

No. _____

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

IN RE PERSONAL RESTRAINT PETITION OF

JACOB IVAN SCHMITT,

PETITIONER.

**PERSONAL RESTRAINT PETITION
(CORRECTED)**

Jeffrey E. Ellis #17139
Attorney for Mr. Schmitt
Law Office of Alsept & Ellis
621 SW Morrison St., Ste 1025
Portland, OR 97205
JeffreyErwinEllis@gmail.com

A. IDENTITY AND STATUS OF PETITIONER

Jacob Schmitt (hereinafter “Schmitt”) was convicted of two counts of Theft 1 and one count of Burglary 2 and sentenced to three consecutive 10 year sentences in Pierce County (Case No. 13-1-04668-9).

Mr. Schmitt (DOC #711473) is currently incarcerated at the Monroe Correctional Center (TRU) in Monroe, Washington.

B. FACTS

Mr. Schmitt was arrested and originally charged with first-degree robbery. He had two prior convictions for most serious offenses—a Robbery 1 from 1993 and a Robbery 2 from 1996. In addition, Schmitt was convicted of federal bank robbery in 2013.

Schmitt was told by his attorney that he would “strike out” if convicted of a most serious offense. Schmitt asked his attorney if his federal bank robbery conviction could be used to prevent the five year “wash out” period for his second-degree robbery. Schmitt wanted to plead guilty and receive a standard range sentence. Schmitt’s attorney informed him that his second degree robbery did not wash out and that, if Schmitt pleaded guilty as charged, he would be sentenced as a persistent offender to life in prison. Eventually, the State made a plea offer: Schmitt could plead guilty to the present charges in exchange for an agreed exceptional sentence. The plea agreement was premised on the understanding that

Schmitt would “strike out” if convicted as charged. No hearing was set or conducted to determine what penalty Schmitt faced if convicted as charged. Based on his attorney’s assurance that Schmitt’s second-degree robbery did not wash out, Schmitt accepted the plea agreement. As Schmitt declares:

“Had my attorney informed me that I was, in fact, not facing a third strike or if he had sought and obtained an agreement with the prosecutor or ruling to that effect from a judge, I would not have accepted the current exceptional sentence plea deal.

Declaration of Jacob Schmitt, p. 2, ¶ 11.

When he was sentenced, Pierce County Superior Court Judge determined that Mr. Schmitt’s offender score was “6” on the theft convictions and “7” on the burglary. That calculation was based on the prior criminal history:

<u>Conviction</u>	<u>Date of Sentence</u>
Rob 1	7/30/93
Burg 1	8/24/93
Cust Asslt	8/24/93
Rob 2	10/7/96
Mal Misch 1	8/11/98
Bank Robbery (Fed)	5/4/01 (found not comparable and not included in offender score)

Not listed in the criminal history calculation were the dates that Schmitt was released from custody on each of the above-convictions:

<u>Conviction</u>	<u>Date of Release</u>	<u>Wash out Term</u>
Rob 1	6/21/96	NA
Burg 1	6/21/96	NA
Cust Asslt	6/9/94	5 yrs
Rob 2	12/18/98	10 yrs
Mal Misch 1	8/6/99	10 yrs
Bank Robbery (Fed)	4/23/13	

If, as Schmitt contends herein the federal bank robbery does not interrupt the washout period, Schmitt was last released from custody on a conviction on August 6, 1999. Thus, he spent 15 years and 4 months (washing out his Class B and C convictions) before the current crime.

A declaration from Schmitt is attached.

C. ARGUMENT

1. THE SENTENCING COURT ERRED WHEN IT INCLUDED THREE CRIMES THAT WASH OUT.
2. MR. SCHMITT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO CHALLENGE SCHMITT'S OFFENDER SCORE.

Introduction

This is a case is about the wash out rules. Mr. Schmitt's federal bank robbery conviction is unquestionably not comparable under Washington law. As a result that conviction cannot be classified as a "crime" under Washington law, and does not interrupt the wash out period for Schmitt's other convictions.

Schmitt's argument is simple. RCW 9.94A.525(2) provides that a prior felony conviction "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 [five years for Class C] consecutive

years in the community *without committing any crime that subsequently results in a conviction.*” (emphasis added).

Mr. Schmitt’s Federal Bank Robbery is Not Comparable to a Washington Crime.

It is beyond dispute that Mr. Schmitt’s federal bank robbery is not comparable and cannot be included in Schmitt’s offender score. This is exactly what Schmitt’s sentencing judge concluded. See *Judgment and Sentence*, p. 2. This result is compelled by *In re Lavery*, 154 Wash.2d 249, 111 P.3d 837 (2005).

Mr. Schmitt’s Federal Bank Robbery Does Not Stop the Wash Out Period.

The next question is whether a non-comparable conviction interrupts the wash-out period. The wash out rules require the commission of a “crime that subsequently results in a conviction.” RCW 9.94A.525(2).

The question then is whether a federal conviction that is not comparable to a Washington crime is still a “crime” as defined in the SRA.

The language of the statute clearly answers that question with a “no.” RCW 9A.04.040(1) defines “crime” as an “offense defined by *this title* or by any other statute *of this state*, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.” (emphasis supplied). RCW 9.94A.030(9) defines “conviction” as “an adjudication of guilt

pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.” (emphasis added).

It follows that because Mr. Schmitt’s federal bank robbery was prosecuted in federal court, he was not adjudicated guilty pursuant to Title 10 or 13 RCW. But see *State v. Morley*, 134 Wash.2d 588, 952 P.2d 167 (1998) (holding that the statute does not mean what it says because otherwise out of state convictions would not count and there would be a disparity).¹ As a result, this Court should apply the plain language of the statute and conclude that Schmitt’s conviction in federal court does not count as a “crime” because it did not subsequently result in a conviction pursuant to Title 10 or 13 of the Washington criminal code.

If this Court rejects that argument, there is a second reason why Schmitt’s federal bank robbery does not interrupt the wash out period. Mr. Schmitt was not convicted of an offense defined by “this title,” because the foreign crime is not comparable to a Washington crime.

There are two types of crimes in Washington: felony and misdemeanor. Schmitt asserts that a conviction for a non-comparable crime is neither. *State v. McCorkle*, 137 Wn.2d 490, 496, 973 P.2d 461 (1999) (partially superceded by statute on other grounds) (noting that whether a prior out-of-state conviction “washes out” cannot be determined

¹ Strictly read, *Morley* applies only to inclusion in criminal history, but does not reach the wash out rules. The disparity that was raised in *Morley* is not as pronounced when it comes to wash out interruption.

without first classifying the conviction as a class A, B, or C felony under Washington law). The earlier Court of Appeals decision in *McCorkle*, further established that a non-comparable conviction does not count as a “conviction” under the wash out rules:

Classification of the 1980 Ohio conviction/1982 parole for unauthorized use of a motor vehicle is especially critical. Unless on remand the State can establish at least a class C felony classification for this Ohio offense, the 1976 Georgia burglary conviction cannot be included in McCorkle's offender score if release from confinement for that burglary predates McCorkle's next conviction (1986 Washington burglary): by more than five years, if the Georgia burglary is comparable to a class C Washington felony; or 10 years, if comparable to a class B Washington felony. RCW 9.94A.360(2). The same would hold true for the 1975 Oregon larceny and 1969 and 1971 North Carolina escape convictions.

State v. McCorkle, 88 Wn.App. 485, 498, 945 P.2d 736 (1997).

In other words, it is important to classify the conviction. Schmitt acknowledges that the SRA provides that if a crime is subject to exclusive federal jurisdiction or if the sentencing court is unable to find a “clearly comparable offense” for a federal felony, “the offense shall be scored as a class C felony equivalent.” RCW 9.94A.525(3). Bank robbery is not an exclusive federal crime. A crime is not exclusively federal merely because it occurs in a federal jurisdiction, such as a bank. Rather, the nature of the crime, not its location, determines whether a crime is exclusively federal and governed by RCW 9.94A.360(3). See *State v. Villegas*, 72 Wash.App. 34, 863 P.2d 560 (1993), *review denied*, 124 Wash.2d 1002, 877 P.2d 1287 (1994) (reentry of a deported alien is an exclusively federal crime).

The question that follows is whether a conviction in federal court that is not comparable to a Washington offense can nevertheless be counted as a conviction under the wash out rules.

The goal of the wash out rules is to ensure that defendants with prior convictions are treated similarly, regardless of where the prior convictions occurred. *State v. Morley*, 134 Wash.2d 588, 602, 952 P.2d 167 (1998). Including a prior out-of-state conviction in an offender score is permissible only *if* the State proves that the conviction would be a felony under Washington law. *State v. Ford*, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). In determining the comparability of crimes, courts must first compare their elements. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). Where the elements are not substantially similar, the sentencing court may look at the defendant's conduct to determine whether it would have violated a comparable Washington statute. *Lavery*, 154 Wn.2d at 255. When a foreign statute is not legally comparable, sentencing courts may only engage in limited fact-finding to determine comparability under these circumstances because “[w]here a foreign statute is broader than Washington's, that examination may not be possible because there may have been no incentive for the accused to have attempted to prove that he did not commit the narrower offense.” *Id.* at 257 (citing *State v. Ortega*, 120 Wn.App. 165, 84 P.3d 935 (2004)).

In *Lavery*, the Supreme Court held that the crimes of federal bank robbery and second degree robbery in Washington are not legally comparable because federal bank robbery is a general intent crime and second degree robbery in Washington requires specific intent to steal. 154 Wn.2d at 255; see *State v. Kjorsvik*, 117 Wn.2d 93, 98, 812 P.2d 86 (1991) (intent to steal is essential nonstatutory element of robbery).

Including non-comparable federal convictions would result in the sentencing disparities that *Morley* sought to avoid when it construed the statute broadly in order to prevent disparate outcomes. If this Court concludes that a non-comparable federal conviction interrupts the wash out period, a defendant who was convicted in federal court would face more onerous sentencing consequences than an individual convicted in another jurisdiction.

This Court should apply the doctrine of constitutional avoidance with regard to the inclusion of non-comparable, non-exclusive federal offenses and hold that they do not interrupt the wash out period. *State v. Chester*, 133 Wash.2d 15, 940 P.2d 1374 (1997) (a statute will be construed so as to avoid constitutional problems, if possible). Of course, the simplest way to avoid the constitutional problem is to construe the statutory definition of “conviction” according to its plain language as requiring a conviction pursuant to titles 10 or 13 of the Washington Revised Code. Mr. Schmitt’s conviction in federal court fails to fit into either category.

Therefore, it is not a “conviction” and does not interrupt Ms. Schmitt’s washout period. As a result, Mr. Schmitt’s convictions all wash out except for his first degree burglary and robbery convictions. In addition, Mr. Schmitt never faced persistent offender status if convicted as charged.

3. MR. SCHMITT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL MISCALCULATED MR. SCHMITT’S OFFENDER SCORE RESULTING IN MR. SCHMITT’S INVOLUNTARY GUILTY PLEA.
4. MR. SCHMITT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE MISADVISED SCHMITT THAT, IF CONVICTED, SCHMITT FACED A PERSISTENT OFFENDER SENTENCE.
5. MR. SCHMITT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; DUE PROCESS AND A STATE-CREATED LIBERTY INTEREST WHEN COUNSEL FAILED TO REQUEST AND THE TRIAL COURT FAILED TO DETERMINE WHETHER SCHMITT’S PRIOR ROBBERY 2 CONVICTION WASHED OUT PRIOR TO ACCEPTING A PLEA AGREEMENT THAT WAS PREMISED ON THE MUTUAL UNDERSTANDING THAT SCHMITT WOULD BE SENTENCED AS A PERSISTENT OFFENDER IF CONVICTED OF A MOST SERIOUS OFFENSE.

Mr. Schmitt’s guilty plea was premised on the belief that a current conviction for a most serious offense would result in a persistent offender life sentence. If that premise was mistaken, as Schmitt now claims, then his plea was involuntary and his offender score agreement was based on a mistake of law.

Despite the fact that the plea agreement required Schmitt to agree to much more time in prison than he ordinarily would have faced, neither his

attorney nor the trial court requested or made any determination of whether Schmitt was acting on an accurate or inaccurate understanding of the law.

If Schmitt is correct that his second degree robbery conviction washes out and he has only one strike, it follows that his plea was involuntary; that his current sentence is unlawful; and that counsel was ineffective. *See State v. Sandoval*, 171 Wash.2d 163, 249 P.3d 1015 (2011).

Mr. Schmitt also establishes prejudice both because he would not have entered a guilty plea and because he would have received a lesser sentence.

There was an obvious solution to this dilemma. Counsel could have requested and the Court could have heard a motion to determine Schmitt's criminal history. Where so much was at stake, conducting a short hearing to determine that material fact prior makes good sense and is demanded by due process (*Hicks v. Oklahoma*, 447 U.S. 373 (1980))—and avoids the prospect of having to raise the issue for the first time in a PRP, as Schmitt has been forced to do.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should grant the PRP and order appropriate relief.

DATED this 16th day of July, 2015

Respectfully Submitted:

/s/Jeffrey E. Ellis

Jeffrey E. Ellis #17139

Attorney for Mr. Schmitt

Law Office of Alsept & Ellis

621 SW Morrison St., Ste 1025

Portland, OR 97205

JeffreyErwinEllis@gmail.com



13-1-04668-9 43278098 STDFG 09-15-14



Superior Court of Washington For Pierce County	
<u>State of Washington</u>	Plaintiff
vs.	
<u>JACOB IVAN SCHMITT</u>	Defendant

No. 13-1-04668-9

Statement of Defendant on Plea of Guilty to Non-Sex Offense (STDFG)

1. My true name is: Jacob Ivan Schmitt
2. My age is: 40 DOB 2/1/74
3. The last level of education I completed was 5th + GED + some college + voc. ed. credits.
4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: CURTIS HUFF

(b) I am charged with the crime(s) of: Theft in the First Degree-two counts, Burglary in the Second Degree as set out in the Amended Information, dated, 9/3/2014, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

The elements of this crime these crimes are as set out in the Amended Information, dated 9/3/2014 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

 Additional counts are addressed in Attachment "B"

0049
0049
9/15/2014

0050
2969
9/15/2014

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1 <input checked="" type="checkbox"/>	7	22-29 months		0	10yrs/\$20,000
2 <input checked="" type="checkbox"/>	7	22-29 months		0	10yrs/\$20,000
3 <input checked="" type="checkbox"/>	8	43-57 months		0	10yrs/\$20,000

Sec stip on prior record and offender score. Def maintains he should be scored a "6" for counts I + II and a "7" for Count III.

* The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I

waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

0052
6762
7152014

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

(g) **The prosecuting attorney will make the following recommendation to the judge:**

Agreed recommendation Count I,II, III: Stipulated Exceptional Sentence Upward of 120 months each count consecutive to each other for a total of 360 months i/c. NCOs w Victims, \$500 CVPA, \$200 filing fee, \$500 DAC, \$100 DNA/Test, Restitution LOC,

No comm. Custody.

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if

0053
2949
9/15/2014

the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.**
- (j) **I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.**
- (k) I acknowledge that my right to vote has been lost due to a felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote will be provisionally restored if, after release from confinement by the Department of Corrections and any community custody, I reregister. That provisional right may be revoked if I fail to pay legal financial obligations as required. My right to vote may be permanently restored by one of the following for each felony conviction: 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 29A.84.660.
- (l) **Government assistance may be suspended during any period of confinement.**
- (m) **I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.**

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.

- (n) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

- ___ (o) **The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.**
- ___ (p) **The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.**
- ___ (q) **If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.**
- ___ (r) **If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.**
- ___ (s) **If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.**
- ___ (t) **The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.**

If the judge imposes the prison-based alternative, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the residential chemical dependency treatment-based alternative, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter

0055
3463
9/15/2014

and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

- (u) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or **amphetamine**, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).
- (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a **motor vehicle in the commission of this felony**.
- (y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- (z) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the**

influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional; fee of \$20 per month.

- ___ (aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.
- ___ (bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.
- ___ (cc) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- ___ (dd) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- ___ (ee) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- ___ (ff) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- ___ (gg) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second-degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.

- (hh) I may be required to register as a felony firearm offender under RCW 9.41.330 and RCW 9.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.
- (ii) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- (jj) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

7. I plead guilty to count(s) I, II, III as charged in the Amended Information, dated 9/3/2014. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that make me guilty of this crime. This is my statement:

On 12/3/13 in Pierce County, WA, I unlawfully and feloniously took property from the person of S. Davenport, with intent to deprive her of the property. I also unlawfully and feloniously took property from the persons of K. De Forrest and A. Gaine with the intent to deprive them of the property. On 12/3/13 I unlawfully and feloniously with intent to commit a crime against a person or property therein entered a bank building located at 2419 224th St E, Spanaway WA.

James S. Schmidt

J.S. ^{In addition to} ~~Instead of~~ making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" and/or "Felony Firearm Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

James S. Schmidt
Defendant

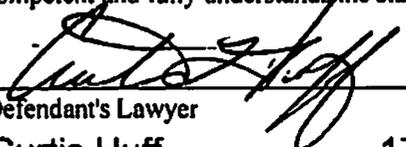
I have read and discussed this statement with the

80058
9/15/2014 2949

defendant. I believe that the defendant is competent and fully understands the statement.



Prosecuting Attorney
Lori A. Kooiman **30370**
Print Name WSBA No.



Defendant's Lawyer
Curtis Huff **17785**
Print Name WSBA No.

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

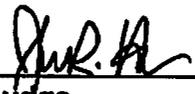
Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter Print Name

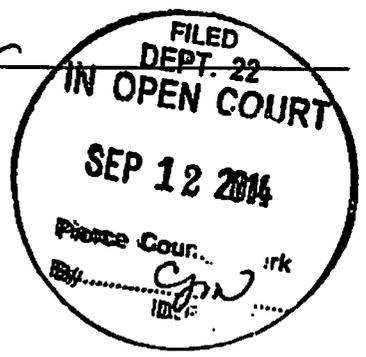
I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 9/12/14



Judge

JOHN R. HICKMAN





13-1-04668-9 43278095 STPATTY 09-15-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04668-9

vs.

JACOB IVAN SCHMITT,

Defendant.

PROSECUTOR'S STATEMENT
REGARDING AMENDED
INFORMATION

The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.431 for the following reasons: The defendant is stipulating to an exceptional sentence upward for three class B felonies of the statutory maximum of 120 months and to be served consecutively to each other for a total of 360 months in custody. The defendant provided a mitigation packet to the State, which was reviewed by the administration of the office and following discussions with defense, agreed to the stipulated exceptional sentence. As outlined in the agreement the exceptional sentence will result in protecting the public, exhibit a frugal use of resources and impose a 30 year sentence for the criminal offense. Furthermore,

ORIGINAL

0047

2949

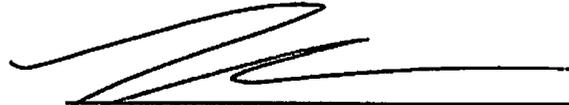
9/15/2014

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the defendant will have five more years to serve for his prior federal sentence, which will be served following this sentence.

x ___ The victim has been notified of the Amended Information.

9/12/14
Date


Lori A. Kooiman
Deputy Prosecuting Attorney
WSB # 30370

9/15/2014 2:49 PM



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 13-1-04668-9

vs.

JACOB IVAN SCHMITT

Defendant.

JUDGMENT AND SENTENCE (JS)

- Prison
- RCW 9.94A.712/9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: WA 16441828
DOB: 2/1/1974

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 9/12/14 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	THEFT 1 (JB1)	9A.56.020(1)(a) 9A.56.030(1)(b)	NONE	12/3/2013	PCSD 133370652
II	THEFT 1 (JB1)	9A.56.020(1)(a) 9A.56.030(1)(b)	NONE	12/3/2013	PCSD 133370652
III	BURG 2 (G4)	9A.52.030(1)	NONE	12/3/13	PCSD 133370652

* (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 AMENDED Information

14-9-09012-0

0064
7900
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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	ROBBERY 1	7/30/93	SPOKANE, WA	2/24/83	A	V
2	BURG 1	8/24/93	SPOKANE, WA		A	V
3	CUST ASSLT	8/24/93	SPOKANE, WA	8/19/93	A	NV
4	ROB 2	10/7/96	SPOKANE, WA	10/7/96	A	V
5	MAL MISCH 1	8/11/98	MASON, WA	9/9/97	A	NV
6	ARMED BANK ROB	5/4/1	KING, WA	8/30/99	A	NV

K.C. Determined not comparable or included in prior convictions - offender score.

2.3 SENTENCING DATA:

COUNTY NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7 + 6	II	22-29 MONTHS 17-22	NONE	22-29 MONTHS 17-22	10 YRS/ \$20,000
II	7 + 6	II	22-29 MONTHS 17-22	NONE	22-29 MONTHS 17-22	10 YRS/ \$20,000
III	8 + 7	III	43-57 33-43 Months	NONE	43-57 33-43 months	10 YRS/ \$20,000

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

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) I, II, III.

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 further and is consistent with the interests of justice and the purposes of the sentencing reform act.

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

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

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

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

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

9/15/2014 11:29:49 AM

- 2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A1.010.
- The court considered the following factors:
- the defendant's criminal history.
 - whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
 - evidence of the defendant's propensity for violence that would likely endanger persons.
 - other: _____
- The court decided the defendant should should not register as a felony firearm offender.

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

- RTWRJN** \$ LDC 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** \$ 500 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: _____

\$ 1,300 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

[] 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).

[X] 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 \$ per Clerk per month commencing per 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 [X] **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 _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).
A 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.

10067

9/15/2014 11:29:49

9/15/2014 11:29:49

9/15/2014 11:29:49

9/15/2014 11:29:49

9/15/2014 11:29:49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) 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) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's 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 court orders that during the period of supervision the defendant shall:

[] consume no alcohol.

[] have no contact with: _____

[] remain [] within [] outside of a specified geographical boundary, to wit: _____

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[] participate in the following crime-related treatment or counseling services: _____

[] undergo an evaluation for treatment for [] domestic violence [] substance abuse

[] mental health [] anger management and fully comply with all recommended treatment.

[] comply with the following crime-related prohibitions: _____

[] Other conditions: _____

[] For sentences imposed under RCW 9.94A.702, 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.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

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: _____

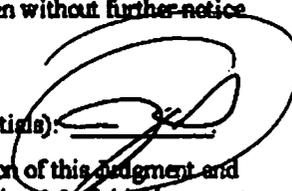
V. NOTICES AND SIGNATURES

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 Court _____ 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: Comply with DNA crown, NCO under
part of LFO's

DONE in Open Court and in the presence of the defendant this date: 9/12/14

JUDGE

Print name

[Signature]
John B. Hickman

Deputy Prosecuting Attorney

Print name:

Lexi Kasman

WSB #

20370

Attorney for Defendant

Print name:

Luella L. Huff

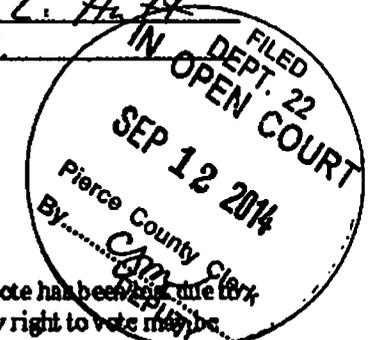
WSB #

17785

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: X

[Signature]

* Although I do not agree with the State's calculation of the offense score and asserts he is a 6 on CT I & II, 7 on Court III
Changing his sentence range to CT I & II 17-22 and CT III 23-43
I stipulates to ~~the~~ exceptional sentence upwards of 120 months on each Court to be served consecutive to each other for 360 months 1/2.
CT I & II was offense score of 6 CT I & II, and 7 CT III

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



13-1-04668-9 43278098 STPPR 09-15-14

FILED
DEPT. 22
IN OPEN COURT

SEP 12 2014

Pierce County Clerk
By *Cjm*
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04668-9

vs.

JACOB IVAN SCHMITT,

STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge THEFT THE FIRST DEGREE; THEFT THE FIRST DEGREE; BURGLARY IN THE SECOND DEGREE, the defendant JACOB IVAN SCHMITT, hereby stipulates that the following prior convictions are HIS complete criminal history, are correct and that HE is the person named in the convictions. The defendant further stipulates that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Age Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
I	THEFT 1		PIERCE, WA	12/3/13	A	NV	B	I:NA II:I III:II	FELONY
II	THEFT 1		PIERCE, WA	12/3/13	A	NV	B	I:I II:NA III:II	FELONY
III	BURG 2		PIERCE	12/3/13	A	NV	B	I:I II:I III:NA	FELONY

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)
 None Known or Claimed, or:

PRIOR CONVICTIONS (if any)
 None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Age Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
ROBBERY 1	7/30/93	SPOKANE, WA	2/24/83	A	V	A	1	FELONY
BURG 1	8/24/93	SPOKANE, WA		A	V	B	1	FELONY
CUST ASSELT	8/24/93	SPOKANE, WA	8/19/93	A	NV	C	1	FELONY
ROB 2	10/7/96	SPOKANE, WA	10/7/96	A	V	B	1	FELONY
MAL MISCH 1	8/11/98	MASON, WA	9/9/97	A	NV	B	1	FELONY
ARMED BANK ROB	3/4/1	KING, WA	8/30/99	A	NV	C	1	FELONY

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct.

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	II	22-29 MONTHS	NONE	22-29 MONTHS	10 YRS/ \$20,000
II	7	II	22-29 MONTHS	NONE	22-29 MONTHS	10 YRS/ \$20,000
III	8	III	43-57	NONE	43-57	10 YRS/ \$20,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

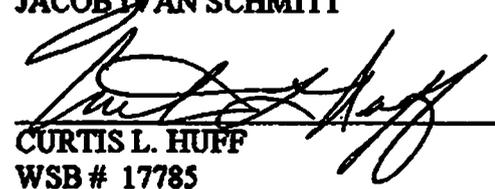
- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;

1
2
3 4) That none of the above criminal history convictions have "washed out" under
4 RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated. If sentenced within the
5 standard range, the defendant further waives any right to appeal or seek redress via any collateral
6 attack based upon the above stated criminal history and/or offender score calculation.

7
8 Stipulated to this on the 12 day of Sept, 2014.

9
10 
11 LORI KOOIMAN
12 Deputy Prosecuting Attorney
13 WSB # 30370

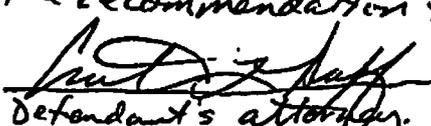
14
15 
16 JACOB IVAN SCHMITT

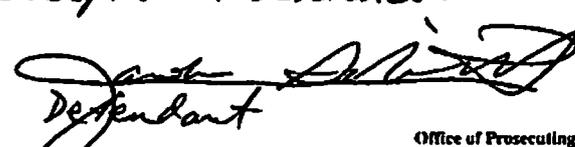
17
18 
19 CURTIS L. HUFF
20 WSB # 17785

21 cmh

22
23 *(*) In computing the defendant's offender score and standard
24 range, the state relies on RCW 9.94A.525(3) to count defendant's
25 federal bank robbery conviction as 1 point toward offender score
26 (Class C felony equivalent since not comparable). Defendant
27 contends his offender score should not include the federal
28 bank robbery conviction and he should be a "6" for counts
I and II (standard range of 17-22 months), and a "7"
for Count III (standard range 33-43 months) based on
State v. Lavery, 154 Wash.2d 279, 111 P.3d 837 (2005) and
State v. Thomas, 135 Wash.App. 474, 480-81, 144 P.3d
1178 (Div. I 2006) (citing Lavery).*

*Although the defendant does not agree with the state's
calculation of offender score, the defendant voluntarily,
knowingly and intelligently enters into this plea, including
the recommendation for an exceptional sentence.*

29
30 
31 Defendant's attorney.


Defendant

0061
9/15/2014 11:29:49



13-1-04668-9 43278114 FNFL 09-15-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04668-9

vs.

JACOB IVAN SCHMITT,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE

Defendant.

THIS MATTER having come on before the Honorable John Hickman, Judge of the above entitled court, for sentencing on two counts of theft in the first degree and one count of burglary in the second degree, the defendant, JACOB IVAN SCHMITT, having been present and represented by his attorney, CURTIS HUFF, and the State being represented by Deputy Prosecuting Attorney LORI A. KOOIMAN, and the court having considered all argument from both parties and having considered all written reports presented, and deeming itself fully advised in the premises, does hereby make the following Findings of Fact and Conclusions of Law beyond a reasonable doubt.

0001
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FINDINGS OF FACT**I.**

The defendant pled guilty on 9-12-14 to two counts of theft in the first degree naming different victims (counts I&II), and one count of burglary in the second degree (count III). The standard range for counts I& II with an offender score of seven is 22-29 months and the standard range for count III with an offender score of 8 is 43-57 months.

II.

That the factors set forth by the Prosecuting Attorney in the State's sentencing recommendation are applicable and warrant an exceptional sentence upward.

III.

The Defendant stipulates to an exceptional sentence above the standard range as part of a plea bargain as allowed by State v. Hilyard, 63 Wn. App. 413 (1991) and In re Breedlove, 138 Wash. 2d 298, 979 P.2d 417 (1999). The defendant was originally charged with one count of robbery in the first degree and one count of attempting to elude a pursuing police vehicle. The defendant has two prior Washington convictions for most serious offenses. It is clear a conviction for robbery in the first degree would be his third most serious and, following conviction, he would receive a mandatory life sentence under RCW 9.94A.570.

IV.

There are no evidentiary issues in proving the original charge beyond a reasonable doubt, the defendant confessed repeatedly and was identified by witnesses.

V.

The defendant prepared a mitigation packet outlining and documenting the defendant's social history including an abusive childhood, institution records starting from four years of age through 10 years of age. The mitigation packet also includes documentation of his mental health records, in which evaluations began at five years of age, and his criminal records, starting at 13 years of age. In addition, the mitigation packet outlined more recent events in the defendant's history regarding positive employment training.

VI.

The defendant is fully advised by his attorney of the strengths and weaknesses of his case. Rather than risk his third strike conviction following a trial and face life in prison without the possibility of parole, he ~~has asked for~~ ^{an exceptional sentence upward} and agreed to a stipulated exceptional sentence upward of 120 months per count to be served consecutive to each other for a total of 360 months in custody.

VII.

That JACOB IVAN SCHMITT understands and acknowledges that he has the right to a jury determination of mitigating or aggravating circumstances and waives any right to appeal this exceptional sentence under Blakely v. Washington, 124 S.Ct. 2531, 159 L. Ed. 2d 403, 2004, or any other authority.

CONCLUSIONS OF LAW

I.

That an exceptional sentence above the standard range is permitted as part of a plea bargain under State v. Hilyard, 63 Wn. App. 413 (1991) and In re Breedlove, 138 Wash. 2d 298,

1
2
3 **DECLARATION OF JACOB SCHMITT**

4 I, Jacob Schmitt, declare:

5 1. I am the Petitioner in this case.

6 2. I was arrested on December 3, 2013, and later charged with robbery in
7 the first degree and attempt to elude. I had, previous to this arrest, been
8 convicted of Robbery 1 and Burglary 1, which together were my first "strike",
9 Robbery 2, my second "strike", and a federal bank robbery.

10 3. My court appointed trial counsel was Curtis L. Huff from the Pierce
11 County Department of Assigned Counsel (DAC).

12 4. Mr. Huff informed me that my federal bank robbery conviction was not
13 comparable to a most serious offense or strike.

14 5. After reading the Lavery decision on comparability, I contacted my
15 attorney and asked him if he agreed with my opinion that my 1996 second-degree
16 robbery washed out of my offender score, which meant that I was not facing
17 a potential third strike. I had not been served with a persistent offender
18 notice, which I understood was the practice in Pierce County.

19 6. My attorney told me that my second-degree robbery did not wash out,
20 and that I was in fact facing a third strike, and subject to being sentenced
21 to life without the possibility of release, if convicted as charged. I
22 told him that I disagreed and wanted to plead guilty as charged with a
23 standard range sentencing recommendation.

24 7. When I told my attorney that I intended to plead guilty as charged,
25 he told me that if I did so I would "strike out" because my second-degree
26 robbery would count as my second "strike". My attorney persisted in this
27 belief, even after the trial judge ruled that my federal bank robbery was
28 not comparable to a Washington offense and did not count in my offender score.

8. Eventually, the State made a plea offer to reduced (non-strike) offenses.
My attorney strongly urged me to accept the plea offer because, according
to him, I would "strike out" and serve a life sentence if convicted of a
most serious offense. The plea offer, which included an exceptional sentence
recommendation, was premised on the belief that I would have been found to
be a persistent offender, if convicted of a current most serious offense.

9. Prior to my entry of plea and imposition of sentence, the trial judge
made the determination that the federal bank robbery was not a prior
conviction and was to be excluded when calculating my offender score. I then
stopped the plea proceedings, twice prior to entry of plea, to ask that my
attorney raise the wash out issue. He refused.

27 DECLARATION OF
28 JACOB SCHMITT
PAGE 1

Jacob Ivan Schmitt, #711473
Monroe Correctional Complex - TRU
16774 - 170th Dr. SE/P.O. Box 888
Monroe, WA 98272

1 10. After I was sentenced, I told my attorney that I wanted to appeal the
2 wash out issue. He told me that it was not an issue for appeal, and instead
3 could only be raised in a PRP.

4 11. Had my attorney informed me that I was, in fact, not facing a third
5 strike or if he had sought and obtained an agreement with the prosecutor
6 or ruling to that effect from a judge, I would not have accepted the current
7 exceptional sentence plea deal.

8 12. Instead, I would have pleaded guilty to a standard range sentence.

9 I declare under the penalty of perjury that the foregoing is true and correct.

10 DATED this 2nd day of June, 2015, in the city of Monroe, Snohomish County,
11 Washington.

12 
13 JACOB SCHMITT

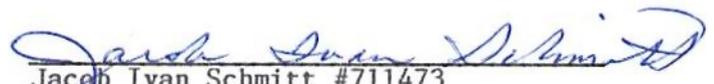
DECLARATION OF JACOB SCHMITT

I, Jacob Ivan Schmitt declare:

1. I am the petitioner in this case.
2. I was released from the Washington State Department of Corrections on June 21, 1996, having completed the following cause numbers:
93-1-00259-0, Spokane County Superior Court, Robbery 1° (Class A)
93-1-00890-3 Spokane County Superior Court, Burglary 1° (Class A)
93-1-01411-3 Spokane County Superior Court, Custodial Assault (Class C)
3. I was again released from the Washington State Department of Corrections on August 6, 1999, having completed the following cause numbers:
96-1-01558-1 Spokane County Superior Court, Robbery 2° (Class B)
98-1-00074-1 Mason County Superior Court, Malicious Mischief 1° (Class B)
4. I was arrested on August 30, 1999, by federal law enforcement and was released confinement on April 23, 2013, having completed the following cause number:
CR99-546-P Bank Robbery (Unclassified/non-comparable)

I declare under the penalty of perjury that the foregoing is true and correct.

DATED this 25th day of June, 2015, in Monroe, Washington.


Jacob Ivan Schmitt #711473
Monroe Correctional Complex - TRU
16774 - 170th. Dr. SE/P.O. Box 888
Monroe, WA 98272

VERIFICATION OF PETITION

I, Jacob Schmitt, verify that the attached petition is true and correct and filed on my behalf.

Monroe and Anokomis County,
Date and Place *Washington*

Jacob Schmitt
Jacob Schmitt

ALSEPT & ELLIS LAW OFFICE

July 16, 2015 - 8:20 AM

Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20150716.pdf

Case Name: In re PRP of Jacob Schmitt

Court of Appeals Case Number:

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: _____
- 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:

Errata[--Non Valid Argument--]corrected PRP

Sender Name: Jeffrey Ellis - Email: jeffreyerwinellis@gmail.com

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

pcpatccf@co.pierce.wa.us