

COA No. 48056-5-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

SANDRA WELLER,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF CLARK COUNTY

---

APPELLANT'S OPENING BRIEF

---

OLIVER R. DAVIS  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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## **A. ASSIGNMENTS OF ERROR**

1. At re-sentencing following appeal, the trial court violated Sandra Weller's Sixth and Fourteenth Amendment rights to a jury trial by imposing an exceptional sentence based on judicial fact finding.

2. The court infringed Ms. Weller's Fourteenth Amendment right to proof beyond a reasonable doubt of aggravating factors by imposing an exceptional sentence based on judicial fact finding.

3. In the absence of a jury finding beyond a reasonable doubt, the trial court erred in entering exceptional sentence Finding of Fact No. 2.

4. The court erred in entering Finding of Fact No. 3.

5. The court erred in entering Finding of Fact No. 4.

6. The court erred in entering Finding of Fact No. 5.

7. The court erred in entering Finding of Fact No. 6.

8. The court erred in entering Finding of Fact No. 7.

9. The court erred in entering Finding of Fact No. 8.

10. The court erred in entering Finding of Fact No. 9.

11. The court erred in entering Finding of Fact No. 10.

12. The court erred in entering Finding of Fact No. 11.

13. The court erred in entering Finding of Fact No. 12.

14. The court erred in entering Finding of Fact No. 13.

15. The court erred in entering Finding of Fact No. 14.

16. The court erred in entering Finding of Fact No. 15.

17. The court erred in entering Finding of Fact No. 16.

18. The court erred in entering Finding of Fact No. 17.

19. The sentencing court erred in imposing a no-contact order of 45 years.

20. The sentencing court was required to but failed to provide Sandra Weller with an appropriately redacted copy of the materials furnished to her attorney as part of the discovery in the case.

21. The trial court erred in denying Ms. Weller's motion for new counsel where the court failed to adequately inquire whether there had been a breakdown in communication.

## **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. A sentencing court may not rely on judicial fact finding to impose an exceptional sentence. Here, the sentencing court imposed an exceptional sentence on Sandra Weller based in part on judicial fact finding. Did the court infringe Ms. Weller's Sixth and Fourteenth Amendment rights to a jury trial and to proof beyond a reasonable doubt by imposing an exceptional sentence based in part on judicial fact finding?

2. Did the sentencing court exceed its authority by imposing a no-contact order regarding the complainants of 45 years, which exceeded the 10 year maximum penalty for the second degree assault, a class B felony, and the exceptional sentence term of 240 months years?

3. Criminal Court Rule (CrR) 4.7(h)(3) requires defense counsel to maintain exclusive custody of discovery materials, but permits counsel to provide an appropriately redacted copy to the defendant. Should the trial court have allowed defense counsel to

provide his client an appropriately redacted copy of the police reports?

4. New counsel is required where there has been a complete breakdown in communication, and the court must inquire thoroughly to determine the matter. Did the trial court abuse its discretion in denying new counsel?

### **C. STATEMENT OF THE CASE**

Following a jury trial, Sandra Weller was convicted of four counts of second degree assault and one count unlawful imprisonment, involving alleged accomplice liability in encouraging physical abuse of her children by her husband Jeffrey Weller. CP 33. Following trial, the court imposed an exceptional sentence of 240 months based on two aggravating factors found by the jury -- deliberate cruelty and an ongoing pattern of abuse. CP 33.

Ms. Weller appealed, and the Court of Appeals invalidated the exceptional sentence, finding the “ongoing pattern” aggravating factor inapplicable. State v. Sandra Weller, 185 Wn.

App. 913, 344 P.3d 695 (2015), petition for review denied, 183 Wn.2d 1010 (2015). The appellate court remanded the case for resentencing, and the trial court entered an order vacating the original sentence. CP 72.

At the commencement of the re-sentencing hearing, Ms. Weller sought new counsel, explaining that she had been unable to communicate with her lawyer, who had been appointed for purposes of the re-sentencing. 8/27/15RP at 3-5. The court concluded that current counsel would remain Ms. Weller's attorney. 8/27/15RP at 6-7.

At the hearing which commenced on August 27 and then continued on September 17 of 2015, the trial court learned from Ms. Weller of her significant rehabilitation in prison including her accomplishments in various classes, and in obtaining positions of responsibility at Washington Corrections Center for Women. 8/27/15RP at 14-16. Ms. Weller also expressed her regret over the incidents leading to the charges. 8/27/15RP at 17-18.

Despite this substantial documented progress and the absence of one of the only two aggravating factors that supported the original sentence, however, the court imposed the same length of exceptional sentence of 240 months as it had in 2013.

8/27/15RP at 21-22; CP 74. The court stated it was relying solely on the remaining jury-found aggravating factor; however, as the sentencing court had done at the previous sentencing, the court supplemented the jury's special verdict with further factual findings from the bench. 8/27/15RP at 20-22; 9/17/15RP at 25-26; CP 74, 87-89. The findings were described as being founded on certain evidence introduced at trial. CP 87, CP 89. The court found, and entered a conclusion of law to the same effect, that an exceptional sentence based on deliberate cruelty was supported by the evidence "admitted at trial and outlined by the trial judge at sentencing." CP 74, CP 89 (Judgment and sentence, including Findings of Fact No. 17 and Conclusion of Law No. 1 in support of exceptional sentence) (Judgment attached as Appendix A).

In addition, the sentencing court entered no-contact orders regarding the two complainants of 45 years, a term which exceeded the 10 year maximum penalty for second degree assault, a class B felony, and which also exceeded the exceptional sentence term of 240 months. 8/27/15RP at 21-22, 9/17/15RP at 27-29.

In further proceedings, counsel for Ms. Weller notified the trial court that she desired a copy of her police reports and other discovery, citing CrR 4.7. 9/17/15RP at 31-35. The prosecutor objected. 9/17/15RP at 34-35. The court denied the request to allow counsel to provide his client with a copy of the discovery, stating:

At this point I'll deny it as a matter for the trial court. If there is something in the way of a further appeal, then it would be up to the Court of Appeals whether they would grant any records or transcripts in connection with it.

9/17/15RP at 35.

Ms. Weller timely filed a notice of appeal. CP 90.

## D. ARGUMENT

### I. THE TRIAL COURT INFRINGED MS. WELLER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A JURY DETERMINATION OF ALL FACTS SUPPORTING HER EXCEPTIONAL SENTENCE.

(a). The court may rely only on facts proved to a jury to impose an exceptional sentence. Any fact that increases the penalty for a crime must be submitted to a jury and proved beyond a reasonable doubt. U.S. Const. Amends. 6, 14; Wash. Const. art. I, §§ 21, 22; Apprendi v. New Jersey, 530 U.S. 466, 476, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); Blakely v. Washington, 542 U.S. 296, 303, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Imposition of an enhanced sentence based on judicial fact finding violates an accused person's right to Due Process and to a jury trial. Blakely, 542 U.S. at 303; Alleyne v. United States, \_\_\_ U.S. \_\_\_, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013).

Blakely errors may be raised for the first time on review. RAP 2.5(a)(3); see State v. O'Connell, 137 Wn. App. 81, 89, 152 P.3d 349 (2007).

Here, the trial court supplemented the jury's special verdicts following trial, with numerous additional factual findings. CP 74 (with Findings of Fact (Findings attached as Appendix B)). As noted, the trial court specifically relied on its assessment of trial evidence to support the exceptional sentence. CP 74, CP 89.

But a court may not impose an exceptional sentence based on judicial fact finding. Blakely, 542 U.S. at 303. The sentence imposed below violated Ms. Weller's right to a jury determination beyond a reasonable doubt of the facts listed in the trial court's findings. Id.

Importantly, although this Court of Appeals previously addressed this argument in a footnote, State v. Weller, 185 Wn. App. at 928 n. 11, RAP 2.5(c)(2) permits the Court to review its earlier decision. Review is appropriate here in the interests of justice. First, the trial court conducted a new sentencing hearing and imposed a new sentence. The entire sentence is therefore

subject to appeal. See, e.g., State v. Toney, 149 Wn. App. 787, 792, 205 P.3d 944 (2009).

Second, the Court of Appeals' prior decision on this issue is *dicta*. See Gabelein v. Diking Dist. No. 1 of Island Cty. of State, 182 Wn. App. 217, 239, 328 P.3d 1008 (2014) (defining *dicta*). Having reversed one aggravating factor, sustained the second, and remanded the case for a new sentencing hearing, the appellate court had no need to address the trial court's factual findings at sentencing or Ms. Weller's argument that these were improper bases for the sentence, since the lower court was free to adopt new findings (or no findings at all) upon resentencing.

Third, the Court of Appeals' prior decision reflected an incomplete understanding of the trial court's findings. The trial court's factual findings explicitly served two purposes. It is true that the trial judge "properly was evaluating the evidence supporting the jury's findings before imposing the exceptional sentences." Weller, 185 Wn. App. at 928 n. 11. This can be seen in Findings Nos. 16 and 17 wherein the court reasoned that the

exceptional sentence based on deliberate cruelty was supported by the evidence admitted at trial and outlined by the trial judge at sentencing. CP 74, CP 89 (Judgment and sentence, including Findings of Fact Nos. 16 and 17 and Conclusion of Law No. 1 in support of exceptional sentence). This Court of Appeals' prior decision did not address this aspect of the trial court's findings. Accordingly, the issue should be revisited in this appeal, notwithstanding the prior decision. RAP 2.5(c)(2).

**(b). The sentence must be vacated.** The trial court's factual findings must be vacated. Blakely, 542 U.S. at 303. Ms. Weller's exceptional sentence must be reversed and the case remanded for a new sentencing hearing. Id.

**2. MS. WELLER IS ENTITLED TO AN APPROPRIATELY REDACTED COPY OF "[A]NY MATERIALS FURNISHED TO [HER] ATTORNEY" AS PART OF THE DISCOVERY IN THIS CASE.**

Court rules are interpreted in the same manner as statutes, using the tools of statutory construction. State v. Hawkins, 181 Wn.2d 170, 183, 332 P.3d 408 (2014), as amended (Sept. 30, 2014), reconsideration denied, (Oct. 1, 2014). The court's objective is to

determine and give effect to the intent of the rule, as expressed in the rule’s plain language. State v. Larson, No. 91457-5, 2015 WL 9460073, at \*2 (Wash. Dec. 24, 2015).

The use of the word “shall” is presumptively imperative. State v. Peeler, 183 Wn.2d 169, 185 n. 9, 349 P.3d 842 (2015).

Under the criminal discovery rules,

a defense attorney shall be permitted to provide a copy of [discovery] materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

(CrR 4.7(h)(3)). The rule’s use of the word “shall” emphasizes the mandatory nature of this provision. See Eubanks v. Brown, 180 Wn.2d 590, 596 n. 1, 327 P.3d 635 (2014).

The rule does not impose any restrictions on the timeframe when discovery material may be provided. Here, when defense counsel sought permission to provide a copy of the police reports to his client, the prosecutor objected. 9/17/15RP at 34-35. But the plain language of the rule does not permit the prosecution to thwart counsel’s efforts to provide a copy of discovery. CrR 4.7(h)(3). Instead, the prosecution must either approve

appropriate redactions or submit the issue to the court. CrR 4.7(h)(3).

The trial court should therefore not have declined Ms. Weller's request. CrR 4.7. This Court of Appeals should reverse the trial court's decision and remand the case to permit defense counsel to provide his client with a copy of the discovery, including any police reports. If defense counsel and the prosecutor cannot agree on appropriate redactions, the issue must be submitted to the court for an order under CrR 4.7(h)(3).

**3. THE NO-CONTACT ORDERS EXCEEDED THE COURT'S AUTHORITY.**

Here, although the court ordered that the sentences for second degree assault and unlawful imprisonment be served consecutively as an exceptional sentence of 240 months, Ms. Weller argues that the court exceeded its statutory authority in two ways under the Sentencing Reform Act (SRA), chapter 9.94A RCW, by imposing a no-contact order of 45 years that exceeded the 10 year maximum penalty for second degree assault, a class B felony. 8/27/15RP at 21-22, 9/17/15RP at 27-29; Supp. CP \_\_\_\_

(Sub # 136) (post-conviction no-contact order, 9/17/16); see RCW 9A.36.021(2)(a).

Under RCW 9.94A.505(8), a trial court may impose a no-contact order for the maximum term of a conviction. State v. Armendariz, 160 Wn.2d 106, 112, 120, 156 P.3d 201 (2007); see also State v. Navarro, 188 Wn. App. 550, 556, 354 P.3d 22 (2015), review denied, 184 Wn. 2d 1031, 364 P.3d 119 (2016).

Ms. Weller objected below by asking the court to "bifurcate" the no-contact period. 8/27/15RP at 26. In any event, a defendant does not waive a challenge to the legality of sentencing conditions by failing to object. State v. Armstrong, 91 Wn. App. 635, 638, 959 P.2d 1128 (1998).

A trial court's sentencing authority is limited to that expressly found in the statutes. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). A court abuses its discretion if, when imposing a crime-related prohibition, it applies the wrong legal standard. State v. Lord, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007). RCW 9.94A.505(8) permits a court to

enforce crime-related prohibitions as part of any sentence. A “crime-related prohibition” is a court order “prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). A no-contact order is a crime-related prohibition. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 376, 229 P.3d 686 (2010). The statutory maximum for Ms Weller's most serious crime of second degree assault, as a class B felony, is 10 years. RCW 9A.20.021(1)(b). Therefore, the maximum operative length of a no-contact order imposed pursuant to RCW 9.94A.505(8) is 10 years in the instant case. Rainey, 168 Wn.2d at 375 (noting that the maximum operative length of a no-contact order is the statutory maximum for the defendant's crime). With regard to an exceptional sentence, the trial court does not have authority to impose a non-contact order that exceeds the maximum sentence imposed. State v. France, 176 Wn. App. 463, 474, 308 P.3d 812 (2013), review denied, 179 Wn.2d 2015, 318 P.3d 280 (2014). RCW 10.99.050 does not grant the sentencing court the power to

prohibit contact greater than the power that exists under RCW 9.94A.505(8). Instead, RCW 10.99.050 provides, “When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.”

Ms. Weller asks that this Court reverse and vacate her judgment and sentence.

**4. THE TRIAL COURT FAILED TO INQUIRE INTO BREAKDOWN AND ABUSED ITS DISCRETION IN DENYING MS. WELLER'S REQUEST FOR NEW COUNSEL FOR SENTENCING.**

A trial court's determination of whether a defendant's dissatisfaction with court appointed counsel warrants appointment of substitute counsel is discretionary, but will be overturned on appeal in the event of an abuse of discretion. State v. Rosborough, 62 Wn. App. 341, 346, 814 P.2d 679, review denied, 118 Wn.2d 1003, 822 P.2d 287 (1991). A defendant does not have an absolute right to choose any particular advocate but the Sixth Amendment does protect the right to adequate counsel.

State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239 (1997) (citing State v. DeWeese, 117 Wn.2d 369, 375–76, 816 P.2d 1 (1991)), cert. denied, 523 U.S. 1008 (1998); U.S. Const. amend. 6. The defendant can justify appointment of new counsel, where she shows good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004) (citing Stenson, 132 Wn.2d at 734).

Here, the trial court denied Ms. Weller’s request for new sentencing counsel, in which she explained to the trial court that she had been unable to effectively communicate with her present counsel for purposes of determining the defense position to be presented at the hearing, and he had repeatedly screamed at her and stated he did not wish to represent her. 8/27/15RP at 5-7.

The trial court was not amenable to the prosecutor’s suggestion that the court conduct further inquiry, into breakdown. 8/27/15RP at 6-7. The court relied on present

counsel's statements that the relationship was adequate and that he had prepared for the hearing. 8/27/15RP at 3-6.

Notably, to advocate for a lower sentence, Ms. Weller had to detail her own rehabilitation efforts and admirable conduct while in prison; no report or pre-sentencing memorandum was prepared by counsel. 8/27/15RP at 14-18. Defense counsel merely, and briefly, urged the court to consider reducing the previous sentence by half, based on the remaining aggravating factor. 8/27/15RP at 14.

The court's denial of new counsel was error. In determining whether a motion to discharge and substitute counsel was properly denied, a reviewing court will examine (1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion. In re Pers. Restraint of Stenson (Stenson 2), 142 Wn.2d 710, 723–24, 16 P.3d 1 (2001) (citing United States v. Moore, 159 F.3d 1154, 1158 n. 3 (9th Cir.1998)). Consistent with Moore, a trial court should conduct a thorough examination of the defendant's allegations in order to decide

whether different counsel must be appointed. See State v. Dougherty, 33 Wn. App. 466, 471, 655 P.2d 1187 (1982), review denied, 99 Wn.2d 1023 (1983) (trial counsel motion).

Ms. Weller's grave concerns indicated that hers was not a mere claim that she had lost confidence in her counsel, which is an insufficient reason to justify appointing new counsel. See Varga, 151 Wn.2d at 200. The apparent breakdown required a more penetrating inquiry by the trial court before denying Ms. Weller's motion. This Court should reverse the sentence and remand for re-sentencing.

#### **E. CONCLUSION AND APPELLATE COSTS PRAYER**

Based on the foregoing, Sandra Weller argues that this Court of Appeals should reverse her judgment and sentence. Further, no appellate costs should be deemed warranted in the event Ms. Weller does not substantially prevail herein under RAP 14. See State v. Sinclair, (Wash. App. Div. 2) 2016 WL 393719, \*4 (2016). Ms. Weller was indigent and entitled to court-appointed counsel at trial, and on appeal (Washington Appellate

Project). See Statement of Arrangements (November 2, 2015) and Appointment of indigent appellate counsel (October 1, 2016) in Court of Appeals Case no. 48056-5-II; see also Supp. CP \_\_\_\_, Sub # 144 (order of indigency in trial court) (attached as Appendix C). Ms. Weller was indigent and had no future earning capacity because of her reported disability; the trial court assessed her indigence as meriting waiver of all non-mandatory trial costs. See State v. Blazina, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). If Ms. Weller's sentence is not reversed or modified such that she does not substantially prevail, she lacks the ability to pay. This Court should deny any request that Ms. Weller pay costs of the appeal.

Respectfully submitted, 7 March, 2016.

s/ OLIVER R. DAVIS

Washington State Bar Number 24560

Washington Appellate Project

1511 Third Avenue, Suite 701

Seattle, WA 98101

Telephone: (206) 587-2711

Fax: (206) 587-2710

e-mail: [oliver@washapp.org](mailto:oliver@washapp.org)

# Appendix A

16  
Jan 14 2  
Bennett ✓

**FILED**

SEP 17 2015 11:30

Scott G. Weber, Clerk, Clark Co.

**Superior Court of Washington  
County of Clark**

**State of Washington**, Plaintiff,

vs.

SANDRA DOREEN WELLER, aka SANDRA  
GRAF,  
Defendant.

SID: WA26401124  
If no SID, use DOB: 11/1/1962

No. 11-1-01679-0

**Felony Judgment and Sentence --  
Prison  
(FJS)**

13-9-01227-7

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline  Mandatory  Discretionary

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; 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, in accordance with the proceedings in this case, the court  **Finds:**

**2.1 Current Offenses:** The defendant is guilty of the following offenses, based upon  
 guilty plea  jury-verdict 2/8/2013  bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	FB	10/7/2010 to 10/7/2011
02	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	FB	10/7/2010 to 10/7/2011
04	UNLAWFUL IMPRISONMENT - DOMESTIC VIOLENCE	10.99.020/9A.40.040	FC	10/7/2010 to 10/7/2011
05	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	FB	10/7/2010 to 10/7/2011
06	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	FB	10/7/2010 to 10/7/2011

*Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))*

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.
- Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A. \_\_\_\_\_.
- The defendant committed  **vehicular homicide**  **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crime(s) charged in Count 01, 02, 04, 05, and 06 **domestic violence** was pled and proved. RCW 10.99.020.
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county &amp; state)</i>
1.			

Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.2 Criminal History (RCW 9.94A.525):**

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County &amp; State)</i>	<i>A or J Adult, Juv.</i>	<i>DV?*</i>	<i>Type</i>
1	(none known)						

\*DV: Domestic Violence was pled and proved

Additional criminal history is attached in Appendix 2.2.

- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions for \_\_\_\_\_ are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions for \_\_\_\_\_ are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term	Maximum Fine
01	7	IV	43 MONTHS to 57 MONTHS		43 MONTHS to 57 MONTHS	10 YEARS	\$20,000.00
02	7	IV	43 MONTHS to 57 MONTHS		43 MONTHS to 57 MONTHS	10 YEARS	\$20,000.00
04	4	III	12+ MONTHS to 16 MONTHS		12+ MONTHS to 16 MONTHS	5 YEARS	\$10,000.00
05	7	IV	43 MONTHS to 57 MONTHS		43 MONTHS to 57 MONTHS	10 YEARS	\$20,000.00
06	7	IV	43 MONTHS to 57 MONTHS		43 MONTHS to 57 MONTHS	10 YEARS	\$20,000.00

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

- Additional current offense sentencing data is attached in Appendix 2.3.

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

**2.4  Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) \_\_\_\_\_
  - above the standard range for Count(s) 1, 2, 4, 5, and 6.
    - 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.
    - within the standard range for Count(s) 1, 2, 4, 5, and 6, but served consecutively to Count(s) 1, 2, 4, 5, and 6.
- 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 to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.
- That the defendant is indigent and disabled and is not anticipated to be able to pay financial obligations in the future. RCW 9.94A.753. *may be*
- Other: \_\_\_\_\_ *may be able, however if situation changes,* RCW 9.94A.753.

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

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

### III. Judgment

- 3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2  The court **dismisses** Counts 8, 9, 10, and 11 in the charging document, guilty verdicts notwithstanding, pursuant to State's motion at the sentencing hearing on double jeopardy grounds; Count 3 was dismissed pursuant to defense motion during trial, after the close of the State's case in chief, for insufficient evidence.

### IV. Sentence and Order

#### It is ordered:

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

56 months on Count 01                      56 months on Count 02  
16 months on Count 04                      56 months on Count 05  
56 months on Count 06.

- The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.
- The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for  firearm  deadly weapon  VUCSA in a protected zone  
 manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 240 months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: counts 1, 2, 4, 5, and 6 shall run consecutive to each other.

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (b) **Credit for Time Served:** The defendant shall receive 956 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures

- (c)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. 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 confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) \_\_\_\_\_, 36 months for Serious Violent Offenses  
 Count(s) 1, 2, 5, 6, 18 months for Violent Offenses  
 Count(s) 4, 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)  
 Count(s) \_\_\_\_\_, \_\_\_\_\_ months. RCW 9.94A.701(9)

(B) While on 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 on 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; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.
- have no contact with: Christa L. Weller and Christopher J. Weller.
- remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.
- participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- undergo an evaluation for treatment for  domestic violence  substance abuse  
 mental health  anger management, and fully comply with all recommended treatment. \_\_\_\_\_
- comply with the following crime-related prohibitions: \_\_\_\_\_
- Additional conditions are imposed in Appendix 4.2, if attached or are as follows: \_\_\_\_\_

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.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN      \$ TBD      Restitution to: \_\_\_\_\_

*Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender)  
(RCW 9.94A.500, .505)(WPF CR 84:0400 (7/2009))*

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035  
 PDV 100.00 Domestic Violence assessment RCW 10.99.080  
 CRC \$ \_\_\_\_\_ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190  
     Criminal filing fee \$ 200.00 FRC  
     Witness costs \$ \_\_\_\_\_ WFR  
     Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/WRF  
     Jury demand fee \$ 250.00 JFR  
     Extradition costs \$ \_\_\_\_\_ EXT  
     Other \$ \_\_\_\_\_  
 PUB ~~\$ 1,000.00~~ Fees for court appointed attorney RCW 9.94A.760  
 WFR \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.760  
 \_\_\_\_\_ DUI fines, fees and assessments  
 FCM/MTH ~~\$ 500.00~~ Fine RCW 9A.20.021;  VUCSA chapter 69.50 RCW,  VUCSA additional  
     fine deferred due to indigency RCW 69.50.430  
 CDF/LDI/FCD \$ \_\_\_\_\_ Drug enforcement Fund #  1015  1017 (TF) RCW 9.94A.760  
 NTF/SAD/SDI  
 \_\_\_\_\_ \$ 100.00 DNA collection fee RCW 43.43.7541  
 CLF \$ \_\_\_\_\_ Crime lab fee  suspended due to indigency RCW 43.43.690  
 FPV \$ \_\_\_\_\_ Specialized forest products RCW 76.48.140  
 RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI  
     only, \$1000 maximum) RCW 38.52.430  
 \_\_\_\_\_ \$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_ **Total** RCW 9.94A.760

*waived due to indigency*

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
  - shall be set by the prosecutor.
  - is scheduled for \_\_\_\_\_ (date).
- The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.
- Restitution** Schedule attached.
- Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth

the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.  
RCW 9.94A.760.

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).

The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

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

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

The defendant shall not have contact with Christopher J. Weller (male; DOB 7/14/1995), a.k.a. Christopher J. Graf, and Christa L. Weller (female, 7/14/1995), a.k.a. Christa L. Graf, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 45 years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet  880 feet  1000 feet of:

Christopher J. Weller (male; DOB 7/14/1995), a.k.a. Christopher J. Graf, and Christa L. Weller (female, 7/14/1995), a.k.a. Christa L. Graf, (name of protected person(s))'s

home/ residence  work place  school

(other location(s)) person

other location \_\_\_\_\_

for 45 years (which does not exceed the maximum statutory sentence).

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

**4.6 Other:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.7 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: \_\_\_\_\_  
\_\_\_\_\_

**4.8** For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your 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 (DOC) 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.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

**5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

**5.5b  Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

**5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

**5.8 Other:** \_\_\_\_\_

**5.9 Persistent Offense Notice**



I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

**Identification of the Defendant**

SANDRA DOREEN WELLER

11-1-01679-0

SID No: WA26401124

Date of Birth: 11/1/1962

(If no SID take fingerprint card for State Patrol)

FBI No. 873007MD9

Local ID No. 208333

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB: , aka SANDRA GRAF, SANDRA GRAF

Race: W

Ethnicity:

Sex: F

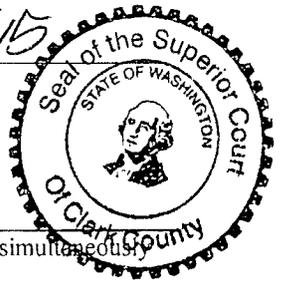
**Fingerprints:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, \_\_\_\_\_

*[Handwritten signatures]*

Dated: \_\_\_\_\_

9/17/15



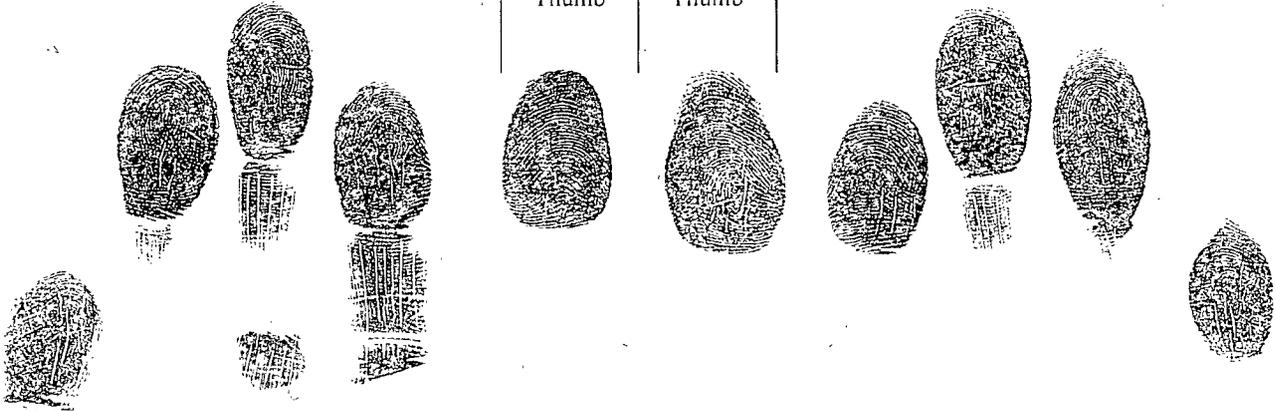
**The defendant's signature:**

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

SANDRA DOREEN WELLER,

Defendant.

SID: WA26401124

DOB: 11/1/1962

NO. 11-1-01679-0

**WARRANT OF COMMITMENT TO STATE  
OF WASHINGTON DEPARTMENT OF  
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	10/7/2010 to 10/7/2011
02	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	10/7/2010 to 10/7/2011
04	UNLAWFUL IMPRISONMENT - DOMESTIC VIOLENCE	10.99.020/9A.40.040	10/7/2010 to 10/7/2011
05	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	10/7/2010 to 10/7/2011
06	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.36.021(1)(c)	10/7/2010 to 10/7/2011

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant

from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	56 Months
02	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	56 Months
04	UNLAWFUL IMPRISONMENT - DOMESTIC VIOLENCE	16 Months
05	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	56 Months
06	ASSAULT IN THE SECOND DEGREE - DOMESTIC VIOLENCE	56 Months

These terms shall be served concurrently to each other unless specified herein:

Counts 1, 2, 4, 5, and 6 shall run consecutive to each other.

The defendant has credit for 956 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 9/17/15

SCOTT G. WEBER, Clerk of the  
Clark County Superior Court

By: S. Vignali  
Deputy



# Appendix B

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

No. 11-1-01679-0



v.

SANDRA DOREEN WELLER,  
Defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FOR AN EXCEPTIONAL SENTENCE**

**APPENDIX 2.4 JUDGMENT AND SENTENCE**

An exceptional sentence  above  within  below the standard range should be imposed based upon the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. The jury unanimously found on February 8, 2013, that Sandra Doreen Weller's conduct during the commission of the current offense manifested deliberate cruelty to the victims as to counts 1, 2, 4, 5, and 6.
2. At trial, Christopher Weller and Christa Weller, hereinafter referred to as "the twins", and the defendants testified that the twins had been legally adopted by Sandra Weller well before the alleged date range of the offenses and that Jeffrey Weller had been married to Sandra Weller for the entire alleged date range and acting as the twins' step-father throughout.
3. At trial, twin siblings Christopher Weller and Christa Weller testified that Sandra Doreen Weller instructed Jeffrey Wayne Weller to strike each of them with a large piece of scrap lumber on their bare buttocks for "stealing food" from the cupboards, to the point where they bled.
4. The twins testified that they were forced to lay down on the kitchen floor with their pants down for these beatings, and that generally one twin was forced to watch while the other twin was struck with the lumber. This was corroborated though the testimony of their siblings.

- 1 5. At trial, a Washington State Crime Lab Forensic Scientist testified to blood being on the 1" by 2" by 42"  
2 board in question and the DNA from that sample matching that of the male twin, Christopher Weller.
- 3 6. At trial, the twins testified that these beatings happened very regularly, often multiple times per month,  
4 during the year-long period charged in the information of October 7, 2010, through October 7, 2011, and  
5 that the beatings would involve approximately 20 to 30 strikes per session.
- 6 7. The twins and their siblings Nathaniel Graf (biological child of Sandra Weller), Ian Weller (biological child  
7 of Jeffrey Weller), and Eli Weller (biological child of Jeffrey Weller), all testified at trial that the twins  
8 would be fed very small portions of food during the year the crimes were committed (October 7, 2010,  
9 through October 7, 2011), and that often this food would be cans of collard greens plus lard. The children  
10 further testified that often the twins would be forced to eat moldy leftovers by Sandra Weller and Jeffrey  
11 Weller.
- 12 8. The twins and their siblings testified at trial that they worked together to "steal" food for the twins to eat  
13 because the twins were extremely hungry as a result of Sandra Weller and Jeffrey Weller's refusal to  
14 sufficiently feed them.
- 15 9. The twins and their siblings testified that the twins were required to spend the vast majority of their time  
16 locked in their bedroom. They all testified that Christopher and his siblings even cut a hole into the wall so  
17 as to create a passage for the siblings to hand the twins food.
- 18 10. The twins testified at trial that they would "steal" the food even though they knew that severe beatings with  
19 the board would inevitably result because they were starving.
- 20 11. Photographs were admitted at trial showing that there was no shortage of food in the defendants' residence.  
21 However, the photographs also corroborated all of the children's testimony that the pantries and refrigerator  
22 were kept under lock and key by Sandra Weller and Jeffrey Weller.
- 23 12. Photographs taken by law enforcement and the defendants themselves admitted at trial showed the twins to  
24 be extremely underweight during the period they were under the care and custody of Sandra Weller and  
25 Jeffrey Weller.
- 26 13. At trial, Dr. Kim Copeland, board certified pediatrician of the Legacy Child Abuse Assessment Team,  
27 testified that Christa Weller was of an extremely low weight when she saw her shortly after being removed  
28 from the defendants' home by Child Protective Services, in just the 1<sup>st</sup> percentile for weight.
- 29 14. At trial, Dr. Kim Copeland further testified that Christopher Weller had an awkwardly healed break in his  
arm consistent with having been struck by a piece of lumber like that admitted at trial and consistent with  
not having received medical care for the break at the time of the injury. Christopher Weller testified that he  
had attempted to block the lumber on at least one occasion, which could have resulted in said break.
15. The twins both testified at trial that they have gained significant weight since being removed from the  
defendants' home. Both twins also appeared to be of a normal weight at trial.

16. The court finds the above summarized trial testimony of Christopher Weller, Christa Weller, Nathaniel Graf, Ian Weller, Eli Weller, Dr. Copeland, and the WSP forensic scientist supports the sentence imposed by the Court as an exceptional sentence.

17. The jury's finding that Sandra Doreen Weller's conduct during the commission of the current offense manifested deliberate cruelty to the named victims as to counts 1, 2, 4, 5, and 6, is supported by the evidence admitted at trial and outlined by the trial judge at sentencing.

II. CONCLUSIONS OF LAW

1. The jury's finding that Sandra Doreen Weller's conduct during the commission of the current offense manifested deliberate cruelty to the named victims as to counts 1, 2, 4, 5, and 6, is supported by the evidence admitted at trial and outlined by the trial judge at sentencing.
2. Conduct during the commission of the current offense manifesting deliberate cruelty to the victim gives the trial court the authority to order an exceptional sentence pursuant to RCW 9.94A.535(3)(a).

Dated: 9/17/15

Judge/Print Name:

Barbara D. Johnson

Colin Hayes

Colin Hayes  
WSBA #35387  
Deputy Prosecuting Attorney

Jeff Barrar  
18281

Jeff Barrar  
WSBA #  
Attorney for Defendant

Sandra Doreen Weller

SANDRA DOREEN WELLER  
Defendant

## Appendix C

**FILED**

SEP 17 2015 11:29

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

Sandra Doreen Weller  
Defendant.

No. 11-1-01679-0

**DOMESTIC VIOLENCE NO-CONTACT ORDER**  
(CLJ = NOCON)  
(Superior Cts = ORPRT)

SID: WA 2640 1124

Pre-trial  
 Post Conviction

If no SID, use DOB: 11-1-1962

Clerk's action required.

The court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to Chapter 10.99 RCW. This order protects (name):

Christa L. Weller (female; DOB 7-14-95); Christopher J. Weller (male; DOB 7-14-95)  
a.k.a. Christa Graf a.k.a. Christopher Graf

This is a pretrial order prohibiting possession of firearms or other dangerous weapons and the court makes the findings pursuant to RCW 9.41.800.

**IT IS ORDERED THAT:**

Defendant is RESTRAINED from:

Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person.

Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service of process of court documents by a 3<sup>rd</sup> party or contact by defendant's lawyers with the protected person.

Entering or knowingly coming within or knowingly remaining within 1000 feet (distance) of the protected person's  residence  school  place of employment  other: person

(Pretrial order) The defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to [name/law enforcement agency] and the defendant is prohibited from obtaining or possessing a firearm, other dangerous weapon or concealed pistol license.

*[Handwritten signature]*  
*[Handwritten initials]*

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

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 48056-5-II
v.	)	
	)	
SANDRA WELLER,	)	
	)	
Appellant.	)	

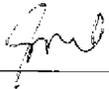
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8<sup>TH</sup> DAY OF MARCH, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ANNE CRUSER, DPA [prosecutor@clark.wa.gov] CLARK COUNTY PROSECUTOR'S OFFICE PO BOX 5000 VANCOUVER, WA 98666-5000	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA COA PORTAL
[X] JODI BACKLUND [backlundmistry@gmail.com] BACKLUND & MISTRY PO BOX 6490 OLYMPIA, WA 98507-6490	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA COA PORTAL
[X] SANDRA WELLER 365337 WACC FOR WOMEN 9601 BUJACICH RD NW GIG HARBOR, WA 98332	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 8<sup>TH</sup> DAY OF MARCH, 2016.

X \_\_\_\_\_ 

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

# WASHINGTON APPELLATE PROJECT

March 08, 2016 - 4:08 PM

## Transmittal Letter

Document Uploaded: 4-480565-Appellant's Brief.pdf

Case Name: STATE V. SANDRA WELLER

Court of Appeals Case Number: 48056-5

**Is this a Personal Restraint Petition?** Yes  No

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Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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### Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: [maria@washapp.org](mailto:maria@washapp.org)

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

[prosecutor@clark.wa.gov](mailto:prosecutor@clark.wa.gov)

[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)