

26694-0-III
COURT OF APPEALS
DIVISION III

FILED
OCT 12 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DONALD L. SMILEY-LYLE, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

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Spokane, Washington 99260
(509) 477-3662

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

FILED

OCT 11 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,)	
	)	No. 26694-0-III
Respondent,)	
)	
v.)	
	)	STATE'S BRIEFING ON DOUBLE
DONALD SMILEY-LYLE,	)	JEOPARDY ISSUES RAISED IN
	)	STATEMENT OF ADDITIONAL
Appellant.	)	AUTHORITIES

I. IDENTITY OF MOVING PARTY

Respondent is the State of Washington.

II. FACTS RELEVANT TO MOTION

The defendant filed a criminal appeal regarding his conviction for first degree murder. Following briefing from both parties, oral argument was set for December 2, 2008. During oral argument, the court presented a question to the State based on the defendant's statement of additional grounds. The State, having read the rules governing such *pro se* statements was unprepared to respond at the time of oral argument as the rules governing statements of additional grounds do not require a response from the State and the opening brief of defendant did not mention the issue raised by the court.

This brief is in compliance with the request of the court.

III. ARGUMENT

The defendant's *pro se* Statement of Additional Authorities raises a single issue. The defendant claims that his convictions violate the *ex post facto* clause of the Constitution. Count I of the second amended Information charged premeditated first degree murder. Count II of the second amended Information charged murder in the first degree. *See* Attach. A.

The jury returned a verdict of guilty on a lesser included charge of manslaughter in the first degree as to Count I. The jury convicted the defendant on Count II as charged, first degree murder. Attach. B.

Following argument on the issue of double jeopardy, the trial court decided not to sentence the defendant on Count I leaving the defendant with only a single conviction, Count II. The trial court apparently thought this procedure would solve any double jeopardy issues.

The defendant cites to *State v. Womac*, 160 Wn.2d 643, 160 P.3d 40 (2007) claiming that it violates his double jeopardy protections to be sentenced on two convictions for the same acts. The defendant also constructs a theory whereby the defendant argues that the jury

contemplated the charges in a particular order, the first one deliberated being the first degree murder in Count I. According to the defendant's arguments, one of the convictions has to be vacated and since Count I was considered first by the jury, it should be the count that remains. By happy happenstance for the defendant, Count I was reduced to a manslaughter by action of the jury selecting a lesser included. The end result of the defendant's arguments is that the manslaughter charge is imposed, but the first degree murder in Count II is vacated. Thus, according to the defendant, he should be resentenced on Count I (which was never sentenced) and Count II should be vacated.

The State agrees that sentencing the defendant on two counts for the same actions would violate double jeopardy provisions of the Constitution. However, that did not happen here. The jury did return guilty verdicts on Counts I and II but the trial court did not enter judgment and did not sentence as to Count I.

The defendant relies on *Womac* for his double jeopardy claims. *Womac* does not apply here. In *Womac*, the trial court entered judgment and sentence on three convictions for the same acts. *Id.* The remedy in that case was to dismiss two counts. *Id.*

In this case, because the trial court did not enter judgment or sentence on Count I, *State v. Faagata*, No. 82336-7, slip. op. (Aug. 19, 2010) (consolidated with *State v. Turner*, No. 81626-3), is on all fours. Under the holding of *Faagata*, there is no double jeopardy violation as Count I was not reduced to judgment and was not sentenced. *Id.* The judgment and sentence form does list Count I, but it is specifically noted that no judgment was entered on Count I. *See* Attach. B.

In *State v. Ward*, 125 Wn. App. 138, 104 P.3d 61 (2005) the court found no double jeopardy violation because the trial court entered judgment and sentenced on only one count. *Ward*, 125 Wn. App. at 144. *See also*, *State v. Turner*, 144 Wn. App. 279, 182 P.3d 478 (2008); *State v. Trujillo*, 112 Wn. App. 390, 410, 49 P.3d 935 (2002), *review denied*, 149 Wn.2d 1002, 70 P.3d 964 (2003); *State v. Schwab*, 98 Wn. App. 179, 988 P.2d 1045 (1999).

While *Womac* certainly controls in those cases where multiple convictions are reduced to judgment and sentenced, such did not happen in this case. There is no need or reason to vacate any count in order to prevent a double jeopardy situation. The defendant's argument lacks merit.

IV. CONCLUSION

For the reasons stated above the State requests that the defendant's convictions and sentencing be affirmed.

Respectfully submitted this 11th day of October, 2010.

STEVEN J. TUCKER
Prosecuting Attorney


Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent

ATTACHMENT A

FILED

NOV 15 2007

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERKIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON	)	SECOND AMENDED
	)	INFORMATION
Plaintiff,)	
	)	No. 06-1-01279-9
v.	)	STEPHEN W. GARVIN
	)	Deputy Prosecuting Attorney
DONALD L. SMILEY-LYLE)	
WM 07/07/88	)	PA# 06-9-22283-1
	)	RPT# CT I - II: 002-06-0076116
	)	RCW CT I: 9A.32.030(1)(A)AGG(11)C-F
Defendant(s).	)	(9.94A.602) (#23622)
	)	CT II: 9A.32.030(1)(C)3-F
	)	(9.94A.602) (#23709)
	)	(AMINF)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: PREMEDITATED MURDER IN THE FIRST DEGREE, WITH AGGRAVATING CIRCUMSTANCES, committed as follows: That the defendant, DONALD L. SMILEY-LYLE, in the State of Washington, on or between March 09, 2006 and March 12, 2006, with premeditated intent to cause the death of another person, did cause the death of BUD ROBERT JOHNSON, a human being, said death occurring on or between March 9, 2006 and March 12, 2006, and the murder was committed in the course of, in furtherance of or in immediate flight from the crime of Residential Burglary, and the defendant being at said time armed with a deadly weapon other than a firearm under the provisions of RCW 9.94A.602 and 9.94A.533(4),

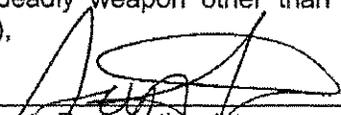
COUNT II: MURDER IN THE FIRST DEGREE, committed as follows: That the defendant, DONALD L. SMILEY-LYLE, in the State of Washington, on or between March 09, 2006 and March 12, 2006, while committing and attempting to commit the crime of FIRST DEGREE BURGLARY and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death of BUD ROBERT JOHNSON, a human being, not a participant in such crime, said death occurring on or between March 9, 2006 and March 12, 2006, and the

SECOND AMENDED INFORMATION
AMINF

Page 1

SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

defendant being at said time armed with a deadly weapon other than a firearm under the provisions of RCW 9.94A.602 and 9.94A.533(4),



Deputy Prosecuting Attorney
WSBA # 31394

DEFENDANT INFORMATION:	DONALD L. SMILEY-LYLE	
Address: 704 E. PROVIDENCE AVE., SPOKANE, WA 99207-2972		
Height: 5'09	Weight: 153	Hair: Brown
Eyes: Blue	DOL #:	State:
SID #: 022789629	DOC #:	FBI NO. 76968JC7

ATTACHMENT B

COURT COSTS 200.00
 VICTIM ASSESS 500.00
 RESTITUTION 1,591.31
 FINE _____
 ATTY FEES _____
 SHERIFF COSTS _____
 METH _____
 DNA FEE 100.00
 CRIME LAB _____
 OTHER COSTS _____

\$2,391.31

FILED

DEC 18 2007

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
 COUNTY OF SPOKANE
 STATE OF WASHINGTON)

Plaintiff,)

v.)

DONALD L. SMILEY-LYLE)
 WM 07/07/88)

Defendant.)

SID: 022789629)

No. 06-1-01279-9

PA# 06-9-22283-1

RPT# CT I - II: 002-06-0076116

RCW CT I: 9A.32.060(1)(A)-F (#23751)

CT II: 9A.32.030(1)(C)3-F (9.94A.602)
(#23709)

FELONY JUDGMENT AND SENTENCE (FJS)

Prison [] RCW 9.94A.712 Prison Confinement

[] Jail One Year or Less [] RCW 9.94A.712

Prison Confinement

[] First Time Offender

[] Special Sexual Offender Sentencing Alternative

[] Special Drug Offender Sentencing Alternative

Clerk's Action Required, para 4.5 (SDOSA),
4.7 and 4.8 (SSOSA) 4.1, 5.2, 5.3, 5.6 and 5.8

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 11-16-07
 by [] plea jury verdict [] bench trial of:

Count No.: 1

MANSLAUGHTER IN THE FIRST DEGREE

RCW 9A.32.060(1)(A)-F (#23751)

Date of Crime between March 09, 2006 and March 12, 2006

Incident No. 002-06-0076116

No Judgment entered on this Court

07910145-4

FELONY JUDGMENT AND SENTENCE (JS)
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

\$10. 6-1-08

Count No.: II **MURDER-1D(W/BURGLARY-1D)**
RCW 9A.32.030(1)(C)3-F (9.94A.602) (#23709)
Date of Crime **between March 09, 2006 and March 12, 2007**
Incident No. **002-06-0076116**

as charged in the Amended Information.

Additional current offenses are attached in Appendix 2.1.

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

- The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712.**
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A._____
- The offense was predatory as to Count(s) _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count(s) _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count(s) _____ RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count(s) _____. RCW 9.94A.835
- This case involves **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 and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count(s) _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count(s) 1 and 2. RCW 9.94A.602, 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, in a 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(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating

liquor or drug or by the operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030

- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) **domestic violence**. **RCW 10.99.020.**
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY: (RCW 9.94A.525):**

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
PSP 2	062505	NV	J	SPOKANE CO, WA	071505
BURGLARY 2	030101	NV	J	WHITMAN CO, WA	071901
THEFT FIREARM	030101	NV	J	WHITMAN CO, WA	071901

- 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 following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 **SENTENCING DATA:**

CT NO	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus enhance-ments*	Total Standard Range (including enhancements)	Maximum Term
1	1	II	86-114M	24M	110-138M	Life + \$50K

2	1	3 15	250-333 M	24 M	274-357M	Life + \$50k

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

Additional current offense sentencing data 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:
- 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): _____

III. JUDGMENT

- 3.1 The defendant is **GUILTY** of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1, *no judgment entered as to First Degree Manslaughter, the lesser included offense of Count 1.*
- 3.2 The defendant is found **NOT GUILTY** of Counts _____
- The Court **DISMISSES** Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court

JASS CODE

RTN/RJN \$ 1,591.31 Restitution to: Crime Victims Compensation - See Restitution Schedule

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV \$500.00 Victim Assessment RCW 7.68.035

\$ _____ Domestic Violence Assessment RCW 10.99.080

CRC \$200.00 Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal Filing fee \$ _____ FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/SRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other _____ \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WRF \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

MTH \$ _____ Meth/Amphetamine Cleanup Fine, \$3000. RCW 69.50.440, 69.50.401(a)(1)(ii)

CDF/LDI \$ _____ Drug enforcement fund of _____ RCW 9.94A.760

FCD/NTF/SAD/SDI

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100 Felony DNA collection fee of \$100 not imposed due to hardship RCW 43.43.7541

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 2391.31 TOTAL RCW 9.94A.760

[] 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 _____

RESTITUTION. Schedule attached.

Restitution ordered above shall be paid jointly and severally with:
 NAME of other defendant CAUSE NUMBER (Victim Name) (Amount\$)

RJN

- The Department of Corrections 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 the DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 10 per month commencing 6-1-08 RCW 9.94A.760.

The defendant SHALL report to the Spokane County Superior Court Clerk's Office immediately after sentencing if out of custody or within 48 hours after release from confinement if in custody. The defendant is required to keep an accurate address on file with the Clerk's Office and to provide financial information when requested by the Clerk's Office. The defendant is also required to make payments on the legal-financial obligations set by the court. **Failure to do any of the above will result in a warrant for your arrest.** RCW 9.94A.760(7)(b).

The Court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: _____. (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

4.1b 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 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 **FAILURE TO REPORT FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340 **FAILURE TO REPORT FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**

The victim, based upon their request, shall be notified of the results of the HIV test whether negative or positive. (Applies only to victims of sexual offenses under RCW 9A.44.) RCW 70.24.105(7)

4.3 No Contact: The Defendant shall not have contact with Bret Krap or
Christina Dvorch (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 or Anti-Harassment No-Contact Order or
Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER _____

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):

290 (months) on Count No. 2;
____ (months) on Count No. ____;
____ (months) on Count No. ____.

The confinement time on Count(s) 2 contain(s) a mandatory minimum term of 290 months (RCW 9.94A.540).

The confinement time on Count _____ includes 24 months as enhancement for { } firearm [] deadly weapon [] sexual motivation [] VUCSA in a protected zone [] manufacture of methamphetamine with juvenile present [] sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 314 months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth in Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____ minimum term _____ maximum term _____
Count _____ minimum term _____ maximum term _____

(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: 638 days credit

4.6 [] COMMUNITY PLACEMENT is ordered as follows: Count _____ for _____ months; Count _____ for _____ months; Count _____ for _____ months.

[] **COMMUNITY CUSTODY** for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[X] **COMMUNITY CUSTODY** is ordered as follows:
Count 1 for a range from 24 to 48 months;
Count 2 for a range from 24 to 48 months;
Count _____ for a range from _____ to _____ months;
or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offense, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver Methamphetamine including its salts, isomers, and salts of isomers		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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) pay supervision fees as determined by DOC; and (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; (8) for sex offenses, submit to electric monitoring if imposed by DOC. The 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 defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____

- Defendant shall remain within outside of a specified geographical boundary, to wit: _____

- Defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- The defendant shall participate in the following crime-related treatment or counseling services: _____

- The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____

- Other conditions: _____

- For sentences imposed under RCW 9.94A.712, 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 7 working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (Known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten 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 purposes 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(5). 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 the 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.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials):

- 5.5 **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.634.
(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.737(2).
- 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 license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

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 involving a minor as 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 within 24 hours of your 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 business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. 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 business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 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 within the new state within 10 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 10 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 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. 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 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. 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 10 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 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. 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 24 hours 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 48 hours, excluding weekends and holidays, after losing your fixed residence, you must send 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. 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. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

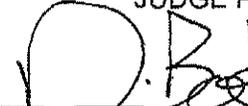
8. Application for a name change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your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

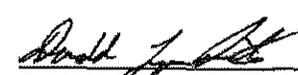
- 5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____

DONE in Open Court in the presence of the defendant this 18 day of
December, 2007.


STEPHEN W. GARVIN
Deputy Prosecuting Attorney
WSBA# 31394


DOUGLAS A. BOE
Attorney for Defendant
WSBA# 1295


JUDGE Print name: Neal Q. Rielly
NEAL Q. RIELLY

DONALD C. SMILEY-LYLE
Defendant

VOTING RIGHTS STATEMENT: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *Ronald J. [Signature]*

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I, _____, 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 said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. 022789629 Date of Birth 07/07/1988
(If no SID take fingerprint card for State Patrol)
FBI No. 76968JC7 Local ID No. 0322210
PCN No. Other
DOB 07/07/1988
Alias name
Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male
 Native American Other: _____ Non-hispanic 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.

THOMAS R. FALLQUIST, County Clerk

Clerk of the Court: *Jelly Stuenkel* Deputy Clerk. Dated: 12-18-07

DEFENDANT'S SIGNATURE: *Donald J. [Signature]*

