

NO. 47796-3-II

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

In re the Personal Restraint Petition Of:

ARTHUR DOVE,

Petitioner.

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

The Honorable John R. Hickman, Judge

BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION

KEVIN A. MARCH
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ISSUES IN SUPPORT OF PERSONAL RESTRAINT PETITION

1a. Current case law provides that trial courts will not consider motions for remission of legal financial obligations (LFOs) until and unless the State begins enforcing the obligation. Does this time-of-enforcement rule make a remission motion an unavailable remedy?

1b. The remission statute, RCW 10.01.160(4), does not define “manifest hardship” or provide any guidance as to its meaning. Even if a remission motion were an available remedy, because there is no standard or procedure to determine whether LFOs impose manifest hardship, is a remission motion nonetheless an inadequate remedy?

2a. The trial court imposed LFOs without inquiring into Arthur Lewis Dove’s ability to pay, taking account of his financial resources, or considering the financial burden in violation of a mandatory statute, RCW 10.01.160(3). The imposition of LFOs in the judgment and sentence therefore exceeded the trial court’s authority. Was the judgment and sentence invalid on its face, thereby overcoming the one-year time bar on collateral attack?

2b. Was the Washington Supreme Court’s March 12, 2015 decision in State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), a significant change in the law under RCW 10.73.100(6), thereby overcoming the one-year time bar on collateral attack?

3. Does the imposition of LFOs without the required statutory inquiries constitute a fundamental defect resulting in a complete miscarriage of justice in light of the serious harms caused by LFOs, which the Blazina court identified and properly sought to remedy?

B. STATEMENT OF THE CASE

The State charged Dove with second degree child rape. Appendix¹ (App.) 1, 3. Dove qualified for a public defender due to his indigency. App. 2.

Dove pleaded guilty. App. 4-15. As part of the plea agreement, Dove agreed to the prosecutor's recommendation of a 102-month minimum, indeterminate sentence. App. 8. The sentencing recommendation also included a \$500 victim penalty assessment, \$500 for court-appointed counsel, \$100 for DNA collection, and \$200 for the court filing fee. App. 8; 1RP² 8. Restitution in the amount of \$201.78 was also agreed. App. 8; 1RP 9. During the plea colloquy, the trial court asked Dove if he understood he would be "required to give a DNA sample with a mandatory fee of \$100" and also stated, "If the Court finds that this is a crime of domestic violence, you'd be required to pay an assessment of \$100;" Dove said he understood.

¹ This brief attaches one appendix, which contains consecutive pagination in marker in the lower right corner of each of the appendix's pages.

² This brief refers to the verbatim reports of proceedings as follows: 1RP—February 7, 2014; 2RP—March 21, 2014.

1RP 10-11. No further discussion of any of the LFOs or Dove's ability to pay them occurred during the plea colloquy.

As part of the State's presentence investigation, Dove indicated that his only personal property consisted of a small boat encumbered by a child support enforcement lien. App. 20. Dove owed significant amounts in back child support, believing that he owed approximately \$13,000 for just one of his children. App. 20. He also had a hospital bill from just prior to his arrest. App. 20. Dove had not been employed since 2009 and had made ends meet by working under-the-table jobs for \$100 to \$200 per week. App. 20-21.

The trial court followed the LFO recommendation, imposing a total of \$1,401.78 in LFOs consisting of \$201.78 in restitution, the \$500 victim penalty assessment, the \$100 DNA fee, \$500 for appointed counsel, and a \$200 filing fee. App. 30. The trial court did not consider Dove's ability to pay any of the LFOs it imposed or consider Dove's financial circumstances whatsoever. See 2RP 3-17 (LFOs not mentioned during sentencing hearing). Nevertheless, Dove's judgment and sentence contained boilerplate reading,

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.

App. 29. Dove did not appeal.

More than a year later, on July 15, 2015, Dove filed a personal restraint petition based on “LFOs post Blazina.” App. 41-47. He alleged the trial court failed to make individualized inquiry into his ability to pay and instead relied on boilerplate language. App. 42. Dove also asserted he was indigent, the imposed LFOs caused manifest hardship, and that he was below 125 percent of the federal poverty guideline. App. 42. Dove stated he was not employed, had no income from any source, and lacked any assets. App. 45-46. He therefore requested that this court vacate his LFOs and remand for resentencing or that this court simply strike LFOs without resentencing. App. 46.

On October 26, 2015, this court appointed Nielsen, Broman & Koch, referred Dove’s petition to a panel of judges, and established a briefing schedule. App. 48-50. This court specifically asked counsel to address: “(1) Whether a motion to remit costs under RCW 10.01.160(4) is an available, adequate remedy such that this court is precluded from granting relief by a personal restraint petition, RAP 16.4(d), and (2) whether any exceptions to the time-bar, RCW 10.73.090, apply.” App. 48.

C. ARGUMENT

1. AN RCW 10.01.160(4) PETITION TO REMIT COSTS IS NEITHER AN AVAILABLE REMEDY NOR AN ADEQUATE REMEDY

RAP 16.4(d) provides that this court “will only grant relief by personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 or .100.” This court has asked “[w]hether a motion to remit costs under RCW 10.01.160(4) is an available, adequate remedy such that this court is precluded from granting relief by a personal restraint petition[?]” App. 48. The answer is no.

RCW 10.01.160(4) provides, in its entirety,

A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant’s immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.^{3]}

Despite the clear statutory language permitting a remission motion “at any time,” in practice, trial and appellate courts have refused to consider such motions unless and until the State attempts to collect or enforce collection of LFOs. Moreover, the statute provides no guidance to the trial

³ RCW 10.01.170, inapposite here, permits the trial court to specify a time period or installments for the payment of outstanding LFOs.

court on how to satisfy itself whether outstanding LFOs cause manifest hardship. For these reasons, RCW 10.01.160(4)'s LFO remission procedure is not a remedy that is available or adequate. Dove therefore asks this court to grant his personal restraint petition and the relief it requests.

- a. A remission motion is not an available remedy under current case law because the State has not attempted to enforce collection of LFOs from Dove

Under current case law, until the State attempts to collect LFOs from Dove, no court will consider any motion for remission. In the meantime, interest at the well-above-market annual rate of 12 percent will compound on outstanding LFOs. Dove currently has no available avenue for relief outside a personal restraint petition.

Numerous cases exemplify Washington's general time-of-enforcement rule. Recently, this court in State v. Lundy, 176 Wn. App. 96, 108, 308 P.3d 755 (2013), stated "we note that generally challenges to *orders* establishing legal financial sentencing conditions that do not limit a defendant's liberty are not ripe for review until the State attempts to curtail a defendant's liberty by enforcing them." Because "nothing in the record reflect[ed] that the State has attempted to collect legal financial obligations from Lundy or even when Lundy is expected to begin repayment of these obligations" "any challenge to the order requiring payment of legal financial obligations on hardship grounds is not yet ripe for review." Id. at 109; see

also State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997) (“[T]he relevant time [to inquire into ability to pay] is the point of collection and when sanctions are sought for nonpayment.”).

Division One has applied the time-of-enforcement rule in the remissions context, holding that the denial of a remission motion is not appealable. State v. Smits, 152 Wn. App. 514, 523-24, 216 P.3d 1097 (2009). This is so because the ability-to-pay or manifest hardship “determination is clearly somewhat ‘speculative,’ [so] the time to examine a defendant’s ability to pay is when the government seeks to collect the obligation.” Id. In addition, the Smits court held that Smits could not appeal the denial of his remission motion because he was not aggrieved under RAP 3.1. Quoting this court’s decision in State v. Malone, 98 Wn. App. 342, 347-48, 989 P.2d 583 (1999), the Smits court held Smits could not seek review “until the State seeks to enforce payment and contemporaneously determines his ability to pay.” Smits, 152 Wn. App. at 525. Smits and Malone foreclose any remedy to Dove through the remission procedure until the State actually attempts to enforce collection of the LFOs listed in the judgment and sentence. Because, to date, the State has not enforced LFO collection from Dove, the remissions process provides no remedy.

Moreover, even if the State were to begin enforcing LFO collection while Dove is incarcerated, Division Three has held that such enforcement

requires no determination of his ability to pay. In State v. Crook, 146 Wn. App. 24, 26, 189 P.3d 811 (2008), the defendant moved for remission when the Department of Corrections began “deducting a portion of his inmate wages to contribute to his legal financial obligations. The superior court denied Mr. Crook’s motions without a facts hearing.” The Crook court recited the time-of-enforcement rule: “Inquiry into the defendant’s ability to pay is appropriate only when the State enforces collection under the judgment or imposes sanctions for nonpayment” Id. at 27 (citing Blank, Mahone, and State v. Curry, 62 Wn. App. 676, 681, 814 P.2d 1252 (1991), aff’d, 118 Wn.2d 911, 829 P.2d 166 (1992)). The Crook court determined mandatory DOC deductions from inmate wages to pay LFO were not collection actions requiring an ability-to-pay inquiry because “[s]tatutory guidelines set forth specific formulas allowing for fluctuating amounts to be withheld, based on designated percentages and inmate account balances, assuring inmate accounts are not reduced below indigency levels.”⁴ Id. at 27-28 (citing RCW 72.11.020, RCW 72.09.111(1), and RCW 72.09.015(10)). Thus, under Crook, even if the State were collecting LFO

⁴ Crook’s assurance that “inmate accounts are not reduced below indigency levels” rings completely hollow given the “indigency level” established under chapter 72.09 RCW means “an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made” RCW 72.09.015(15). Moreover, it is difficult to conceive that DOC’s statutory deduction formulas somehow exempt DOC’s LFO collections from qualifying as “collection actions by the State requiring inquiry into a defendant’s financial status.” Crook, 146 Wn. App. at 28.

payments from Dove through the DOC procedure, the RCW 10.01.160(4) remissions process would be useless.

To be sure, the Washington Supreme Court recently undermined the time-of-enforcement rule. In Blazina, “[t]he State argue[d] that the issue [wa]s not ripe for review because the proper time to challenge the imposition of an LFO arises when the State seeks to collect.” Blazina, 182 Wn.2d at 832 n.1. The Blazina court disagreed. Id. Its disagreement was based on several harms caused by LFOs, including the accrual of compounding interest: “LFOs accrue interest at a rate of 12 percent and may also accumulate collection fees when they are not paid on time.” Id. at 836 (citing RCW 10.82.090(1); Travis Sterns, Legal Financial Obligations: Fulfilling the Promise of *Gideon* by Reducing the Burden, 11 SEATTLE J. SOC. JUST. 963, 967 (2013)). The enormous interest that accrues serves to prolong courts’ “jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs.” Id. at 836-37. This, in turn, can have “serious negative consequences on employment, on housing, and on finances. LFO debt also impacts credit ratings, making it more difficult to find secure housing. All of these reentry difficulties increase the chances of recidivism.” Id. at 837 (citations omitted).

While Blazina might undermine the time-of-enforcement rule, it did not expressly overrule the cases that rely on it. Smits, Lundy, Mahone, Blank, and Crook, however faulty and unjust their reasoning, remain good law given that Washington Supreme Court does not generally overrule precedent sub silentio.⁵ State v. Studd, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999). Because the State has not begun collecting or attempting to collect LFOs from Dove, the remissions process is not available to him. This court should accordingly consider the merits of his personal restraint petition.

- b. A remission motion is not an adequate remedy because there is no standard or procedure to discern when and whether outstanding LFOs impose manifest hardship

Even if the remissions process were available to Dove, this “process” fails to provide an adequate remedy. Assuming a trial court were actually to consider whether “it appears to [its] satisfaction . . . that payment of the amount due will impose manifest hardship on the defendant or the defendant’s immediate family,” RCW 10.01.160(4), there is no standard governing what manifest hardship means. The standard is elusive and amorphous—nowhere in Washington statutes is there a definition of “manifest hardship.” Nor does any case interpreting or applying RCW 10.01.160(4) say what “manifest hardship” means.

⁵ This court recently granted a motion for discretionary review to examine the adequacy of the superior court remissions process in State v. Shirts, No. 47740-8-II.

In this manner, RCW 10.01.160(4) is impermissibly vague. The void for vagueness doctrine invokes fundamental due process rights and applies to all legal actions. Small Co. v. Am. Sugar Ref. Co., 267 U.S. 233, 239, 45 S. Ct. 295, 69 L. Ed. 589 (1925). The doctrine requires that statutes provide explicit standards to avoid “resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). Where a statute affords discretion to a judge, the discretion must be suitably directed so that the decisions are neither arbitrary nor influenced by the personal views of the judge. See Gregg v. Georgia, 428 U.S. 153, 188-89, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) (in the context of capital punishment, holding that “where discretion is afforded a sentencing body . . . that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action”). Stated differently, the void for vagueness doctrine renders a statute unconstitutional when the statute is “so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to its application.” State v. Wright, 88 Wn. App. 683, 689, 946 P.2d 792 (1997).

RCW 10.01.160(4)’s “manifest hardship” language suffers from this infirmity. It provides no guidance for determining whether outstanding LFOs cause manifest hardship. Nothing in the statute differentiates manifest

hardship from non-manifest hardship or from no hardship at all. This lack of any discernible standard to guide the trial court's discretion renders the application of RCW 10.01.160(4) completely arbitrary, capricious, and therefore unconstitutionally vague.

Because RCW 10.01.160(4)'s remission process gives no guidance on how a manifest hardship determination should be made, it fails to provide an adequate remedy to Dove. Because the RCW 10.01.160(4) remissions process is neither adequate nor available, RAP 16.4(d) does not preclude this court's consideration of Dove's personal restraint petition on the merits.

2. DOVE'S PERSONAL RESTRAINT PETITION IS NOT TIME BARRED

RCW 10.73.090(1) provides, "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the sentence is valid on its face and was rendered by a court of competent jurisdiction." (Emphasis added.) A judgment becomes final on the latest date of any of the following three events: (1) the date the judgment is filed with the trial court clerk; (2) the date an appellate court issues its mandate; and (3) the date the United States Supreme Court denies a timely petition for certiorari. RCW 10.73.090(3).

Petitioners may also overcome the one-year time limit under any of the six exceptions enumerated in RCW 10.73.100. Relevant here is RCW 10.73.100(6), which provides,

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

Dove overcomes the one-year time limit on collateral attack for two reasons. First, the trial court made no inquiry into Dove's ability to pay as required by statute before imposing LFOs in a judgment and sentence. Because the trial court exceeded its statutory authority, Dove's judgment and sentence is invalid on its face. Second, the Washington Supreme Court's recent watershed decision in Blazina is a significant change in the law under RCW 10.73.100(6). Therefore, the one-year time bar does not apply.

- a. The judgment and sentence imposing LFOs without any consideration of ability to pay exceeded the trial court's sentencing authority thereby rendering the judgment and sentence invalid on its face

Under RCW 10.73.090(1), a judgment and sentence is invalid on its face "where a court has in fact exceeded its statutory authority in entering the judgment or sentence." In re Pers. Restraint of Coats, 173 Wn.2d 123, 135.

267 P.3d 324 (2011); see also id. at 164 (Stephens, J., concurring) (“The touchstone of an invalid judgment and sentence is the trial court exceeding its authority.”). To determine whether the judgment and sentence is invalid “on its face,” review is not limited “to the four corners of the judgment and sentence.” Id. at 138. “But [courts] have only considered documents that reveal some fact that shows the judgment and sentence is invalid on its face because of legal error.” Id. at 138-39.

Here, the trial court exceeded its authority when it imposed discretionary LFOs without inquiring into Dove’s ability to pay. “The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” RCW 10.01.160(3) (emphasis added). “In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” Id. The trial court plainly violated this mandatory statute: it ordered Dove to pay LFOs without determining whether he could pay them and without taking account of his financial resources or the burden the LFOs would impose. See Blazina, 182 Wn.2d at 838 (holding RCW 10.01.160 is a mandatory statute given the legislature’s use of the word “shall”). By imposing costs on Dove, the trial court exceeded its statutory authority.

The existence of boilerplate findings in the judgment and sentence does not show the trial court acted within its authority. See App. 29 (boilerplate findings that the court has considered ability to pay and financial resources and that Dove has the ability or likely future ability to pay LFOs). The “imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay.” Blazina, 182 Wn.2d at 838. Moreover, “[w]ithin this inquiry, the court must also consider important factors . . . such as incarceration and a defendant’s other debts, including restitution, when determining a defendant’s ability to pay.” Id.

The record here does not reflect any inquiry into Dove’s financial circumstances at all. This court should consider the verbatim reports of proceedings consisting of the plea colloquy and sentencing because they “reveal some fact that shows the judgment and sentence is invalid on its face because of legal error.” Coats, 173 Wn.2d at 138-39. Aside from the prosecutor reciting the LFOs recommended during the plea colloquy and the trial court asking Dove if he understood he would have to pay mandatory victim assessments and DNA collection fees, the record is silent as to Dove’s current and future ability to pay any additional LFOs. 1RP 7-8, 10-11.

Indeed, when the trial court sentenced Dove, it did not even hint at making the required inquiry regarding his financial circumstances. 2RP 3-17. The trial court, by failing to make the mandatory ability-to-pay inquiry, exceeded its authority under the statute.

Nor did Dove's agreement to the prosecutor's LFO recommendation relieve the trial court of its duty under RCW 10.01.160(3) to consider Dove's financial circumstances before imposing LFOs. See App. 8 (statement on plea of guilty agreeing "prosecuting attorney will make the following recommendation to the judge"). As the plea statement indicated, "The judge does not have to follow anyone's recommendation as to sentence." App. 8 (boldface omitted). Under RCW 10.01.160(3), a mandatory statute, the trial court may not blindly follow an agreed recommendation to impose LFOs without making the individualized ability-to-pay inquiry. And a defendant cannot agree to a sentence exceeding the trial court's sentencing authority. See, e.g., State v. Barber, 170 Wn.2d 854, 870-71, 248 P.3d 494 (2011); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 871, 50 P.3d 618 (2002); In re Pers. Restraint of Moore, 116 Wn.2d 30, 38, 803 P.2d 300 (1991); In re Pers. Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980); In re Pers. Restraint of Carle, 93 Wn.2d 31, 33-34, 604 P.2d 1293 (1980). By imposing LFOs without making the required inquiry into Dove's financial

circumstances, the trial court exceeded its authority. Dove's judgment and sentence is facially invalid. RCW 10.73.090(1)'s time bar does not apply.

Division Three recently reached a contrary conclusion in In re Pers. Restraint of Flippo, ___ Wn. App. ___, ___ P.3d ___, 2015 WL 7568652, at *4 (Wash. Ct. App. Nov. 24, 2015). It concluded the sentencing court—which did not consider Flippo's ability to pay at sentencing yet imposed discretionary LFOs—did not exceed its statutory authority, reasoning, "The LFOs imposed upon Mr. Flippo were all authorized by statute." Id. This untenable holding ignores the statutory language and the conditional authority it provides. RCW 10.01.160(3) expressly disallows a trial court to order LFOs unless the defendant can pay them: "The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them." (Emphasis added.) In Flippo's case, as here, the trial court exceeded its statutory authority because it ordered costs without making the required statutory ability-to-pay determination. When a court does not consider a defendant's financial circumstances, it plainly lacks authority under RCW 10.01.160(3) to impose costs. LFOs were "authorized by statute" *only if* the trial court made an ability-to-pay determination. Here, the trial court did not do so. Flippo is therefore incorrect. Because the trial court exceeded its sentencing authority, Dove's judgment and sentence is facially invalid and Dove overcomes the one-year time limit on collateral attack.

- b. The Washington Supreme Court's *Blazina* decision represents a significant change in the law under RCW 10.73.100(6)

Dove also overcomes the time bar because Blazina, a watershed decision in Washington law, qualifies as a significant change in the law. RCW 10.73.100(6) provides that RCW 10.73.090's one-year time limit does not apply when

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

Dove meets this criterion, especially in light of the Washington Supreme Court's recent elucidation of it in In re Pers. Restraint of Tsai, 183 Wn.2d 91, 351 P.3d 138 (2015).

The Tsai court stressed the distinction between a "significant change in the law" for RCW 10.73.100(6) purposes and a "new" rule under the retroactivity analysis in Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). Tsai, 183 Wn.2d at 103-05. The Tsai court explained, "A significant change in state law occurs 'where an intervening opinion has effectively overturned a prior appellate decision that was originally determinative of a material issue.'" Id. at 104 (quoting In re Pers. Restraint

of Greening, 141 Wn.2d 687, 691, 9 P.3d 206 (2000)). This differed from a new rule under Teague, which “breaks new ground or imposes a new obligation on the States or the Federal Government. To put it differently, a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.” Teague, 489 U.S. at 301 (citations omitted).

At issue in Tsai was the retroactive application of Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), on collateral review. The Tsai court determined that Padilla did not announce a new rule under Washington law, but was a significant change in the law under RCW 10.73.100(6). Tsai, 183 Wn.2d at 105. Padilla was a significant change in the law because, contrary to Padilla’s holding, “Washington appellate cases issued before Padilla apparently foreclosed any possibility that the unreasonable, prejudicial failure to provide the advice required by RCW 10.40.200 could ever be ineffective assistance of counsel.”⁶ Tsai, 183 Wn.2d at 105. Because Padilla was not a new rule but instead a significant

⁶ RCW 10.40.200 requires advisement of immigration consequences before accepting a guilty plea.

change in the law, the Padilla rule applied retroactively to matters on collateral review. Tsai, 183 Wn.2d at 103.⁷

Like Padilla, Blazina did not announce a new rule. It nonetheless constitutes a significant change in the law. As discussed above, although no Washington court has explicitly yet held, Blazina may have overturned or abrogated decisions relying on the time-of-enforcement rule. See Blazina, 182 Wn.2d at 832 n.1 (rejecting application of time-of-enforcement rule). Blazina also altered the standard trial court practice of imposing LFOs without the required ability-to-pay inquiry and eschewed the commonplace reliance on ability-to-pay boilerplate in judgments and sentences. Under Tsai's analysis, Blazina constituted a significant change in the law.

In addition, prior to Blazina, defense counsel were not regularly objecting to the imposition of LFOs without ability-to-pay determinations. See State v. Blazina, 174 Wn. App. 906, 911, 301 P.3d 492 (2013) (declining to consider LFO claim on appeal because there was no objection at sentencing). Also, as this case itself demonstrates, most trial courts issued judgments and sentences with boilerplate findings stating they considered indigent defendants' ability to pay when, in actuality, they failed to take "account of the financial resources of the defendant and the nature of the

⁷ Under Teague, *new* constitutional rules of criminal procedure typically apply only to matters on direct review. See Tsai, 183 Wn.2d at 100 (citing Whorton v. Bockting, 549 U.S. 406, 416, 127 S. Ct. 1173, 167 L. Ed. 2d 1 (2007)).

burden that payment of costs will impose,” as RCW 10.01.160(3) requires. Compare Blazina, 182 Wn.2d at 838 (noting that boilerplate findings do not satisfy the RCW 10.01.160(3) requirements) with App. 29 (boilerplate ability-to-pay finding). Moreover, Blazina explicitly held that “the record must reflect” the ability-to-pay inquiry. Id. at 837-38. Thus, Blazina’s interpretation of RCW 10.01.160(3) altered the procedures of Washington’s trial courts. It clarified that boilerplate findings were unacceptable and that trial courts must, on the record, make an inquiry into ability to pay. Blazina was a significant change in Washington law.

In Flippo, without addressing Tsai, Division Three rejected the proposition that Blazina qualified as a significant change in the law. Division Three reasoned that Blazina “only confirm[ed], and [did] not alter, what has always been required of the sentencing court under RCW 10.01.160(3)[.]” Flippo, 2015 WL 7568652, at *2. There is some merit to Division Three’s conclusion that Blazina merely confirmed the *substantive* requirements of RCW 10.01.160(3). However, Division Three erred in failing to acknowledge that Blazina explicitly altered the superior court *procedure* in fulfilling the substance of the RCW 10.01.160(3) determination. Blazina explicitly defined the required procedure (on-the-record ability-to-pay determinations) and contrasted this procedure with the typical but erroneous judgment-and-sentence boilerplate procedure that most

superior courts were employing. RCW 10.73.100(6) allows significant changes in the law, “whether substantive or procedural,” to overcome the time limit on collateral attack. (Emphasis added.) This court should therefore reject Flippo’s incomplete analysis.

Moreover, Blazina acknowledged that Washington’s LFO systems were “broken,” and proposed a new standard in assessing ability to pay: “Courts should also look to the comment in court rule GR 34 for guidance.” Blazina, 182 Wn.2d at 838. “[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person’s ability to pay LFOs.” Id. at 839. Thus, Blazina adopted GR 34 as a substantive and procedural mechanism to ensure trial courts were complying with RCW 10.01.160(3). This also is a significant change in the law under RCW 10.73.100(6).

Blazina’s change in the law was material to the LFOs imposed on Dove as part of his criminal sentence. RCW 10.73.100(6) (requiring significant changes in the law to be “material to the conviction, sentence, or other order entered in a criminal or civil proceeding”). This court cannot say that the trial court would have imposed LFOs against Dove had it followed RCW 10.01.160(3)’s command, as laid out in Blazina, and considered his ability to pay. The trial court’s failure to comply with RCW 10.01.160(3)’s

strictures makes the significant change in the law identified in Blazina material to Dove's sentence.

Because Blazina is a significant change in the law, rather than a new constitutional rule of criminal procedure under Teague, "it applies retroactively to matters on collateral review under Teague." Tsai, 183 Wn.2d at 103. Indeed, Blazina merely clarified what RCW 10.01.160(3) has always meant and required.

[I]t is a fundamental rule of statutory construction that once a statute has been construed by the highest court of the state, that construction operates as if it were originally written into it. In other words, there is no "retroactive" effect of a court's construction of a statute; rather, once the court has determined the meaning, *that is what the statute has meant since its enactment*.

In re Pers. Restraint of Vandervlugt, 120 Wn.2d 427, 436, 842 P.2d 950 (1992) (alterations in original) (internal quotation marks omitted) (quoting Moore, 116 Wn.2d at 37 (quoting State v. Darden, 99 Wn.2d 675, 679, 663 P.2d 1352 (1983) (quoting Johnson v. Morris, 87 Wn.2d 922, 927-28, 557 P.2d 1299 (1976))))). Blazina's interpretation of RCW 10.01.160's requirements relates back to RCW 10.01.160's enactment, so Dove "is entitled to have that holding applied in his case." Vandervlugt, 120 Wn.2d at 436. Dove overcomes the one-year time bar on collateral attack under RCW 10.73.100(6).

3. THE IMPOSITION OF LFOs WITHOUT THE REQUISITE ABILITY-TO-PAY DETERMINATION CONSTITUTES A FUNDAMENTAL DEFECT RESULTING IN A COMPLETE MISCARRIAGE OF JUSTICE

A personal restraint petitioner must demonstrate prejudice that entitles him to relief. Where, as here, the error is not constitutional, “the petitioner must prove a fundamental defect resulting in a complete miscarriage of justice.” In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 607, 316 P.3d 1007 (2014).

As discussed, the trial court violated RCW 10.01.160(3) when it imposed discretionary LFOs without inquiring into Dove’s financial circumstances. Thus, the LFO portion of Dove’s sentence is unlawful. “The imposition of an unlawful sentence is a fundamental defect.” In re Pers. Restraint of Wheeler, 188 Wn. App. 613, 617, 354 P.3d 950 (2015) (citing In re Pers. Restraint of Carrier, 173 Wn.2d 791, 818, 272 P.3d 209 (2012)).

The fundamental defect of imposing LFOs without an ability-to-pay determination results in a gross miscarriage of justice. Blazina recognized the multiple and significant harms LFOs impose on indigent defendants. The primary harm is the compounding accrual of interest at an annual rate of 12 percent. Blazina, 182 Wn.2d at 836. “[O]n average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed.” Id.; see

also Alexes Harris, et al., Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States, 115 AM. J. SOC. 1753, 1776-77 (2010) (explaining “those who make regular payments of \$50 a month toward a typical legal debt will remain in arrears 30 years later”). “The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs.” Blazina, 182 Wn.2d at 836-37.

The court’s long-term involvement in defendants’ lives inhibits reentry: legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs. This active record can have serious negative consequences on employment, on housing, and on finances. LFO debt also impacts credit ratings, making it more difficult to find secure housing. All of these reentry difficulties increase the chances of recidivism.

Id. at 837 (citations omitted). In addition, by requiring an ability to pay, trial courts “must also consider important factors . . . such as incarceration and a defendant’s other debts, including restitution, when determining a defendant’s ability to pay.” Id. at 838.

Here, Dove demonstrates he was prejudiced by the trial court’s failure to consider his ability to pay LFOs. Dove was indigent and qualified for appointed counsel in the superior court. App. 2. This court has determined he still qualifies for appointed counsel. See App. 48. Dove has a

ninth grade education. App. 4. Dove was last employed in the spring of 2009 and has since “supported himself by doing odd jobs working under the table for his neighbor and turning in scrap metal,” and also “helped log, clean up properties, and sell wood.” App. 20. This work provided \$100 to \$200 per week. App. 20. Prior to sentencing, his only personal property consisted of a “small, ‘crappy’ boat,” which was encumbered by a loan. App. 20. Dove has no checking or savings account. App. 20, 45. Dove owes child support for two of his children, and was in arrears more than \$13,000 at the time of sentencing. App. 20. He was ordered to pay more than \$200 in restitution. App. 30. Despite Dove’s other debt and clearly limited financial resources, the trial court nonetheless imposed discretionary LFOs in the amount of \$700.⁸

While \$700 might not sound like a significant amount, it will accrue interest at a 12-percent rate, compounding while Dove is incarcerated. Indeed, if Dove only serves his 102-month minimum sentence, he will owe

⁸ In Lundy, this court determined the criminal filing fee of \$200 was a mandatory LFO, noting “the legislature has directed expressly that a defendant’s ability to pay should not be taken into account.” 176 Wn. App. at 102. The court cited RCW 36.48.020(2)(h) to support its contention that the “\$200 criminal filing fee is required . . . irrespective of the defendant’s ability to pay.” Id. at 103. But RCW 36.48.020(2)(h) states that adult criminal defendants “shall be liable for a fee of two hundred dollars” upon plea of guilty, and, although it also states that the superior court clerks “shall collect” the fee, it does not say that trial courts must impose it or that it cannot be waived by a judge. In practice, many trial courts waive this filing fee in indigent cases. Dove therefore contends the \$200 filing fee is a discretionary LFO, not a mandatory one, and treats it as such.

\$1,837.17, more than two-and-a-half times the \$700 initially imposed. Dove's restitution and mandatory LFOs will have accrued interest as well, making the \$1,837.17 especially burdensome and making Dove's reentry into society more difficult. This is the precise problem with Washington's "broken" LFO system that the Blazina court identified and sought to remedy. See Blazina, 182 Wn.2d at 836-37 (discussing the cascading effect of LFOs with a 12-percent interest rate and examining detrimental impact to rehabilitation and reentry into society stemming from ordering costs that cannot be paid).

Washington's LFO system punishes the poor for their poverty. By unlawfully imposing LFOs without any consideration of Dove's ability to pay, the LFO order is a fundamental defect that results in a complete miscarriage of justice. Dove therefore requests that the discretionary LFOs in his judgment and sentence be stricken or that this matter be remanded for resentencing.

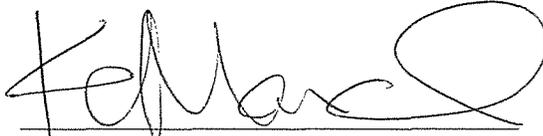
D. CONCLUSION

Dove has no available or adequate remedy outside this personal restraint petition to obtain relief from his LFOs. Dove's personal restraint petition is not time barred and Dove has demonstrated the LFOs prejudice him. This court should accordingly grant Dove's petition.

DATED this 14th day of January, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read 'Kevin A. March', written over a horizontal line.

KEVIN A. MARCH

WSBA No. 45397

Office ID No. 91051

Attorneys for Petitioner

APPENDIX

October 28 2013 12:31 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04138-5

vs.

ARTHUR LEWIS DOVE,

INFORMATION

Defendant.

DOB: 3/23/1972
PCN#: 541085092

SEX : MALE
SID#: 27370069

RACE: WHITE
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ARTHUR LEWIS DOVE of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That ARTHUR LEWIS DOVE, in the State of Washington, during the period between the 1st day of September, 2013 and the 24th day of October, 2013, did unlawfully and feloniously, being at least 36 months older than T.P., engage in sexual intercourse with T.P., who is at least 12 years old but less than 14 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.076, and the crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(i), the offense resulted in the pregnancy of a child victim of rape, and against the peace and dignity of the State of Washington.

DATED this 28th day of October, 2013.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

hd

By: /s/ HEATHER DEMAINE
HEATHER DEMAINE
Deputy Prosecuting Attorney
WSB#: 28216

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

October 29 2013 10:19 AM

KEVIN STOCK
COUNTY CLERK

Next Proceeding: 12/16/13 08:30 AM JURY TRIAL
Prosecutor: JARED AUSSERER

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

THE STATE OF WASHINGTON,

Plaintiff,

vs.

ARTHUR LEWIS DOVE

Defendant.

NO. 13-1-04138-5

NOTICE OF APPEARANCE

TO: Clerk of the Superior Court
AND TO: Pierce County Prosecuting Attorney

PLEASE TAKE NOTICE that the above-named defendant appears in the above-entitled action by and through his/her assigned counsel of record:

JANE C. PIERSON
WSBA #23085
DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET ST STE 334
TACOMA, WA 98402
Phone: 798-3982

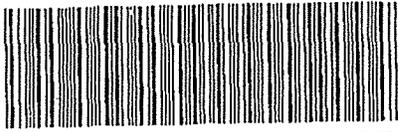
Service of all further pleadings, notices, documents or other papers herein should be served upon said defendant by serving said attorney at the above address.

DATED: 29 day of October, 2013

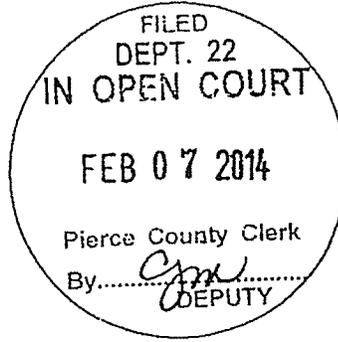


Michael R Kawamura, WSBA # 17202
Director of Assigned Counsel
949 Market Street, Ste 334
Tacoma, Washington 98402

2/10/2014 172 0323



13-1-04138-5 42002439 AMINF 02-07-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04138-5

vs.

ARTHUR LEWIS DOVE,

AMENDED INFORMATION

Defendant.

DOB: 3/23/1972
PCN#: 541085092

SEX : MALE
SID#: 27370069

RACE: WHITE
DOL#: UNKNOWN

COUNT I

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DATED this 31st day of January, 2014.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

aw

By:

ANGELICA WILLIAMS
Deputy Prosecuting Attorney
WSB#: 36673

AMENDED INFORMATION- 1

ORIGINAL

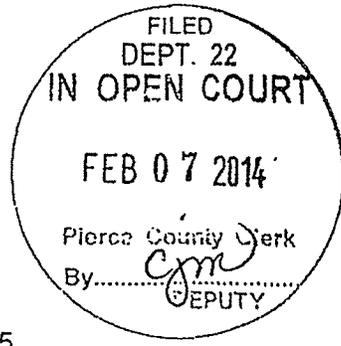
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930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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13-1-04138-5 42002442 STTDFG 02-07-14

ORIGINAL



**Superior Court of Washington
For Pierce County**

No. 13-1-04138-5

State of Washington

Plaintiff

vs.

**Statement of Defendant on Plea of
Guilty to Sex Offense
(STTDFG)**

Arthur Lewis Dove

Defendant

1. My true name is: Arthur Lewis Dove.
2. My age is: 41; d.o.b. 3-23-72.
3. The last level of education I completed was 9th Grade.
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Jane Pierson.
 - (b) I am charged with the crime(s) of: Rape of a Child in the Second Degree as set out in the Original Information, dated, Oct. 28, 2013, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. ALD
(Defendant's initials)

The elements of [X] this crime [] these crimes are as set out in the Original Information, dated Oct. 28, 2013, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. ALD
(Defendant's initials)
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;

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- (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 pre-trial motions such as time for trial challenges and suppression issues.

Handwritten signature/initials.

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*	TOTAL ACTUAL CONFINEMENT (standard range including enhancement)	COMMUNITY CUSTODY (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	0	78-102 months, Indeterminate	none	78-102 months, Indeterminate	LIFETIME	LIFE \$50,000
X						
X						

* 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

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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 sex offenses 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 period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. 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 sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: 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 period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.507: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
--------------------------	---------------------------

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Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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 period of confinement is over one year, or if my crime is failure to register as a sex offender, and this is my second or subsequent conviction of that crime, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006: For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

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Community Custody Violation: 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:**
Agree: 102 months , minimum; Indeterminate Sentence = ISRB decides, after the minimum term is served when/if the defendant may be released from incarceration. If and when released, must be on community custody for life. \$500 CVPA + \$200 court costs/filing fee + \$500 DAC recoupment + \$100 DNA Fee. DNA sample required. HIV testing required. No contact with victim for Life (formal No Contact Order). Obtain psychosexual evaluation and successfully complete any and all treatment recommended. Comply with Sex Offender Registration Laws. Law-Abiding Behavior. Forfeit any/all items seized as evidence. Comply with DOC rules, requirements, and conditions, including: Report to and be available for contact with the assigned Community Corrections Officer; work at DOC-approved employment, Do not consume controlled substances (without valid prescription) or alcohol; Pay supervision fees as determined by DOC; Receive prior approval for living arrangements/residence location; Remain without geographic boundaries as determined by DOC; Do not hold any position of trust or authority with any persons under the age of 18 years; Do not initiate or have any physical contact with anyone under the age of 18 years; Inform your community corrections officer of any/all romantic relationships (to verify that there are no victim-age child involved); Submit to polygraph testing at DOC's direction; Do not frequent any places where children congregate; Follow all conditions imposed by your sexual deviancy treatment provider and CCO; Do not possess or peruse any sexually explicit materials (in any medium); Do not patronize prostitutes or establishments that promote the commercialization of sex, etc... Restitution by later Court Order. (\$20,780 Restitution) -> ACD

[] 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 (except as provided in paragraph 6(f)). 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 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.

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(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.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence 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 register where I reside, study or work.** The specific registration requirements are described in the "Offender Registration" Attachment.
- (n) **I will be required to have a biological sample** collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay a \$100.00 DNA collection fee.
- (o) **I will be required to undergo testing** for the human immunodeficiency (HIV/AIDS) virus.

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.

AD (p) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I

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have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

~~_____~~

Special sex offender sentencing alternative: In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of the minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after July 1, 2005; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community

custody, the judge may revoke the suspended sentence.

ALD (r) If this is a crime of domestic violence, the court may order me 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.

ALD (s) 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.

 ~~(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.

 ~~(X)~~ 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 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 the Department of Licensing 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.

 ~~(X)~~ For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as 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.

 ~~(X)~~ 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, or vehicular assault 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.

 ~~(X)~~ 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[p].

 ~~(X)~~ 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.

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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 re in the "Felony Firearm Offender Registration." Attachment.

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.

For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.

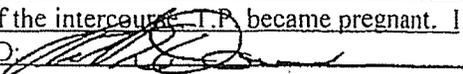
If I am pleading guilty to patronizing a prostitute or commercial sexual abuse of a minor, a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they are not feasible. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.

7. I plead guilty to ~~Count I (Rape of a Child in the Second Degree)~~ as charged in the ~~Original~~ Information, dated ~~Oct. 28, 2013~~. 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 makes me guilty of this crime. This is my statement: During the period between September 1, 2013 and October 24, 2013, I engaged in sexual intercourse with T.P. in Pierce County, Washington. At the time, I was 41 years of age; T.P. was at least 12 years old, but less than 14 years old; we were not married, nor were with in a state-registered domestic partnership. As a result of the intercourse, T.P. became pregnant. I plead guilty to this offense because I am guilty. SIGNED: 

[] 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.

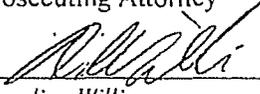
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12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, and, if applicable, the "Felony Firearm Offender Registration" Attachment. I understand them all. I have been given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


Defendant

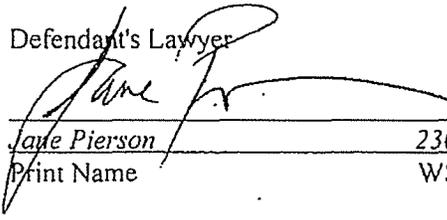
I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement

Prosecuting Attorney



Angelica Williams 36673
Print Name WSBA No.

Defendant's Lawyer



Jane Pierson 23085
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]:

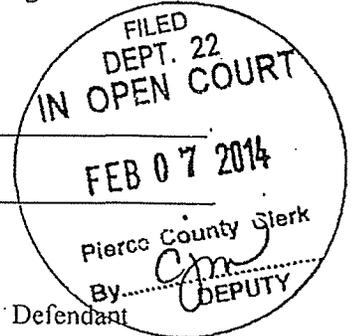
- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant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

Interpreter's Declaration: I am a certified 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.

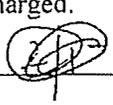
Signed at (city) _____, (state) _____, on (date) _____

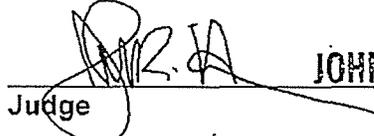
Interpreter _____

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:  2/7/14



Judge JOHN R. HICKMAN

2/10/2014 172 0335

Case Name State v. Arthur Lewis Dove Cause No. 13-1-04138-5

"Offender Registration" Attachment: sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.128. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements: Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.128, I will be required to register.

If I am a resident of Washington, I must register with the sheriff of the county of the state of Washington where I reside. I must register within three business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me. I must also register within three business days of my release with the sheriff of the county of the state of Washington where I will be residing.

If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register within three business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me. I must also register within three business days of my release with the sheriff of the county of my school, where I am employed, or where I carry on a vocation.

2. Offenders Who are New Residents or Returning Washington Residents: If I move to Washington or if I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State: If I change my residence within a county, I must provide, by certified mail, with return receipt requested or in person, signed written notice of my change of residence to the sheriff within three business days of moving. If I change my residence to a new county within this state, I must register with the sheriff of the new county within three business days of moving. Also within three business days, I must provide, by certified mail, with return receipt requested or in person, signed written notice of my change of address to the sheriff of the county where I last registered.

4. Leaving the State or Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If I move out of state, I must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): I must give notice to the sheriff of the county where I am registered within three business days:

- i) before arriving at a school or institution of higher education to attend classes;
- ii) before starting work at an institution of higher education; or
- iii) After any termination of enrollment or employment at a school or institution of higher education.

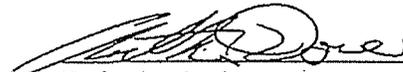
6. Registration by a Person Who Does Not Have a Fixed Residence: Even if I do not have a fixed residence, I am required to register. Registration must occur within three business days of release in

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the county where I am being supervised if I do not have a residence at the time of my release from custody. Within three business days after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register with the sheriff of the new county not more than three business days after entering the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I must keep an accurate accounting of where I stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change: If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence, and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

Date: February 7, 2014


Defendant's signature

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FILED
PT. 22
IN OPEN COURT
MAR 10 2014
Pierce County Clerk
By *CJM* DEPUTY

RECEIVED
PIERCE COUNTY SUPERIOR COURT
MAR 07 2014



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION

TO: The Honorable John R. Hickman
Pierce County Superior Court

DATE OF REPORT: 03/03/14

NAME: Dove, Arthur

DOC NUMBER: 372225

ALIAS(ES):

COUNTY: Pierce

CRIME(S): Count I: Rape of a Child in the Second Degree

CAUSE #: 13-1-04138-5

DATE OF OFFENSE: Between 09/01/13 to 10/24/13

SENTENCING DATE: 03/21/14

PRESENT ADDRESS: Pierce County Jail

DEFENSE ATTORNEY: Jane Pierson
949 Market Street
Suite 334
Tacoma, WA 98402

I. OFFICIAL VERSION OF OFFENSE:

Pursuant to the Information dated October 28th, 2013, Mr. Dove was formally charged with one Count of Rape of a Child in the Second Degree (Count I) by the Pierce County Prosecuting Attorney's Office. On February 7th, 2014, an Amended Information was filed with the Pierce County Court wherein Mr. Dove was formally charged with one Count of Rape of a Child in the Second Degree (Count I), he pled guilty to that charge (Count I). Mr. Dove is currently incarcerated in the Pierce County Jail, and will be sentenced on this cause before the Honorable John R. Hickman in Pierce County Court on March 21st, 2014

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The following was extracted from the Declaration for Determination of Probable Cause filed by the Pierce County Prosecutor's Office, dated October 28th, 2013. It was based on various Pierce County Sheriff's Reports referencing incident number 132971054.

That in Pierce County, Washington, during the period between September 1, 2013, and October 24, 2013, the defendant, ARTHUR LEWIS DOVE, did commit the crime of Child Rape in the Second Degree (aggravated) against T.P. (DOB 5/22/01). The defendant was T.P.'s mother's boyfriend and is 41-years-old.

On October 23, 2013, deputies attempted to do a welfare check on T.P., but the defendant said she was not home.

On October 24, 2013, deputies learned from T.P.'s grandmother that T.P. was sexually assaulted. T.P.'s grandmother advised of the following: On October 7, the defendant called her and reported T.P. was pregnant and that a 12-year-old boy was the father. The defendant further advised he was going to restrict T.P. and preclude her from seeing the boy again. The defendant made arrangements for T.P. to have an abortion and asked T.P.'s grandmother to take her to the procedure. T.P.'s grandmother became suspicious as the defendant acted nervous. T.P.'s grandmother questioned T.P. who eventually disclosed the defendant was responsible and she did not want him to go to jail. The defendant sent texts to T.P.'s grandmother after deputies stopped by his home. He told the grandmother not to talk to deputies. She acted as if she would help him and inquired how he could do such a thing to her granddaughter. The defendant stated he was sorry and T.P. needed to get the abortion and everything would be ok. T.P.'s grandmother advised she took T.P. to her appointment, but was told T.P. would have to have the procedure at a hospital. T.P.'s grandmother gave deputies her cell phone with the text messages she exchanged with the defendant showing he knew what he was doing and he was responsible.

On October 25, 2013, T.P. was forensically interviewed and disclosed the defendant had sexual intercourse with her. His penis went inside her vagina and she was pregnant by him. They had sexual intercourse one time.

II. VICTIM CONCERNS:

I have attempted to contact the Victim Case Workers assigned to this case, but I have not received a return call. Therefore there will not be a victim impact statement included in this report.

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III. MR. DOVE'S STATEMENT REGARDING OFFENSE:

I met with Mr. Dove at the Pierce County jail on March 3, 2014. He was dressed in normal jail attire and appeared lucid. He agreed to speak with me and stated that he didn't understand what all happened and that he didn't mean for it to happen. He stated he threw T.P's mother out due to a Child Protection Services (CPS) situation and the kids were supposed to go with her. He stated he is not happy it happened as after kicking her mother out he became depressed. Even though he was there not to harm them or himself, but he is sure being under the influence of methamphetamine at the time didn't help matters either. He kept stated that he didn't mean for it to happen, didn't want it to happen, it just happened.

Mr. Dove stated he still has dreams about what happened, but not in a sexual way, in the fact that the whole situation bothers him. He hates it and hates the fact that he won't get to see his own daughter grow up because of what he did. He stated he has no anger towards anyone but himself. He stated he was not the parent he should have been and that he should have listened to his friends and family and now he is just angry with himself.

IV. CRIMINAL HISTORY:

SOURCES:

1. National Crime Information Center (NCIC) and Washington Crime Information Center (WASCIC).
2. Washington State Department of Corrections Offender Databse.
3. Superior Court Operations Management Information System (SCOMIS).
4. Law Enforcement Support Agency (LESA).
5. District Court Information System (DISCIS).

<u>Juvenile Felonies:</u>	None documented or found.
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<u>Adult Felony:</u>	
Date of Offense:	Between 09/01/13 to 10/24/13
Crime:	Count I: Rape of a Child in the Second Degree
County / Cause:	Pierce County/13-1-04138-5
Date of Sentence:	03/21/14
Disposition:	Guilty/Pending Score 0

Crime	Date of sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
None Known or Claimed								

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Misdemeanor(s): Misdemeanors do not affect the offender score but do reflect the offender's view of societal values and should be noted by the court.

Juvenile Misds: None documented or found.

V. SCORING:		
SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I XI	0	78 to 102 Months up to Life

VI. COMMUNITY CUSTODY:		
SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I XI	0	Life

VII. RISK / NEEDS ASSESSMENT:

A risk / needs assessment interview was completed with the offender. The following risk / needs area(s) and strengths have implications for potential risk, supervision, and interventions. Unless otherwise noted, the following information was provided by the offender and has not been verified.

Criminal History:

See Section IV above.

Mr. Dove stated the first time he had contact with law enforcement was when he was sixteen and was caught shoplifting. He stated no charges were filed. He also stated he was arrested about ten years ago for Assault 4th Degree and Possession of Controlled Substance. He stated an ex-girlfriend had said that he hit her, but there were numerous calls to 911 that he made where they could hear her hitting herself in the background. He stated the charges were dismissed.

Education / Employment:

Employment is a primary socialization structure in our culture. Lack of consistent employment reflects a higher risk for, or return to criminal behavior. A history of poor job performance and attitude signifies disregard for pro-social

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reinforcement. Overall academic achievement is related to stability and a crime-free lifestyle.

Mr. Dove stated he completed the 9th Grade at Kofa High School in Yuma, AZ. He stated he left school in 1987 or 1988, because he hated school and was always being picked on. He stated he had been in Special Education because of a learning disability and the other kids would make fun of him all the time. He stated that although he was never in any real trouble at school, he would be sent to the principal's office regularly for being the class clown. He stated that was his way of dealing with his anger. He stated the principal would always send him back to class without any punishments. He stated he played football once, but was kicked off the team for smoking.

Mr. Dove stated his last place of employment was at Bulk Handling Systems in Oregon. He stated he worked there for about a year and a half as a welder and Night Shift Supervisor. He stated he was laid off when the entire night shift was eliminated. He thinks the company may have gone out of business. He stated he last worked in the spring of 2009. He stated he worked a variety of temp agencies before getting that job. He stated he would do a variety of work, but primarily welding at different companies. He stated he never attended formal schooling for welding, but was able to obtain positions in that field.

Mr. Dove stated he has supported himself by doing odd jobs working under the table for his neighbor and turning in scrap metal. He stated he has helped log, clean up properties, and sell wood. He stated his mother also helped support him as well. He stated he was only fired from one of the temp jobs, because he was always late and then he didn't show up for work.

Financial:

Financial stability and self-sufficiency are pro-social. Financial problems are considered stressors, which may be indicative of anti-social attitudes or precipitators of inappropriate ways to get money.

Mr. Dove stated he has a small, "crappy" boat, but Child Support Enforcement has a lien on it. He stated that is the only thing he actually owns of any value. He stated he does not have any checking or savings accounts. He stated his biggest liability is child support for two of his children. He stated he thinks he owes about thirteen thousand for one and is not sure how far behind on the other one he is, but his mother has been paying the fifty dollar monthly payment for him. He stated he also has a hospital bill from just before his arrest. He stated he was stung by a bee and swelled up really bad. He stated he was also treated for gout.

Mr. Dove stated he would make about one to two hundred dollars a week in his under the table jobs and his recycling. He stated for the most part it only pays for

his propane to heat his trailer. He stated the trailer leaks and so the heater has to run all the time in the winter. He stated he was also receiving about six hundred and thirty dollars in food stamps when the whole family was living there as his girlfriend did not work.

Family / Marital:

A satisfying family or marital situation indicates pro-social relationships and ties that are negatively correlated with criminal risk. Uncaring, negative or hostile relationships with relatives who have frequent contact indicate poor social and problem-solving skills and a lack of pro-social modeling. Parental influence is a behavioral control that inhibits anti-social behavior and is a source of pro-social modeling.

Mr. Dove stated his father is Arthur Lewis Dove, but he doesn't know anything about him as he has not been a part of his life since he was around two years old.

Mr. Dove stated his step father, Leon Morey, has been his father figure since he was two years old. He stated Leon is a retired Pierce County Sheriff and they didn't really get along until recently. He stated they have just started doing things together and getting to know each other, but before that his step father didn't like that he was taking money from his mother and not working. He stated he has just started to accept Leon as a father and he has always hoped his real father would come back for him. He stated he realizes he wasted a lot of time with his step father by holding onto that false hope.

Mr. Dove stated his step father never really disciplined him; his father would get mad at him and not speak to him. He stated his step father didn't like ninety percent of the things that he (Dove) did, but Leon was a cop and never hit him. But, he would take things away or withhold things.

Mr. Dove stated his mother is sixty five year old Cindy Morey. He stated she lives in Eatonville with Leon and she works as a Real Estate Agent right now. He stated he loves his mother and they are very close, but she is close with all her kids. He stated she will do anything for anyone and is always there to help.

Although she hates the things that he has done in and with his life she has always been a constant.

Mr. Dove stated his mother never really disciplined him when he was growing, she would talk to him, but he wouldn't listen. She always said that she hopes he learns from his mistakes and that if he ever ended up in jail she would not bail him out. But, she would love him anyway. He stated although he tended to keep

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to the "shadows" and did his own thing when dealing with his family, yet there would still be a lot of laughter and good times.

Mr. Dove stated his parents amaze him. He stated that they have always worked together, spent all their time together, and were always there for each other. He stated he thinks it is "crazy" that two people could spend so much time together and never argue or fight. He thinks it must be "love."

Mr. Dove stated his mother comes to visit him every week since he was arrested and he calls every once in a great while when he is feeling down and missing them.

Mr. Dove stated he has two siblings, a fifty year old brother Ron Dove and forty seven year old sister Sabrina. He stated he doesn't really know them as they went with their father when his parent split up and he stayed with their mother. He stated that the last time he talked to either of them was Sabrina when he was twenty two years old and she was living in Florida.

Mr. Dove stated that he has a fun childhood and did a lot of things to keep active. He was a happy child and had a lot of friends and other people to hang out with. He stated he ended up moving out of his parents' home the first time when he was sixteen because he and his step father were not getting a long and they were living out in the country away from everyone and town.

Mr. Dove stated he was married once when he was eighteen to Tammy. But, the marriage only lasted about six months and their only child passed away of Sudden Infant Death Syndrome.

Mr. Dove stated he has three other children, sixteen year old Chase, a five year old boy that he doesn't remember the name of, and two year old Danni. He stated he raised Chase until he was four years old, then his mother came back and took him away. He stated he didn't get to see his son again until Chase was thirteen years old when his mother passed away. He stated Chase now lives with his maternal grandmother in Oregon. He stated Chase is a good boy and really athletic, playing basketball, football, and baseball. He stated Chase is also a straight A student. He sometimes wonders if Chase is really his kid.

~~Mr. Dove stated the parents of the five year old mother kept him hidden from him. They told him that if he kept away from the child they would not file for child support, but they just hit him with it a couple of years ago and he still hasn't been able to see his son.~~

Mr. Dove stated his two year old daughter lives with her mother in Eatonville and she is a smart little girl. He gets to see her every week when his mother brings her into visit him in jail. He stated she is getting big and can't sit still "for nothing."

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Accommodation:

A stable residence shows some ties to a neighborhood. Many changes in residence reflect insufficient neighborhood ties and could mean more exposure to or influence of pro-criminal attitudes. In a high-crime neighborhood there may be more opportunities for pro-criminal modeling and rewards for anti-social behaviors and attitudes.

Mr. Dove stated he lived in Eatonville with his mother for the last five years before his arrest. He stated prior to that he lived in a duplex for a year and a half in Springfield, OR. Then for eight years he moved around living/staying with friends. He stated he wasn't actually homeless as he always had a place to stay, but he was basically "couch surfing" for those eight years.

Leisure and Recreation:

An excess of idle or discretionary time presents an added dimension of risk. Recent, regular involvement with a group of pro-social individuals is an indicator of attachment and bonds that would tend to constrain the individual's criminal activities.

Mr. Dove stated that he likes to work with his hands and spends a lot of his spare time working on cars or other things.

Companions:

The presence of criminal acquaintances and/or friends is associated with an opportunity for pro-criminal modeling, which is considered a major risk factor. A lack of pro-social companions means a diminished opportunity to observe pro-social models and no reinforcement for pro-social behaviors.

Mr. Dove stated he can make friends easily and will keep and maintain those friendships, but most of his close and trusted friends have all passed away in the last few years. He stated most of his "friends" now are really more like "associates." He stated he keeps the connections because he likes to have someone around to talk to. He stated he has more friends in Oregon than up here in Washington as he has had too much going on in his life and it was hard after losing his other friends.

Mr. Dove stated his two best friends died within the last seven years. One was shot and the other died of alcohol poisoning. He stated it is not easy to make good friends again as you have to get passed the trust issues. He stated he has one person that is slowly getting closer, but he is still not sure if he wants to or can become good friends with them.

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Alcohol / Drug Use:

A history of substance abuse is a risk factor for criminal behavior. Substance abuse erodes significant pro-social bonds that contribute to increased criminal risk. Substance misuse may facilitate or instigate criminal behavior.

Mr. Dove stated he was fifteen when he first tried alcohol. He stated he just wanted to see what it was like. He stated he liked drinking then as he thought it was cool and everyone else was drinking too. He stated one day he "grew up and quit." He stated since he was fifteen years old he has only really had one wine cooler. He stated he was a happy drunk when he drank, but he had made an agreement with himself that if he ever wrecked his vehicle he would never drink again. He said when he put his car in a ditch he realized he could have killed someone and he couldn't live with that.

Mr. Dove stated he tried marijuana a couple of times when he was sixteen, but he didn't like it, so has never done it again. He stated he started using methamphetamine when he was fifteen or sixteen years old and has used it for years. He stated has never really used a lot, mostly a "tweener" over a period of a week. He stated did it for years and liked it because it didn't make him lazy. He would use it as his "coffee" every morning and that would be the only time he would allow himself to use it. He stated he went to treatment on a self-referral in Oregon just to learn how to manage his usage, not to actually quit, but to handle his idea of only using it in the morning as his wake up. He stated by doing it that way he would be up and productive during the day and not strung out at night so he could sleep.

Mr. Dove stated he thought he was doing good with managing his use of meth because he wasn't stealing and he was able to make enough for bills and his next baggy. He stated he didn't realize how it was really affecting him until he came to jail. He stated this is the first time since he was fifteen that he has been clean and he feels good. He stated he is not happy now that he didn't stop when his mother paid twenty thousand dollars for his treatment.

Mr. Dove stated he has never done any other illegal or controlled substances and he actually "hates" pain pills. He figured he was already putting enough poison into his body; he doesn't need to start adding more.

Emotional / Personal:

Mild anxiety and depression, as well as severe emotional and cognitive problems can interfere with an individual's ability to respond to occupational, social and psychological stressors. Coping deficiencies may increase the risk of criminal behavior.

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Mr. Dove stated his health is "great." He stated he has started having stomach problems where it will start hurting for no reason. He stated he has been trying to get in to see the doctor in jail, but nothing has happened so far. He stated he has never had a physical in his life so he doesn't know if there are any undiagnosed issues, but nothing seems to bother him besides his stomach. He stated he had hernia surgery about ten to fifteen years ago, but that was his only major illness or injury he has had in his past.

Mr. Dove stated that he has never been diagnosed with any mental or emotional health issues. He denied ever seeing a psychologist or psychiatrist in the past. He stated he has never had symptoms of depression and has never had any thoughts or plan to attempt suicide. He stated he is currently taking medication for diarrhea.

Attitude / Orientation:

A criminal value orientation is strongly associated with future criminal behavior, anti-social personality disorder and psychopathic tendencies. Poor attitudes and sentiments about the conviction, sentence and/or supervision tend to indicate anti-social values. Lifestyle, predicated on sensation seeking, and general acceptance of criminal orientation, is associated with poor informal social controls.

Mr. Dove described himself as normally clean shaven, slim, with a great personality, and short hair. He stated he is fun, outgoing, and he likes to go out camping, hunting, fishing, and four by'ing. He stated he likes to do more out door type things than indoor.

Mr. Dove stated that when he heard the Life aspect of his sentencing options he was scared. He stated he is wishing and hoping for less time. But, he knows he can't change what the Court gives him, so he is hoping that he will be sent to Monroe Correctional Center (MCC) so he can get into the Sex Offender Treatment. He stated he can't "yell, complain, or bitch" about the situation, so he will just have to do what he has to do to get through this.

Mr. Dove stated he is having a hard time dealing with Life on supervision when he gets out. But, he wants to get out so he can be with his Mom. He stated his step father is not doing well and he wants to be there for her. He also wants to be able to watch his daughter grow up.

Mr. Dove stated he knows that while he is in he can get his General Education Development (GED) Certification and keep busy taking other classes and/or programs. He stated he is going to do everything he can to behave, do his time, and then get out and get the help he needs as well as help his mother.

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VIII. CONCLUSIONS:

A risk assessment was completed during the pre-sentence interview. Factors which require attention to reduce Mr. Dove's risk to re-offend include his chemical dependency and sexual deviancy,. Recommended conditions in Appendix H will enable the Department of Corrections (DOC) to effectively monitor and supervise Mr. Dove in the community. Intervention applied to these areas would assist in reducing potential risk to community safety. Also, DOC, as a matter of policy, supervises sex offenders and violent offenders who are placed on supervision at elevated levels.

IX. SENTENCE OPTIONS:

- Confinement within the Standard Range Sentence
- Community Restitution Hours
- Exceptional Sentence
- First-time Offender Waiver (FTOW)
- Drug Offender Sentencing Alternative (DOSA)
- Special Sex Offender Sentencing Alternative (SSOSA)
- Mentally Ill Offender Sentencing Option (MIOSO)

X. RECOMMENDATIONS:

Based on information contained in the Guilty plea, I understand the Deputy Prosecutor in this matter intends to recommend 102 months up to Life confinement; Life on Community Custody under the supervision of the Department of Corrections; to submit to a DNA test; No Contact with victim(s) (T.P.); No Contact with minors; to Register as a sex offender in County of residence; and thereafter to register per the Sex Offender registration statute; obtain a psychosexual evaluation and comply with all recommendations; to maintain Law-Abiding behavior; to comply with conditions outlined in Appendix H, by the CCO, and on the Pre-Sentence Investigation; and legal financial Obligations as noted below in section XI.

I am in agreement with the Deputy Prosecuting Attorney's recommendation. I am also recommending that Mr. Dove be required to obtain a substance abuse evaluation and comply with all recommendations.

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Sentence Type/Option: Confinement within the Standard Range Sentence

Confinement: 102 Months up to Life

Length of Community Custody: Life

Conditions of Supervision: See attached Appendix H

XI. MONETARY OBLIGATIONS:

Restitution:	TBD	Court Costs:	\$200.00	DNA:	\$100.00
Victim Penalty:	\$500.00	DAC Atty. Fee:	\$500.00		

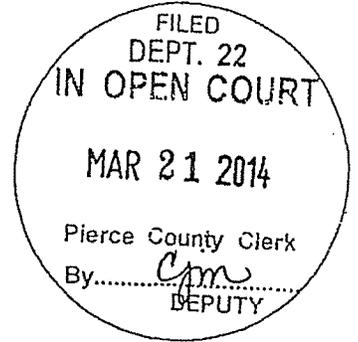
Submitted By:

Approved By:

Sally Saxon 3/6/14
 Sally Saxon Date
 Community Corrections Officer
 1016 S 28th St
 Tacoma, WA 98409
 253-680-2621

Karen Blatman-Byers 3.6.14
 Karen Blatman-Byers Date
 Community Corrections Supervisor
 1016 S 28th St
 Tacoma, WA 98409
 (253) 680-2688

Distribution: ORIGINAL – Court COPY - A.Williams, Prosecuting Attorney, J.Pierson, Defense Attorney, File, WCC / RC (Prison)



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04138-5

vs.

JUDGMENT AND SENTENCE (JS)

ARTHUR LEWIS DOVE

Defendant.

- Prison
- RCW 9A.71.200 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: 27370069
DOB: 03/23/1972

I HEARING

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

II FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2/7/14 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
1	RAPE OF A CHILD IN THE SECOND DEGREE (13)	9A.44.076		9/01/13-10/24/13	PCSD 132971054

* (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

JUDGMENT AND SENTENCE (JS)
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- 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): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	XI	78-102 MONTHS TO LIFE		78-102 MONTHS TO LIFE	LIFE/50K

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) _____.
 - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the 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:

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: _____

JUDGMENT AND SENTENCE (JS)

[] 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

RTNRJN \$ ~~750.00~~ ^{82.13} Restitution to: VR 92033
 \$ 119.65 Restitution to: 1011901786WA
 (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: _____

\$ ~~1400.00~~ ^{1401.78} 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, if necessary

[] 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(2).

[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 CCO per month commencing. Per CCO 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)

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[] 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 36.12.190, 9.94A.720 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.

[X] 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 T.P. 5/22/01 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

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

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

<i>Abide by formal no contact order</i>
<i>Abide by all conditions of SCC & Appendix H of the PSF</i>
<i>Psychosexual evaluation & follow-up treatment</i>
<i>Legal financial obligations including any restitution</i>
<i>Register as sex offender per statute</i>
<i>few abiding behavior</i>
<i>No contact with minor</i>

4.4a [X] All property is hereby forfeited

[] 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.

4.4b BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

JUDGMENT AND SENTENCE (JS)

_____ months on Count _____ months on Count _____

_____ months on Count _____ months on Count _____

_____ months on Count _____ months on Count _____

CONFINEMENT. RCW 9.94A.507. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 102 Months Maximum Term: Life

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: months & life

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 147 Days

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

- Count _____ for _____ months;
- Count _____ for _____ months;
- Count _____ for _____ months;

[] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

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.

[X] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

- Count I until _____ years from today's date [X] for the remainder of the Defendant's life.
- Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.
- Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

(E) 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 .705 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:

- [X] consume no alcohol.
- [X] have no contact with: T.P. & minor
- [] remain [] within [] outside of a specified geographical boundary, to wit: _____
- [X] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age
- [X] participate in the following crime-related treatment or counseling services: Per CCO

[] 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: Per cco

Other conditions:

Per cco

[] 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:

^{9.94A.507}
CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 102 Months Maximum Term: Life

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. []

COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count I until _____ years from today's date for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

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.760c.

5.4 RESTITUTION HEARING.

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

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, identicaid, 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.

1. General Applicability and Requirements. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within three (3) business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three (3) business days after losing your fixed residence, you must provide signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within three (3) business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. **Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

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

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 3/21/14

JUDGE

Print name

John R. Fickman
John R. Fickman

Ad Williams

Deputy Prosecuting Attorney

Print name: Angelica Williams

WSB # 36673

Attorney for Defendant

Print name: John Piers

WSB # 23085

FILED
DEPT. 22
IN OPEN COURT
MAR 21 2014
Pierce County Clerk
By Cym
DEPUTY

[Signature]

Defendant

Print name: ARTHUR DAVE

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 9.92.056; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 10 of 12

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense - *Rape Child 2*
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed;

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary: _____
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol; _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: Percco

IDENTIFICATION OF DEFENDANT

SID No. 27370069
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/23/1972

FBI No. 718530CC9

Local ID No. UNKNOWN

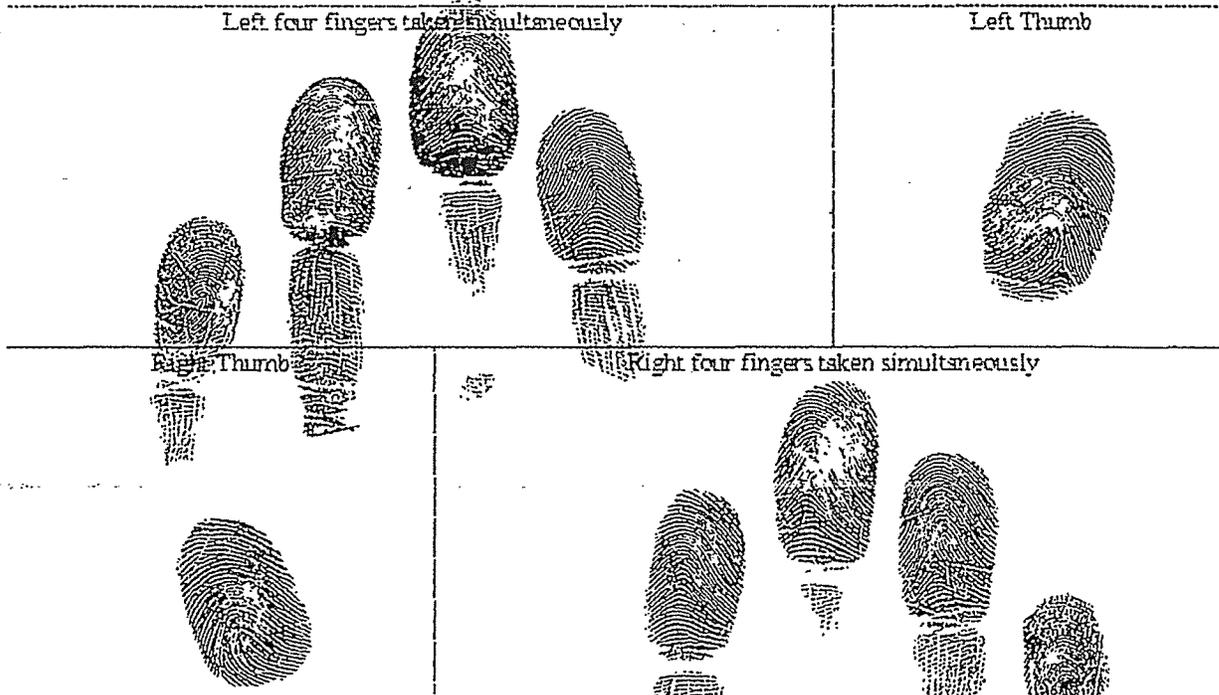
PCN No. 541025092

Other

Alias name, SSN, DOB:

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, _____ Dated: _____

DEFENDANT'S SIGNATURE: _____

DEFENDANT'S ADDRESS: _____

FILED
COURT OF APPEALS
DIVISION II

2015 JUL 15 AM 11:57

STATE OF WASHINGTON

BY _____
DEPUTY

RECEIVED

OCT 26 2015

Nielsen, Broman & Koch, P.L.L.C.

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION _____

IN RE THE PERSONAL RESTRAINT OF:)
)
) No. 13-1-04138-5
Arthur Lewis Dove) PERSONAL RESTRAINT PETITION
(petitioner's full name)) (regarding LFOs post *Blazina*)

A. STATUS OF PETITIONER

I, Arthur Lewis Dove

_____ (full name and address), apply
for relief from restraint. I am am not _____ now in custody serving a sentence upon
conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody
because of the following type of court order: _____
_____ (identify type of court order).

- The court in which I was sentenced is:
Superior court of Washington Pierce county
- I was convicted of the crime of: Rape of a child in the second
- I was sentenced after (check one) Trial _____ Plea of Guilty on
4-7-14 (date of sentence).
- The Judge who imposed sentence was John R Hickman
- My lawyer at trial court was Jane Pierson WEB# 36673
_____ (name and address if known).
- I did _____ did not appeal from the decision of the trial court. (If the answer is that I
did), I appealed to: _____
_____ (name of court or courts to which appeal took place).
- My lawyer on appeal was: _____

- _____ (name and address if known; if none, write 'none').
8. The decision of the appellate court was _____ was not ~~not~~ published. (If it is published, and I have this information), the decision is published in _____ (volume number, Wa.App. or Wa.2d, and page number).
9. Since my conviction I have _____ have not asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was _____ (name of court or courts in which relief was sought).
Relief was denied on: _____ (date of decision[s]).
10. (If I have answered in question 9 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 9 was: _____

_____ (name and address if known; if none, write 'none').
11. If the answers to the above questions do not really tell about the proceedings, the courts, judges and attorneys in your case tell about it here: _____

B. GROUNDS FOR RELIEF:

1. I should be released from the imposition of Judgment as it pertains to the Legal Financial Obligation portion(s) only, because:
- The trial court failed to make an individualized inquiry into petitioner's ability to pay any LFOs, which warrants resentencing.
 - The trial court relied on boiler-plate language, which petitioner alleges is prejudicial, to impose Judgment on the defendant.
 - Defendant at all times alleges that he is indigent for the reasons found at number (2), and states that payment of the imposed judgment will impose a manifest hardship on the petitioner and/or his family.
2. The following facts are important when considering my case:
- Petitioner is physically/mentally disabled and does not have the future ability to be gainfully employed.
 - Petitioner's current household income falls below 125% of the federal poverty guideline.
 - Distinctions exist between petitioner's financial circumstances at time of sentence and petitioner's current financial status.

- Petitioner owes \$201.78 in restitution which cannot be waived per statute. However, restitution should be considered as a financial responsibility which weighs on the petitioner's ability to pay other discretionary LFOs.
- Petitioner requests the court to also review the LFO's ordered under these additional cause numbers, as long as review does not invoke a mixed petition rule.

- Petitioner owes LFOs in several Court jurisdictions within this division which also cause a distinguishable financial hardship.
- Petitioner receives assistance from a needs based, means tested assistance program.
- Petitioner's household income is above 125% of the federal poverty guideline and the defendant has recurring basic living expenses, as defined in RCW 10.101.010(4) (d), that render him without financial ability to pay.
- Other compelling circumstances exist that demonstrate the petitioner's inability to pay any LFO.
- No fact was entered into the record which would support the conclusion that the defendant has had, or will ever have, the ability to pay the LFO imposed under this cause number(s).

Petitioner was ordered to pay LFOs as follows:

(Check those that apply and enter amounts)

- | | |
|-----------------------------------------------------------------------|------------------|
| <input checked="" type="checkbox"/> Victims' Penalty Assessment | \$ <u>500.00</u> |
| <input checked="" type="checkbox"/> Court Costs | \$ _____ |
| <input checked="" type="checkbox"/> DNA Fee | \$ <u>100.00</u> |
| <input checked="" type="checkbox"/> Attorney Costs | \$ <u>500.00</u> |
| <input type="checkbox"/> Bench Warrant Fee | \$ _____ |
| <input type="checkbox"/> Extradition Costs | \$ _____ |
| <input type="checkbox"/> Jury Fee | \$ _____ |
| <input type="checkbox"/> Witness Costs | \$ _____ |
| <input checked="" type="checkbox"/> Restitution | \$ <u>201.78</u> |
| <input type="checkbox"/> Appellate Costs | \$ _____ |
| <input type="checkbox"/> Drug Offense Costs | \$ _____ |
| <input type="checkbox"/> Investigative fees | \$ _____ |
| <input checked="" type="checkbox"/> Other: <u>criminal filing fee</u> | \$ <u>200.00</u> |

- Public, needs-based government benefits are not subject to attachment, garnishment, or execution.
- Petitioner has previously filed a PRP, and may be subject to successive petition rule; petitioner claims that issues have not been previously raised, issues were not previously reviewable per statute, and could not be raised in the first petition accordingly.

3. The following reported court decisions show the error alleged to have occurred in my case:

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (March 12, 2015) (trial courts must consider a defendant's individual financial circumstances, and make an individualized inquiry into the defendant's present and future ability to pay).

Matter of Vandervlugt, 120 Wn.2d 427, 842 P.2d 950 (1992) (the decision found in Blazina should be retroactive due to the fairness factors which themselves compel retroactive application).

Bennet v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204 (1988); Nelson v. Heiss, 271 F.3d 891, 895 (9th Cir. 2001) (citing Bennet) (government benefits are not subject to execution, to include court-ordered LFOs; if state procedure conflicts with federal statute then the Supremacy Clause of the United States Constitution requires that the federal statute stands).

State v. Lundy, 176 Wn.App. 96, 308 P.3d 755 (2013) (if the court intends to impose discretionary LFOs as a sentencing condition, it must consider the defendant's present or likely future ability to pay).

State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992) (establishing seven factors regarding permissible costs and fees structure).

4. The following statutes and constitutional provisions should be considered by the Court:

- Petitioner failed to object to the imposition of LFOs, however the Court should consider RAP 1.2, providing broad ability to waive or alter any rule, including RAP 2.5, to serve the ends of justice by reviewing this petition.
- This Court should consider RCW 10.01.160(3) and (4) before applying the one year time-bar in RCW 10.73.090, where LFO judgments are not 'final', and a defendant "may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof."
Additionally, this Court should consider RCW 10.73.100(6) as there has been a significant change in the law according to the decision recently made in the Washington Supreme Court in State v. Blazina, supra. This change should overcome application of RCW 10.73.090.
- When determining petitioner's claim of indigence this Court should consider Washington Court Rule GR 34 and RAP Rule 15.2. These two rules, combined with RCW 10.01.160(3), provide guidance to the Court regarding what constitutes indigence, and give rise to the petitioner's claim on review.
- Where petitioner receives need-based government benefits, this Court should consider 42 U.S.C. § 407 and 38 U.S.C. § 5301 (such benefits are exempt from garnishment or other legal process).

5. This petition is the best way I know to receive the relief I am requesting, and no other option will work as well because prejudice has occurred which has caused a manifest hardship to be imposed on the petitioner contrary to State statute.

C. STATEMENT OF FINANCES

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have a spendable balance of \$ 0 in my prison or institution account.
3. I do do not ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.
4. I am am not employed. My salary or wages amount to \$ _____ a month.
My employer is

Name and address of employer

5. During the past 12 months I did did not get any money from a business, profession, or other form of self-employment. If I did, it was _____ (type of self-employment) and the total income I received was \$ _____.
6. During the past 12 months I:
Did Did Not Receive any rent payments. If so, the total I received was \$ _____
Did Did Not Receive any interest. If so, the total I received was \$ _____
Did Did Not Receive any dividends. If so, the total I received was \$ _____
Did Did Not Receive any other money. If so, the total I received was \$ _____
Do Do Not Have any cash except as said in question 2 of Statement of Finances.
If so the total amount of cash I have is \$ _____.
Do Do Not Have any savings or checking accounts. If so the total amount in all accounts is \$ _____.
Do Do Not Own stocks, bonds, or notes. If so their total value is: \$ _____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
<u>NONE</u>	

8. I am ___ am not married. If I am married, my wife or husband's name and address are:

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
<u>NONE</u>		

10. All of the bills I owe are listed here:

Name & Address of Creditor	Amount
<u>NONE</u>	

D. REQUEST FOR RELIEF

I respectfully request this Court to:

VACATE my Legal Financial Obligations Judgment and remand for resentencing.

VACATE my Legal Financial Obligations Judgment and dismiss the Judgment with Prejudice without resentencing.

Other: _____

E. OATH OF PETITIONER

THE STATE OF WASHINGTON)
) :SS:
COUNTY OF Pierce)

After being first duly sworn, on oath, I depose and say:

That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true and correct.



(Signature)

Arthur Dove

(Print name)

PO Box 2049

Airway Hts, wa 99001

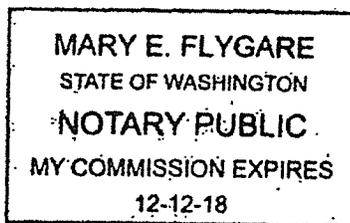
(Address)

SUBSCRIBED AND SWORN to me this 8 day of July, 2015.

Mary E Flygare
Notary Public in and for the state of Washington,

Residing at Airway Hts, WA

My commission expires: 12-12-18



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II
2015 OCT 26 AM 11:37
STATE OF WASHINGTON
BY Ma
DEPUTY

In re the
Personal Restraint Petition of

ARTHUR LEWIS DOVE,

Petitioner.

No. 47796-3-II

ORDER (1) APPOINTING
COUNSEL, (2) REQUESTING
RESPONSE, (3) ESTABLISHING
BRIEFING SCHEDULE, AND (4)
REFERRING PETITION TO A
PANEL OF JUDGES

Arthur Lewis Dove seeks relief from personal restraint imposed following his March 21, 2014 guilty plea conviction under Pierce County case number 13-1-04138-5. After reviewing this petition, we have determined that additional briefing by counsel for petitioner and a response from the State would assist this court in deciding this matter.

Accordingly, under RAP 16.11(b) and RAP 16.15(h), this court will appoint counsel Nielsen, Broman, and Koch to represent petitioner in this matter and to brief the issues petitioner has raised in his petition. Counsel should specifically address the following issues: (1) Whether a motion to remit costs under RCW 10.01.160(4) is an available, adequate remedy such that this court is precluded from granting relief by a personal restraint petition, RAP 16.4(d), and (2) whether any exceptions to the time-bar, RCW 10.73.090, apply.

This court also orders that under RAP 16.15(h), any necessary preparation of the record of prior proceedings shall be at public expense and waives charges for reproducing briefs or motions in this cause. At public expense, this court will provide petitioner's appointed counsel with copies of the petition together with any attached records.

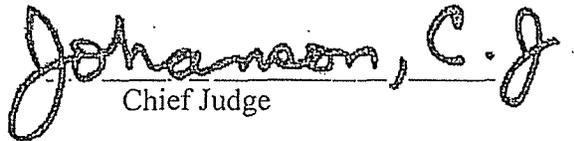
Within 20 days of appointment of counsel, petitioner must arrange to transcribe any hearings from other proceedings necessary to resolve the above issues by filing a statement of arrangements. *See* RAP 9.2, 16.7(a)(2)(i). Within the same 20 days, petitioner must also designate any clerk's papers or exhibits from other proceedings necessary to resolve the petition. *See* RAP 9.6, 16.7(a)(2)(i). The record on review should be filed within 30 days of when petitioner files the statement of arrangements and the designation of clerk's papers. Respondent also remains obligated to provide to this court copies of any records of other proceedings relevant to answering the petition. *See* RAP 16.9. The parties must comply with Title 9 RAP when providing the record necessary to decide this petition.

Petitioner's supplemental petition is due within 45 days after the report of proceedings is filed. Respondent is directed to file its response within 45 days after service of petitioner's supplemental petition. Petitioner may, but is not required to, file a reply within 20 days after service of the response. After this briefing is complete, this court will determine under RAP 16.11(c) whether to decide the petition with or without

47796-3-II

oral argument.

DATED this 26th day of October, 2015.


Chief Judge

cc: Arthur Lewis Dove
County Cause No. 13-1-04138-5
Nielsen, Broman, and Koch
Kathleen Proctor, Pierce County Assistant Prosecuting Attorney
Office of Public Defense

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

In re Personal Restraint Petition of)	
Arthur Dove:)	
)	
STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 47796-3-II
)	
ARTHUR DOVE,)	
)	
Petitioner.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 14TH DAY OF JANUARY 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ARTHUR DOVE
DOC NO. 372225
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 14TH DAY OF JANUARY 2016.

X *Patrick Mayovsky*

NIELSEN, BROMAN & KOCH, PLLC

January 14, 2016 - 2:49 PM

Transmittal Letter

Document Uploaded: 4-prp2-477963-Personal Restraint Petition Brief.pdf

Case Name: Personal Restraint Petition of Arthur Dove

Court of Appeals Case Number: 47796-3

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: Personal Restraint Petition

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: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

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

PCpatcecf@co.pierce.wa.us

MarchK@nwattorney.net