

**NO. 43525-0-II**

**COURT OF APPEALS OF THE STATE OF WASHINGTON,**

**DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**JEREMY PUTMAN BAKKE,**

**Appellant.**

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**BRIEF OF APPELLANT**

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## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

The trial court incorrectly calculated the defendant's offender score and thereby imposed a sentence in excess of the standard range without finding supporting aggravating facts.

### ***Issues Pertaining to Assignment of Error***

Does a trial court exceed its statutory authority when it miscalculates a defendant's offender score and thereby imposes a sentence in excess of the correct standard range without entry of facts sufficient to justify imposition of a sentence in excess of the standard range?

## STATEMENT OF THE CASE

By information filed January 6, 2011, the Clark County Prosecutor charged the defendant Jeremy Putnam Bakke with one count of Second Degree Burglary and one count of Third Degree Theft out of a single incident at a tire store in Vancouver. CP 1-2. The defendant subsequently pled guilty to an amended information charging one count of attempted second degree burglary. CP 33, 35-51. At sentencing on this matter, the state claimed that the defendant's offender score was 14½ points with a standard range of 38¼ to 51 months in prison. RP 12-42.<sup>1</sup> The defendant argued that his offender score was well below that claimed by the state. RP 15. The documentation the state filed with the court listed 14 prior felony convictions for the defendant and three misdemeanors. CP 59-60. Although the defendant disputed the dates reported on some and disputed whether or not they counted in his offender score, he did not dispute the fact of the convictions. RP 15.

The following lists each of these convictions along with the defendant's status as a juvenile or adult. CP 58-59; RP 12-42. This list also includes the points the state ascribed to the offenses and the points the defendant ascribed to the offenses. *Id.* For ease of reference, each offense

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<sup>1</sup>The record on appeal includes one volume of verbatim reports of the March 1, 2012, guilty plea hearing, and the June 4, 2012 sentencing hearing. It is referred to herein as "RP [page #]."

is given a sequential number. *Id.* The defendant committed all of these offenses in Washington except as noted. *Id.*

	Offense	J or Adult	Date Committed	Date Sentenced	Points (State)	Points (Def.)
1	Att. Indecent Liberties	J	1/5/90	2/22/90	.5	0
2	Burglary 2 (2 counts)	J	4/30/90	6/15/90	2	0
3	Residential Burglary	J	12/18/90	1/18/91	1	0
4	Possession of Stolen Property 2	J	1/11/91	1/18/91	.5	0
5	Second Degree Assault	J	8/27/93	10/26/93	1	1
6	Malicious Mischief 2	J	9/28/93	11/4/93	.5	0
7	Custodial Assault	A	3/23/95	6/15/95	1	0
8	Possession of Stolen Property 2	A	4/30/97	4/21/98	1	0
9	Possession of Stolen Property 2	A	7/7/97	4/21/98	1	0
10	Possession of Stolen Property 2	A	7/18/97	4/21/98	1	0
11	Attempted Burglary 2	A	2/23/98	5/27/98	2	2
12	Unauthorized Vehicle Use (Oregon)	A	1/21/01	3/9/01	1	0
13	Escape 3	A	1/17/01	4/2/01	n/a	n/a
14	Theft 2	A	7/8/01	11/6/01	1	0
15	Theft 3	A	12/17/06	8/21/07	n/a	n/a
16	Vehicle Prowling 2	A	12/17/06	8/21/07	n/a	n/a
17	Failure to Register	A	6/7/06 to 9/21/09	1/9/09	1	1
Total Points					14½	4

CP 58-59 (with the first, second and sixth columns added); RP 12-42.

The defendant's arguments on his calculation of his offender score were as follows. First, he argued that since he committed the first four

offenses prior to his fifteenth birthday that under prior RCW 9.94A.525, they were excluded from the offender score. RP 24-25. Second, the defendant argued that his 6/15/95 adult conviction for custodial assault had been vacated and should not have been included in his offender score. RP 24. Third, the defendant claimed that he had gone five consecutive years without a conviction after his 11/6/2001 conviction for second degree theft, thus washing out that conviction and all prior Class C felonies. RP 15-23. Fourth, the defendant argued that his one Oregon conviction for unauthorized use of a motor vehicle did not count because it was not a comparable offense. RP 23. Fifth, the defendant argued that he qualified for consideration for a prison-based DOSA sentence under RCW 9.94A.660.

In response to the defendant's arguments, the state argued as follows: (1) that juvenile offenses the defendant committed prior to his fifteenth birthday do count as part of his offender score, (2) that the defendant's 6/15/95 adult conviction for custodial assault had not been vacated and thus should be included in his offender score, (3) that a copy of the defendant's 1/9/09 Statement of Defendant on Plea of Guilty to Failure to Register showed that he had committed this offense before five years had ran following his release from his 11/6/2001 conviction for second degree theft, thus interfering with any wash out, (4) that the defendant's Oregon conviction for unauthorized use of a motor vehicle did count because it was

comparable to the Washington felony of Taking a Motor Vehicle without Permission, and (5) that since the defendant had a prior sex offense, he did not qualify for a DOSA sentence under RCW 9.94A.660. RP 12-30.

The trial court rejected all of the defendant's argument, calculated his offender score at "9+" points, determined his standard range as 38.25 to 51 months in prison, and ruled that the defendant did not qualify to ask for a DOSA sentence. RP 30-42. Based upon these rulings, the court imposed a sentence of 38.25 months in prison. CP72-85. The defendant thereafter filed timely notice of appeal. CP 86.

## ARGUMENT

### **THE TRIAL COURT INCORRECTLY CALCULATED THE DEFENDANT’S OFFENDER SCORE AND THEREBY IMPOSED A SENTENCE IN EXCESS OF THE STANDARD RANGE WITHOUT FINDING SUPPORTING AGGRAVATING FACTS.**

Generally, under RCW 9.94A.585(1), a party cannot appeal a sentence within the standard range. *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). This statute states:

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

RCW 9.94A.585(1).

The belief that a standard range sentence generally cannot be appealed “arises from the notion that, so long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence’s length.” *State v. Williams*, 149 Wn.2d at 146-47 (citing *State v. Ammons*, 105 Wn.2d 175, 183, 713 P.2d 719 (1986)).

However, this rule is not as absolute as the statute might make it sound. For example, under RAP 2.2(b)(6), a party may appeal a sentence under an argument that the trial court miscalculated the standard range, even if that miscalculation yielded a sentence that would have been in the range

the appellant claims is correct. *State v. Rodriguez*, 61 Wn.App. 812, 812 P.2d 868 (1991).

In the case at bar, the defendant argues that the trial court erred when it imposed a sentence within the range appropriate for a defendant with an offender score of nine or more points because the defendant's correct offender score is lower. The defense bases this conclusion on three separate arguments: (1) that the court erred when it included the 6/15/95 adult conviction for custodial assault without first resolving the defendant's factual claim that the conviction had been vacated, (2) that the court erred when it included a disputed foreign conviction in the defendant's offender score because the state failed to prove comparability, and (3) that the court erred when it added points for prior Class C felonies that had washed from the defendant's offender score. The following sets out these arguments.

***(1) The Trial Court Erred When it Included the 6/15/95 Adult Conviction for Custodial Assault Without First Resolving the Defendant's Factual Claim That the Conviction Had Been Vacated.***

At sentencing hearings, the State bears the burden of proving a defendant's prior convictions by a preponderance of the evidence. *State v. Hunley*, 161 Wn.App. 919, 925, 253 P.3d 448 (2011). As our state supreme court explained in *State v. Ford, infra*, the burden of proving that a defendant has a prior conviction is on the State "because it 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.” *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999) (quoting *In re Personal Restraint of Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988)). As with most other factual issues, the sentencing court may rely on a defendant’s stipulation or acknowledgment of prior convictions without further proof. *In re Personal Restraint of Cadwallader*, 155 Wn.2d 867, 873–74, 123 P.3d 456 (2005). However, absent a stipulation or acknowledgment, the state bears the affirmative duty of proving the existence of a defendant’s prior convictions and “the defendant’s silence is not constitutionally sufficient to meet this burden.” *State v. Hunley*, 161 Wn.App. at 928. Finally, a defendant convicted after trial “has no obligation to disclose any prior convictions.” *Cadwallader*, 155 Wn.2d at 875.

Under RCW 9.94A.640(3), vacated criminal convictions are not included when calculating a defendant’s offender score. This provision states:

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender’s criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender’s prior conviction in a later criminal prosecution.

RCW 9.94A.640(3).

In the case at bar, the defendant argued that his 1995 Lewis County conviction for third degree assault had been vacated and should not have been included in his offender score. In spite of the fact that the state did not produce an abstract of this file or any evidence to dispute this claim as was the state's burden. In addition, the trial court refused to consider the defendant's argument on this point. As a result, the trial court erred when it included this offense in the defendant's offender score.

***(2) The Trial Court Erred When it Included a Disputed Foreign Conviction in the Defendant's Offender Score Because the State Failed to Comparability.***

The inclusion of foreign convictions in a defendant's offender score is controlled by RCW 9.94A.525(3), which states:

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

RCW 9.94A.525(3) (formerly codified as RCW 9.94A.360(3)).

Washington case law interpreting this statute indicates that in determining the effect of a foreign conviction, the sentencing court must first compare the elements of the foreign conviction to elements of any

comparable Washington statute. *State v. Ford, supra*. If the elements are identical, then the analysis ends. *State v. Bush*, 102 Wn.2d 372, 9 P.3d 219 (2000). However, if the foreign statute defines the offense in broader terms, the sentencing court must then look to the actual conduct to determine the equivalent Washington offense. *State v. Morley*, 134 Wn.2d 588, 952 P.2d 167 (1998).

Evidence setting out the conduct that led to the foreign conviction can be found in supporting documents such as the Indictment, the Statement of Defendant on Plea of Guilty (if the defendant pled guilty), the Jury Instruction (if the defendant went to a jury trial), or the Judgment and sentence. Upon determining the conduct proven, the court should then determine what crime, if any, it would constitute under Washington law. *State v. Morley, supra*. The state had the burden of producing sufficient evidence to prove by a preponderance of the evidence that the actual conduct constituted a particular offense in Washington. *State v. Ford, supra*. The appellate courts conduct a de novo review of this determination by the trial court. *State v. McCraw*, 127 Wn.2d 281, 898 P.2d 838 (1995).

For example, in *State v. Cameron*, 80 Wn.App. 374, 909 P.2d 309 (1996), the defendant pled guilty to delivery of heroin. At sentencing, the defendant stipulated that he had a prior federal conviction for conspiracy to possess marijuana with intent to deliver. However, he argued that it had

washed because he subsequently spent more than five consecutive years in the community crime free. The state agreed with the defendant's factual assertion, but argued that the conviction counted toward the defendant's offender score because (1) a ten year wash out period applied, and (2) the defendant had not spent ten years crime free (which fact the defendant conceded). The trial court agreed with the state's analysis, counted the prior federal conviction as three points, and sentenced the defendant to 36 months on a range of 36 to 48 months. The defendant then appealed, arguing that the correct range was from 21 to 27 months in prison.

In its analysis, the Court of Appeals first noted that in determining the applicability of a foreign conviction under RCW 9.94A.360(3) (now RCW 9.94A.525(3)), the court was required to analyze the elements of the foreign offense and compare it to the comparable Washington crime. Upon doing this, the court held that the federal conviction had the same elements as conspiracy to possess marijuana with intent to deliver under RCW 69.50.401(a)(1)(ii), which is a class C felony with a maximum term of five years in prison.

The Court of Appeals then addressed the state's argument that the prior federal conviction was a second drug offense, and that under RCW 69.50.408, the maximum applicable term was doubled to ten years in prison. The Court of Appeals responded that it agreed with the state's legal analysis.

However, it disagreed with the state's factual analysis, finding that the record indicated that the prior federal conviction had not been treated as a subsequent offense. Thus, the court held that the trial court should have applied the five year period, thus washing out the federal conviction. As a result, the court reversed and remanded for resentencing.

In the case at bar, the state argued that the court should include the defendant's Oregon conviction for Unauthorized Use of a Motor Vehicle. Under ORS 164.135, the Oregon Legislature has defined this offense as follows:

(1) A person commits the crime of unauthorized use of a vehicle when:

(a) The person takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner;

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, the person intentionally uses or operates it, without consent of the owner, for the person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope of the operator's employment.

ORS 164.135.

The Washington Legislature has defined a somewhat similar offense in RCW 9A.56.070 and RCW 9A.56.075. The first of these two statutes states as follows:

(1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) Taking a motor vehicle without permission in the first degree is a class B felony.

RCW 9A.56.070.

The second of these two statutes, entitled Taking Motor a Vehicle Without Permission in the Second Degree, states as follows:

(1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony.

RCW 9A.56.075.

Even a cursory review of these two statutes reveals that they are not legally comparable because there are many ways to commit the Oregon offense without committing the Washington offense, particularly since the Washington offense only deals with a “motor vehicle,” while the Oregon statute can also be violated by taking a “boat or aircraft.” Thus, in the case at bar, the prior Oregon offense could only count in the defendant’s offender score if the state proved factual comparability. In this case the record appears to reveal that the state was going to make this argument, because the state did offer a copy of the defendant’s Oregon conviction for the court’s consideration. However, whether or not this document would have proven factual comparability is unknown, because the trial court refused to consider

it or take any argument on the issue. RP 25-26. Thus, the court erred when it included this offense in the defendant's offender score.

***(3) The Trial Court Erred When it Added Points for Prior Class C Felonies That Had Washed from the Defendant's Offender Score.***

Under RCW 9.94A.525(2)(c), prior Class C felonies "wash" from a defendant's offender score if that offender has spent five consecutive years in the community following release without committing a new offense. The statute states:

(2)(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

RCW 9.94A.525(2)(c).

In the case at bar, the defendant argued at sentencing that this provision applied to wash out his 11/6/01 conviction for second degree theft and all prior Class C felonies because he had spent five consecutive years in the community without "committing any crime that subsequently result[ed] in a conviction." The state responded to this argument by claiming that the defendant's 1/9/09 conviction for failure to register interrupted the wash out period because the defendant had committed the offense on 6/7/06. While the state's argument would be correct if their factual claim had been proven,

the record at the sentencing hearing indicated that the defendant had committed this single offense somewhere between 6/7/06 and 1/9/09. Since no proof was presented as to the actual date upon which the defendant committed this single, discrete offense, the evidence presented is insufficient to prove that the defendant's prior Class C felonies did not wash. As a result, the trial court erred when it included the defendant's prior Class C felonies committed in 2001 and earlier.

## CONCLUSION

The trial court erred when it miscalculated the defendant's offender score. As a result, this court should vacate the defendant's sentence and remand for a new sentencing hearing.

DATED this 22nd day of October, 2012.

Respectfully submitted,

A handwritten signature in black ink that reads "John A. Hays". The signature is written in a cursive style with a horizontal line underneath it.

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John A. Hays, No. 16654  
Attorney for Appellant

## APPENDIX

### RCW 9.94A.525(2)&(3)

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered “prior offenses within ten years” as defined in RCW 46.61.5055.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

**RCW 9.94A.640**  
**Vacation of Offender's Record of Conviction**

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504 (6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637; or (g) the offense was a class C felony described in RCW 46.61.502(6) or 46.61.504 (6).

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

**RCW 9A.56.070**

**Taking Motor Vehicle Without Permission in the First Degree**

(1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) Taking a motor vehicle without permission in the first degree is a class B felony.

**RCW 9A.56.075**

**Taking Motor Vehicle Without Permission in the Second Degree**

(1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony.

**ORS 164.135**  
**Unauthorized Use of Vehicle**

(1) A person commits the crime of unauthorized use of a vehicle when:

(a) The person takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner;

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, the person intentionally uses or operates it, without consent of the owner, for the person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope of the operator's employment.

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NO. 43525-0-II

AFFIRMATION OF  
OF SERVICE

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Donna Baker states the following under penalty of perjury under the laws of Washington State. On October 22<sup>ND</sup>, 2012, I personally placed the United States Mail and/or E-filed the following documents with postage paid to the indicated parties:

1. BRIEF OF APPELLANT

TONY GOLIK  
CLARK COUNTY PROS ATTY  
1200 FRANKLIN ST.  
P.O. BOX 5000  
VANCOUVER, WA 98666-5000

JEREMY BAKKE - #737768  
AIRWAY HGTS CORR CTR.  
P.O. BOX 2049  
AIRWAY HGTS, WA 99001

Dated this 22<sup>nd</sup> day of October, 2012, at Longview, Washington.

/s/

\_\_\_\_\_  
Donna Baker, Legal Assistant

# HAYS LAW OFFICE

**October 22, 2012 - 10:45 AM**

## Transmittal Letter

Document Uploaded: 435250-Appellant's Brief.pdf

Case Name: State vs Jeremy P. Bakke

Court of Appeals Case Number: 43525-0

**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: Appellant'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
- Petition for Review (PRV)
- Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Cathy E Russell - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:  
jennifer.casey@clark.wa.gov