

FILED

MAR 18, 2013

Court of Appeals
Division III
State of Washington

NO. 31351-4-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

THOMAS NATHAN CALDWELL,

Defendant/Appellant.

APPELLANT'S BRIEF

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ASSIGNMENT OF ERROR

1. The sentencing court erred when it entered a Judgment and Sentence requiring Thomas Nathan Caldwell to

(a) pay restitution of \$54.80 to the Walla Walla County Prosecuting Attorney;

(b) be subject to a no contact order for life when the conviction is a class B felony;

(c) be subject to domestic violence orders imposed for life contrary to statutory authority; and

(d) serve eighteen (18) months of community custody.

(CP 39)

ISSUES RELATING TO ASSIGNMENT OF ERROR

1. Does a sentencing court have the authority to require a restitution payment to a prosecuting attorney?

2. Does a sentencing court have authority to impose either a lifetime no-contact order or lifetime domestic violence orders when an individual is convicted of a class B felony?

3. Does the rule of lenity apply in connection with the imposition of community custody if a particular offense is both a violent offense and a crime against persons?

STATEMENT OF CASE

Mr. Caldwell was charged with first degree assault of a child by an Information filed on May 16, 2012. (CP 4)

Amended Informations were filed on May 29, 2012, May 30, 2012 and November 26, 2012. (CP 8; CP 11; CP 25)

Mr. Caldwell entered a guilty plea to second degree assault of a child on November 26, 2012. (CP 28)

The guilty plea advised Mr. Caldwell that community custody could be imposed for violent offenses as well as crimes against persons. A sentencing court has authority to impose eighteen (18) months community custody for violent offenses; but only twelve (12) months for crimes against persons. (Appendix "A")

Judgment and Sentence was entered on December 3, 2012. The Court imposed \$54.80 restitution to be repaid to the prosecuting attorney. The Court imposed eighteen (18) months community custody. The Court

entered lifetime no-contact orders and domestic violence orders. (CP 49; CP 51)

Mr. Caldwell filed a Notice of Appeal on December 13, 2012. (CP 58)

SUMMARY OF ARGUMENT

The sentencing court committed numerous errors which need to be corrected.

The sentencing court has no statutory authority to enter a requirement of restitution to a prosecuting attorney's office.

The maximum length of time for imposition of no-contact order/domestic violence orders is ten (10) years when the underlying felony conviction is a class B felony.

The rule of lenity applies to the time frame for community custody.

ARGUMENT

A. RESTITUTION

A trial court has authority to order restitution under RCW 9.94A.753(5) ..., “Restitution shall be ordered whenever the offender is convicted of an offense which results in **injury to any person or damage to or loss of property.**” “[R]estitution is appropriate so long as there is a causal connection between the crime and the injuries for which compensation is sought.” *State v. Enstone*, 89 Wn. App. 882, 886, 951 P.2d 309 (1998).

State v. Oakley, 158 Wn. App. 544, 552, 242 P.3d 886 (2010). (Emphasis supplied.)

Mr. Caldwell contends that RCW 9.94A.753(3) limits restitution to victims. The subsection states, in part:

Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages **for injury to or a loss of property, actual expenses incurred for treatment of injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for ... other intangible losses**
....

(Emphasis supplied.)

RCW 9.94A.753(6) is inapplicable under the facts and circumstances of Mr. Caldwell’s case.

The record does not reflect the reason for imposition of \$54.80 restitution to the prosecuting attorney's office. The sentencing court had no statutory authority to impose the restitution.

B. NO-CONTACT/DV ORDERS

The trial court's Judgment and Sentence is contained on an obsolete sentencing form (8/05 - the current sentencing form is attached as Exhibit "B")

The Judgment and Sentence references RCW 9.94A.110 and .120. The statutes have been replaced by RCW 9.94A.500 and .505.

RCW 9.94A.505(5) states:

Except as provided under RCW 9.94A.750(4) and RCW 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in Chapter 9A.20 RCW.

RCW 9A.20.021(1) provides, in part:

Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

...

(b) For a class B felony, by confinement in a state correctional institution for a term of ten

years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine

Second degree assault of a child is a class B felony. *See:* RCW 9A.36.130.

There does not appear to be any statutory authority authorizing a sentencing court to impose a no-contact/domestic violence order in excess of the maximum penalty for the underlying offense.

Moreover, the Judgment and Sentence does not indicate that the sentencing court found the offense to be a domestic violence offense.

The Third Amended Information does not assert that the offense is a domestic violence offense.

C. COMMUNITY CUSTODY

RCW 9.94A.701(2) authorizes imposition of eighteen (18) months of community custody for violent offenses.

RCW 9.94A.701(3)(a) authorizes twelve (12) months of community custody for crimes against persons.

RCW 9.94A.411(2) includes second degree assault of a child under crimes against persons.

Mr. Caldwell contends that he is entitled to the benefit of the rule of lenity where two (2) statutes impose different punishments (community custody) for the same offense.

... [In] *Simpson v. United States*, 435 U.S. 6, 55 L. Ed.2d 70, 98 S. Ct. 909 (1978), in which the court, confronted with a ... problem concerning two federal statutes, ruled that the presence of ... an ambiguity required the court to apply two rules of statutory construction. The first rule, the rule of lenity, provides that a court ought not to interpret a criminal statute so as to increase the penalty imposed, absent clear evidence of a legislative intent to do so

State v. Wilson, 25 Wn. App. 891, 894, 611 P.2d 1312 (1980).

Mr. Caldwell asserts that there is an ambiguity within RCW 9.94A.701 concerning the length of community custody where an offense fits multiple categories. As announced in *Seattle v. Winebrenner*, 167 Wn.2d 451, 462, 219 P.3d 686 (2009): “The rule states that an ambiguous criminal statute cannot be interpreted to increase the penalty imposed.”

Mr. Caldwell is entitled to application of the rule of lenity as to the ambiguous situation that exists in RCW 9.94A.701.

CONCLUSION

Multiple sentencing errors require that Mr. Caldwell be resentenced so that:

1. He is not required to pay \$54.80 restitution to the Walla Walla County Prosecutor’s Office;

2. The no-contact/domestic violence orders do not exceed the maximum term for a class B felony (10 years); and
3. His community custody is reduced to twelve (12) months.

DATED this 16th day of March, 2013.

Respectfully submitted,

s/ Dennis W. Morgan
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APPENDIX “A”

COMMUNITY CUSTODY

Offense	Sentenced to a term of confinement for one year or less. <i>See RCW 9.94A.702</i>	Sentenced to the Department of Corrections. <i>See 9.94A.701</i>
Sex offenses (see pg 62)	Up to 12 months	36 months (if not sentenced under RCW 9.94A.507)
Violent offenses (see pg 60)	Up to 12 months	18 months
A crime against a person under RCW 9.94A.411(2) (see pg 69)	Up to 12 months	12 months
A felony offense under Chapter 69.50 or 69.52 RCW	Up to 12 months (includes conspiracy or solicitation)	12 months
A felony violation of RCW 9.A.44.132(1)(Failure to Register)	Up to 12 months	12 months
A serious violent offense (see pg 59)		36 months
Offense involving the Unlawful Possession of a Firearm (RCW 9.41.040) where the offender is a criminal street gang member/associate		12 months

APPENDIX “B”

**Superior Court of Washington
for**

State of Washington,

Plaintiff

vs.

Defendant

No.

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

1. My true name is: _____.
2. My age is: _____.
3. The last level of education I completed was _____.
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
 - (b) I am charged with: _____.
The elements are: _____.
5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**
 - (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
 - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
 - (c) The right at trial to hear and question the witnesses who testify against me;
 - (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
 - (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

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

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

COUNT NO.	OFFENDER SCORE	STANDARD RANGE AC-TUAL CONFINEMENT (not including enhancements)	PLUS Enhance-ments*	COMMUNITY CUS-TODY	MAXIMUM TERM AND FINE
1					
2					
3					

* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in 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, (P16) Passenger(s) under age 16.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of

Corrections, and I will have restrictions and requirements placed upon me.

- [] For offenses committed after July 1, 2000 but prior to July 26, 2009, the court may impose a community custody range as follows: for serious violent offenses, 24 to 36 months; for crimes against persons, 9 to 12 months; for offenses under 69.50 and 69.52, 9 to 12 months.

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

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

Certain sentencing alternatives may also include community custody.

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

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

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

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

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

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.
- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Government assistance may be suspended during any period of confinement.
- (m) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

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

- _____ (n) This offense is a most serious offense or “strike” as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- _____ (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- _____ (p) The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose

sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.

_____ (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the “Offender Registration” Attachment.

_____ (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

_____ (s) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

_____ (t) The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

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

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court.

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

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

_____ (u) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

- _____ (v) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).
- _____ (w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- _____ (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.
- _____ (y) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor, or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- _____ (z) If I am pleading guilty to felony driving under the influence of intoxicating liquor, or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor, or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with the Department of Licensing ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.
- _____ (aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.
- _____ (bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, or vehicular assault while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.
- _____ (cc) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- _____ (dd) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- _____ (ee) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

- _____ (ff) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- _____ (gg) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.
- _____ (hh) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- _____ (ii) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count _____

count _____

count _____

in the _____ Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

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

_____.

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

Defendant

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

Prosecuting Attorney

Defendant's Lawyer

Print Name

WSBA No.

Print Name

WSBA No.

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

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

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

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

Interpreter

Print Name

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

Dated: _____

Judge

NO. 31351-4-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	WALLA WALLA COUNTY
Plaintiff,)	NO. 12 1 00148 8
Respondent,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
THOMAS NATHAN CALDWELL,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 16th day of March, 2013, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

Court of Appeals, Division III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

CERTIFICATE OF SERVICE

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(per agreement)

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