

FILED  
**May 11, 2016**  
Court of Appeals  
Division III  
State of Washington

NO. 33854-1-III

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

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STATE OF WASHINGTON,

Respondent,

v.

JUSTIN HOYT,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR BENTON COUNTY

The Honorable Cameron Mitchell, Judge

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AMENDED BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
<u>Potential Issue Presented</u> .....	3
B. <u>STATEMENT OF THE CASE</u> .....	3
C. <u>ARGUMENTS</u> .....	6
1. THE GUILTY PLEAS WERE INVALID BECAUSE HOYT WAS NEVER INFORMED THERE WOULD BE A DEADLY WEAPON SENTENCE ENHANCEMENT AS PART OF THE RESULTING SENTENCE.....	6
2. SCRIVENER'S ERRORS IN THE JUDGMENT AND SENTENCE WARRANT REMAND FOR CORRECTION.....	<b>Error! Bookmark not defined.</b>
3. THE TRIAL COURT'S FAILURE TO CONSIDER HOYT'S ABILITY TO PAY DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS WARRANTS REMAND FOR PROPER CONSIDERATION. ....	12
4. APPEAL COSTS SHOULD NOT BE IMPOSED.....	<b>Error!</b>
<b>Bookmark not defined.</b>	
D. <u>CONCLUSION</u> .....	19

## TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>In re Pers. Restraint of Isadore</u> 151 Wn.2d 294, 88 P.3d 390 (2004).....	7, 11
<u>In re Pers. Restraint of Mayer</u> 128 Wn. App. 694, 117 P.3d 353 (2005).....	12
<u>In re Stockwell</u> 179 Wn.2d 588, 316 P.3d 1007 (2014).....	7, 11
<u>State v. Bahl</u> 164 Wn.2d 739, 193 P.3d 678 (2008).....	12
<u>State v. Barber</u> 170 Wn.2d 854, 248 P.3d 494 (2011).....	8
<u>State v. Barton</u> 93 Wn.2d 301, 609 P.2d 1353 (1980).....	8
<u>State v. Blazina</u> 182 Wn.2d 827, 344 P.3d 680 (2015).....	13, 14, 15
<u>State v. Branch</u> 129 Wn.2d 635, 919 P.2d 1228 (1996).....	7
<u>State v. Conley</u> 121 Wn. App. 280, 87 P.3d 1221 (2004).....	7, 8, 11
<u>State v. Johnston</u> 17 Wn. App. 486, 564 P.2d 1159 (1977).....	8
<u>State v. McDermond</u> 112 Wn. App. 239, 47 P.3d 600 (2002).....	8
<u>State v. Mendoza</u> 157 Wn.2d 582, 141 P.3d 49 (2006).....	7, 9, 10, 11

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Miller</u> 110 Wn.2d 528, 756 P.2d 122 (1988).....	8
<u>State v. Ross</u> 129 Wn.2d 279, 916 P.2d 405 (1996).....	7, 8
<u>State v. Sinclair, II</u> __ Wn. App. __, __ P.3d __, 2016 WL 393719 (slip op. filed January 27, 2016) .....	17, 18
<u>State v. Turley</u> 149 Wn.2d 395, 69 P.3d 338 (2003).....	11
<u>State v. Weyrich</u> 163 Wn.2d 556, 182 P.3d 965 (2008).....	10
<u>Wood v. Morris</u> 87 Wn.2d 501, 554 P.2d 1032 (1976).....	8

**FEDERAL CASES**

<u>Boykin v. Alabama</u> 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).....	7
--	---

**RULES, STATUTES AND OTHER AUTHORITITES**

CrR 4.2.....	7
CrR 7.8.....	12
RAP 2.5.....	14
RAP 14.4.....	3
RAP 15.2.....	17
RCW 9.94A.533 .....	8, 9

**TABLE OF AUTHORITIES (CONT'D)**

	Page
RCW 9.94A.760 .....	13
RCW 10.01.160 .....	2, 13
RCW 10.73.160 .....	3
U.S. Const. Amend. XIV .....	7
Const. art. I, § 3 .....	7

A. ASSIGNMENTS OF ERROR

1. The trial court erred in accepting Appellant's guilty plea to first degree robbery with a deadly weapon because it was not knowing, voluntarily and intelligent.

2. The judgment and sentence contains scrivener's errors that must be corrected.

3. The court erred in failing to consider appellant's ability to pay before imposing discretionary legal financial obligations (LFOs).

Issues Pertaining to Assignments of Error

1. Did the trial court err in accepting Appellant's guilty plea to first degree robbery with a deadly weapon when neither the signed plea form nor the colloquy the Appellant was engaged in by the court informed Appellant the standard sentence range cited in the plea agreement and during the colloquy included a 24-month deadly weapon enhancement, which must be served in total confinement and consecutive to all other sentence terms?

2. Appellant was found guilty by a jury of first degree robbery with a deadly weapon, first degree burglary and second degree theft. This Court reversed the robbery and burglary convictions, and vacated the sentences for all three offenses. Appellant then pled guilty to the robbery and burglary and was resentenced for all three offenses. In addition to

terms of confinement and community custody, the court also imposed LFOs totaling \$3660.24, consisting of both mandatory and discretionary fees. The resulting judgment and sentence, however, erroneously includes the following three provisions:

(i) that appellant "was found guilty on 07-08-08 by . . . [X] jury verdict" (only the theft conviction was by jury verdict).

(ii) "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 never engaged in this consideration).

(iii) "[ ] The confinement time on Count I includes 24 months as an enhancement for [ ] firearm [X] deadly weapon [ ] VUCSA in a protected zone { } manufacture of methamphetamine with juvenile present." (the first "[ ]" is not marked to indicate this provision applies).

(a) Should this Court remand to correct these provisions?

(b) There was no inquiry into appellant's ability to pay the contemplated LFOs. Where the trial court failed to comply with RCW 10.01.160(3), which requires such an inquiry, is remand required for the

trial court to consider appellant's ability to pay before imposing discretionary fees?

Potential Issue Presented<sup>1</sup>

In the event appellant does not substantially prevail on appeal, should this Court exercise its discretion to deny a state's request for an assessment against appellant for the costs of the appeal?

B. STATEMENT OF THE CASE

In April 2008, the Benton County Prosecutor charged appellant Justin Hoyt with first degree robbery with a deadly weapon allegation, first degree burglary and second degree theft. CP 1-3. The prosecutor alleged that on April 8, 2008, Hoyt robbed a man at knife-point of money at a Safeway gasoline station kiosk, and that on April 9, 2009, Hoyt stole over \$300 worth of MP3 players from a Target store. CP 4-5.

On July 8, 2008, a jury convicted Hoyt as charged and was subsequently sentenced 195 months of incarceration and ordered to pay mandatory and discretionary LFOs totaling \$1843.14. CP 6-15.

On appeal, this Court reversed and remanded for retrial on the robbery and burglary charges, and resentencing on the theft. CP 18-28;

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<sup>1</sup> The third argument presented herein pertains to the potential for the assessment of the costs of the appeal under RCW 10.73.160 and RAP 14.4.

see 3RP<sup>2</sup> 7.<sup>3</sup> Hoyt subsequently pled guilty to the robbery and burglary as charged. CP 41-49; 3RP 3-8. The plea statement signed by Hoyt (CP 41-49), a copy of which is attached as Appendix B, provides he is charged with "Robbery I - deadly wpn" and "Burg I". Appendix B at 1. It also informs that the "STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)" is "153-195" and "87-116", with a "MAXIMUM TERM AND FINE" of "20yr-life 50k." Appendix B at 2. There is no term of confinement listed under the section titled "PLUS Enhancements\*." Id. The statement includes a paragraph, initialed by Hoyt, which acknowledges the offense or offenses being pled to includes a "deadly weapon, firearm, or sexual motivation enhancement." Appendix B at 7. Finally, it provides the prosecution will recommend a sentence of 171 months, to be served consecutive to Hoyt's Oregon sentences, plus community custody and restitution. Appendix B at 4.

During a plea colloquy, the trial court informed Hoyt about the rights he was giving up by pleading guilty, to which Hoyt replied he understood. 3RP 3-4; Appendix A at 3-4. The court also informed Hoyt

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<sup>2</sup> There are three volumes of verbatim report of proceedings referenced as follows: 1RP - May 27, 2010; 2RP - July 1, 2010; and 3RP - July 12, 2010. A copy of 3RP is attached as Appendix A.

<sup>3</sup> Hoyt explained to the resentencing court that the theft sentence was vacated because his offender score might be different in light of reversal of the other two convictions, and the prosecutor agreed. 3RP 7.

that the charge of first degree robbery with a deadly weapon "carries a standard range in [Hoyt's] case of 153 months to 195 months of confinement, maximum penalty of 20 years to life imprisonment and \$50,000 fine, or both." Appendix A at 4.

Hoyt acknowledge going over the guilty plea statement form with his attorney, understanding it and that he had no questions about it. Appendix A at 4-5. Hoyt denied anyone was threatening him to plead guilty, acknowledge committing the acts constituting the crimes, and stated he understood the court was not required to follow the recommendation of either party at sentencing. Appendix A at 5-6.

Sentencing immediately followed the acceptance of Hoyt's guilty pleas. 3RP 6-8. The court followed the joint recommendation for a combined total sentence of 171 months. CP 50-58; 3RP 9-12. The judgment and sentence, unlike the plea statement, indicates the standard range of 129-171 months for the first degree robbery, but that there is also a 24-month deadly weapon enhancement to add, making the entire range 153-195 months. CP 52. The judgment and sentence provides the sentence for the robbery is 171 months. CP 54.

In the judgment and sentence just below the section setting for the terms of confinement imposed, it provides: "[ ] The confinement time on

Count I includes 24 months as enhancement for , , , [X] deadly weapon . . ." CP 54,

The court also imposed LFOs as follows: "You will be responsible for crime victims assessment of \$500. \$500 fine. \$100 felony DNA collection fee. Court costs in the amount of \$1078.50." 3RP 12-13. The court never inquired into Hoyt's ability to pay the financial obligations imposed. Curiously, the LFOs reflected in the new judgment and sentence total \$3660.24, \$1481.74 more than the court's oral pronouncement. CP 53, 58.

Hoyt appeals.<sup>4</sup> CP 61

C. ARGUMENTS

1. THE GUILTY PLEAS WERE INVALID BECAUSE HOYT WAS NEVER INFORMED THERE WOULD BE A DEADLY WEAPON SENTENCE ENHANCEMENT AS PART OF THE RESULTING SENTENCE.

Hoyt's guilty plea was involuntary and invalid because he was never informed he would be subject to a 24-month deadly weapon enhancement, for which he is required to serve in total confinement without any reduction for good behavior. This misinformation entitles him to withdraw his guilty plea. State v. Mendoza, 157 Wn.2d 582, 584,

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<sup>4</sup> By ruling entered on February 11, 2016, this Court excused Hoyt's tardy notice of appeal, which was not filed until October 22, 2015, as he had not been properly advised of his right to appeal.

141 P.3d 49 (2006); State v. Conley, 121 Wn. App. 280, 285, 87 P.3d 1221 (2004).

“Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily.” In re Stockwell, 179 Wn.2d 588, 594-95, 316 P.3d 1007 (2014) (quoting State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996)); U.S. Const. Amend. XIV; Const. art. I, § 3. A guilty plea is otherwise invalid. Boykin v. Alabama, 395 U.S. 238, 242-44, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228(1996). This standard is reflected in CrR 4.2(d), “which mandates that the trial court ‘shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.’” Mendoza, 157 Wn.2d at 587 (quoting CrR 4.2).

“Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a manifest injustice.” In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). “An involuntary plea produces a manifest injustice.” Id. A guilty plea is not voluntary or knowingly made when it is based on misinformation regarding a direct sentencing consequence. Mendoza, 157 Wn.2d at 584, 590-9. A sentencing consequence is direct when “the result represents a

definite, immediate and largely automatic effect on the range of the defendant's punishment." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (internal quotation marks omitted) (quoting State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). For example, a mandatory minimum term is a direct consequence of a plea. Conley, 121 Wn. App. at 285 (citing State v. McDermond, 112 Wn. App. 239, 244-45, 47 P.3d 600 (2002)); State v. Johnston, 17 Wn. App. 486, 490, 564 P.2d 1159 (1977) (citing Wood v. Morris, 87 Wn.2d 501, 513, 554 P.2d 1032, 1039 (1976)); see also State v. Miller, 110 Wn.2d 528, 528-29, 537, 756 P.2d 122 (1988) (mistake over mandatory minimum sentence entitled defendant to withdraw plea), overruled on other grounds by State v. Barber, 170 Wn.2d 854, 248 P.3d 494 (2011).

RCW 9.94A.533 sets forth adjustments to a standard range when the offense involved a "deadly weapon." It provides for a 24-month sentence enhancement for all Class A felonies found to have been committed with a deadly weapon. RCW 9.94A.533(4)(a). It also provides that "all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter." RCW 9.94A.533(4)(e).

Hoyt's statement on plea of guilty does include a section, initialed by Hoyt, acknowledging that he is pleading guilty to an offense that includes a mandatory "deadly weapon, firearm of sexual motivation enhancement", but fails to provide that it is a 24-month enhancement, and instead affirmatively misadvises that the entire 153-195 month range as "not including enhancements." Appendix B at 2, 7. This was incorrect.

Hoyt was affirmatively misinformed about a direct consequence of his plea because he was never informed that the quoted sentence range included a 24-month deadly weapon enhancement that must be served in total confinement and consecutive to all other aspects of the sentence. Appendix B at 2; RCW 9.94A.533(4)(e).

A guilty plea is involuntary when based on misinformation regarding a direct consequence of the plea, regardless of whether the actual sentence received was more or less onerous than anticipated. Mendoza, 157 Wn.2d at 590-91. Under Mendoza, a defendant may withdraw a guilty plea when the plea is based on misinformation regarding the direct consequences of the plea, including a miscalculated offender score resulting in a lower standard range than anticipated by the parties when negotiating the plea. Id. at 584. "Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea." Id. at 591. In

short, misinformation indicating greater punishment invalidates a plea in the same manner as misinformation indicating lesser punishment. Id. at 590-91.

Mendoza dictates the outcome in this case. The plea form and the plea colloquy with the court show Hoyt was misinformed about the sentence he faced. Appendices A & B. That misinformation renders his guilty plea involuntary, a manifest injustice that entitles him to withdraw the plea. Mendoza, 157 Wn. 2d at 584.

It is immaterial whether Hoyt relied on the standard range sentence set forth in the plea form. “[A] defendant who is misinformed of a direct consequence of pleading guilty is not required to show the information was material to his decision to plead guilty.” Mendoza, 157 Wn.2d at 589; see also State v. Weyrich, 163 Wn.2d 556, 557, 182 P.3d 965 (2008) (“The defendant need not establish a causal link between the misinformation and his decision to plead guilty.”). On the contrary, the Supreme Court has specifically rejected “an analysis that requires the appellate court to inquire into the materiality of mandatory community placement in the defendant's subjective decision to plead guilty” because “[a] reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision.” Mendoza, 157

Wn.2d at 590 (quoting Isadore, 151 Wn.2d at 302). Therefore, misinformation regarding the direct consequences of a plea is presumed prejudicial on direct appeal. Stockwell, 179 Wn.2d at 596.

Hoyt should be allowed to withdraw his plea because the plea agreement failed to inform him that 24 months of whatever sentence was imposed would have to be served in total confinement and consecutive to all other sentencing terms. Mendoza, 157 Wn. 2d at 584; Conley, 121 Wn. App. at 285.

Hoyt is entitled to withdraw his plea as to both counts because the plea is indivisible. A plea agreement is indivisible when the defendant pleads guilty to multiple charges in a single proceeding and the pleas are described in the same agreement. State v. Turley, 149 Wn.2d 395, 400, 402, 69 P.3d 338 (2003). When manifest injustice is shown as to one count, the entire plea agreement, including all charges, may be withdrawn and may not be limited to one count only. Id. at 400. Under Turley, this Court should permit Hoyt to withdraw his plea of guilt to both counts.

2. SCRIVENER'S ERRORS IN THE JUDGMENT AND SENTENCE WARRANT REMAND FOR CORRECTION.

Hoyt's current judgment and sentence contained several errors, including stating that all three convictions are the product of jury verdicts, that the trial court gave actual consideration to Hoyt's ability to pay the

discretionary LFOs imposed, and the failure to clearly indicate that 24 months of the 171-month sentence are the result of a deadly weapon sentence enhancement. These are apparent scrivener's error that should be corrected.

Sentencing errors may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Clerical errors such as the one at issue here may be corrected at any time. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701-02, 117 P .3d 353 (2005) (citing CrR 7.8(a) ("clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time")). The remedy is to remand to the trial court for correction of the scrivener's error in the judgment and sentence. Mayer, 128 Wn. App. at 701. This Court should do so here.

3. THE TRIAL COURT'S FAILURE TO CONSIDER HOYT'S ABILITY TO PAY DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS WARRANTS REMAND FOR PROPER CONSIDERATION.

The court stated it was imposing LFOs in the amount of \$2178.50. 3RP 12-13. Yet the LFOs listed in the judgment and sentence total \$3660.24. It is unclear why this difference exists, and remand for clarification of this discrepancy is warranted on its own. But remand is also required because the court failed to consider Hoyt's ability to pay any

of the LFOs imposed, despite boilerplate verbiage in the judgment and sentence claiming it had.

The trial court may order a defendant to pay costs pursuant to RCW 10.01.160. However, the statute also provides "[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

A trial court thus has a statutory obligation to make an individualized inquiry into a defendant's current and future ability to pay before the court imposes legal financial obligations. State v. Blazina, 182 Wn.2d 827, 344 P.3d 680, 681 (2015). The record reflects no such consideration was engaged in here. 1RP 45-46.

In the judgment and sentence, the following pre-printed, generic language appears:

**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.

CP 52.

Despite this, the trial court did not in fact consider Hoyt's individual financial resources and the burden of imposing such obligations on him. This boilerplate language is inadequate to meet the requirements under RCW 10.01.160(3).

[T]he court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay.

Blazina, 344 P.3d at 685. The trial court failed to do anything more than enter the boilerplate language. Thus, it failed to follow statutory mandate in imposing the legal financial obligations and the remedy is a new sentencing hearing. Id.

In response, the state may argue that this issue has been waived and should not be considered for the first time on appeal. Even though defense counsel did not object below, this Court has the discretion to reach this error consistent with RAP 2.5. Id. at 681. As shown below, given the trial court's failure to conduct any semblance of an inquiry into Hoyt's ability to pay and given his indigent status, this Court should exercise its discretion under RAP 2.5(a) and consider the issue.

First, Blazina provides compelling policy reasons why trial courts must undertake a meaningful inquiry into an indigent defendant's ability

to pay at the time of sentencing and why, if that is not done, the problem should be addressed on direct appeal.

The Supreme Court discussed in detail how erroneously imposed LFOs haunt those who cannot pay, not only impacting their ability to successfully exit the criminal justice system but also limiting their employment, housing and financial prospects for many years beyond their original sentence. Blazina, 344 P.3d at 683-85. Considering these circumstances, the Supreme Court concluded that indigent defendants who are saddled with wrongly imposed LFOs have many reentry difficulties that ultimately work against the State's interest in reducing recidivism. Id.

As a matter of public policy, courts must do more to make sure improperly imposed LFOs are quickly corrected. As Blazina shows, the remission process is not an effective vehicle to alleviate the harsh realities recognized in that decision. Instead, correction upon remand is a far more reasonable approach from a public policy standpoint.

Second, there is a practical reason why appellate courts should exercise discretion and consider on direct appeal whether the trial court complied with RCW 10.01.160(3). As the Supreme Court recognized in Blazina, the fact is the state cannot collect money from defendants who cannot pay. Id. at 684. There is nothing reasonable about requiring defendants who never had the ability to pay LFOs to go through

collections and a remission process to correct a sentencing error that could have been corrected on direct appeal. Remanding back to the same sentencing judge who is already familiar with the case so he or she may actually make the ability-to-pay inquiry is more efficient, saving the defendant and the state from a wasted layer of administrative and judicial process.

Finally, the erroneous ability-to-pay finding entered here is representative of a systemic problem that requires a systemic response. Unquestionably, the trial court erred in imposing discretionary LFOs without making any inquiry into Hoyt's ability to pay. The Supreme Court has held that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before imposing legal financial obligations. *Id.* at 685. This did not happen.

For these reasons, this Court should exercise its discretion, accept review, and remand with instructions that the sentencing court conduct a meaningful, on-the-record inquiry into Hoyt's ability to pay LFOs.

4. APPEAL COSTS SHOULD NOT BE IMPOSED

In State v. Sinclair, II,<sup>5</sup> the Court exercised its discretion and denied the state's cost bill.<sup>6</sup> Slip op. at 14. Despite the fact that Sinclair challenged appellate costs for the first time in a motion for reconsideration, this Court considered Sinclair's challenge, noting "the issue of appellate costs is systemic in nature[.]" Sinclair, II, slip op. at 4. Sinclair's motion set forth several facts supporting his inability to pay appellate costs, including; the trial court's lack of determination that he was able to pay any amount of trial court LFOs, the trial court's waiver of all nonmandatory LFOs in the judgment and sentence, and the appointment of appellate counsel because of Sinclair's indigency. Sinclair, II, slip op. at 12-13. Noting RAP 15.2(f) established a "presumption of continued indigency throughout review," the Court concluded no facts or trial court order supported a determination that Sinclair's financial condition had improved or was likely to improve. Sinclair, II, slip op. at 13-14. The Court therefore concluded an award to the state of appellate costs was inappropriate. Sinclair, II, slip op. at 14.

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<sup>5</sup> State v. Sinclair, II, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2016 WL 393719 (slip op. filed January 27, 2016).

<sup>6</sup> An Order granting Sinclair's motion for reconsideration, withdrawing opinion, and substituting a published opinion was entered on January 27, 2016.

As in Sinclair, II, here several facts show Hoyt does not have the present, or future ability, to pay appellate costs. For example, the trial court found Hoyt "unable by reason of poverty to pay for any of the expenses of appellate review." CP 62. Similarly the court found Hoyt "cannot contribute anything toward the costs of appellate review." Id. As such, the court waived the filing fee for appeal, authorized appointment of counsel "wholly at public expense[,]" and authorized production of the relevant record at public expense. CP 62-63 (Order of Indigency). As in Sinclair, II, here the State has failed to submit any evidence that would rebut the "presumption of continued indigency throughout review." Slip op. at 13-14.

As in Sinclair, II, this Court should exercise its discretion, consider Hoyt's challenge to the state's anticipated request for appellate costs herein, and find that an award of appellate costs is inappropriate.

Granting Hoyt's request also best serves the goals of judicial efficiency. If the court exercises discretion in its decision terminating review, Hoyt will not have to prepare and file a cost bill objection, the commissioner will not have to rule on the issue of costs, Hoyt will not need to move to modify the commissioner's ruling, and a panel of judges will not need to decide whether or not to exercise its discretion when ruling on the motion to modify. The exercise of discretion now would at

least streamline and simplify the process for making a determination on the issue of appellate costs. Hoyt asks that this Court exercise discretion by denying appellate costs in its decision terminating review in the event he does not prevail on appeal.

D. CONCLUSION

For the reasons stated, this Court should reverse the robbery and burglary convictions and the sentences for all three offenses and remand. And even if this Court does not reverse the convictions, remand is warranted to correct several identified scrivener's errors in the judgment and sentence and for the trial court to properly engage in a meaningful inquiry into Hoyt's ability to pay the LFOs imposed.

Dated this 14<sup>th</sup> day of May, 2016

Respectfully submitted

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read 'CHRISTOPHER H. GIBSON', written over a horizontal line.

CHRISTOPHER H. GIBSON

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Appendix A



1 APPEARANCES:

2

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July 12, 2010

Kennewick, WA

THE COURT: Good morning.

MR. BLOOR: Good morning.

MR. ZIEGLER: Good morning, Your Honor.

THE COURT: Good morning.

This is State versus Justin Hoyt.

MR. ZIEGLER: We are prepared to tender a plea on that, Your Honor.

THE COURT: Mr. Hoyt, before you enter your plea, I need to advise you of the rights you will give up if you choose to plead guilty, sir. If you choose to plead guilty, you will give up your right to remain silent. You will give up your right to a speedy and public trial before an impartial jury. You will give up your right to hear and question witnesses who testify against you. You will give up your right to have witnesses testify for you, have the witnesses be made to appear at no cost to you. You will give up your right to require the State prove each and every element of the crime charged beyond a reasonable doubt, and you will give up the right to appeal the question of guilt on any charge to which you plead guilty.

Also, sir, if you are not a citizen of the

1 United States, a plea of guilty is grounds for  
2 deportation, exclusion from admission to the United  
3 States, or denial of naturalization pursuant to the  
4 laws of the United States.

5 A plea of guilty will also result in loss of  
6 your right to own or possess a firearm.

7 Do you understand those rights you will be  
8 giving up, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You are charged with one count  
11 of robbery in the first degree with a deadly weapon.  
12 It carries a standard range in your case of 153  
13 months to 195 months confinement, maximum penalty of  
14 20 years to life imprisonment and \$50,000 fine, or  
15 both.

16 How far did you go in school, sir?

17 THE DEFENDANT: Ninth grade, sir.

18 THE COURT: Any objection to my adding that  
19 to the form?

20 MR. ZIEGLER: None, Your Honor.

21 THE COURT: Did you have a chance to go  
22 over this statement with your attorney, sir?

23 THE DEFENDANT: Yes, sir, I did.

24 THE COURT: Do you understand it?

25 THE DEFENDANT: Yes, sir, I do.

1 THE COURT: Do you have any questions about  
2 it?

3 THE DEFENDANT: No, sir, I don't.

4 THE COURT: Did you sign this document?

5 THE DEFENDANT: Yes, sir, I did.

6 THE COURT: It indicates on Page 8,  
7 Paragraph 11, this is my statement. On April 22,  
8 2008 in Benton County, while armed with a knife,  
9 whose blade was longer than three inches --

10 MR. ZIEGLER: Is it that bad, Judge?

11 THE COURT: I --

12 MR. ZIEGLER: -- forced my way --

13 THE COURT: -- forced my way into a gas  
14 station kiosk by forcing open the door and then  
15 entered against the attendant's will and forcibly  
16 took and removed money. I used physical force  
17 against the defendant -- excuse me, against the  
18 attendant to complete the robbery.

19 Is that an accurate statement of the facts,  
20 sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Anyone make any threats against  
23 you or promises to you to get you to change your  
24 plea?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you understand that any  
2 recommendation for sentencing is only a  
3 recommendation, the court could sentence you up to  
4 195 months?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: To the charge of robbery in the  
7 first degree with a deadly weapon, how do you plead,  
8 sir?

9 THE DEFENDANT: Guilty, Your Honor.

10 THE COURT: The court finds your plea of  
11 guilty was knowingly, intelligently and voluntarily  
12 made. The court also finds there is adequate factual  
13 basis to support your plea. So based on your plea,  
14 sir, the court is going to find you guilty of the  
15 crime of robbery in the first degree with a deadly  
16 weapon.

17 MR. ZIEGLER: And Burglary 1, Judge.

18 THE COURT: There is also a Burglary 1?

19 MR. ZIEGLER: Burglary 1 should be right  
20 underneath the Robbery 1 there.

21 THE COURT: So is Burglary 1 the same  
22 standard range?

23 MR. BLOOR: No, it's actually a little bit  
24 -- the Burglary 1 is 87 to 116 months.

25 MR. ZIEGLER: You may want to enter that

1           yourself, Judge. I usually just put the top numbers  
2           in.

3                       THE COURT: The numbers again, Mr. Bloor,  
4           are? 100 --

5                       MR. BLOOR: It's 87 to 116.

6                       THE COURT: To the charge of burglary in  
7           the first degree, sir --

8                       MR. ZIEGLER: Could I have just a minute,  
9           Judge?

10                      THE COURT: Certainly.

11                      MR. ZIEGLER: This case came back from the  
12           Court of Appeals. He's pleading on these two counts.  
13           He was actually found guilty of the Theft 2, but he  
14           indicates he hasn't been sentenced on the Theft 2.

15                      THE DEFENDANT: They reversed the sentence  
16           because the points could have been different.

17                      MR. BLOOR: Oh.

18                      MR. ZIEGLER: So I better defer to the  
19           State. Do we want to do this in separate hearings,  
20           or do we want to do it --

21                      MR. BLOOR: No. I just have a judgment  
22           and sentence. I don't think he needs to plead guilty  
23           to the Count 3. But there is a third count and I  
24           think we can just resentence him on --

25                      MR. ZIEGLER: We could.

1 MR. BLOOR: -- the one, two and three.

2 MR. ZIEGLER: The jury verdicts stand on  
3 that.

4 THE COURT: So let me then go back and  
5 address the burglary issue.

6 You are also charged with one count of burglary  
7 in the first degree which carries a standard range of  
8 87 to 116 months.

9 To the charge of burglary in the first degree,  
10 how do you plead, sir?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Thank you. The court finds  
13 your pleas of guilty are knowingly, intelligently and  
14 voluntarily made. The court also finds there is  
15 adequate factual bases to support your pleas. Based  
16 on your pleas, sir, the court is going to find you  
17 guilty on Count 1 of the crime of robbery in the  
18 first degree with a deadly weapon; guilty in Count 2  
19 of the crime of burglary in the first degree.

20 I have signed the statement of defendant on  
21 plea of guilty.

22 MR. ZIEGLER: Thank you, Your Honor.

23 THE COURT: Going onto sentencing on these  
24 two matters?

25 MR. ZIEGLER: I think we can actually

1 sentence on all three.

2 MR. BLOOR: Hand this up.

3 THE COURT: Thank you. So we are going to  
4 sentence on all three counts?

5 MR. BLOOR: I think that would be the  
6 cleanest thing to do.

7 MR. ZIEGLER: I agree.

8 MR. BLOOR: Your Honor, we'll ask the court  
9 to impose a sentence of 171 months on the first  
10 count; 87 months on the second count; 22 months on  
11 the third count. Those should all run concurrently.

12 There is a charge in Oregon that I ask to run  
13 consecutive to this. And I did put that out in the  
14 judgment and sentence in Section 4.4. He did get 70  
15 months on that matter. And they ran -- the way this  
16 worked actually is he was found guilty in this court  
17 first. We entered our judgment and sentence. Then  
18 he was found guilty in Oregon and they ran their time  
19 consecutive.

20 So as things stood, prior to his appeal, you  
21 know, he would have gotten 195 months, which is what  
22 Judge Runge sentenced him to on this case, plus 70  
23 months in Oregon.

24 So we're basically giving him a two-year break.  
25 But I do think that should be consecutive.

1           There are a couple other things I'd like to  
2 point out. This is going to be a little bit  
3 confusing, I think, but I believe I've done this  
4 right. Under Section 4.5, you know the law changed  
5 in this window of time concerning the number of  
6 months on community placement. It used to be a  
7 range, now it's just a flat number. And as I  
8 understand the law, it depends on the sentencing  
9 date, not the date of offense. So I put in 18 months  
10 for both the robbery and the burglary. Other than  
11 that, I don't really have any comments.

12           We're asking for the no contact order.

13           You know, the break that he's getting is  
14 definitely something, but on the other hand, Mr.  
15 Ziegler and I calculated he's probably going to do  
16 quite a bit of time. This would be 241 months total  
17 that he gets if the court accepts our recommendation.  
18 In Oregon, he won't get any good time.

19           So now he is, I believe, 35 now or 34 maybe.  
20 That's going to be, you know, some good years of his  
21 life that he's going to be in prison. And I know  
22 he's ready to accept that.

23           THE COURT: Mr. Ziegler?

24           MR. ZIEGLER: He is, Judge. I know it  
25 sounds rather strange, especially coming from me, in

1 particularly, when we're looking at these kind of  
2 offenses; but I wish I could get a dozen more like  
3 him.

4 I put a lot of work into this case when it came  
5 back on remand. And I went and saw him Saturday.  
6 The State had given us a modified witness list.  
7 A witness was going to testify that did not appear at  
8 the first trial, which basically undid all the work  
9 that I had already done.

10 And when I talked about what that left us with  
11 in terms of a trial here today, Mr. Hoyt basically  
12 said I want to thank you for everything you did for  
13 me, but we're not going to go through that. He said,  
14 there is no reason to do that, not for me and not for  
15 you. And he thanked me for everything I've done for  
16 him up to that point in time.

17 This really is a jolt. He's what's called a  
18 11-A in Oregon, which means he gets not one day of  
19 good time on that 70 months. So according to my  
20 calculations, he will probably be maybe 52, 53 before  
21 he'll be released on this. And I agree with what  
22 Terry said, it's not only a good chunk of time of  
23 some of the best years of his life.

24 So I'm going to ask that you accept it, it's a  
25 fair recommendation in relation to what happened in

1 the facts on this case. I'm going to ask that you  
2 accept it.

3 THE COURT: Mr. Hoyt, anything you'd like  
4 to say, sir?

5 THE DEFENDANT: I would like to thank  
6 everybody involved in the case: The prosecutor, my  
7 attorney for being professional. I would like to  
8 apologize to the City of Kennewick and to everybody  
9 involved in the case.

10 If I can set it up through the DAs office, I'd  
11 like to write an apology letter to Mr. Corrado, if at  
12 all possible. And I -- just that I hope you go with  
13 the recommendation.

14 THE COURT: Thank you, sir.

15 The court will accept the recommendation, will  
16 impose a sentence of 171 months on Count 1; 87 months  
17 on Count 2; and 22 months on Count 3 for a total of  
18 171 months. That will run consecutively to the  
19 sentence imposed in Oregon.

20 Also, sir, you will be subject to community  
21 custody for a period of 18 months on Count 1, and 18  
22 months on Count 2 following your term of confinement.

23 You will be responsible for crime victims  
24 assessment of \$500. \$500 fine. \$100 felony DNA  
25 collection fee. Court costs in the amount of

1           \$1,078.50.

2           As I said, you will be subject to community  
3 custody for a period of 18 months following your term  
4 of confinement.

5           Mr. Hoyt, thank you for your candor and your  
6 willingness to accept responsibility. I hope that --  
7 I know this is a long time. It's going to be a  
8 difficult time, but in listening to your comments  
9 today, I trust that you will make the most of that  
10 time and be a -- will be prepared to be a productive  
11 member of society. Obviously you have that  
12 capability within you. So I hope that that comes to  
13 fruition when you are released and that things go  
14 well for you and you're able to find your way in a  
15 productive way in society. Thank you, sir, again,  
16 for your candor.

17           I have signed the judgment and sentence and the  
18 no.contact order.

19           MR. ZIEGLER: Thank you, Your Honor.

20           THE DEFENDANT: Thank you, Your Honor.

21           THE COURT: Good luck to you, sir.

22           MR. BLOOR: Thank you.

23           THE DEFENDANT: Thank you, Your Honor.

24                           (Court was adjourned.)

25

1 STATE OF WASHINGTON )  
 ) ss.  
2 COUNTY OF BENTON )

3 I, CHERYL A. PELLETIER, Official Court Reporter of  
4 the Superior Court of the Kennewick Judicial District,  
5 State of Washington, in and for the County of Benton,  
6 hereby certify that the foregoing pages comprise a full,  
7 true and correct transcript of the proceedings had in the  
8 within-entitled matter, recorded by me in stenotype on the  
9 date and at the place herein written; and that the same  
10 was transcribed by computer-aided transcription.

11

12 That I am in no way related to or employed by any  
13 party in this matter, nor any counsel in the matter; and I  
14 have no financial interest in the litigation.

15

16 That I am certified to report Superior Court  
17 proceedings in the State of Washington.

18

19 WHEREFORE, I have affixed my official signature this  
20 2nd day of February, 2016.

21

22

23

24

25

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Cheryl A. Pelletier, CCR  
Official Court Reporter



JOSIE DELVIN  
BENTON COUNTY CLERK

JUL 12 2010

FILED <sup>U</sup>/<sub>9</sub>

Superior Court of Washington  
for

State of Washington

Plaintiff

vs.

Justin W. Hoyt  
Defendant

No. 08-1-00421-3

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

1. My true name is: Justin W Hoyt
2. My age is: 41/20/25
3. The last level of education I completed was 9th grade

4. I Have Been Informed and Fully Understand That:

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with: Reckless I - deadly

The elements are: Burg I upon

5. [Signature] 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;

110

- (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 ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1		153-195			20yr - 50K
2		87-111			
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.

- (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. 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 to 36 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: 121 MOS

consecutive to OR  
comm custody - restrictions  
 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 it 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 unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must immediately surrender any concealed pistol license. RCW 9.41.040.

- (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 two years 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) 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.
- (q) 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.
- (r) 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.
- (s) 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.

- (t) 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.
- (u) 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, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b).
- (v) 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.
- (w) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.
- (x) If 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).
- (y) If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of

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

- (z) 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].
- (aa) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts I and II will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- (bb) 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.
- (cc) 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.
- (dd) 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.
- (ee) 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.
- (ff) 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 I  
count II  
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:

*with a knife whose blade was longer than 3", I forced my way into a gas station kiosk by forcing open the door & forcibly took & removed money. I used physical force against the attendant to complete the robbery.*

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.

[Signature]  
Defendant

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

[Signature]  
Defendant's Lawyer

Terry J. Bloor  
Prosecuting Attorney

Terry J. Bloor 9044  
Print Name WSBA No.

[Signature]  
Print Name WSBA No. 11895

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 interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language. 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: 7/12/10

[Signature]  
Judge

ERIC J. NIELSEN  
ERIC BROMAN  
DAVID B. KOCH  
CHRISTOPHER H. GIBSON

OFFICE MANAGER  
JOHN SLOANE

LAW OFFICES OF  
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MARY T. SWIFT  
OF COUNSEL  
K. CAROLYN RAMAMURTI  
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State v. Justin Hoyt

COA No. 33854-1-III

Certificate of Service

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 11<sup>th</sup> day of May, 2016, I caused a true and correct copy of the **Amended Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Benton County Prosecuting Attorney  
[prosecuting@co.benton.wa.us](mailto:prosecuting@co.benton.wa.us)

Justin Hoyt  
DOC No. 320994  
Monroe Correctional Complex  
P.O. Box 777  
Monroe, WA 98272

**Signed** in Seattle, Washington this 11<sup>th</sup> day of May, 2016.

X  \_\_\_\_\_