

NO. 43167-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CHARLES FARNSWORTH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

APPELLANT'S SUPPLEMENTAL BRIEF
ADDRESSING SENTENCING ISSUES

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A. ARGUMENT.

The State did not prove Mr. Farnsworth’s California conviction is comparable to Washington’s equivalent offense based on sparse facts and different legal elements, which renders unlawful the life sentence imposed

1. *The State must prove a qualifying prior conviction to authorize a three-strike life sentence.*

It is impermissible for a court to impose a sentence of life without the possibility of parole under the Persistent Offender Accountability Act (POAA) unless the State proved the defendant has qualifying prior convictions. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005); RCW 9.94A.030(36)(a)(ii)¹; RCW 9.94A.525(3). When a prior conviction is from another state, the State must prove it is comparable to a qualifying Washington offense. *Id.*

The court’s comparability inquiry is constrained by the Sixth and Fourteenth Amendments. *Descamps v. United States*, __ U.S. __, 133 S.Ct. 2276, 2288, 186 L.Ed.2d 438 (2013); *Lavery*, 154 Wn.2d at 258. Due to these constitutional restrictions, the only facts a sentencing court can be sure the jury found, or the defendant admitted in a guilty plea,

¹ Citations to the sentencing statutes herein refer to the version in effect at the time of the offense. Some non-substantive numbering changes have occurred since then.

“are those constituting the elements of the offense.” *Descamps*, 133 S.Ct. at 2288; *Shepard v. United States*, 544 U.S. 13, 25-26, 28, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005)).

Mr. Farnsworth’s three-strike sentence hinged on the court’s determination that his 1984 California conviction for vehicular manslaughter is comparable to Washington’s vehicular homicide. 2/24/12RP 70-72. Mr. Farnsworth contested this conviction’s comparability below, and this Court reviews whether a prior conviction qualifies as a strike under the POAA *de novo*. 2/24/12RP 48-58, 61, 67-68; *State v. Knippling*, 166 Wn.2d 93, 98, 206 P.3d 332 (2009).

2. *In 1984, Washington’s vehicular homicide statute had specific causation requirements absent from the California statutes.*

Comparability determinations are based on the Washington law in effect at the time the foreign offense was committed. *Lavery*, 154 Wn.2d at 255. Mr. Farnsworth was convicted of vehicular manslaughter in California for an offense that occurred on January 18, 1984. App. at 5, 12.²

² The State’s submissions for the California statutes and the underlying complaint, guilty plea document, and judgment are attached in the Appendix.

In 1984, Washington’s vehicular homicide statute required that “impairment due to alcohol must have been a proximate cause of the fatal accident.” *State v. MacMaster*, 113 Wn.2d 226, 235, 778 P.2d 1037 (1989); Former RCW 46.61.520 (1983). *MacMaster* ruled that it was “not a proper statement of the law” to merely show the defendant’s driving caused the accident and “coincidentally, defendant was also under the influence” of alcohol. *Id.*

In 1984, California law did not similarly require proof death was proximately caused by intoxicated driving. Although it is unclear whether Mr. Farnsworth’s 1984 California conviction rested on a violation of Penal Code § 192(c)(3), or Vehicular Code § 23153(a), both statutes have similar essential elements. 2/24/12RP 21, 50-51, 55.

Both California statutes say that *while* driving under the influence, the driver commits *another* act forbidden by law or neglects a duty imposed by law, such as a traffic violation, and this *additional* “act or neglect proximately causes” death or bodily injury. Former Veh. Code § 23153(a)³; Former Penal Code § 192 (3)(c) (1983).⁴

³ The version of Veh. Code § 23153(a) in effect at the time of Farnsworth’s offense reached any injury, and was not limited to causing a person’s death. App. at 3 (Statutes of 1983, ch. 937, § 3).

⁴ See App. at 1-2 (Statutes of 1983, ch. 937, § 1).

These elements are: (1) a separate violation of the traffic law, (2) which proximately causes death or injury, and (3) the driver was drunk at the time. *See People v. Soledad*, 190 Cal.App.3d 74, 81 (Ct. App. 1987) (explaining “the unlawful act” causing the death required by PC § 192 must be an unlawful act “other than” a violation of the drunk driving laws).

California would permit a conviction when a person “coincidentally” causes a person’s death while driving under the influence, yet *MacMaster* holds that the impaired driving must proximately cause the person’s death in Washington. 113 Wn.2d at 235. For example, if a driver crosses the center line while intoxicated, and crossing the line proximately causes a person’s death, the driver would be guilty under California law but not necessarily in Washington.

Because neither California statute required proof that intoxicated driving proximately caused the death, they do not satisfy the narrower specific causation required for Washington’s 1984 vehicular homicide. This lack of legal comparability ends the inquiry, because the plea statement has no additional facts to show this conviction was based on proof of the same elements as Washington’s statute. *Lavery*, 154 Wn.2d at 256; App. at 6-11.

3. *Ambiguities in charging and sentencing documents further demonstrate the State failed to meet its burden of proving factual and legal comparability.*

Numerous ambiguities in the documents presented by the prosecution regarding Mr. Farnsworth's 1984 conviction further undermine its status as a valid predicate for a sentence of life without the possibility of parole.

It is the State's burden to prove the pertinent conviction and its statutory elements. *State v. Lopez*, 147 Wn.2d 515, 519, 55 P.3d 609 (2002); *see also In re Pers. Restraint of Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988) (“[I]t [is] inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove.”). In the context of comparability, the court asks what elements were proven beyond a reasonable doubt as the basis of the prior conviction.

The State does not meet its burden by guesswork or speculation. *State v. Mendoza*, 165 Wn.2d 913, 920, 205 P.3d 113 (2009). A prosecutor is not a witness and her “assertions are neither fact nor evidence, but merely argument.” *State v. Ford*, 137 Wn.2d 472, 483 n.3, 973 P.2d 452 (1999).

a. The conviction was premised on count 2, which requires only bodily injury as defined by statute.

The 1984 California judgment documents state Mr. Farnsworth pled guilty solely to Count 2. App. at 5, 12; 2/24/12RP 51. The complaint has two counts. App. at 5. Count 1 and count 2 name different victims, cite different controlling statutes, and set forth elements of these different statutes. App. at 5. Count 2 accused Mr. Farnsworth of “committing the crime of violation of section 23153 (a) of the Vehicular Code,” while Count 1 alleged “a violation of section 192(3)(c) of the Penal Code.” App. at 5.

Because the judgment says Mr. Farnsworth was convicted of “count 2,” the elements of Veh. Code § 23513(a) control the legal comparability analysis. *Id.* at 5, 12.

While count 2 recites the elements of Veh. Code § 23153(a), it overstates these elements. *Id.* As of the operative date of January 18, 1984, this statute required proof of “bodily injury” and not proof of death or other more serious injury. App. at 3 (statute). Veh. Code § 23153(a) was broadly defined to require that a person drive under the influence, commit another unlawful act, and this other act “proximately causes *bodily injury*” to another person. App. at 3 (emphasis added).

Although the statute was later amended to include death or bodily injury, this later version was not in effect at the time of the offense.

The “elements of the charged crime must remain the cornerstone of the comparison.” *Lavery*, 154 Wn.2d at 255; *Descamps*, 133 S.Ct. at 2285-86. The elements of the statute in effect for count 2 required causing “bodily injury” but not death. App. at 3, 5. Based on the elements of the controlling statute, Mr. Farnsworth’s conviction may not be construed as premised on causing another person’s death by drunken driving.

b. The documentary evidence does not support a conviction under the penal code’s version of vehicular homicide.

Confusingly, the judgment lists “PC § 192(3)(c)” as the relevant statute even though it also states that count 2 is the basis of conviction and count 2 cites to and states the elements of only Veh. Code § 23153(a). App. at 5, 12-13.

At the sentencing hearing, the State insisted that the citation in the judgment to PC §192(3)(c) reflected a non-existent statute and urged the court to treat it as a scrivener’s error, intended to be PC § 193(c)(3). 2/24/12RP 22. The prosecutor contended that someone in

California told her “there never, ever was a section [of the Penal Code] that reads the way the J&S says.” *Id.*

The State’s claim that PC §192(3)(c) “never, ever” existed is wrong. PC §192(3)(c) was in effect in 1984 and is attached as App. 1-2.

The State incorrectly insists that a sentencing court should disregard plain language in the out-of-state judgment in an effort to make sense of documents used to prove comparability. If the judgment contains errors in listing the governing statute, or shows confusion about the underlying crime of conviction, the State has not met its burden of proving the directly related elements that were sufficiently proven at the time of conviction. *See Lavery*, 154 Wn.2d at 255.

c. The conviction is not factually comparable to Washington’s vehicular homicide statute.

The only facts that may be used to determine the factual comparability of conviction obtained under a broader foreign statute are “facts that were admitted, stipulated to, or proved beyond a reasonable doubt.” *Lavery*, 154 Wn.2d at 258; *see State v. Olsen*, 180 Wn.2d 468, 473-74, 325 P.3d 187, *cert. denied*, 135 S. Ct. 287 (2014). A court may not increase the penalty for a crime based on a fact that was not proved beyond a reasonable doubt. *Lavery*, 154 Wn.2d at 256, citing *Apprendi*

v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). The *Lavery* framework limits the court to considering “only those facts that were clearly charged and then clearly proved beyond a reasonable doubt to a jury or admitted by the defendant.” *Olsen*, 180 Wn.2d at 476.

Here the factual record is sparse. The State did not offer any transcripts from hearings or specific factual admissions of guilt. 2/24/12RP 61. The “felony disposition statement” says Mr. Farnsworth “will” plead guilty to “§ 192(3)(c)” but does not refer to the charging document, explain the elements of the offense, or include any factual admissions by Mr. Farnsworth. App. at 6-11.

In the guilty plea form, Mr. Farnsworth did not initial the section agreeing there is a factual basis for the plea, despite the presence of his initials in every other part of the form where initials are required. App. at 7. By failing to initial the factual basis of the plea, the form indicates he did not stipulate to the factual basis of the plea, which underscores the State’s failure to prove what facts he agreed to as having been proven beyond a reasonable doubt.

Additionally, the complaint refers to case number 15838, but the guilty plea and judgment forms use case number 18917. App. at 5, 6,

12, 13. The plea and sentencing documents do not say the date of the incident or any factual basis. *Id.* The facts admitted to are unexplained and this complaint may not be the same case as the plea or sentence.

In California, when the record of a guilty plea is ambiguous, the conviction reflects only the “least adjudicated elements” available under the statute. *People v. Rodriguez*, 17 Cal.4th 253, 261-62, 949 P.2d 31, 37 (Cal. 1998). The least adjudicated elements of count 2 are causing bodily injury by committing a traffic law violation, which occurred while driving under the influence of alcohol. This is not comparable to a 1984 vehicular homicide in Washington and does not authorize a sentence of life without the possibility of parole.

B. CONCLUSION.

Charles Farnsworth respectfully requests this Court vacate the sentence and order the imposition of a standard range sentence.

DATED this 20th day of December 2016.

Respectfully submitted,

s/ Nancy P. Collins
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NO. 91297-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
CHARLES V. FARNSWORTH,
Petitioner.

APPENDIX

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is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

SEC. 2. Section 1777 is added to the Welfare and Institutions Code, to read:

1777. Any moneys received pursuant to the Federal Social Security Act by a ward who is incarcerated by the Youth Authority are liable for the reasonable costs of the ward's support and maintenance.

CHAPTER 937

An act to amend Sections 192 and 193 of the Penal Code, and to amend Section 23153 of, and to add Sections 13350.5 and 23156 to, the Vehicle Code, relating to crimes.

[Approved by Governor September 20, 1983. Filed with
Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 192 of the Penal Code is amended to read:

192. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; provided that this subdivision shall not apply to acts committed in the driving of a vehicle.

3. Vehicular—

(a) Driving a vehicle, not involving drugs or alcohol and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Driving a vehicle, not involving drugs or alcohol, and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(c) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(d) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

This section shall not be construed as making any homicide in the driving of a vehicle punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

"Gross negligence", as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in *People v. Watson* (1981) 30 Cal. 3d 290.

SEC. 2. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for two, four, or six years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or imprisonment in the state prison for two, four, or six years.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 2.5. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for three, six, or 11 years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192 the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six, or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 3. Section 13350.5 is added to the Vehicle Code, to read:

13350.5. Notwithstanding Section 13350, for the purposes of this article, conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is deemed to be a conviction of a violation of Section 23153.

SEC. 4. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

SEC. 5. Section 23156 is added to the Vehicle Code, to read:

23156. For the purposes of this article, a prior offense which resulted in a conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is a prior offense of a violation of Section 23153.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 193 of the Penal Code proposed by both this bill and AB 236. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1984, (2) each bill amends Section 193 of the Penal Code, and (3) this bill is enacted after AB 236, in which case Section 2 of this bill shall not become operative.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 938

An act to amend Section 37 of, and to add Sections 340.3 and 1021.4 to, the Code of Civil Procedure, and to amend Sections 26820.4 and 72055 of, of the Government Code, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1983. Filed with Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 37 of the Code of Civil Procedure is amended to read:

37. (a) A civil action shall be entitled to preference, if the action is one in which the plaintiff is seeking damages which were alleged to have been caused by the defendant during the commission of a felony offense for which the defendant has been criminally convicted.

(b) The court shall endeavor to try the action within 120 days of the grant of preference.

SEC. 2. Section 340.3 is added to the Code of Civil Procedure, to read:

340.3. Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon such person's

FILED
Ventura County Municipal Court

VENTURA COUNTY MUNICIPAL COURT
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE

JAN 26 1984

By James G. Fox CLERK
Deputy Clerk

FEB 28 1984

CR18917

THE PEOPLE OF THE STATE OF CALIFORNIA,
RICHARD D. DEAN, County Clerk
By RICHARD D. DEAN
Deputy County Clerk

No. Fy-15838

Exh 5

CHARLES E. NICKERSON, JR.,
aka Charles Anderson, Charles E. Nickerson, Jr.
CHP 1-84-135
OFFENDANT

COMPLAINT
 FELONY
 MISDEMEANOR
(Sect. 17b P.C.)

COUNT 1

Donald M. Grant, being first duly sworn, says that
CHARLES E. NICKERSON, JR., aka Charles Anderson

committed the crime of violation of section 192(3)(c) of the Penal Code,
a (felony), (misdemeanor), in that on or about January 18, 1984,
in Ventura County, California, he did willfully and unlawfully while under the influence
of an alcoholic beverage and a drug and under their combined influence drive
a vehicle with gross negligence and in the commission of an unlawful act not
amounting to a felony, to wit, passing without sufficient clearance, a
violation of Vehicle Code section 21751, proximately caused the death of
Digna Marie Henket.

COUNT 2

Said complainant further accuses CHARLES E. NICKERSON, JR.,
aka Charles Anderson of committing the crime of violation of section 23153(a)
of the Vehicle Code, a felony, in that on or about January 18, 1984, in
Ventura County, California, he did willfully and unlawfully, while under
the influence of an alcoholic beverage and a drug and under their combined
influence, drive a vehicle and in so driving did commit an act forbidden
by law, to wit, passing without sufficient clearance, a violation of
Vehicle Code section 21751, in the driving of said vehicle which proximately
caused death and bodily injury to Teresa Ramirez.

Bail recommended by
District Attorney

Donald M. Grant

\$
DMG:me Ctrm. 11 1/27/84 9 a.m.

Subscribed and sworn to before me this 26th
day of January, 1984

Dept. CHP
Officer _____
Vacation from _____ 197
to _____ 197

Harold S. Curtis III
Deputy District Attorney, Ventura County

DA J.C.C.
PO OTHER
SO

FILED

DATE: MAY - 1 1984

RICHARD D. DEAN, County Clerk

By [Signature]
Deputy County Clerk

MICHAEL D. BRADBURY
District Attorney
800 South Victoria Avenue
Ventura, CA 93009

Telephone (805) 654-2501

Attorney for Plaintiff

Exh 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)

vs.

CHARLES VERDEL FARNSWORTH)
Defendant.)

COURT NO. CR 18917

FELONY DISPOSITION
STATEMENT

I.
PLEA

A. CHANGE OF PLEA

The defendant will plead GUILTY () NOLO CONTENDERE () to:

§ 192 (3) (c)

and admit

The remaining counts will be dismissed after the defendant is sentenced.

OTHER CASE DISPOSITIONS: _____

B. SUMMARY OF DISTRICT ATTORNEY'S REASON FOR DISMISSAL OR AMENDMENT
(Deputy District Attorney to initial)

The defendant is entering (a plea to the most serious charge) (pleas to sufficient counts) to give the court adequate discretion to impose an appropriate sentence.

The defendant cannot be (convicted) (sentenced) on the count because it arises from the same facts as the count(s) to which the defendant has pleaded.

C. NOLO CONTENDERE PLEA (Defendant to initial, if applicable)

I understand that for all purposes, my plea of nolo contendere (no contest) has the same effect as a guilty plea, constitutes a conviction, and empowers the Court to sentence me as though I had pleaded guilty. It also may be used against me as an admission in a civil proceeding.

D. VOLUNTARINESS OF PLEA (Defendant to initial)

CE I have discussed the facts of the case and all possible defenses which I might have with my attorney.

CE I am entering this plea freely and voluntarily and not as the result of any force, pressure, threats or coercion brought against me or any member of my family; further, no commitments have been made to me or my attorney other than those appearing on this form.

E. FACTUAL BASIS FOR PLEA (Defendant to initial)

I agree that the Court may consider the following as proof of the factual basis for my plea:

- Preliminary hearing transcript
- Police reports
- Probation report
- Welfare investigator's declaration
- _____

F. CONSEQUENCES OF PLEA (Defendant to initial)

CE My attorney has explained to me the direct and indirect consequences of this plea including the maximum possible sentence. I understand that the following consequences could result from my plea:

AF I could be sentenced to the state prison for a maximum possible term of 8 year(s).

AF I could be sentenced to the California Youth Authority for a maximum possible term of 8 year(s).

I will be required to register as a sexual offender pursuant to Penal Code § 290.

I could be deported, excluded from or denied naturalization if I am not a citizen. (Penal Code § 1016.5.)

My driver's license will be suspended or revoked for a period of _____ (SS 13350, 13351, 13352 of the Vehicle Code).

I will not be granted probation, and execution or imposition of sentence will not be suspended (1203.055(c), 1203.06, 1203.65, 1203.066, 1203.07, 1203.075, 1203.08, 1203.085, 1203.09 PC).

I will not be granted probation unless the court finds that this is an unusual case where the interests of justice would best be served by granting probation (462, 462.5, 1203(e), 1203.04 PC).

AF After I have served my prison term, I may be subject to a maximum parole period of 3 years (In re Carabas, 144 Cal. App. 3d 927).

I will be required to register as a narcotics offender.

I will be ordered to pay a fine of not less than \$100 nor more than \$10,000 (Gov't. Code § 13967, § 1191.2 PC).

G. WAIVER OF CONSTITUTIONAL RIGHTS (Defendant to initial)

My attorney has explained to me, and I understand, that this plea will result in my conviction and that I am therefore waiving (giving up) each of the following constitutional rights:

- AF 1. The right to have every charge and allegation against me determined by a jury of 12 persons;
- AF 1(a) *If I waive jury, I waive the right to a trial by 12a court.*
- AF 2. The right to confront and, through my attorney, cross-examine each witness called by the prosecution to prove my guilt;
- AF 3. The right to be represented at all times during a trial by a competent attorney and to have the Court appoint one to represent me at no charge, if I cannot afford one;
- AF 4. The right against self-incrimination which means I would not have to testify at my trial and if I did not, the jury could not consider this as evidence of guilt.

II.

A. DISTRICT ATTORNEY

THE DISTRICT ATTORNEY'S POSITION ON SENTENCE
(Deputy District Attorney to initial)

CE Any authorized sentence may be sought.

___ The defendant should be placed on probation and not now be sentenced to state prison. The defendant may, however, at a later time be sentenced to state prison if a court finds he has violated a term or condition of his/her probation.

___ The defendant will receive credit for time served.

SUMMARY OF DISTRICT ATTORNEY'S REASON FOR SENTENCE:
(Deputy District Attorney to initial)

___ The defendant has no prior criminal record.

___ The severity and frequency of the defendant's prior criminal record is not serious.

___ The underlying facts of the case are not sufficiently serious to require a state prison sentence at this time.

B. THE COURT

The Court, in this non-Proposition 8 case, without the consent or concurrence of the District Attorney, makes the following statements concerning sentencing: (Judge to initial)

___ The defendant will be placed on probation and not now be sentenced to state prison. If, however, he later violates his probation, he may be sent to prison at that time.

CE Court agrees to no more than 4 yrs
unless after reading probation report it
feels that a higher sentence should be
sought. If this occurs, defendant may withdraw
plea.

C. HARVEY WAIVER (Defendant to Initial)

CF The defendant agrees that all facts and information relating to any and all counts, allegations of prior convictions, and other sentencing enhancement allegations which are dismissed by the Court as part of this disposition may be included in the probation report and considered by the Court in determining sentence.

III.

DEFENDANT'S AND DEFENSE ATTORNEY'S POSITION

I have read, discussed with my attorney, and understand the consequences of this plea and waive (give up) the above-mentioned constitutional rights. I request that the Court accept my new plea.

DATED: 5-1-84

James V. Farnsworth
(Defendant's signature)

I have explained to the defendant all of his constitutional rights. I am satisfied he understands them and also understands that by entering this plea he is giving up each of them. I have discussed the facts of the case and all possible defenses to the charges with the defendant. I have explained the direct and indirect consequences of this plea to the defendant and am satisfied he understands them. I am satisfied the defendant is voluntarily and of his own free will seeking to enter this plea. I request the Court to accept this plea.

DATED: 5-1-84

William S. McJuffee
(Defendant's Attorney's Signature)

IV.

DISTRICT ATTORNEY'S STATEMENT

With the exception of any commitments made to the defendant by the Court, the District Attorney agrees to the terms of this disposition and requests that the Court accept it and order this statement filed.

MICHAEL D. BRADBURY, District Attorney
County of Ventura, State of California

DATED: 5/1/84

By James S. Lindsey
Deputy District Attorney

FINDINGS AND ORDER

The Court finds that:

1. Defendant and his attorney appeared in open court and the defendant entered his plea(s) and admission(s).
2. Defendant understands the nature of the charge(s) and the consequences of his plea(s) and admission(s).
3. Defendant has knowingly, intelligently, and understandingly waived his rights as set forth above.
4. Defendant's waivers of his rights, and his plea(s) and admission(s), are free and voluntary.
5. There is a factual basis for the plea.

IT IS ORDERED THAT:

1. Defendant's plea(s) and admission(s) are accepted.
2. The clerk file this document and incorporate it in the minutes of this case.

DATED: May 1, 1984

William Stark
Judge of the Superior Court

The defendant's plea is accepted conditionally, pursuant to Penal Code section 1192.5, and I have advised the defendant that my approval of this plea is not binding, that at the probation and sentencing hearing I may withdraw my approval, and that if I do so, he may withdraw his plea if he desires to do so.

DATED: May 1, 1984

William Stark
Judge of the Superior Court

**ABSTRACT OF JUDGMENT - COMMITMENT
SINGLE OR CONCURRENT COUNT FORM**
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM 05L 190 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

BRANCH 5.6

Exh 7

PEOPLE OF THE STATE OF CALIFORNIA
DEFENDANT: CHARLES VERDEL FARNSWORTH
AKA: ANDERSON AKA NICKERSON

PRESENT NOT PRESENT

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT

AMENDED
 ABSTRACT

CASE NUMBER
OR 18917

050,25,84 22

WILLIAM L. PECK

LOUISE CHARLES

SHARON SCRUGGS

HERB CURTIS

WILLIAM MC GUFFY

ELLEN LOVE

1. DEFENDANT HAS CONVICTED BY THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTION BY	TIME IMPOSED
2	PC 192(3)(c)	vehic mansl	84 05 07 84	37 M	6

2. PAROLEMENTS (CHARGES AND FOUND VERDICTS, TIME IMPOSED)

COUNT	12031(a)	12031(b)	12031(c)	12031(d)	12031(e)	12031(f)	12031(g)	12031(h)	12031(i)	12031(j)	12031(k)	12031(l)	12031(m)	12031(n)	12031(o)	12031(p)	12031(q)	12031(r)	12031(s)	12031(t)	12031(u)	12031(v)	12031(w)	12031(x)	12031(y)	12031(z)	

3. OTHER ORDERS:

4. A. NUMBER OF PRIOR PRISON TERMS:

	C/P	X	I
447.1(a)	0	0	0
447.1(b)	0	0	0
447.1(c)	0	0	0

B. NUMBER OF PRIOR FELONY CONVICTIONS:

	C/P	X	I
447.2(a)	0	0	0

5. TIME STATED IN (1) (DOUBLE BASE LIMIT)

6. TOTAL TERM IMPOSED: 6

7. THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S)

8. EXECUTION OF SENTENCE IMPOSED

A. AT INITIAL SENTENCING HEARING B. AT RESENTENCING PROCEEDINGS C. AFTER REVOCATION OF PROBATION D. AT RESENTENCING PURSUANT TO APPEAL OR COMMITMENT TO STATE PRISON

9. DATE SENTENCE PROHOUNCED: 05 25 84 CREDIT FOR TIME SPENT IN CUSTODY: 180 INCLUDING 120 ACTUAL SOCIAL SERVICE 60

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED TO:

FORTHWITH AFTER 24 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS

INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION/GUARDIAN CENTER LOCATED AT: CALIF. INSTITUTION FOR WOMEN - FRONTIERA CALIF. MEDICAL FACILITY - PACIFIC CALIF. INSTITUTION FOR MEN - CHICO

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

REPORT SIGNATURE: *[Signature]* DATE: 5/25/84

This form is prescribed pursuant to Penal Code 41213.5 to satisfy the requirements of Penal Code 41213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code 1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code 41203. A copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code 41203.5. Attachments may be used but must be incorporated by reference.

DA 9:50
PO OTHER
SO Chino

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: WILLIAM L. PECK DATE: MAY 25, 1984 TIME: 9:30 CASE NO: CR 18917
CLERK: LOUISE CHARLES BAILIFF: ART MILLER CRT. RPTR: S. SCRUGGS
DDA: HERB CURTIS DEF. CNSL: H. MC GUFFY DPO: ELLEN LOVE

TITLE OF CASE:
PEOPLE OF THE STATE OF CALIFORNIA
vs. Plaintiff

NATURE OF PROCEEDINGS:
JUDGMENT ON CONVICTION

CHARLES VERDEL FARNSWORTH
Defendant

Interpreter () Stipulated as qualified () Sworn () Previously sworn
() Public defender appointed (X) Waives arraignment () Indicates no legal cause
(X) Convicted by plea of guilty of violation of Section 142(b)(3)(C) of the Penal Code, Vehicle & Motor Rights () Declared misdemeanor

(X) Sentenced State Prison for the median term of 6 years

() Term set of _____ years in state prison if defendant subsequently violates probation
(X) Total fixed term 6 years () 1202(b) PC () 1170 (d) PC
() Imposition of sentence suspended () Execution of sentence suspended
() Probation granted _____ months () Formal () Conditional () Attached terms
() Sentenced County Jail () Concurrent () Consecutive

() Condition Probation () Execution stayed
() Review set _____ 9 AM, Courtroom 35 () Ordered to return
() Ordered to voluntarily surrender to Sheriff () Defendant accepts
(X) Remaining Count(s)/Allegation(s) dismissed/stricken () Court waives Work Furlough criteria
() Committed California Youth Authority () 1737 WIC
(X) Credit actual 120 4019(b) 60 State Institution Total 180 days

(X) Defendant does not have the financial ability to reimburse County of Ventura/pay for:
(X) Court appointed counsel () Probation costs () Pre-sentence Investigation
() Defendant does have financial ability to pay for: () Counsel \$ _____ at \$ _____ mo.
() Probation costs _____ /mo. () Investigation Report \$ _____ at \$ _____ no.
() 2% Collection Surcharge () Through Collections Services beginning _____

() Financial ability hearing () waived () set _____, 9 AM, Courtroom 35
(X) Advised re appeal (X) Advised re parole () Time waived
() Probation/Sentencing continued _____ at _____, Courtroom 35 () Ordered present
() Bench warrant, bail set \$ _____, issued () Ordered held () No action bail
() Bench warrant recalled/withdrawn () Bail () Forfeited () Reinstated () Exonerated
Company _____ Amount \$ _____

() Released () Probation/Bail/Own Recognizance (X) Remanded (X) without bail
() Committed Diagnostic Facility, 90 days, 1203.03 PC, to be automatically returned by
Sheriff upon notice by Director of Corrections
() Criminal proceedings suspended, civil proceedings instituted, trial _____ appointed

() 1289.1 PC () 3050/3051 WIC () Hearing set _____, 9 AM, Courtroom 35
() Ordered report to/make/keep appointment(s) () Doctor(s) () Probation Department
(X) Original/one copy of plea transcript ordered: Reporter Rud O'Grady Date 5-1-84
(X) Sheriff ordered to transport defendant to Department of Corrections, Chino, California

(X) Defendant's request for commitment to the California Rehabilitation Center is denied

RICHARD D. DEAN, County Clerk
(Rev. 4-84)

By: Louis O'Grady
Deputy County Clerk

CRIMINAL PROBATION/SENTENCE MINUTE ORDER

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 43167-0-II
v.)	
)	
CHARLES FARNSWORTH,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20TH DAY OF DECEMBER, 2016, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MICHELLE HYER, DPA	()	U.S. MAIL
[PCpatcecf@co.pierce.wa.us]	()	HAND DELIVERY
PIERCE COUNTY PROSECUTOR'S OFFICE	(X)	E-SERVICE VIA
930 TACOMA AVENUE S, ROOM 946		COA PORTAL
TACOMA, WA 98402-2171		

SIGNED IN SEATTLE, WASHINGTON THIS 20TH DAY OF DECEMBER, 2016.



X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

December 20, 2016 - 3:37 PM

Transmittal Letter

Document Uploaded: 6-431670-Supplemental Brief.pdf

Case Name: STATE V. CHARLES FARNSWORTH

Court of Appeals Case Number: 43167-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief: Supplemental

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

Petition for Review (PRV)

Other:

Comments:

CORRECTED BRIEF

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

PCpatcecf@co.pierce.wa.us