A	05/18/2011	04/20/2011	Brown, Winston A
03/31/2011 09:41:50	Facility Plan Review	WCC-RC		Hanson, Melissa A	04/30/2011	04/06/2011	Hanson, Melissa A
05/27/2003 11:06:00	Minimum 1 Targeted	SCCC		Rohrer, Liza A	09/22/2003	09/25/2003	
05/27/2003 11:05:00	Minimum 2 Targeted	SCCC		Rohrer, Liza A	06/22/2003	09/25/2003	
03/13/2003 11:05:00	Minimum 1 Targeted	SCCC		Bruner, Kathryn L	09/22/2003	05/27/2003	
03/13/2003 11:04:00	Minimum 2 Targeted	SCCC		Bruner, Kathryn L	05/22/2003	05/27/2003	
01/18/2003 10:24:00	Dental Hold	SCCC		System, Obts	04/18/2003	04/16/2003	
10/04/2002 16:10:00	Custody Targeted	MCC-WSR		System, Obts	05/23/2003	12/20/2002	
02/06/2002 15:27:00	Out To Court	WCC-RC		Gietz, Laura L	03/25/2002	05/10/2002	
01/16/2002 11:09:00	Out To Court	WSP-Main		Lyons, Susan M	01/23/2002	01/23/2002	

Custody Facility Plan History

Next Review Date

03/18/2012

Current Incarceration

Review Type/Purpose	Assigned Custody	Override Reason	Location	In-Effect Date	Status
Regular Review / Re-entry	Minimum 2 - Camp		CRCC	09/21/2011	In-Effect
Intake	Medium		CRCC	04/20/2011	Archive
Initial	Medium		WCC-RC	04/06/2011	Archive

APPENDIX “C”

Certified Judgment and Citation for Misd. Offense

CRIMINAL **TRAFFIC** **NON-TRAFFIC** **C 056740**

IN THE DISTRICT MUNICIPAL COURT OF PUYALLUP PUYALLUP, WASHINGTON
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF PIERCE
 CITY/TOWN OF PUYALLUP **07-008376**

L.E.A. ORI #: WA0270100 COURT ORI #: WA027071J

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. **Henri 82306 RV** STATE **WA** EXPIRES **12/07** PHOTO I.D. MATCHED YES NO

NAME: LAST **Hennigan** FIRST **BENJAMIN** MIDDLE **PEARL** CDL YES NO

ADDRESS **3706 SO. YAKIMA AVE** IF NEW ADDRESS

CITY **TACOMA** STATE **WA** ZIP CODE **98408** EMPLOYER LOCATION

DATE OF BIRTH **12/24/70** RACE **W** SEX **M** HEIGHT **6-01** WEIGHT **200** EYES **BRO** HAIR **BRO**

RESIDENTIAL PHONE NO. CELL/PAGER NO. WORK PHONE NO.

VIOLATION DATE MONTH **08** DAY **23** YEAR **07** TIME **24 HOUR 007** INTERPRETER NEEDED LANG:

AT LOCATION **800 BLE 31st AVE SW** CITY/COUNTY OF **PUYALLUP / PIERCE**

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO. **216 UBL** STATE **WA** EXPIRES **8/08** VEH. YR. **1995** MAKE **AMAZ** MODEL **CRUIS** STYLE **CP** COLOR **GRAN**

TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.

OWNER/COMPANY IF OTHER THAN DRIVER **STATE**

ADDRESS CITY STATE ZIP CODE

ACCIDENT BAC COMMERCIAL YES HAZMAT YES EXEMPT FARM FIRE
 NO NA R I F READING X VEHICLE TRUCK VEHICLE P.V. OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE **RCW 46.20.342.1C** DV **DUI/R3**
DRIVING WHILE LICENSE SUSPENDED

#2 VIOLATION/STATUTE CODE **RECEIVED** DV

AUG 27 2007

MANDATORY COURT APPEARANCE OR BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE **09** MO **06** YR **07** TIME **1:00** PM RELATED # **07-0376** DATE ISSUED **8/23/07**

Served on Violator
 Sent to Court for Mailing
 Referred to Prosecutor

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND MY REPORT ATTACHED TO THIS DOCUMENT IS TRUE AND CORRECT.

OFFICER **[Signature]** **206**

PUYALLUP MUNICIPAL COURT COMPLAINT / CITATION

929 E. MAIN, SUITE 120 PUYALLUP, WA 98477

CHARGES	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1. G NG 07	\$	\$	\$	8/25-07
2. G NG 07	\$	\$	\$	
OTHER COSTS \$				
RECOMMENDED NON-EXTENSION <input type="checkbox"/>	LICENSE SUR-RENDER DATE	TOTAL COSTS \$	CREDIT / TIME SVD	

I certify that I have compared this copy with the original. It is a true and complete copy.

Date **9/19/11** WASHINGTON UNIFORM COURT DOCKET - COURT COPY June 2006

CLERK/COURT ADMIN **[Signature]**

C 056740

PUYALLUP MUNICIPAL COURT

929 E. Main, Suite 120, Puyallup, WA 98372 Phone: (253) 841-5450

**MUNICIPAL COURT OF WASHINGTON
FOR CITY OF PUYALLUP**

City of Puyallup, Plaintiff,
vs.
HENNIGAN, BENJAMIN DEAN
Defendant.

No. C56740 07-8376-268

JUDGMENT AND SENTENCE FOR:

1) DWLS 3 G NG DS DISM

2) _____ G NG DS DISM

The defendant pleads guilty, or pleads not guilty and the verdict of the jury was guilty, or the finding of the court was guilty; therefore, the defendant is ADJUDGED guilty and sentenced as follows:

Sentence is SUSPENDED or DEFERRED for 12 months OR _____ years on the following conditions:

Count 1) 90 days of jail, suspended 90 days; and a fine of \$ 100 with \$ _____ suspended.

Count 2) _____ days of jail, suspended _____ days; and a fine of \$ _____ with \$ _____ suspended.

JAIL: Serve a total of _____ days in jail with credit for _____ days served, and/or
serve a total of _____ days of electronic home monitoring with credit for _____ days served.

Jail sentences are concurrent/ consecutive with all other commitments _____.

FINE:

<input checked="" type="checkbox"/> Fine	\$ <u>100</u>	<input type="checkbox"/> Crim Fee Traffic (CFT)	\$ _____
<input checked="" type="checkbox"/> PSEA assessments	\$ <u>101</u>	<input type="checkbox"/> Crim Fee Non Traff (CFN)	\$ _____
<input type="checkbox"/> Booking fee	\$ _____	<input type="checkbox"/> Warrant fee	\$ _____
<input checked="" type="checkbox"/> Probation fee	\$ <u>50.</u>	<input type="checkbox"/> DV fee	\$ _____
<input type="checkbox"/> Crim Traff Penalty (TPC)	\$ _____	<input type="checkbox"/> Public defender recoupment	\$ _____
<input type="checkbox"/> Domestic viol fee	\$ _____	<input checked="" type="checkbox"/> Other <u>250</u>	\$ <u>43.</u>
<input type="checkbox"/> Restitution to:	_____		\$ _____

All payments shall be made through the clerk of this court, including restitution. TOTAL: \$ 298

MONTHLY PAYMENTS IN THE AMOUNT OF \$ 55 DUE BY THE 5 OF EACH MONTH BEGINNING: 1-5-08
YOU MAY BE ABLE TO WORK OFF A PORTION OF YOUR FINE THROUGH COMMUNITY SERVICE-PLEASE SEE THE CLERK FOR ADDITIONAL INFORMATION ON PERFORMING COMMUNITY SERVICE.

Additional Conditions of Sentence:

- No criminal violations of law; No alcohol-related infractions; No traffic infractions.
- Not drive a motor vehicle without a valid license and proof of insurance.
- Probation monitoring for _____ months. See the probation office before leaving court today. (If in custody, report to probation within 72 hours); Shall not relocate out of state without court approval.

- Provide proof of completion within _____ days the following:
- Certified Domestic Violence Assessment; Certified Alcohol/Drug Assessment; Alcohol/Drug Information School; DUI Victim Panel;
- Domestic Violence Victim Panel; Anger Management Assessment; Consumer Awareness; Defensive Driving/Road Rage Info School; Other: _____

- Submit proof by _____ of entry into certified treatment program as per evaluation or assessment and provide monthly status reports to the Court for:
- Alcohol/Drug treatment; Domestic Violence treatment; Mental health counseling; Other: _____
- Attend sober support and submit proof of _____ meetings by Friday of each week beginning _____
- Do not go upon the property of and have no contact with _____, directly, indirectly, in person, or through any third parties except as set forth in the separate No-Contact Order/Protection Order.
- Other: _____
- Return for a review hearing: _____ Bail or Bond is Exonerated Forfeited.

DATED 12/5/08

PUYALLUP MUNICIPAL COURT
929 E. MAIN, SUITE 120
PUYALLUP, WA 98372

I certify that I have compared this copy with the original. It is a true and complete copy.

JUDGE / COURT COMMISSIONER / PROthonary

[Signature] 12/24/70

DEFENDANT'S SIGNATURE DATE OF BIRTH

Date 9/9/11

CLERK/COURT ADMIN [Signature]

PIERCE COUNTY PROSECUTOR

October 21, 2011 - 2:58 PM

Transmittal Letter

Document Uploaded: 418151-Respondent's Brief.pdf

Case Name: State v. Hennigan

Court of Appeals Case Number: 41815-1

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

 Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:
cathyglinski@wavecable.com