

77973-2

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE THE PERSONAL	)	NO. 56056-5
RESTRAINT OF:)	
COREY BEITO, JR.	)	PERSONAL RESTRAINT
	)	PETITION

A. STATUS OF PETITIONER

Corey Beito was convicted on his guilty plead of one count of first degree murder and received an exceptional sentence of 504 months as opposed to a standard range sentence of 281 to 374 months. Mr. Beito has been confined since his arrest on this charge in 1998.

Mr. Beito appealed his exceptional sentence and this Court reversed the sentence and remanded for resentencing. 46308-0-1.

On remand the trial court again imposed a 504 month exceptional sentence.

Mr. Beito again appealed his sentence and the court again reversed the sentence and remanded for resentencing. 49528-3-1.

On remand the trial court again imposed a 504 month exceptional sentence.

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Mr. Beito again appealed his sentence. 51673-6-I. This Court affirmed. The Supreme Court denied Mr. Beito's petition for review on September 8, 2004. The mandate has not yet issued in that case.

Mr. Beito has not previously filed a Personal Restraint Petition in this matter.

B. GROUND FOR RELIEF

1. *RELEVANT FACTS*

The State charged Mr. Beito by Amended Information with aggravated first degree murder for the killing of Jessica Seim. Appendix A. The State alleged two aggravating factors in the alternative: (1) the murder was committed to conceal the commission of first or second degree rape or third degree rape of a child; and (2) the murder was committed in furtherance of first or second degree rape. *Id.*

Mr. Beito entered an Alford plea to first degree murder as charged in the Second Amended Information, in which he acknowledged he had caused the death of Ms. Seim, but denied that he had committed premeditated or intentional murder. Appendices B and C. In addition, Mr. Beito agreed to permit the sentencing court to consider his statements to police, various

witness statements, the autopsy report and photographs, and that the crime of third degree rape of a child had been committed. Mr. Beito also agreed to allow the state to attempt to establish that he had committed the crimes of first or second degree rape, although he denied he had committed those crimes. Appendix B

The trial court imposed an exceptional sentence of 504 months based solely upon the following finding:

It is uncontroverted that the defendant raped Jessica Siem. This finding does not violate the Real Facts Doctrine. The defendant admits Rape of a Child Third Degree, which is a substantial and compelling reason supporting an exceptional sentence. This circumstance distinguishes this from other crimes of premeditated murder in the first degree and forms a basis to impose longer sentence than the standard range.

Appendix D. Mr. Beito appealed his sentence contending that absent some nexus between the rape and the murder there was insufficient basis for the exceptional sentence. This Court agreed and remanded the matter to permit the trial court to consider what if a nexus existed between the crimes. Appendix E.

On remand the trial court again imposed an exceptional sentence of 504 months, again finding Mr. Beito had admitted committing the crime of third rape of a child. Appendix F. The court also concluded (1) the victim's strangulation and ligature

injuries were consistent with efforts to keep her from screaming; (2) the rape occurred close in time to the murder; (3) the victim was never seen alive after she went into Mr. Beito's room; (4) Mr. Beito never said the sex was consensual; (5) the victim had multiple injuries including "defensive wounds;" (6) the victim's injuries were consistent with witness statements and inconsistent with consensual sex; (7) the victim was petite. Id. From these findings the court concluded

A valid inference from the evidence is that the rape was a motive for, and factually connected to the murder, accordingly, the Court finds the defendant's confession on this point not credible.

Id. The court concluded the rape distinguished Mr. Beito's of crime from other first degree murders.

Mr. Beito again appealed and this Court again reversed his sentence concluding the trial court miscalculated his offender score, by wrongly including two juvenile offense in his offender score. Appendix G.

On remand, despite the lower standard range the trial court once again imposed a 504 month exceptional sentence relying on the same findings it had previously made, and merely entered a

copy of its prior findings with the improper standard range lined out and the corrected range handwritten in. Appendix H.

Once again Mr. Beito appealed. Mr. Beito contended that by imposing the same sentence despite his lower standard range the court had in fact imposed a more severe sentence and thus deprived him of due process. This Court rejected his arguments and affirmed his conviction. Appendix I.

The Washington Supreme Court denied his petition for review on September 8, 2004. Appendix J.

2. *MR. BEITO IS SUFFERING UNLAWFUL RESTRAINT AND IS ENTITLED TO RELIEF BY WAY OF A PERSONAL RESTRAINT PETITION*

a. Mr. Beito is unlawfully restrained. A person is entitled to relief by way of a Personal Restraint Petition (PRP) where the person is unlawfully restrained as defined in RAP 16.4. A person is restrained where she "has limited freedom because of a court decision in a civil or criminal proceeding, [or] the petitioner is confined." RAP 16.4(b). Mr. Beito is currently serving the exceptional sentence which he is challenging in the present petition and is thus under "restraint."

RAP 16.4(c) provides restraint is unlawful where:

.....
(2) The . . . sentence . . . was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington

.....
(4) There has been a significant change in the law, whether substantive or procedural, which is material to the . . . sentence . . . in a criminal proceeding . . . and sufficient reasons exist to require retroactive application of the changed legal standard

.....

The United States Supreme Court has held that the imposition of an exceptional sentence above the standard range under the Sentencing Reform Act, based on a judicial determination of the relevant aggravating factors deprives the person of their Sixth Amendment right to a jury determination of the facts of conviction. Blakely v. Washington, __ U.S. __ 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). As with any other element of a crime, the Fourteenth Amendment Due Process Clause requires these facts be proven beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); Ring v. Arizona, 536 U.S. 584, 604, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Mr. Beito contends his conviction violates the Sixth and Fourteenth Amendment as he was not advised of and thus did not validly waive his rights to a jury determination of the these facts beyond a reasonable doubt. Further, he contends his rights under

Article I, §§ 21, 22 to a jury determination beyond a reasonable doubt were also violated.

Additionally, Mr. Beito contends the imposition of an exceptional sentence based upon a judicial finding of fact after his guilty to plea to an offense is a judgment notwithstanding the verdict and thus violates the Double Jeopardy provisions of the Fifth and Fourteenth Amendments. Therefore, Mr. Beito's restraint is unlawful pursuant to RAP 16.4(c)(2).

In addition, where appellate decisions issued after a sentence was imposed demonstrate the sentence is improper, a change in law has occurred from which a person is entitled to benefit. In re the Personal Restraint of Johnson, 131 Wn.2d 558, 568-69, 933 P.2d 1019 (1997). Blakely not only held the Sixth Amendment bars an exceptional sentence imposed based on a judicial determination of the existence of the aggravating factors, but in doing so it overruled the decision in State v. Gore, 143 Wn.2d 288, 21 P.3d 262 (2001)

Cases which result in a change in law always apply to those cases which are not yet final at that time the decision is rendered, including cases on appeal. State v. Hanson, 151 Wn.2d 783, 791 91 P.3d 888 (2004). The finality of a case is determined by the

provisions of RAP 12.7. Hanson, 151 Wn.2d at 790-91. Pursuant to RAP 12.7(a), a case in the court of appeals is not final until (1) a mandate is issued; (2) the Supreme Court accepts review; (3) a certificate of finality is issued. None of these three events had occurred in Mr. Beito's case prior to the issuance of the decision in Blakely. Thus, Mr. Beito's appeal was not yet final, Blakely must apply to his case, and his restraint is unlawful pursuant to RAP 16.4(c)(4).

3. *MR. BEITO WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL AND FOURTEENTH AMENDMENT RIGHT TO PROOF BEYOND A REASONABLE DOUBT OF EACH ELEMENT OF THE OFFENSE FOR WHICH HE WAS SENTENCED*

The Sixth Amendment guarantees a criminal defendant the right to a jury trial. Apprendi, 530 U.S. at 476-77. This right includes the right to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Id., quoting United States v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). The right to a jury trial does not allow a defendant to be "expose[d] . . . to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone."

(Emphasis in original.) Apprendi, 530 U.S. at 483, see also Ring, 536 U.S. at 604. Additionally, the Due Process Clause of the Fourteenth Amendment compels any fact which increases a sentence to a term beyond the maximum be formally pleaded, submitted to a jury, and proven beyond a reasonable doubt. See Specht v. Patterson, 386 U.S. 605, 609-11, 87 S.Ct. 1209, 18 L.Ed.2d 326 (1967). The United States Supreme Court has noted:

[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.

Apprendi, 530 U.S. at 490 quoting, Jones v. United States, 526 U.S. 227, 252-53, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999) (opinion of Stevens, J.).

A sentencing court's ability to impose a sentence is limited to the maximum for that offense reflected in the jury verdict alone.

Blakely, 124 S.Ct. at 2537. Blakely held

the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts "which the law makes essential to punishment."

(Italics in original.) *Id.*, citing, 1 J. Bishop, Criminal Procedure, § 87, p.55 (2d ed. 1872)).

Because it was concerned specifically with an exceptional sentence imposed under the SRA, there can be no doubt that Blakely applies to the exceptional sentence in this case as well. Blakely concluded that because the imposition of an exceptional sentence required factual findings beyond those made by the jury or pleaded to in a guilty plea, the resulting sentence violated the Sixth Amendment. Blakely at 2537-38.

Here the maximum penalty authorized by Mr. Beito's guilty plea was 374 months. Appendix H. The judicial finding of aggravating circumstances and resulting conviction and sentence on an aggravated version with a 504 month sentence violated Mr. Beito's Sixth and Fourteenth Amendment rights.

4. *MR. BEITO'S GUILTY PLEA DOES NOT PRECLUDE RELIEF*

The State cannot argue Mr. Beito's guilty plea and agreement to real facts constituted a valid waiver of his Sixth and Fourteenth Amendment rights to proof beyond a reasonable doubt to a jury.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). A plea is neither intelligently nor voluntarily made unless the defendant is aware of the "true nature of the charge against him." Henderson v. Morgan, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d (1976) citing, Smith v. O'Grady, 312 U.S. 329, 334, 61 S.Ct. 572, 85 L.Ed.2d 859 (1941). To constitute a voluntary and intelligent waiver of the various constitutionally afforded trial rights, a guilty plea must establish the defendant was aware of "the nature of the constitutional protections he is waiving" and must establish the defendant "in fact understood the charge." Henderson, 426 U.S. at 645 n.13, citing, Johnson v. Zerbst, 304 U.S. 458, 464-65, 58 S.Ct. 1019, 82 L.Ed 1461 (1938); and Smith, 312 U.S. at 334. A plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

Mr. Beito's plea and real facts agreement could only be a waiver of his rights if he were first advised and understood that (1) he had the right to require the State prove the facts supporting an

exceptional sentence beyond a reasonable doubt to a jury; and (2) he was in fact pleading guilty to a greater crime than first degree murder. See Johnson, 304 U.S. at 464-65; and Smith, 312 U.S. at 334. But nothing in those documents establishes he was advised of these rights. Because Mr. Beito was never advised of this information, his plea and real facts agreement cannot be considered a waiver of his rights.

In a colloquy with the deputy prosecutor preceding the entry of his guilty plea, Mr. Beito indicated he understood he was waiving the right to proof beyond a reasonable doubt of the crime of first degree murder as charged in the amended information. Appendix K at 4-5. He stated his understanding that the State would, for purposes of sentencing, seek to prove the facts of a higher crime. Appendix K at 11. But he never was informed that he had the right to require the state to prove the elements of such greater crime beyond a reasonable doubt to a jury.

Similarly in the plea colloquy conducted by the trial court, the court read aloud the charge contained in the Amended Information and Mr. Beito stated he understood he was waiving the right to require the State to prove that charge beyond a reasonable doubt to a jury. Appendix K at 17-18. Mr. Beito acknowledged that the

State would seek an exceptional sentence based on proof of additional crimes. Appendix K at 22. But he was never informed of nor waived his right to have the facts leading to this increased punishment proven to a jury beyond a reasonable doubt.

In light of the above, Mr. Beito's guilty plea and agreement to real facts did not constitute a valid waiver of his Sixth and Fourteenth Amendment rights to proof beyond a reasonable doubt to a jury.

5. *MR. BEITO'S SENTENCE VIOLATES THE FIFTH AMENDMENT'S DOUBLE JEOPARDY CLAUSE*

Mr. Beito contends that any judicial finding which increases the crime of conviction to a greater degree violates not only the Sixth and Fourteenth Amendments, it also violates the Fifth Amendment's Double Jeopardy Clause.

The Supreme Court has made clear Apprendi concerned whether "facts labeled sentencing factors were nevertheless 'traditional elements'" Harris v. United States, 536 U.S. 545, 557-58, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2003). Harris added

Apprendi and McMillan, mean that those facts setting the outer limits of a sentence, and of the judicial power to impose it, are **the elements** of the crime for purposes of the constitutional analysis.

536 U.S. at 557-58 (Emphasis added). Where a defendant is sentenced based on the jury's verdict plus a fact found by a judge, the defendant has been convicted of an aggravated version of the crime actually reflected in the jury's verdict. See e.g., Ring, 536 U.S. at 609 (aggravating circumstances that make a defendant eligible for increased punishment "operates as the functional equivalent of an element of a greater offense"), see also Sattazahn v. Pennsylvania, 537 U.S. 101, 111, 123 S.Ct. 732, 154 L.Ed.2d 588 (2003) (plurality decision).¹ Justice Scalia's plurality decision in Sattazahn went beyond merely restating the Ring holding. Instead the Court held "we can think of no principled reason to distinguish, between what constitutes an offense for the purposes of the Sixth Amendment's jury-trial guarantee and constitutes an 'offence' for purposes of the Fifth Amendment's Double Jeopardy Clause." Sattazahn, 537 U.S. at 111.

¹ This portion of Sattazahn was only joined in by four justices, as Justice O'Connor, consistent with her dissent in Apprendi and Ring, refused to join in this section of the opinion. See 537 U.S. at 117 (O'Connor, J., concurring in part and concurring in the judgment). It is nonetheless undoubtedly an accurate statement of the law in light of Apprendi and Ring, as the four-justice dissent in Sattazahn, although disagreeing with the majority's refusal to find a jury's inability to reach a unanimous verdict on whether to impose the death penalty was the equivalent of an acquittal, specifically relied on Ring for the point that aggravating factors in death penalty cases are the equivalent of elements. Sattazahn, 537 U.S. at 126 n.6 (Ginsburg, J., dissenting).

The Fifth Amendment provides that no individual shall “be twice put in jeopardy of life or limb” for the same offense. The Fifth Amendment’s double jeopardy protection is applicable to the states through the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 787, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

The Double Jeopardy Clause protects against a second prosecution for the same offense after conviction. North Carolina v. Pearce, 395 U.S. 711, 717, 726, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), overruled on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). Double jeopardy protections begin where there has been an event, such as an acquittal or a conviction, which terminates original jeopardy. Richardson v. United States, 468 U.S. 317, 325, 104 S.Ct. 3081, 82 L.Ed.2d 242 (1984). The double jeopardy clause bars prosecution or conviction of a higher degree of a crime once a conviction or acquittal has been obtained on a lesser degree or included offense. See e.g., Brown v. Ohio, 432 U.S. 161, 169-70, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977) (prior conviction for the lesser included offense of joyriding prohibited prosecution of the greater offense of auto theft). A valid guilty plea constitutes a conviction in every sense. “By entering a plea of guilty, the accused is not simply stating that

he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” United States v. Broce, 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). This bar exists unless the conviction on the first offense is somehow vacated on appeal.

Sattazahn, 537 U.S. at 110-11.

Double jeopardy principles preclude the state from seeking a judgment notwithstanding the verdict no matter how clear or strong the evidence of guilt. Standefer v. United States, 447 U.S. 10, 21-25, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980). “The prosecution in a criminal case cannot obtain a directed verdict or judgment notwithstanding the verdict, no matter how clear the evidence of guilt.” State v. Mullins-Costin, 152 Wn.2d 107, 116, 95 P.3d 321 (2004); see also State v. Goins, 151 Wn.2d 728, 735, 92 P.3d 181 (2004) (refusing to strike plainly inconsistent verdicts of guilt based on “traditional approach of exercising restraint from interfering with jury verdicts.”) Thus, even if the evidence plainly established Mr. Beito was guilty of an aggravated version of the offense to which he pleaded guilty, once his plea was accepted double jeopardy principles precluded the state from seeking a conviction and sentence of an aggravated version of the offense. Mr. Beito’s conviction on the greater offense must be reversed.

In addition, the double jeopardy principles outlined here bar any effort to uphold the greater convictions on appeal, or to permit the State to seek a verdict on the greater offenses on remand. "Conditioning an appeal of one offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy." Green v. United States, 355 U.S. 184, 193-94, 78 S.Ct. 221, 223, 2 L.Ed.2d 199 (1957). Put simply, where jeopardy has attached to one offense by means of a conviction or acquittal, an appeal of another offense as violating double jeopardy does not allow removing the jeopardy bar which attached to the first. Benton illustrates this point.

In Benton a defendant was acquitted of larceny but convicted of burglary. 395 U.S. at 785. Because both the grand and petit juries had been selected under an invalid procedure, a state court set aside his burglary conviction. Id. at 786. On remand the State again sought and obtained a conviction of both burglary and the larceny of which the defendant was acquitted. Id. Before the Supreme Court, the state argued that because the larceny indictment was void due to a procedural defect, no jeopardy

attached and thus he could be tried again for both. Id. at 796. The Court rejected this claim finding that even if the indictment was void

[p]etitioner was acquitted of larceny. He has, under Green a valid double jeopardy plea which he cannot be forced to waive. Yet Maryland wants the earlier acquittal set aside, over petitioner's objections, because of a defect. This it cannot do.

Benton, 395 U.S. at 797; see also United States v. Ball, 163 U.S. 662, 669-70, 16 S.Ct 1192, 41 L.Ed. 300 (1896) (concluding that even though acquittal stemmed from fatally defective indictment, the indictment was not void but merely voidable and government could not seek to set aside acquittal over defendant's objection). Because of state law questions of the interrelation of the larceny and burglary convictions, Benton remanded the matter to the state court to determine whether the burglary conviction was also barred by the jeopardy which attached to the larceny conviction. 395 U.S. at 798-99.²

Here Mr. Beito pleaded guilty to first degree murder. That conviction is final. Besides barring the trial court from entering convictions for the greater offenses, this final conviction prevented, and now bars any conviction for a greater or lesser offense. United

² Assuming that under Maryland law larceny was a lesser offense of burglary, the Court's subsequent decisions in cases dealing with lesser offenses, such as Brown, would require the conclusion that the burglary conviction was also barred.

States v. Dixon, 509 U.S. 688, 698, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993). Dixon explained that where a first offense results in a conviction, and proof of a second offense necessarily proves the first, the conviction on the first will bar prosecution on the second. In Dixon, the Court found that pursuant to the Blockburger³ test, a defendant could not be convicted of both contempt, for violating conditions of release by possessing drugs, and of the substantive offense of possession of drugs even though the defendant could commit contempt without possessing drugs, as the possession charge was "a species of lesser-included offense." 509 U.S. at 98, citing, Illinois v. Vitale, 447 U.S. 410, 420-421, 100 S.Ct. 2260, 2267, 65 L.Ed.2d 228 (1980) (Double Jeopardy Clause would be violated if the state's proof of manslaughter required proof of the misdemeanor crime of failure to slow to avoid accident of which the defendant has already been convicted); and Whalen v. United States, 445 U.S. 684, 694, 100 S.Ct. 1432, 1439, 63 L.Ed.2d 715 (1980) (convictions of both rape and felony murder based on rape violated double jeopardy).

First degree murder plus an aggravating circumstances necessarily establishes the lesser offense of first degree murder,

³ Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932).

and thus first degree murder is “a species of lesser-included offense” of first degree murder plus aggravating circumstances. Dixon, 509 U.S. at 698. Therefore, the guilty plea to the lesser offense will bar any effort to seek a verdict or conviction on the greater. Id.

Mr. Beito’s appeal of the conviction of the greater offense of first degree murder plus aggravating circumstances does not waive his claim of former jeopardy which arises from his final conviction of first degree murder no further action can be taken to seek or affirm the greater convictions. See Green, 355 U.S. at 193-94; and Benton, 395 U.S. at 797. This necessarily includes any effort to apply a harmless error analysis to affirm the conviction on appeal or any effort by the State on remand to seek a verdict on the greater offense.

The State may respond that double jeopardy principles have no application as this matter merely involves the sentence imposed. Indeed, this Court has previously succumbed to such reasoning. See e.g., State v. Maestas, 124 Wn.App. 352, 356 101 P.3d 426 (2004). However, such an argument completely miscomprehends Apprendi, Ring, and Blakely. This case is no more about sentencing than a case where a jury convicts an individual of

second degree robbery but the judge concludes the individual is guilty of first degree robbery. Apprendi, Ring, Harris, and Blakely make clear what is an element of a crime. Ring and Harris state any judicial finding which increases the maximum penalty is the functional equivalent of an element of a greater offense. Sattazahn establishes that elements for purposes of the Sixth Amendment are elements for purposes of double jeopardy.⁴ This case is not about sentencing.

Instead the only question is whether a court, based on judicial findings which go beyond the jury's verdict, can enter a conviction of a greater offense than that found to have been committed by the jury in its verdict. In short, can the court enter a judgment notwithstanding the jury's verdict. The answer is, of course, no. Again, Maestas fails to properly understand or apply Double Jeopardy principles on this point.

Maestas opined that even if under Apprendi, Ring, and Blakely facts supporting an exceptional sentence are elements of a

⁴ Maestas refuses to follow Justice Scalia's opinion in Sattazahn with respect to this question dismissing it as merely a plurality decision on this point. See Maestas, 124 Wn.App. at 359. But Maestas ignores the fact that the four "dissenting" justices agreed with the Justice Scalia on the reach of the Double Jeopardy Clause, thus making this a 8-1 majority decision on this point. See Sattazahn, 537 U.S. at 126 n.6 (Ginsburg, J., dissenting).

greater offense, there is constitutional problem if a judge makes those findings after a jeopardy has attached by way of a guilty plea or jury verdict. 124 Wn.App. at 359. Thus, the Court concluded there was no double jeopardy violation so long as the state did not seek a conviction of a lesser offense following a defendant's acquittal of a greater offense. Id. at 360. This conclusion is directly at odds with the plain holding of Standefer and Mullins-Costin. Standefer, 447 U.S. at 21-25; Mullins-Costin, 152 Wn.2d at 116. Maestas plainly misapplies double jeopardy principles.

As in Blakely, Mr. Beito's sentence is contrary to the Sixth and Fourteenth Amendments. Mr. Beito's guilty plea to the crime charged in the second amended information remains valid, cannot be withdrawn over his objection, and limits the punishment that may be imposed to the standard range sentence for first degree murder. Mr. Beito is entitled to relief

C. CONCLUSION

For the reasons set forth above, Mr. Beito's restraint is unlawful. He requests this Court grant his PRP, reverse his sentence and remand his case for the imposition of a standard range sentence for the offense of first degree murder as reflected in the guilty plea, before a new judge.

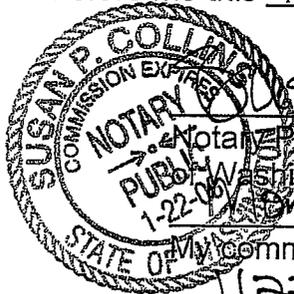
D. OATH

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition know its contents, and I believe the petition is true.



COREY BEITO
Petitioner

Subscribed and sworn to before me this 11 day of April, 2005.




Notary Public in and for the State
of Washington, residing at
1-22-08
My commission expires
1/22/08

Because a Notary Public is unavailable to me:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated this ___ day of _____, 2005.

COREY BEITO
Petitioner

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Appendix A Amended Information

Appendix BStatement of Defendant on Plea of Guilty

Appendix C Second Amended Information

Appendix DCourt's Written Findings of Fact and
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Appendix F.....Court's Written Findings of Fact and
Conclusions of Law in Support of
Exceptional Sentence (April 2, 2002)

Appendix G Opinion 49528-3-1

Appendix HCourt's Written Findings of Fact and
Conclusions of Law in Support of
Exceptional Sentence (January 3, 2003)

Appendix I..... Opinion 51673-6-1

Appendix JOrder Denying Petition for Review

Appendix KVerbatim Report of Proceedings
of plea hearing October 8, 1999

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CLERK

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.	)	COA NO.
)	
COREY BEITO JR.,)	
)	
APPELLANT.)	

DECLARATION OF SERVICE

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

ON THE 15TH DAY OF APRIL, 2005, I CAUSED A TRUE AND CORRECT COPY OF THE **PERSONAL RESTRAINT PETITION** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] KING COUNTY PROSECUTOR'S OFFICE
APPELLATE DIVISION
KING COUNTY COURTHOUSE, W-554
516 THIRD AVENUE
SEATTLE, WA 98104

SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF APRIL, 2005.

x Becky Crowley

APPENDIX A

Amended Information

APPENDIX A

FILED
KING COUNTY, WASHINGTON

FEB 9 1998

SUPERIOR COURT CLERK
LYN RHODES
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

1
2
3
4 THE STATE OF WASHINGTON,)
5 Plaintiff,) No. 98-1-00243-0 KNT
6 v.)
7 COREY SCOTT BEITO) AMENDED INFORMATION
8)
9 Defendant.)

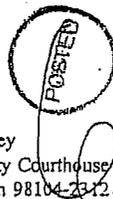
11
12 I, Norm Maleng, Prosecuting Attorney for King County in the
13 name and by the authority of the State of Washington, do accuse
14 COREY SCOTT BEITO of the crime of Aggravated Murder in the First
15 Degree, committed as follows:

16 That the defendant COREY SCOTT BEITO in King County, Washington
17 during a period of time intervening between January 21, 1998 through
18 January 23, 1998, with premeditated intent to cause the death of
19 another person, did cause the death of Jessica Seim, a human being,
20 who died during a period of time intervening between January 21,
21 1998 through January 23, 1998;

22 That further, aggravated circumstances exist, to-wit: did
23 commit the murder to conceal the commission of a crime or to protect
24 or conceal the identity of any person committing a crime, to-wit:
25 Rape in the First or Second Degree, Rape of a Child in the Third
Degree; and/or the murder was committed in the course of, in
furtherance of, or in immediate flight from the following crimes:
Rape in the First or Second Degree;

AMENDED INFORMATION- 1

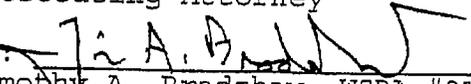
Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000



000005

1 Contrary to RCW 9A.32.030(1)(a), 10.95.020(9) and/or
2 10.95.020(11)(b), and against the peace and dignity of the State of
3 Washington.

4 NORM MALENG
5 Prosecuting Attorney

6 By: 
7 Timothy A. Bradshaw, WSBA #91002
8 Senior Deputy Prosecuting Attorney
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FILED

98 FEB 9 PM 2:20
CAUSE NO. 98-1-00243-0 KNT

KING COUNTY
SUPERIOR COURT CLERK
CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

1 That Timothy A. Bradshaw is a Senior Deputy Prosecuting
2 Attorney and has reviewed the written, printed and other material
3 submitted by King County Department of Public Safety in case number
4 98-21764.
5

6 That the following information upon which this motion for
7 determination of probable cause is made is, unless specifically
8 designated, contained exclusively in the written, printed and other
9 materials described above:

10 Jessica Dawn Seim, born Christmas day 1983, was fourteen-
11 years-old when the defendant, Cory Scott Beito, strangled her to
12 death. Seim had been staying temporarily with Beito's house
13 roommate. Beito's house is located at 12231 46th Ave South,
14 Seattle, King County, Washington.

15 The roommate, Michael Corbell, called 911 and summoned police
16 last Saturday, January 24, 1998. Corbell and another man had just
17 discovered the victim's body which had been stuffed in a garbage
18 can, duct-taped closed, and stored in the defendant's backyard tool
19 shed which had just recently been pad-locked. The two men had
20 become concerned and scared about Jessica's whereabouts since they
21 had not seen her alive since the morning of January 22, 1998, and
22 because of statements by the defendant.

23 Corey S. Beito, Jr., 27, had been partying with the victim and
24 Michael Corbell Wednesday evening--Thursday morning. Beito had made
25 sexual comments about Jessica. After Jessica had gone to sleep on
the living room couch, Beito asked Corbell whether he thought
Jessica would say anything if he (Beito) raped her. This comment
resurfaced for Corbell the next day when Jessica was missing and
Beito claimed that she had left the house after he made a pass at
her, despite the fact her shoes were still in the house. Beito
later summoned Corbell to go to the Renton Fred Meyer with him.
There, he saw Beito purchase a new garbage can and carpet freshener.
Back at the house, Beito proceeded to vacuum the carpet and wash his
clothes. The defendant also received a delivery of several bags of
cement the night after the murder.

The next day, the defendant summoned his friend, Mark Coffey,
to his Skyway house. In his bedroom, Beito confided to Coffey that
he had killed someone and asked his advise. Coffey could not
believe this even after the defendant opened his closet to show him

Certification for Determination
of Probable Cause - 1

Norm Maleng
Prosecuting Attorney
W 534 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000



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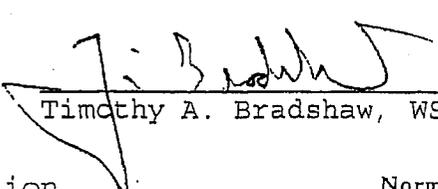
1 a garbage bag and kicked it. Coffey assumed, believed, that it
2 contained clothes only.

3 King County Major Crimes Detectives responded to the scene.
4 Detectives Sue Peters and Denny Gula took custody of the physical
5 evidence, including the victim's ripped underwear, the garbage can,
6 the garbage bag, and eventually took custody of the defendant's
7 leather belt.

8 Following the defendant's arrest at a home in Buckley,
9 Washington on January 25, 1998, the defendant was properly advised
10 of his applicable constitutional rights. The defendant provided a
11 tape-recorded statement to the Detectives and admitted strangling
12 Jessica to death. He stated that he choked her "a couple of times";
13 first he choked her with his bare hands and then he wrapped his
14 ragged belt around her neck and strangled her to death. "She didn't
15 fight once," he added. Beito claimed that he had had consensual
16 intercourse with the girl, whom he referred to as "just a baby." He
17 said that the petite Jessica had "not really" resisted him. The
18 defendant claimed he had "just snapped." He further admitted to the
19 detectives that he had stuffed the dead body in a garbage bag and
20 garbage can and then stored it in the dog house in the back yard.
21 He later had to move the can into the tool shed. He explained that
22 he had in fact gone to Fred Meyer and purchased a new garbage can,
23 as well as carpet freshener so that "the whole house [would] smell
24 better."

25 Dr. Norman Tiersch of the King County Medical Examiner's Office
performed an autopsy of the victim. Dr. Tiersch observed contusions
to the victim's head, including a large fresh black eye. The
Medical Examiner concluded that Jessica died as a direct result of
homicidal violence--asphyxiation via manual and/or ligature
strangulation. Moreover, the deep bruising and injuries to the
victim's small neck are visually and textually consistent with the
defendant's leather belt. Given that it takes approximately two
minutes of continuous pressure to strangle a human being to death,
Dr. Tiersch is of the opinion that substantial force and significant
time were devoted to this homicide. Additionally, Dr. Tiersch
discovered evidence of sexual assault to the victim, including a
vaginal abrasion.

Under penalty of perjury under the laws of the State of Washington,
I certify that the foregoing is true and correct. Signed and dated
by me this ____ day of January, 1998, at Seattle, Washington.


Timothy A. Bradshaw, WSBA #91002

Certification for Determination
of Probable Cause - 2

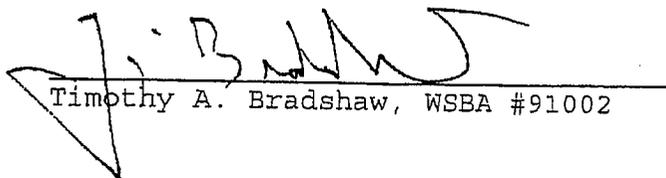
Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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REQUEST FOR BAIL

Given the serious nature of the charge, including the beating, raping, and strangling of the young and vulnerable victim, bail in the amount of \$1,000,000.00 is requested, CASH ONLY. In addition to his obvious threat to innocents in the community, the defendant is a convicted felon, and has been convicted of VUFA, TMVWOP, Criminal Trespass, Assault, and Harassment. He also has an FTA, has been arrested on multiple occasions, and has several misdemeanors on his record.


Timothy A. Bradshaw, WSBA #91002

Certification for Determination
of Probable Cause - 3

000009

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

APPENDIX B

Statement of Defendant on Plea of Guilty

APPENDIX B

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

FILED

OCT 12 PM 2:39

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

Accelerated
 Non Accelerated
 DPA Defense

STATE OF WASHINGTON

Plaintiff,

v.

Corey S. Beito

Defendant.

No. 98-1-00243-0 KNT

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(Felony)

- 1. My true name is Corey S. Beito
- 2. My age is 28. Date of birth 5-13-71
- 3. I went through the 11th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is David Roberson

(b) I am charged with the crime(s) of Murder in the First Degree

The elements of this crime(s) are see Second Amended Information

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been 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;

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 1 OF 9



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(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

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

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a maximum sentence(s) of life years imprisonment and a \$ 50,000. fine.

RCW 9.94A.030(23),(27), provide that for a third conviction for a "most serious offense" as defined in that statute or for a second conviction for a "most serious offense" which is also a "sex offense" as defined in that statute I may be found a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.

(b) The standard sentence range is from 291 (~~days~~) months to 388 (~~days~~) months confinement, based on the prosecuting attorney's understanding of my criminal history. The standard sentence range based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. If my current offense was prior to 7/1/97: criminal history always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older; may include convictions in Juvenile Court for felonies or serious traffic offenses that were committed when I was 15 years of age or older; and juvenile convictions, except those for sex offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty. If my current offense was after 6/30/97: criminal history includes all prior adult and juvenile convictions or adjudications.

(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.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 2 OF 9

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(d) If I am convicted of any new crimes before sentencing, or if I was on community placement at the time of the offense to which I am now pleading guilty, 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.

If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030,(23),(27), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains additional prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody.RCW 9.94A.120(4).

Even so, my plea of guilty to this charge is binding on me. I cannot change my plea if additional criminal history is discovered, even though it will result in the mandatory sentence that the law does not allow to be reduced.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$500.00, or \$100.00 if my crime date is prior to 6/7/96, as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, incarceration, lab and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: 500 months
confinement, real facts in Appendix C, DNA sample, victim
penalty assessment, community placement JAB

(g) 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. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the

standard range, no one can appeal the sentence.

(h) The crime of Murder 1st ^{dur} ~~2nd~~ ^{Flocking} has a mandatory minimum sentence of at least 20 years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]

The crime of Murder 1st is a most serious offense as defined by RCW 9.94A.030(23), and if the judge determines that I have at least two prior convictions on separate occasions whether in this state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody.

RCW 9.94A.120(4). [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]

The crime of Murder 1st is also a "most serious offense" and a "sex offense" as defined in RCW 9.94A.030(23) and (27), and if the judge determines that I have one prior conviction whether in this state, in federal court or elsewhere of a most serious sex offense as defined in that statute, I may also be found to be a persistent offender in which case the judge must impose a mandatory sentence of life without the possibility of parole. RCW 9.94A.120(4). [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]

~~(i) The crime charged in Count _____ includes a firearm/deadly weapon sentence enhancement of _____ months.~~

~~This additional confinement time is mandatory and must be served consecutively to any other sentence I have already received or will receive in this or any other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge C.476 _____.]~~

~~(j) The sentences imposed on counts _____, except for any weapons enhancement, will run concurrently unless the judge finds substantial and compelling reason to do otherwise or unless there is a special weapons finding. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge C.477 _____.]~~

(k) In addition to confinement, the judge will sentence me to community placement for at least one year.

During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]

~~(l) If this offense is a sex offense committed after 6/5/96 and I am either sentenced to the custody of the Department of Corrections or if I am sentenced under the special sexual offender sentence alternative, the court will, in addition to the confinement, impose not less than 3 years of community custody which will commence upon my release from jail or prison. Failure to comply with community custody may result in my return to confinement. In addition the court may extend the period of community custody in the interest of public safety for a period up to the maximum term which is _____.~~

~~[If not applicable this paragraph should be stricken and initialed by the defendant and judge _____.]~~

~~(m) 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(20). This sentence could include as much as 90 days' confinement 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. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]~~

~~(n) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]~~ Paragraph N does apply.

~~(o) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]~~

(p) 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.

~~(q) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph should be stricken and initialed by the~~

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 5 OF 9

SC FORM REV 10/98

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defendant and the judge

WSP

Paragraph 9 applies

write copies of Block, my JDS

(r) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff at least 14 days before moving and must register again with the sheriff within 24 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county at least 14 days before moving and I must give written notice of my change of address to the sheriff of the county where I last registered within 10 days of moving. If I move out of Washington state, I must also send written notice within 10 days of moving to the county sheriff with whom I last registered in Washington state.

[If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge]

WSP
F. Block

(s) This plea of guilty will result in the revocation of my right to possess any firearm. Possession of any firearm after this plea is prohibited by law until my right to possess a firearm is restored by a court of record.

7. I plead guilty to the crime(s) of Murder 1^o

as charged in the 2nd Amended 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.

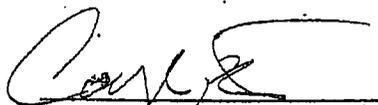
11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s).

This is my statement:

I have reviewed the police reports and other discovery with my attorney. Although I admit no guilt ~~in terms of~~ in terms of a premeditated intentional murder I do admit to causing the death of Jessica Seim by means of strangulation. I wish to plead guilty to the charge of Murder 1^o in order to take advantage of the State reducing its charge from one of Aggravated Murder. I do believe that if I went to trial there is a substantial likelihood that a judge or jury would convict me. The court may ~~consider~~ consider the certificate of probable cause as well as ^{the terms of} Appendix C to form a basis for my plea and my sentencing.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all.

I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.


DEFENDANT

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


DEFENDANT'S LAWYER


PROSECUTING ATTORNEY

The foregoing statement was signed by the defendant 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; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant

understood it in full.

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 this 8 day of Oct, 1999.

Levinson J. Fleck
JUDGE

I am fluent in the _____ language and I have translated this entire 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.

DATED this _____ day of _____, _____.

TRANSLATOR

INTERPRETER

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 8 OF 9

SC FORM REV 10/98

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CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Timothy A. Bradshaw is a Senior Deputy Prosecuting Attorney and has reviewed the written, printed and other material submitted by King County Department of Public Safety in case number 98-21764.

That the following information upon which this motion for determination of probable cause is made is, unless specifically designated, contained exclusively in the written, printed and other materials described above:

Jessica Dawn Seim, born Christmas day 1983, was fourteen-years-old when the defendant, Cory Scott Beito, strangled her to death. Seim had been staying temporarily with Beito's house roommate. Beito's house is located at 12231 46th Ave South, Seattle, King County, Washington.

The roommate, Michael Corbell, called 911 and summoned police last Saturday, January 24, 1998. Corbell and another man had just discovered the victim's body which had been stuffed in a garbage can, duct-taped closed, and stored in the defendant's backyard tool shed which had just recently been pad-locked. The two men had become concerned and scared about Jessica's whereabouts since they had not seen her alive since the morning of January 22, 1998, and because of statements by the defendant.

Corey S. Beito, Jr., 27, had been partying with the victim and Michael Corbell Wednesday evening--Thursday morning. Beito had made sexual comments about Jessica. After Jessica had gone to sleep on the living room couch, Beito asked Corbell whether he thought Jessica would say anything if he (Beito) raped her. This comment resurfaced for Corbell the next day when Jessica was missing and Beito claimed that she had left the house after he made a pass at her, despite the fact her shoes were still in the house. Beito later summoned Corbell to go to the Renton Fred Meyer with him. There, he saw Beito purchase a new garbage can and carpet freshener. Back at the house, Beito proceeded to vacuum the carpet and wash his clothes. The defendant also received a delivery of several bags of cement the night after the murder.

The next day, the defendant summoned his friend, Mark Coffey, to his Skyway house. In his bedroom, Beito confided to Coffey that he had killed someone and asked his advise. Coffey could not believe this even after the defendant opened his closet to show him

Certification for Determination
of Probable Cause - 1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

000081

1 a garbage bag and kicked it. Coffey assumed, believed, that it
2 contained clothes only.

3 King County Major Crimes Detectives responded to the scene.
4 Detectives Sue Peters and Denny Gula took custody of the physical
5 evidence, including the victim's ripped underwear, the garbage can,
6 the garbage bag, and eventually took custody of the defendant's
7 leather belt.

8 Following the defendant's arrest at a home in Buckley,
9 Washington on January 25, 1998, the defendant was properly advised
10 of his applicable constitutional rights. The defendant provided a
11 tape-recorded statement to the Detectives and admitted strangling
12 Jessica to death. He stated that he choked her "a couple of times";
13 first he choked her with his bare hands and then he wrapped his
14 ragged belt around her neck and strangled her to death. "She didn't
15 fight once," he added. Beito claimed that he had had consensual
16 intercourse with the girl, whom he referred to as "just a baby." He
17 said that the petite Jessica had "not really" resisted him. The
18 defendant claimed he had "just snapped." He further admitted to the
19 detectives that he had stuffed the dead body in a garbage bag and
20 garbage can and then stored it in the dog house in the back yard.
21 He later had to move the can into the tool shed. He explained that
22 he had in fact gone to Fred Meyer and purchased a new garbage can,
23 as well as carpet freshener so that "the whole house [would] smell
24 better."

25 Dr. Norman Tiersch of the King County Medical Examiner's Office
performed an autopsy of the victim. Dr. Tiersch observed contusions
to the victim's head, including a large fresh black eye. The
Medical Examiner concluded that Jessica died as a direct result of
homicidal violence--asphyxiation via manual and/or ligature
strangulation. Moreover, the deep bruising and injuries to the
victim's small neck are visually and textually consistent with the
defendant's leather belt. Given that it takes approximately two
minutes of continuous pressure to strangle a human being to death,
Dr. Tiersch is of the opinion that substantial force and significant
time were devoted to this homicide. Additionally, Dr. Tiersch
discovered evidence of sexual assault to the victim, including a
vaginal abrasion.

Under penalty of perjury under the laws of the State of Washington,
I certify that the foregoing is true and correct. Signed and dated
by me this ____ day of January, 1998, at Seattle, Washington.

Timothy A. Bradshaw, WSBA #91002

Certification for Determination
of Probable Cause - 2

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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REQUEST FOR BAIL

Given the serious nature of the charge, including the beating, raping, and strangling of the young and vulnerable victim, bail in the amount of \$1,000,000.00 is requested, CASH ONLY. In addition to his obvious threat to innocents in the community, the defendant is a convicted felon, and has been convicted of VUFA, TMVWOP, Criminal Trespass, Assault, and Harassment. He also has an FTA, has been arrested on multiple occasions, and has several misdemeanors on his record.

Timothy A. Bradshaw, WSBA #91002

Certification for Determination
of Probable Cause - 3

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

000083

PLEA AGREEMENT

10/28/99
10/29/99

Defendant: Craig Scott Binto Cause No: 99-1-00243-0 SEA/KNT

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in count(s) _____ of the (original) (Second Amended) Information,

MURDER FIRST DEGREE (1st Information) B
 With Special Finding(s): deadly weapon - firearm, RCW 9.94A.310(3); deadly weapon other than firearm, RCW 9.94A.310(4); sexual motivation, RCW 9.94A.127; protected zone, RCW 69.50.435 for count(s) _____

CONFINEMENT of 508 MONTHS

1. DISMISS: Upon disposition of Count(s) _____ the State moves to dismiss Count(s): _____

2. REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:
 as set forth in the certification(s) of probable cause filed herein.
 as set forth in the attached Appendix C.

3. RESTITUTION: Pursuant to RCW 9.94A.142, the defendant agrees to pay restitution as follows:
 in full to the victim(s) on charged counts.
 as set forth in the attached Appendix C.

4. OTHER: BLOOD (DNA) SAMPLE
+ VPA

SENTENCE RECOMMENDATION:

a. The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Maximum on Count I is not more than Life years and/or \$ 50,000 fine.

Maximum on Count _____ is not more than _____ years and/or \$ _____ fine.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.120(4) only: 20 yrs.
+ Community Placement

Mandatory weapon sentence enhancement for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to any other term and without any earned early release.

Mandatory drivers license revocation RCW 46.20.285

Mandatory revocation of right to possess a firearm for any felony conviction.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new crimes, fails to appear for sentencing or violates the conditions of his release.

Craig Scott Binto
Defendant

John B. ...
Deputy Prosecuting Attorney

APW ... 19298
Attorney for Defendant

Sharon A. Huck 17903
Judge, King County Superior Court

PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)

PRELIMINARY CRIMINAL HISTORY ONLY

Defendant: BEITO, COREY SCOTT JR.

Date: 8/26/98
Doc# 970426

- None known. Recommendation and standard range assumes no prior felony convictions.
- Criminal history not known and not received at this time.

ADULT FELONIES:

10/12/90 - CT I - TMVWOP
CT II - BURC 2° KC 90-1-01785-7
CT III - PSP 2° / 6 mo ea. CT, JL / 12 mo SUP
* MISC. 4/26/93 - 30A ; 6/16/97 - 150A
7/22/94 - UPFA -- KC 94-1-01088-0 -- 366 DA PRISON

JUVENILE FELONIES:

2/25/88 - TMVWOP - KC 87-8-05706-4 - 30A/6mo SUP
3/17/89 - TMVWOP - KC 88-8-06011-0 - 9mo SUP

MISD.

9/16/88 - MAL. MISCF - KC 88-8-03412-7
5/15/89 - NEG. DRIVE - KCP/RDC - I 00123432
6/23/89 - RECK. DRIVING - KCP/RDC - J 00022226
10/21/89 - MAL. MISCF 3° RDC - J 00027965
4/1/90 - CRIM. TRESP - RDC - J 00034305
10/15/90 - HIT & RUN - ATTENDED - RDC - J 00009773
4/14/94 - FAIL TO DEL. LEASED PROP - FWD - N 34652
4/26/94 - HARASS - SDC - 100721
6/7-6/96 - VIOL. NCO - SWD - CP 44620 KC

*NOTE: As the above-noted information reflects preliminary criminal history, it may be subject to revision later in the sentencing process.

Prepared by:

Community Corrections Officer
Department of Corrections

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 98-1-00243-0 KNT
)	
vs.	)	APPENDIX C TO PLEA AGREEMENT
	)	RE: REAL FACTS
)	
COREY SCOTT BEITO,)	
)	
Defendant.)	
)	
)	

A. Pursuant RCW 9.94A.370(2), the parties agree that the Court may rely on information admitted, acknowledged, or proven at sentencing. As part of the plea agreement, Real and Material facts establishing elements of a Rape First and Second Degree, and Rape of a Child Third Degree to be considered at sentencing are specifically stipulated to.

In addition to the facts summarized in the Certification(s) for Determination of Probable Cause, the State incorporates, and the defendant acknowledges, the following:

- 1. Statements of the defendant included in the case discovery;

Beito Guilty Plea, Appendix C,
1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 2. That the crime of Rape of a Child Third Degree was
2 committed;

3 3. That the defendant denies and disputes that the crimes of
4 Rape First and Second Degree were committed. The State may,
5 however, attempt to prove at sentencing that such crimes were
6 committed.

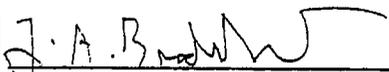
7 4. The sentencing Court may consider the witness statements
8 of Michael Corbell, Mark Coffey, Nick Gache, the autopsy report,
9 and list/photos of physical evidence.

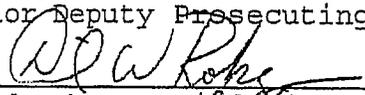
10 5. Additional evidence that is offered and accepted by the
11 Court at sentencing may be considered.

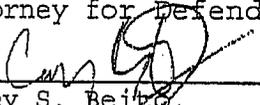
12 6.

13
14
15 DATED this 07th day of October, 1999.

16
17 Agreed to and approved by:

18
19 
20 Timothy A. Bradshaw,
21 Senior Deputy Prosecuting Attorneys

22 
23 David Roberson, 19298
24 Attorney for Defendant

25 
Corey S. Beito,
Defendant

Beito Guilty Plea, Appendix C,

2

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Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

GENERAL SCORING FORM

Serious Violent Offenses

Use this form only for the following offenses: Assault 1, Assault of a Child 1, Homicide by Abuse, Kidnapping 1, Murder 1 and 2.

OFFENDER'S NAME BEITO, COREY Scott	JR	OFFENDER'S DOB 5-13-71	STATE ID# WA 13889378
JUDGE		CAUSE# 98-1-00243-0	FBI ID# 667988NA2

Doc #970246

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent felony convictions x 3 =
 Enter number of other violent felony convictions x 2 =
 Enter number of other nonviolent felony convictions 4 x 1 = 4

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent felony adjudications x 3 =
 Enter number of other violent felony adjudications x 2 =
 Enter number of other nonviolent felony adjudications 2 x 1/2 = 1

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other violent felony convictions x 2 =
 Enter number of nonviolent felony convictions x 1 =

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point + 1 =

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

5

MURDER 1°	STANDARD RANGE CALCULATION*	XIV	5	months
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE	HIGH
			291	388

- * Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- * If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

Statutory minimum is 240 months (20 years)

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APPENDIX C

Second Amended Information

APPENDIX C

FILED
KING COUNTY, WASHINGTON

OCT 8 1999

SUPERIOR COURT CLERK
KARLA GABRIELSON
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 98-1-00243-0 KNT
)	
v.)	
	)	SECOND AMENDED INFORMATION
COREY SCOTT BEITO)	
)	
)	
Defendant.)	

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse COREY SCOTT BEITO of the crime of Murder in the First Degree, committed as follows:

That the defendant COREY SCOTT BEITO in King County, Washington, during a period of time intervening between January 21, 1998, through January 23, 1998, with premeditated intent to cause the death of another person did cause the death of Jessica Seim, a human being, who died during a period of time intervening between January 21, 1998, through January 23, 1998;

Contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

~~And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant COREY SCOTT BEITO of commission of this crime with sexual motivation, that is: that one of the purposes for which the defendant committed this crime was for the purpose of his sexual gratification, under the authority of RCW 9.94A.127.~~

NORM MALENG
Prosecuting Attorney

By: Timothy A. Bradshaw
Timothy A. Bradshaw, WSBA #17983
Senior Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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SUPERIOR COURT CLERK
KARLA GABRIELSON
DEPUTY

OF WASHINGTON,)
)
Plaintiff,)
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T BEITO)
)
)
Defendant.)

No. 98-1-00243-0 KNT

MOTION AND ORDER PERMITTING FILING
OF AN AMENDED INFORMATION
S22244

COMES NOW the State of Washington by Norm Maleng, King
Prosecuting Attorney, by and through his deputy, and moves
for an order permitting the filing of an amended
information in the above entitled cause.

That Timothy A. Bradshaw is a Senior Deputy Prosecuting
Attorney in and for King County, Washington, and is familiar with
the facts and files herein, and certifies that:

- () Newly available information is set forth in the
prosecutor's case summary and request for bail.
- (X) The Amended Information more accurately
reflects the Defendant's Conduct.

*As part of the plea agreement, good conduct
upon plea agreement.*

Under penalty of perjury under the laws of the State of
Washington, I certify that the foregoing is true and correct.
Witness my hand and dated by me this 08 day of July, 1999, at Seattle,
Washington.

By: Timothy A. Bradshaw, WSBA #17983
Senior Deputy Prosecuting Attorney

ORDER

THIS MATTER having come before this court upon the motion
of the Prosecuting Attorney, good cause having been demonstrated,
and defendant not being prejudiced in any substantial right, the
State of Washington is allowed to file an amended information.

DONE IN OPEN COURT this 08th day of July, 1999.

Subramaniam A. Fleck
JUDGE



Submitted by:
Bradshaw
A. Bradshaw, WSBA #17983
Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Sub. No. 116

APPENDIX D

**Court's Written Findings of Fact and
Conclusions of Law in Support of
Exceptional Sentence (March 27, 2000)**

APPENDIX D

MAR 3 12 000

COPY TO SENTENCING GUIDELINES COMMISSION

FILED
KING COUNTY, WASHINGTON

MAR 27 2000

SUPERIOR COURT CLERK
KARLA GABRIELSON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 98-1-00243-0 KNT
)	
vs.)	
)	COURT'S WRITTEN FINDINGS OF
CORY SCOTT BEITO,	)	FACT AND CONCLUSIONS OF LAW
	)	IN SUPPORT OF EXCEPTIONAL
	)	SENTENCE
Defendant,	)	APPX. D
)	
)	

On March 3, 2000, the court held a hearing to determine the appropriate sentence in the above entitled case. The State was represented by Timothy Bradshaw, and the defendant was present and represented by David Roberson. Pursuant to the Plea Agreement and the terms of the defendant's plea, the court considered the Certificate for Determination of Probable Cause. The court at sentencing also considered the following:

- a) Stipulations as to Real Facts, Appx C;
- b) Plea Agreement and attachments;
- c) Autopsy Report, KCME 98-0107;
- d) Witness Statements of Michael Corbell, Mark Coffey, Nick Gache;
- e) Photographic Exhibits;
- f) The defendant's confession;
- g) Crime Laboratory report of Forensic Scientist Michael Croteau;
- h) A "mitigation package" from the defense; and
- i) State v. Bingham, 40 Wn. App. 553, 699 P.2d 262;
- j) The arguments of counsel.

FINDINGS OF FACT & CONCLUSIONS
OF LAW IN SUPPORT OF EXCEPTIONAL
SENTENCE - APPX. D. - Page 1

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

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1 FINDINGS OF FACT:

2 1. On October 8, 2000, Cory Scott Beito pled guilty to one count of Murder in the First
3 Degree. The standard range for this offense is 291-388 months of confinement.

4 2. The State of Washington recommends an exceptional sentence of 504 months
5 confinement. The Department of Corrections recommends an exceptional sentence of 504 months
6 confinement. The attorney for the defendant recommends a sentence at the middle end of the
7 standard range, 339 months confinement.

8 3. Pursuant to 9.94A.370(2), the following aggravating factor gives rise to the
9 imposition of an exceptional sentence above the standard range:

10 A. *Rape*

11 It is uncontroverted that the defendant raped Jessica Siem. This finding does not violate the
12 Real Facts Doctrine. The defendant admits Rape of a Child Third Degree, which is a substantial
13 compelling reason supporting an exceptional sentence. This circumstance distinguishes this case
14 from other crimes of premeditated murder in the first degree and forms a basis to impose a longer
15 sentence than the standard range.

16 CONCLUSIONS OF LAW:

17 Pursuant to RCW 9.94A.390(2)(b) and 9.94A.370.(2), and the preponderance of evidence,
18 the defendant's stipulated rape of the victim is a substantial and compelling reason to sentence the
19 defendant above the standard sentencing range.

20 A term of 504 months, or 42 years, is an appropriate period on incarceration for this offense
21 to meet the purposes of the SRA including protection of the community and proportionate, just
22 punishment.

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A term of 504 months, or 42 years, is an appropriate period on incarceration for this offense to meet the purposes of the SRA including protection of the community and proportionate, just punishment.

In addition to the above written Findings and Conclusions the court incorporates by reference its oral findings and conclusions.

DONE IN OPEN COURT this 24 day of March, 2000.

Deborah A. Fleck
JUDGE DEBORAH FLECK

Presented by:

TIMOTHY BRADSHAW, WSBA #17983
Senior Deputy Prosecuting Attorney

Approved for entry, presentation waived

DAVID ROBERSON, WSBA #19298
Attorney for the Defendant

FINDINGS OF FACT & CONCLUSIONS
OF LAW IN SUPPORT OF EXCEPTIONAL
SENTENCE - APPX. D. - Page 3

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Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

APPENDIX E

Opinion 46308-0-I

APPENDIX E

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

FILED
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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

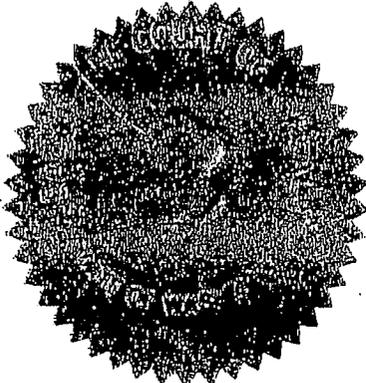
STATE OF WASHINGTON,)	
)	No. 46308-0-1
Respondent,)	
	)	MANDATE
v.)	
	)	King County
COREY SCOTT BEITO,)	
	)	Superior Court No. 98-1-00243-0.KNT
Appellant.)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of

WASH
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JUDG
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EXH

Washington, Division I, filed on May 21, 2001, became the decision terminating review of this court in the above entitled case on August 20, 2001. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.
James Dixon - nb
James Whisman - kcpa
The Honorable Deborah Fleck
Indeterminate Sentencing Review Board



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 20th day of August, 2001.

[Signature]

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

POSTED
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A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

Ausar R. Ajid

FILE
IN CLERK'S OFFICE
COURT OF APPEALS
STATE OF WASHINGTON, DIVISION 1
DATE MAY 21 2001
Ausar R. Ajid
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 46308-0-1
)	
Respondent,	)	DIVISION ONE
)	
v.)	
	)	UNPUBLISHED OPINION
COREY SCOTT BEITO,)	
	)	FILED: <u>MAY 21 2001</u>
Appellant.)	

PER CURIAM. Aggravating factors that are not connected with the crime cannot support an exceptional sentence. Where the trial court failed to enter a finding on whether there was any connection between the child rape and the subsequent murder, we conclude that an exceptional sentence cannot be based solely upon facts showing Cory Beito had sexual intercourse with the 14-year-old victim at some undetermined time before he murdered her. We reverse and remand for resentencing.

FACTS

J.S. was a 14-year old girl who had run away from home. She went to a drinking party at the home of Michael Corbell and Cory Beito, the defendant. Eventually some of the guests left, leaving J.S., Corbell and Beito at the home. Beito saw Corbell having sex with J.S. and later in the evening, after J.S. fell asleep, Beito made a sexual comment about J.S. to Corbell. The next day, when J.S. was missing, Beito told Corbell she had left after he made a pass at her. But Corbell saw that her shoes were still in

the house. After Beito purchased a new garbage can and ordered cement to be delivered that same evening, Corbell became very concerned about J.S.'s whereabouts. He discovered J.S.'s body in Beito's tool shed and called police.

Police located and arrested Beito. He gave a lengthy tape-recorded statement. In it he admitted strangling J.S. after he had sex with her. He described the sex as consensual. At some point afterwards he began strangling her with his hands and eventually with his belt. He denied a connection between the sex and the murder. He awoke in the morning next to her body. An autopsy of J.S.'s body showed injuries to her head, neck, shoulders, hands, vagina and anus.

The State initially charged Beito with first degree murder. After amending the charge to aggravated murder, the State amended it again to first degree murder in exchange for a guilty plea. As part of the plea, Beito agreed that the State could recommend an exceptional sentence but expressly reserved the right to appeal such a sentence. For purposes of sentencing, Beito stipulated that the court could consider facts that established third degree child rape, and first and second degree rape. He also stipulated that third degree child rape had in fact occurred but expressly denied that there was a forcible rape. Finally, Beito stipulated that the sentencing court could consider the certification of probable cause, his own statements contained in the discovery, certain witness statements and reports, and "[a]dditional evidence that is offered and accepted by the court[:]"

The prosecutor argued for an exceptional sentence on grounds of deliberate cruelty, victim vulnerability, multiple injuries and the agreed fact that the defendant had committed rape of a child. Beito's counsel agreed that the rape of a child had occurred, but argued that it was a legally insufficient ground in itself and was of diminished

significance to any other ground because J.S. was living as an adult. He argued against each of the State's other proposed reasons. The sentencing judge found that "rape of a child, based on a stipulation" was sufficient to support an exceptional sentence and declined to decide whether any of the other aggravating factors were present in light of her decision. The court imposed an exceptional sentence of 504 months. This appeal follows.

DECISION

A trial court may depart from the standard range and impose an exceptional sentence when there are substantial and compelling reasons to do so. RCW 9.94A.120(2). This court reviews a trial court's decision to impose an exceptional sentence by determining whether the evidence supports the reasons given and whether the court's reasons justify a departure from the standard range as a matter of law. State v. Garza, 123 Wn.2d 885, 889, 872 P.2d 1087 (1994); RCW 9.94A.210(4). Beito contends that the court's reason for the exceptional sentence legally fails because the court failed to find any connection between the child rape and the murder. We agree.

Preliminarily, we consider the State's argument that Beito waived any challenge to the exceptional sentence. The State asserts that the trial prosecutor argued, and the trial court implicitly found, a connection between the child rape and murder. Because Beito did not object to either the court's basis for the exceptional sentence or the sufficiency of the findings, the State argues that he waived any challenge to the court's implicit finding of a connection, relying on State v. Tuitoelau, 64 Wn. App. 65, 822 P.2d 1222 (1992).

In Tuitoelau, the trial court imposed an exceptional sentence in a rape case after it expressly found that the defendant was aware that the victim's 2-year old child was

present in the bed at the time of the rape. The defendant argued on appeal that the record did not support the findings. We refused to consider the argument that the evidence was insufficient because, "[w]here a statement of material fact is repeatedly asserted without objection and when the trial court, without objection, accepts and reasserts this statement as a factual basis for imposition of its sentence, the defendant [has] waived the right to dispute that fact[.]" Tuitoelau, 64 Wn. App. at 71.

We will not extend Tuitoelau to the present circumstances, where the trial court's oral and written findings are silent on the finding in question and do not reassert any statement by the prosecutor. Beito specifically reserved the right to appeal an exceptional sentence at the time of his plea. He did not waive his right to dispute a connection between the rape and the murder on appeal and accordingly we consider his argument on the merits.

The facts relied upon for an exceptional sentence must be related to the crime for which the defendant is being sentenced. State v. Tierney, 74 Wn. App. 346, 872 P.2d 1145 (1994). "[A]ggravating factors should not be relied upon in the abstract but should be firmly grounded in the unique factual circumstances of the individual case." State v. Chadderton, 119 Wn. 2d 390, 400, 832 P.2d 481 (1992). Here the trial court provided only the abstract finding that "Rape of a Child Third Degree...is a substantial compelling reason supporting an exceptional sentence. This circumstance distinguishes this case from other crimes of premeditated murder[.]"

The State argues that there is no other reasonable interpretation of the evidence except that the two crimes are connected. The sentencing court considered the certification of probable cause, Beito's long and somewhat inconsistent taped confession, witness statements from others at the house, autopsy reports, and a

mitigation package including a psychological evaluation of Beito. While some of these materials have been provided to this court, the witness statements of those at the house have not. We thus cannot determine whether there is only one reasonable interpretation of the evidence.

The sentencing court, as the finder of fact, was entitled to draw inferences from circumstantial evidence and to determine whether it believed the parts of Beito's confession claiming that the murder was completely unrelated to the sexual intercourse. We express no opinion on whether a court could rationally infer a connection between the two crimes based on the partial record we have received. "[I]t is not this Court's function to supply 'missing' findings—even when the record would support the findings without taking additional evidence." State v. Hinds, 85 Wn. App. 474, 485, 936 P.2d 1135 (1997).¹

In Hinds, the trial court granted an exceptional sentence downward based on the vehicular homicide victim's participation in the crime by supplying alcohol to the underage driver. The State appealed and argued that the trial court had failed to find a causal connection between the alcohol and the crime -- based as it was on reckless driving rather than intoxicated driving. While we concluded that one could infer a causal connection from the record, we agreed that remand was necessary. Likewise, in Chadderton, the Supreme Court reversed and remanded an exceptional sentence for additional development of the facts when the trial court relied upon aggravating factors without adequately referring to underlying facts. Chadderton, 119 Wn. 2d. at 400.

¹ For this same reason, we do not address the parties' discussions about whether the uncharged child rape could support an exceptional sentence on the novel theory that it constitutes significant unscoréd criminal history. State v. Vasquez, 95 Wn. App. 12, 972 P.2d 109 (1998). See also RCW 9.94A.390(j).

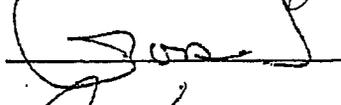
Reversal and remand for resentencing is also appropriate in this case. The State's initial response to Beito's opening brief was to move to remand to the trial court for additional findings, essentially conceding that the trial judge's findings were insufficient. Beito objected, arguing that by declining to make the requested findings, the trial court essentially rejected the State's arguments. He argued that the State should either file a concession or a response brief. A commissioner of this court denied the motion without prejudice, allowing the State to argue on the merits for remand if it so chose. While the State has not renewed the request for remand in its response brief, we nonetheless consider the motion an implied and well-taken concession.

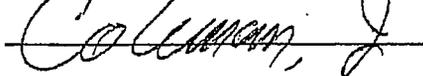
If, on resentencing, the trial court determines that the third degree child rape was so closely connected to the murder as to be considered "part and parcel" of the same crime, it is proper to consider it as an aggravating factor. Tierney, 74 Wn. App. at 352. Because we agree with the State that the trial court did not reject other arguments for an exceptional sentence but rather simply did not reach them, the court also may choose to enter findings relying upon or rejecting the other grounds urged by the State. If the trial court concludes that there is no sufficient connection between the third degree child rape and the murder, and that no additional grounds exist to support an exceptional sentence, then the court must resentence Beito to a sentence within the standard range.

Reversed and remanded for resentencing.

For the Court:







APPENDIX F

**Court's Written Findings of Fact and
Conclusions of Law in Support of
Exceptional Sentence (April 2, 2002)**

APPENDIX F

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 98-1-00243-0 KNT
)	
vs.	)	COURT'S WRITTEN FINDINGS OF
	)	FACT AND CONCLUSIONS OF LAW IN
CORY SCOTT BEITO,)	SUPPORT OF EXCEPTIONAL
)	SENTENCE
Defendant.)	APPX. D/JUDGMENT AND SENTENCE
)	2.5
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On November 16, 2001, the court held a hearing to determine the appropriate sentence in the above-entitled case. The State was represented by Timothy Bradshaw, and the defendant was present and represented by J. Richard Quirk. Pursuant to the Plea Agreement and the terms of the defendant's plea, the court considered the Certificate for Determination of Probable Cause.

The court at sentencing also considered the following:

- a) Stipulations as to Real Facts, Appx. C;
- b) Plea Agreement and attachments;
- c) Autopsy Report, KCME 98-0107;
- d) Witness Statements of Michael Corbell, Mark Coffey, Nick Gache;
- e) Photographic Exhibits;
- f) The defendant's confession;
- g) Crime Laboratory report of Forensic Scientist Michael Croteau;
- h) A "mitigation package" from the defense;
- i) State v. Bingham, 40 Wn. App. 553, 699 P.2 262; and
- j) The arguments of counsel.

ORIGINAL

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 standard sentencing range. The Court concludes that the rape
2 (forcible and of a child) and subsequent murder are sufficiently
3 connected. This circumstance distinguishes this case from other
4 crimes of premeditated murder in the first degree and forms a
5 basis to impose a longer sentence than the standard range.

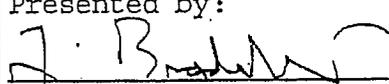
6 The Court additionally concludes that the evidence is
7 insufficient to find the exceptional sentence basis of victim
8 vulnerability or deliberate cruelty, per RCW 9.94A.390(2)(b)(a).

9 A term of 504 months, or 42 years, is an appropriate period
10 on incarceration for this offense to meet the purpose of the SRA
11 including protection of the community and proportionate, just
12 punishment.

13 In addition to the above written Findings and Conclusions,
14 the court incorporates by reference the arguments of counsel and
15 its oral findings and conclusions.

16 DONE IN OPEN COURT this 27 day of March, 2002.

17 
18 JUDGE DEBORAH FLECK

19 Presented by:
20 
21 TIMOTHY BRADSHAW, WSBA #17983
22 Senior Deputy Prosecuting Attorney

23 Approved for entry, presentation waived
24 
25 RICHARD QUIRK, WSBA #3531
Attorney for Defendant

APPENDIX G

Opinion 49528-3-I

APPENDIX G

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

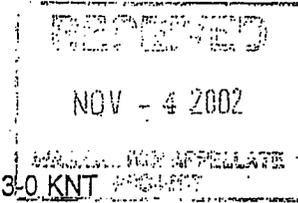
STATE OF WASHINGTON,
Respondent,
v.
COREY SCOTT BEITO,
Appellant.

No. 49528-3-1

MANDATE

King County

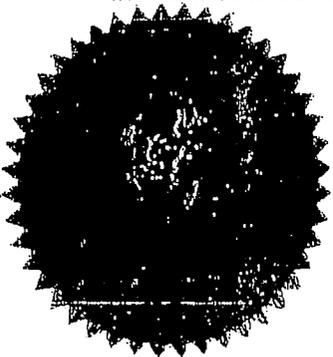
Superior Court No. 98-1-00243-0



THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on September 16, 2002, became the decision terminating review of this court in the above entitled case on November 1, 2002. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

c: Gregory Link
Timothy A. Bradshaw
Hon. Deborah Fleck
Indeterminate Sentencing Review Board



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 1st of November, 2002.

A handwritten signature in black ink, appearing to read "Richard D. Johnson".

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

Mary Kay Becker

FILE
IN CLERK'S OFFICE
COURT OF APPEALS
STATE OF WASHINGTON-DIVISION 1
DATE SEP 16 2002
Mary Kay Becker
CHIEF JUDGE

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 COREY SCOTT BEITO,)
)
 Appellant.)

NO. 49528-3-1
DIVISION ONE
UNPUBLISHED OPINION
FILED: SEP 16 2002

RECEIVED
SEP 16 2002
WASHINGTON APPELLATE
COURT

PER CURIAM — Corey Beito appeals the 504-month exceptional sentence imposed after his conviction for first degree murder, arguing that under recent Supreme Court caselaw, two "washed out" juvenile offenses were erroneously included in his offender score. As the State concedes, Beito is correct. In such cases, remand for resentencing is required unless the record clearly demonstrates that the court would have imposed the same sentence with a correct offender score. Because the record is silent as to that eventuality, we must remand.

Facts

During the early morning hours of January 23, 1998, Corey Beito strangled to death J.S., a 14-year-old runaway girl who had been drinking at Beito's home. Beito confessed to the crime and admitted having consensual sexual intercourse with J.S. shortly before killing her, but he denied forcibly raping her.

Beito entered an Alford¹ plea of guilty to first degree murder and agreed that the State would recommend an exceptional sentence. He also stipulated that for sentencing purposes the court could consider facts establishing the additional uncharged crimes of third degree rape of a child, as well as first and second degree forcible rape.

The sentencing court calculated Beito's offender score as five based in part on two juvenile offenses from 1988 and 1989 for taking a motor vehicle without the owner's permission. The court then imposed an exceptional sentence of 504 months, citing "rape of a child" as the single aggravating factor. Beito appealed and this court remanded for resentencing for the court to determine whether there was a sufficient connection between the rape and murder to justify relying on that separate crime to depart from the standard range for murder.²

On remand, the parties agreed that Beito's offender score was five. After finding a factual connection between the murder and Beito's forcible rape of J.S., the sentencing court again imposed a 504 month exceptional sentence. Beito now contends, for the first time, that his sentence is based on an incorrect offender score.

Analysis

Beito's challenge to his sentence centers upon the court's calculation of his offender score as five.³ He contends that his two juvenile offenses "washed out" and

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

² State v. Beito, No. 46308-9-I (Wash. Ct. App. May 21, 2001).

³ Beito may challenge the use of "washed out" juvenile convictions in his offender score despite agreeing that his offender score was five at sentencing. See In re Goodwin, ___ Wn.2d ___, 50 P.3d 618, 625-26 (2002). Therefore, we need not

should not have counted. The State concedes this error, and we agree. In 1988 and 1989, juvenile offenses did not count as criminal history if the defendant turned 23 before committing the current crime.⁴ The Legislature eliminated this rule in 1997, but our Supreme Court recently held that the 1997 amendments do not apply to the scoring of offenses committed before the effective date of the amendment.⁵ Because Beito turned 23 before the 1997 amendment, the juvenile offenses should not have been included in his offender score.

The State argues, however, that the error was harmless because the court imposed the exceptional sentence based on the aggravating factor that Beito raped J.S. We disagree. Under the Sentencing Reform Act, it is essential that the sentencing court first determine the correct standard range for the offense in order for it to exercise "principled discretion" in determining that substantial and compelling reasons justify departing from that range: "When the sentencing court incorrectly calculates the standard range before imposing an exceptional sentence, remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same sentence anyway."⁶

Here, there is nothing in the sentencing court's oral or written ruling to show that it would have imposed the same 504-month exceptional sentence had it known Beito's offender score was four and that his standard range was 281 to 374 rather than 291 to

address Beito's second argument that his counsel was ineffective for agreeing to that offender score at sentencing.

⁴ See former RCW 9.94A.030(12)(b), 9.94A.360(4).

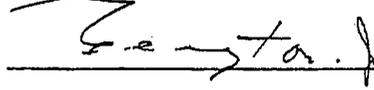
⁵ *State v. Smith*, 144 Wn.2d 665, 30 P.3d 1245 (2001), 39 P.3d 294 (2002).

⁶ *State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997).

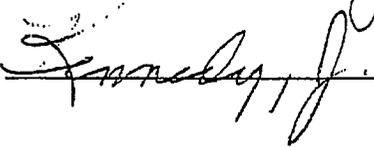
388 months. The court's written findings and conclusions⁷ repeatedly reference the standard range as the court's point of departure, and nothing in the record indicates what impact a different range would have had on the court's thinking. While the difference in the range is relatively small, this is a question to be answered by the sentencing court in the exercise of discretion, and we will not assume the answer where the record is entirely silent.⁸

Reversed and remanded for resentencing based on an offender score of four.

FOR THE COURT:







⁷ See Finding of Fact III; Conclusion of Law in Support of Exceptional Sentence. The trial court entered written findings of fact and conclusions of law in support of the exceptional sentence on March 27, 2002. Those findings have been provided, without objection, as an attachment to the State's brief. Because the court entered written findings of fact after the opening brief was filed, and because we remand this case for resentencing, we need not address Beito's argument that the court failed to comply with former RCW 9.94A.120(3) by failing to enter findings in support of the exceptional sentence.

⁸ See Parker, 132 Wn.2d at 192 n. 15.

APPENDIX H

**Court's Written Findings of Fact and
Conclusions of Law in Support of
Exceptional Sentence (January 3, 2003)**

APPENDIX H

FILED
KING COUNTY, WASHINGTON

JAN - 2 2003

KNT
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

5	STATE OF WASHINGTON,	)	51673-6
6)	
6	Plaintiff,	)	NO. 98-1-00243-0 KNT
7)	
7	vs.	)	COURT'S WRITTEN FINDINGS OF
8		)	FACT AND CONCLUSIONS OF LAW IN
8	CORY SCOTT BEITO,	)	SUPPORT OF EXCEPTIONAL
9		)	SENTENCE
9	Defendant.	)	APPX. D/JUDGMENT AND SENTENCE
10		)	2.5
10)	

11 On November 16, 2001, the court held a hearing to determine
 12 the appropriate sentence in the above-entitled case. The State
 13 was represented by Timothy Bradshaw, and the defendant was present
 14 and represented by J. Richard Quirk. Pursuant to the Plea
 15 Agreement and the terms of the defendant's plea, the court
 16 considered the Certificate for Determination of Probable Cause.
 17 The court at sentencing also considered the following:

- 18 a) Stipulations as to Real Facts, Appx. C;
- 19 b) Plea Agreement and attachments;
- 20 c) Autopsy Report, KCME 98-0107;
- 21 d) Witness Statements of Michael Corbell, Mark Coffey, Nick Gache;
- 22 e) Photographic Exhibits;
- 23 f) The defendant's confession;
- 24 g) Crime Laboratory report of Forensic Scientist Michael Croteau;
- 25 h) A "mitigation package" from the defense;
- i) State v. Bingham, 40 Wn. App. 553, 699 P.2 262; and
- j) The arguments of counsel.

COURT FINDINGS

Norm Maleng
 Prosecuting Attorney
 W 554 King County Courthouse
 Seattle, Washington 98104-2312
 (206) 296-9000

COURT FINDINGS AND CONCLUSIONS
FF

COPY TO SENTENCING GUIDELINES COMMISSION JAN 08 2003

172

1 I. On October 8, 2000, Cory Scott Beito pled guilty to one
2 count of Murder in the First Degree. The agreed standard range
3 for this offense is ~~291-308~~²⁸¹⁻³⁷⁴ months of confinement. AJ

4 II. The State of Washington recommends an exceptional
5 sentence of 504 months confinement. The Department of Corrections
6 recommends an exceptional sentence of 504 months confinement. The
7 attorney for the defendant recommends a sentence ~~in the middle of~~
8 ~~the standard range, 339~~⁴⁹⁰ months confinement. AJ

9 III. Pursuant to 9.94A.370(2), and 9.94A.290(2), the
10 following aggravating factor gives rise to the imposition of an
11 exceptional sentence above the standard range:

12 A. Rape

13 1) It is uncontroverted that the defendant raped Jessica Siem
14 in January 1998, the day of her murder.

15 2) Jessica was born Christmas 1983; the defendant May 13,
16 1971.

17 3) The defendant admits to Rape of a Child Third Degree.

18 4) This finding of Rape of a Child does not violate the Real
19 Facts Doctrine.

20 B. The Rape was closely connected to the murder.

21 1) The strangulation injuries and ligature marks are
22 consistent with an effort to keep the victim from screaming for
23 help.

24 2) The estimated time of death correlates with the time of
25 child rape.. The rape was in close proximity to, and occurred just
before, the murder.

1 3) The victim was taken into the defendant's bedroom and was
2 not seen alive again.

3 4) The defendant never indicated consensual intercourse
4 after the victim's death.

5 5) The victim suffered multiple injuries, including
6 defensive wounds.

7 6) Injuries to the victim, including severe bruising to her
8 eye, are consistent with the witness' statements and inconsistent
9 with consensual sexual activity.

10 7) The victim was petite and small, both in stature and
11 weight (104 lb), as well as her young age (14). The defendant
12 referred to her as "a baby." The victim was also provided and
13 consumed alcohol.

14 8) A valid inference from the evidence is that the rape was
15 a motive for, and factually connected to, the murder; accordingly,
16 the Court finds the defendant's confession on this point not
17 credible.

18
19 CONCLUSIONS OF LAW:

20 Pursuant to RCW 9.94A.390(2) and 9.94A.370(2), and the
21 preponderance of evidence, as well as the defendant's stipulated
22 rape of the victim, the Court concludes that there are substantial
23 and compelling reasons to sentence the defendant above the
24 standard sentencing range. The Court concludes that the rape
25 (forcible and of a child) and subsequent murder are sufficiently
connected. This circumstance distinguishes this case from other

COURT FINDINGS AND CONCLUSIONS

PT

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 crimes of premeditated murder in the first degree and forms a
2 basis to impose a longer sentence than the standard range.

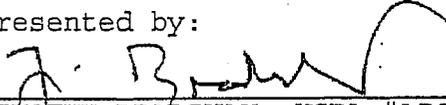
3 The Court additionally concludes that the evidence is
4 insufficient to find the exceptional sentence basis of victim
5 vulnerability or deliberate cruelty, per RCW 9.94A.390(2)(b)(a).

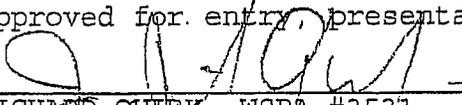
6 A term of 504 months, or 42 years, is an appropriate period
7 on incarceration for this offense to meet the purpose of the SRA
8 including protection of the community and proportionate, just
9 punishment.

10 In addition to the above written Findings and Conclusions,
11 the court incorporates by reference the arguments of counsel and
12 its oral findings and conclusions.

13 DONE IN OPEN COURT this 20th day of Dec. ~~March~~, 2002.

14 
15 JUDGE DEBORAH FLECK

16 Presented by:
17 
18 TIMOTHY BRADSHAW, WSBA #17983
19 Senior Deputy Prosecuting Attorney

20 Approved for entry, presentation waived
21 
22 RICHARD QUIRK, WSBA #3531
23 Attorney for Defendant
24
25

APPENDIX I

Opinion 51673-6-I

APPENDIX I

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE RCWA 2.06.040

SLIP COPY
Court of Appeals of Washington,
Division 1.
STATE of Washington, Respondent,
v.
Corey BEITO, Appellant.
No. 51673-6-I.
Dec. 22, 2003.

Appeal from Superior Court of King County.

Sharon Jean Blackford, Attorney at Law, Washington Appellate Project, Seattle, WA, for Appellant.
Prosecuting Atty King County, King County Prosecutor/appellate Unit, Seattle, WA, for Respondent.

UNPUBLISHED OPINION

PER CURIAM.

*1 **Corey Beito** appeals the sentence imposed following a second remand from this court for resentencing. He contends the sentencing court failed to follow statutory sentencing procedures. In a supplemental assignment of error, he contends the latest sentence is harsher than the previous sentences and, under the circumstances, constitutes a vindictive sentence. We affirm.

FACTS

Beito pleaded guilty to the premeditated murder of a 14- year-old runaway girl who had been drinking at his home. He stipulated that the court could consider facts establishing the uncharged crimes of third degree rape of a child and first and second degree forcible rape. Based on an offender score of five, the court imposed an exceptional sentence of 504 months, citing "rape of a child" as the single aggravating factor. Beito appealed and this court remanded for a determination as to whether there was a sufficient connection between the rape and murder to justify an exceptional sentence. [FN1]

[FN1]. *State v. Beito*, No. 46308-9-I (Wash.Ct.App. May 21, 2001).

On remand, after finding a factual connection between the rape and murder, the sentencing court again imposed a 504-month exceptional sentence. Beito appealed, this time arguing that his sentence was based on an incorrect offender score and that the standard range for his offense was 281 to 374 months, not 291 to 388 months. We agreed and remanded for resentencing because the record did not indicate whether the sentencing court would have imposed the same sentence had it been aware of the correct range. At resentencing, defense counsel requested a 14 -month reduction in the sentence, which was equal to the difference between the top of the correct and incorrect ranges. The court reimposed its previous sentence of 504 months, stating in part:

I am satisfied that the findings that I made at the last hearing are appropriate findings and do again, because of your objection, will impose an exceptional sentence for the reasons stated previously. I don't think that simply reducing down 14 months has a whole lot of logic to it....

And a figure of 504 months seemed appropriate on each of the other sentences to me. I in large part agree because the only difference is 14 months. It doesn't have any real impact on my thinking {regarding} the appropriate sentence in this case. And I am satisfied that a 504 months sentence is the appropriate sentence yet again.

Beito appeals.

DECISION

Beito first argues that the superior court exceeded its authority because it did not use the standard

range as the starting point for determining the appropriate sentence. Instead, he argues, the court simply adhered to its previous sentences without giving due consideration to the reduced standard range. The record is to the contrary.

The sentencing court expressly considered the reduced standard range and Beito's argument that his sentence should be reduced to reflect the difference between the correct and incorrect ranges. The court stated that the difference between the ranges was relatively small and concluded that the aggravating factors still supported a 504-month sentence. The court gave due consideration to the reduced standard range and did not exceed its authority.

*2 In a supplemental assignment of error, Beito contends the latest sentence is vindictive and violates due process. This argument is meritless. A sentence violates due process if a judge, motivated by vindictive retaliation, imposes a more severe sentence following a defendant's successful appeal. [FN2] A rebuttable presumption of vindictiveness arises if the sentence on remand is in fact more severe. [FN3] Beito concedes he received the same sentence on remand that he received at the previous sentencings. He argues, however, that the latest sentence is more severe because it was based on a lower standard range. This argument was rejected in, and is defeated by, State v. Franklin. [FN4]

FN2. State v. Franklin, 56 Wn.App. 915, 920, 786 P.2d 795 (1989) (citing North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed. 656 (1969)).

FN3. Franklin, 56 Wn.App. at 920.

FN4. 56 Wn.App. 915, 786 P.2d 795 (1989) (holding that sentence was not increased, and therefore no presumption of vindictiveness arose, where court on remand adhered to prior sentence in the face of a reduced standard range); see State v. Barberio, 66 Wn.App. 902, 906-08, 833 P.2d 459 (1992) (rejecting argument that reduction in offender score and standard range requires proportionate reduction in the length of reimposed exceptional sentence; 'an appellate court will not find an abuse of discretion simply because a trial court, after consideration of valid aggravating factors, reimposes the same sentence after a change in the offender score.')

The only case Beito cites -- State v. Ameline [FN5] -- is distinguishable. There, a presumption of vindictiveness arose because the court increased the defendant's sentence on remand from 164 months to 240 months. Ameline does not apply here because there was no increase in Beito's sentence.

FN5. 118 Wn.App. 128, 75 P.3d 589 (2003).

Affirmed.
Wash.App. Div. 1, 2003.
State v. Beito
2003 WL 22996116 (Wash.App. Div. 1)
END OF DOCUMENT

APPENDIX J

Order Denying Petition for Review

APPENDIX J

APPENDIX K

**Verbatim Report of Proceedings
of plea hearing October 8, 1999**

APPENDIX K

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

RECEIVED
KING COUNTY, WASHINGTON

JUL 21 2000

KNT DEPARTMENT OF
JUDICIAL ADMINISTRATION

STATE OF WASHINGTON)
Plaintiff,)
Vs.)
COREY BEITO, JR.,)
Defendant.)

No. 98-1-00243-0 KNT
COA No. 46308-0-I

Heard Before the Honorable Deborah Fleck, Judge

Appearances:

For the plaintiff: Timothy Bradshaw
Deputy Prosecuting Attorney

For the defendant: David Roberson
Attorney at Law

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2000 AUG 9 PM 5:00

October 8, 1999
reported by Gary Crawford, Official Court Reporter

5110

1 October 8, 1999

2 10:44 a.m.

3 PROCEEDINGS

4
5 THE COURT: Good morning.

6 MR. BRADSHAW: Your honor, this is the matter
7 of the State of Washington versus Corey Beito,
8 number 98-1-00243-0 Kent. Tim Bradshaw appearing
9 for the State of Washington. Dave Roberson
10 appearing for Mr. Beito, who is present.

11 Your Honor, there are two things before the
12 Court with related documents. In anticipation of
13 a plea of guilty, in fact I am looking at a
14 completed and signed Statement of Defendant on
15 Plea of Guilty, conditioned upon that carried to
16 fruition the state at this time would make its
17 motion for a second amended Information in this
18 case, and I believe the Court has those
19 documents?

20 THE COURT: I do.

21 MR. BRADSHAW: The state at this time would
22 hereby move to amend the current Information of
23 the crime of aggravated murder in the first degree
24 down to the crime of murder in the first degree.

25 MR. ROBERSON: Your Honor, we do knowledge

1 receipt of that information, waive further formal
2 reading, and Mr. Beito is prepared to enter a plea
3 of guilty.

4 THE COURT: Given the representation of
5 counsel I will grant the Motion to Amend. I have
6 signed the Order Authorizing Amendment. You may
7 proceed, Mr. Bradshaw.

8 MR. BRADSHAW: Thank you. Your Honor, I
9 refer to certain documents that attach literally
10 and subsequently to this charge, Appendix B, the
11 state's understanding of the defendant's criminal
12 history, as well as a reserved scoring form; and
13 there is an Appendix C to the Plea Agreement
14 regarding real facts and what the parties agree
15 can be argued at the subsequent sentencing.

16 Just at the outset I want the Court to know,
17 certainly Mr. Beito to know, that the state will
18 be arguing for an exceptional sentence above the
19 presumed standard range.

20 With that I would inquire of Mr. Beito
21 directly. Sir, is your full name and true and
22 correct name Corey Scott Beito?

23 THE DEFENDANT: Yes. It is.

24 MR. BRADSHAW: And your date of birth,
25 please?

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THE DEFENDANT: 5/13/71.

MR. BRADSHAW: And you have completed by way of formal education through the eleventh grade, is that correct?

THE DEFENDANT: Right.

MR. BRADSHAW: And is it also correct that you have gone over this case thoroughly and to your satisfaction with your counsel Dave Roberson?

THE DEFENDANT: Yeah.

MR. BRADSHAW: And noting that you had previous counsel, as well, am I right that Mr. Roberson has performed on your behalf a through investigation of this case?

THE DEFENDANT: Yes.

MR. BRADSHAW: Do you have any questions that you have thought of now that you haven't had time to ask Mr. Roberson that you would like to ask me or Judge Fleck?

THE DEFENDANT: No.

MR. BRADSHAW: You are charged now with murder in the first degree. The state would need to prove beyond a reasonable doubt not just that whole crime, Mr. Beito, but each of what the law calls elements or each of the significant parts that

1 make up the crime of murder in the first degree.
2 Have you had a chance to look at what we would
3 have to prove?

4 THE DEFENDANT: Yes.

5 MR. BRADSHAW: And all aspects of that
6 current charge are identified in what we have
7 called the second amended Information. Have you
8 had time to see that?

9 THE DEFENDANT: Yes.

10 MR. BRADSHAW: And by pleading guilty today
11 do you understand that you are giving up your
12 right to force myself, on behalf of the State of
13 Washington, to prove each element beyond a
14 reasonable doubt of the crime of murder in the
15 first degree?

16 THE DEFENDANT: Yes.

17 MR. BRADSHAW: You are giving up a trial in
18 which you could call witnesses to testify on your
19 behalf at no expense to you. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 MR. BRADSHAW: This crime of murder in the
23 first degree, Mr. Beito, carries what we call a
24 maximum sentence; and in this state that maximum
25 sentence is life in prison and a \$50,000 fine. Is

1 that your understanding of what the maximum can
2 be, life in prison?

3 THE DEFENDANT: I thought the maximum was 504
4 months, whatever that is.

5 MR. BRADSHAW: We will get to that. The
6 maximum sentence by statute, okay? So with no
7 reference to an individual circumstance, okay,
8 either of the facts or your criminal history, the
9 maximum a judge could ever give someone charged
10 with murder in the first degree in this state is
11 life in prison and a \$50,000 fine. Do you
12 understand that now?

13 THE DEFENDANT: Yes.

14 MR. BRADSHAW: There is, however, in the
15 State of Washington a standard sentencing range.
16 That's a presumed range within which the Court is
17 presumed to sentence you. Now, that's based, in
18 addition to the seriousness of the crime of murder
19 in the first degree, that is calculated with our
20 understanding of your criminal history and more
21 precisely your accountable criminal history.

22 So, if you would look at -- I believe you
23 have seen before Appendix B. This is the state's
24 understanding of your criminal history. In
25 looking at that we understand that your offender

1 score or your criminal history would qualify an
2 offender score of 5, okay? Now, that merged with
3 the seriousness of this crime, we believe, equals
4 a presumed standard sentencing range of 291 to 388
5 months. Do you understand that?

6 THE DEFENDANT: Yes.

7 MR. BRADSHAW: What follows from that, Mr.
8 Beito, is if we should find out, say, about
9 additional countable or additional criminal
10 history that you have that we just don't know
11 about at sentencing the judge could take that into
12 account and your standard sentencing range could
13 increase.

14 THE DEFENDANT: How, if you don't know about
15 it?

16 MR. BRADSHAW: We feel we do, but often times
17 searches aren't done fully. I want you to
18 understand that is possible.

19 THE DEFENDANT: All right.

20 MR. BRADSHAW: Do you understand that?

21 THE DEFENDANT: Yeah.

22 MR. BRADSHAW: Okay. With regard to your
23 criminal history, Mr. Beito, have you plead guilty
24 before?

25 THE DEFENDANT: Yeah.

1 MR. BRADSHAW: And do you know what I mean
2 when we say community placement?

3 THE DEFENDANT: Yeah.

4 MR. BRADSHAW: Do you understand that after
5 your release from prison on this case you would be
6 eligible and required, however, to be placed in
7 community placement?

8 THE DEFENDANT: Yeah.

9 MR. BRADSHAW: There is also in this state,
10 Mr. Beito, you need to be aware of what is called
11 593 legislation or lay persons refer to it as the
12 Three Strikes Law. That is when, again, there are
13 certain prior felony convictions that a person can
14 have at least two and then they get a third, of
15 which certainly murder in the first degree would
16 be, there is no parole at all.

17 Now, it's our understanding you do not have
18 such prior history. But again going back to my
19 hypothetical, if we found out, for example, in
20 Louisiana that we don't know about you had a
21 countable strike, so to speak, that's a
22 possibility, too. Do you understand that?

23 THE DEFENDANT: Yes.

24 MR. BRADSHAW: Okay. Now, the state is
25 making -- will be making a sentencing

1 recommendation to the Court. A couple of
2 important things about that. Recommendation means
3 what it says. Just because we say we are going to
4 ask for something doesn't mean the Judge is going
5 to give it unless they agree. The Judge sentences
6 you, not myself; but you need to understand what
7 we are recommending to the Court.

8 So is it your understanding, as identified in
9 page 3, paragraph F, that our recommendation to
10 the Court is for a confinement period of 504
11 months with credit for all time that you have been
12 in jail already since the date of the offense?
13 You get credit for that. That's our
14 recommendation in the law.

15 We are also recommending that you provide
16 voluntarily a DNA sample by way of a blood sample
17 and that you pay a Victim Penalty Assessment, I
18 believe, at \$500; and after your release from
19 prison you are on community placement. There is
20 also reference to appendix C, Mr. Beito. This
21 document I want you to look at, and when you
22 understand and agree with it, if you agree with
23 it, I would like you to sign it there.

24 Appendix C is your agreement Mr. Beito that
25 the state may argue at sentencing in support of.

1 the exceptional sentence. You are agreeing that
2 we may argue facts that may qualify other crimes,
3 just so we are clear. Because you are not
4 pleading guilty to anything right now except for
5 murder in the first degree, okay?

6 THE DEFENDANT: But signing this gives you
7 the opportunity to, right?

8 MR. BRADSHAW: That's correct to be specific,
9 the statute cited there is in support of the
10 state's ability to do that.

11 THE COURT: Your what?

12 MR. ROBERSON: Here.

13 THE COURT: Let's go ahead and have you take
14 a minute, Mr. Roberson, and talk with Mr. Beito
15 about the issue raised right now.

16 (Off the record.)

17 MR. BRADSHAW: All right. Mr. Beito, I am
18 looking now at the same appendix and document. It
19 now has your signature, as well as your
20 counsel's. Am I to take from that signature you
21 understand and agree with the document.

22 THE DEFENDANT: I understand it.

23 MR. BRADSHAW: Okay. And what this is is a
24 part of our plea agreement Mr. Beito that you
25 understand that in support of the state's sentence

1 recommendation we are allowed to try and prove,
2 facts that may qualify another crime. This also
3 includes, so we are clear, a specification in
4 paragraph 3 where you specifically deny and
5 dispute that crimes of rape in the first and
6 second degree were committed. All right. You do
7 under that?

8 THE DEFENDANT: Yeah.

9 MR. BRADSHAW: Do you agree with the Appendix
10 C as being part of the overall plea agreement.

11 THE DEFENDANT: I understand it. I agree
12 with it. I signed it, right?

13 MR. BRADSHAW: Yes. You did.

14 THE COURT: Do you need any additional time,
15 Mr. Beito, to talk to your attorney about what
16 that attachment or appendix means.

17 THE DEFENDANT: No, Your Honor. Thank you.

18 MR. BRADSHAW: All right. Mr. Beito, I am
19 looking at the last -- second to the last page of
20 the Statement of Defendant on Plea of Guilty.
21 This is your personal statement about the crime
22 that is currently before the Court.

23 It reads as follows: In King County,
24 Washington, during the period of time intervening
25 between January 21, 1998 through January 23, 1998

1 with premeditated intent to cause the death of
2 Jessica Seim, a human being, I did cause the death
3 by meanings of strangulation. Is that your
4 statement and is it accurate?

5 THE DEFENDANT: I will sign it.

6 MR. BRADSHAW: When you sign it what do you
7 mean to communicate by that?

8 THE DEFENDANT: I am saying I got no choice
9 to sign it. If I don't sign it I go to trial. I
10 get life without. If I sign this --

11 MR. BRADSHAW: That may very well be true.
12 If you have any questions for the Court or me this
13 is a good time, but what you just said makes me
14 want to clarify a couple of things. The bottom of
15 page 6, Mr. Beito, looking at numbers 9 and 10.
16 We need to make sure that no one, quoting number
17 9, no one has threatened any harm of any kind to
18 me or to any other person that may cause me to
19 make this plea.

20 Number 10 reads no person has made promises
21 of any kind to cause me to enter this plea except
22 as set forth in the statement. Now, I don't know
23 if the Court would like to correct me on this, but
24 what this is not talking about here is whether you
25 like what is happening, all right? It's not

1 asking whether you're making a calculated, learned
2 decision on advice of counsel, that this is rather
3 than the alternate going to trial.

4 Inherent in the legal system is a degree of
5 coercion, okay? But that's based on the
6 allegations and sentencing laws in the state, but
7 where this is going is were there any other
8 outside forces or any improper forces upon you,
9 you know, whereas that you feel threatened to make
10 this plea or that you are being made improper
11 promises of any kind in exchange for your plea?

12 THE DEFENDANT: No.

13 MR. BRADSHAW: Okay.

14 MR. ROBERSON: May I have just a minute?

15 MR. BRADSHAW: Yes.

16 (Off the record.)

17 THE DEFENDANT: I guess I will take what they
18 call the Alford plea on this.

19 MR. BRADSHAW: Okay. So you have gone over
20 this option with your counsel to your
21 satisfaction?

22 THE DEFENDANT: Okay. But by way of an
23 Alford plea.

24 MR. BRADSHAW: I will ask Mr. Roberson to
25 insert the appropriate language. What I am

1 interested in is that you are allowing the Court
2 to review at this time the document we filed in
3 support of the original charge. Basically it's a
4 summary of the facts called Certificate in Support
5 of Determination of Probable Cause. Do you
6 remember that document?

7 MR. ROBERSON: Your Honor, if I may have a
8 minute? I can write the appropriate language for
9 the Alford plea.

10 THE COURT: You may.

11 MR. ROBERSON: Your Honor, I have changed
12 the wording of paragraph 11. It now reads as
13 follows. I have reviewed the police reports
14 and other discovery with my attorney. Although
15 I admit no guilt in terms of a premeditated
16 intentional murder, I do admit to causing the
17 death of Jessica Sing by means of strangulation.

18 I wish to plead guilty to the charge of
19 murder in the first degree in order to take
20 advantage of the state's reducing the charge from
21 one of aggravated murder. I do believe that if I
22 went to trial there is a potential likelihood a
23 judge or jury would convict me. The Court may
24 consider the Certificate of Probable Cause as well
25 as Appendix C to form a basis for my plea and my

1 sentence.

2 I have signed that and Mr. Beito, too, has
3 signed it; and I would ask to exchange the old
4 page 7 with a new page 7.

5 MR. BRADSHAW: All right. Mr. Beito?

6 THE DEFENDANT: Yes.

7 MR. BRADSHAW: Were you following and did you
8 listen to your counsel reading the new statement?

9 THE DEFENDANT: Yes.

10 MR. BRADSHAW: Okay. There is now an
11 addition only as to the last sentence that reads
12 as follows: The Court may consider the
13 Certificate of Probable Cause as well as the
14 materials of Appendix C to form a basis for my
15 plea and my sentencing. Is that sentence as well
16 as the whole statement true and accurate?

17 THE DEFENDANT: Yes.

18 MR. BRADSHAW: Mr. Beito, at this time are
19 you prepared to indicate to the Court whether you
20 are making this plea freely and voluntarily?

21 THE DEFENDANT: Yes.

22 MR. BRADSHAW: And is this your decision to
23 go ahead and plead guilty to the amended charge of
24 murder in the first degree?

25 THE DEFENDANT: Yes.

1 MR. BRADSHAW: So do you have any other
2 questions?

3 THE DEFENDANT: Nope.

4 MR. BRADSHAW: Your Honor, I have signed the
5 Statement of Defendant on Plea of Guilty. I
6 would encourage the Court to inquire of Mr. Beito
7 on any points that it believes need clarification,
8 but having been part of this negotiation process
9 for many, many months and having gone over a
10 significant amount of discussion with current
11 counsel, as well as former counsel, I am confident
12 Mr. Beito knows what he is doing and why he is
13 doing it and the calculus that goes into it.

14 Therefore, I would urge the Court to accept
15 the plea. I believe the Court has the Certificate
16 of Probable Cause. It's been referenced. It can
17 be relied upon. I am handing up the original
18 Statement of Defendant on Plea of Guilty, as well
19 as original Appendix C and Plea Agreement forms
20 that are now signed by all parties.

21 THE COURT: Thank you. Mr. Roberson?

22 MR. ROBERSON: Your Honor, I believe that Mr.
23 Beito is making a knowing, intelligent and
24 voluntary decision with the caveat that Mr.
25 Bradshaw spoke about in terms of built in coercion

1 in the system. He is happy with his choice, but
2 he understands it's an intelligent choice and he
3 is making it freely and voluntarily.

4 THE COURT: Thank you. Mr. Beito, did you
5 read through the document Statement of Defendant
6 on Plea of Guilty yourself?

7 THE DEFENDANT: Yes. I did.

8 THE COURT: Have you had enough time to think
9 about and also to talk with Mr. Roberson about
10 your decision to enter a plea to the amended
11 charge, reduced from aggravated murder in the
12 first degree to murder in the first degree?

13 THE DEFENDANT: Yes. I have thought about
14 it.

15 THE COURT: Do you understand that the
16 elements of the amended charge are as follows,
17 that you in King County, Washington between
18 January 21, 1998 through January 23, 1998 with
19 premeditated intent to cause the death of another
20 person did cause the death of Jessica Seim, a
21 human being, who died during a period of time
22 intervening between those dates? Do you
23 understand that those are the elements of this
24 crime?

25 THE DEFENDANT: Yes.

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THE COURT: Do you understand that by entering a plea you give up your right to require the state to prove each one of those elements beyond a reasonable doubt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that you have a number of rights under the Constitution associated with going to trial?

THE DEFENDANT: Yes.

THE COURT: Do you understand that when you enter a plea you give up those rights associated with going to trial because, of course, there will be no trial.

THE DEFENDANT: Right.

THE COURT: Do you understand specifically that by entering a plea you give up the right to a speedy and public trial by an impartial jury in this court?

THE DEFENDANT: Yes. I do.

THE COURT: Do you also understand that you give will up the right to remain silent before and during the trial, as well as the right to refuse to testify against yourself, and alternately the right to testify, if you choose to do so? Do you understand you give up each of those things?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that you
3 give up the right at trial to hear and question
4 witnesses who testify against you, as well as the
5 right to have at trial witnesses testify for you
6 and be made to appear at no expense to you?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand you give up the
9 presumption of innocence unless and until the
10 charge is proved beyond a reasonable doubt against
11 you?

12 THE DEFENDANT: Yes.

13 THE COURT: And finally, do you understand
14 that you give up the right to appeal a
15 determination of guilt following a trial?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have any questions at all
18 about those rights or about giving them up when
19 you enter a plea?

20 THE DEFENDANT: Do I have a right to appeal
21 if I am sentenced above the standard range?

22 THE COURT: Yes.. These are trial rights.
23 You are giving up these rights under the
24 constitution when you enter a plea because there
25 is no trial.

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THE DEFENDANT: Okay.

THE COURT: Do you understand that the following statute of the Revised Code of Washington 99a.40.30 sub part 23 and sub part 27 provide for that third conviction for a "most serious offense", as defined in that statute or for a second conviction for a "most serious offense" which is also a sex offense as defined in that statute you may be found to be a persistent offender.

If you are found to be a persistent offender the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. The law does not require any reduction of such a sentence. Do you understand that is the law in the State of Washington?

THE DEFENDANT: Talking about the three strikes?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: Do you understand that the state's current knowledge of your criminal history does not include convictions that would put you in the third strike position?

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THE DEFENDANT: Yes. I do.

THE COURT: Do you also understand that if the state located additional criminal history which could include three strike-type offenses the state is not bound by its own recommendation in this case.

THE DEFENDANT: Yes. I do.

THE COURT: Do you understand that if additional criminal history is found of the most serious offense-type that this statute may, in fact, apply?

THE DEFENDANT: Yes. I do.

THE COURT: Mr. Bradshaw has indicated that based on the state's understanding of your criminal history your offender score is 5, leading to a standard range of 291 to 388 months? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that the sentencing court is not required to follow any recommendation by your attorney or by the state?

THE DEFENDANT: Yes. I do.

THE COURT: Do you understand if a court sentenced you outside the standard range you have a right to appeal the sentence?

1 THE DEFENDANT: Yes. I do.

2 THE COURT: Do you understand if the
3 sentenced you within the standard range you do not
4 have a right the appeal?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Bradshaw has indicated
7 clearly on the record the state intends to seek an
8 exceptional sentence and that acceptional sentence
9 is 504 months. It looks like a correction. It
10 needs to reflect 504 months.

11 MR. BRADSHAW: Correct.

12 THE COURT: A substantial amount above the
13 high end of the standard range. Do you understand
14 that is the state's recommendation?

15 THE DEFENDANT: Yes. I do.

16 THE COURT: And do you also understand that
17 the plea agreement here involves your recognition
18 and agreement that the state may utilize real
19 facts as provided in Appendix C?

20 THE DEFENDANT: Yes. I do.

21 THE COURT: And that relates to, as Mr.
22 Bradshaw indicated, the state's desire and ability
23 to argue facts that could constitute additional
24 crimes.

25 THE DEFENDANT: Yes. I do.

1 THE COURT: Has anyone made any threats or
2 promises to you except what is contained in this
3 plea agreement?

4 THE DEFENDANT: No.

5 THE COURT: Has anyone made -- I asked that
6 in the conjunctive. I want to ask it in the
7 disjunctive. Has anyone made any threats at all
8 to you to get you to make this plea?

9 THE DEFENDANT: No.

10 THE COURT: Has anyone made any promises to
11 you except what's contained in the document
12 Statement of Defendant on Plea of Guilty?

13 THE DEFENDANT: No.

14 THE COURT: The original form, counsel, has a
15 number of paragraphs which have been crossed out.
16 I believe under the court rules the document --
17 it's requires both the defendant and me sign off
18 or initial the places that have been crossed out.
19 That has not yet been done by the defendant.

20 I would like to hand it back down and ask
21 you to take your time and review that with him,
22 your client, Mr. Roberson, and have him initial if
23 he understands clearly that that's what he is
24 agreeing to. Those paragraphs do not apply.

25 MR. BRADSHAW: Your Honor, thank you. In a

1 similar vein I would ask if the Court agrees I
2 would request the Court to clarify with the
3 defendant the statutory maximums and minimums
4 applicable. I am not sure I was as artful as I
5 should be.

6 THE COURT: Mr. Roberson, would you -- since
7 I know you have reviewed that with your client,
8 but you have had him initial this. I have been
9 watching you do that, and I don't know that he has
10 had time to run his eyes over each of those
11 paragraphs. Would you just take a minute to
12 scrutinize with him each of those paragraphs.

13 MR. ROBERSON: Yes, Your Honor. Your Honor,
14 I have, in fact, gone over the the paragraphs and
15 realized that there were two errors made in
16 crossing out certain paragraphs.

17 For whatever strange reason the legislature
18 has decided a person guilty of the crime of murder
19 in the first degree is not eligible to possess a
20 driver's license. So that paragraph was
21 stricken. That is no longer stricken. The fact
22 that he cannot have a driver's license was
23 reflected in the state's plea agreement, and I
24 will maintain that covered it, but the paragraph
25 indicates he must provide a sample of his DNA. It

1 is a violent offense. He must provide a sample of
2 his DNA. So we have initialed those two
3 paragraphs indicating that they do, in fact,
4 apply.

5 THE COURT: Thank you. Mr. Beito, do you
6 understand that by entering a plea of guilty to
7 murder in the first degree one of the consequences
8 will be the revocation of your privilege to
9 drive?

10 THE DEFENDANT: Yes.

11 THE COURT: You also understand that if you
12 were not a citizen of the United States that a
13 plea of guilty, an offense punishable as a crime
14 under state law, is grounds for deportation or
15 exclusion from admission to the United States or
16 denial of naturalization pursuant to the laws of
17 the United States?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that murder in
20 the first degree is a violent offense and that
21 therefore you will be required to provide a sample
22 of your blood for purposes of your DNA
23 identification and analysis?

24 THE DEFENDANT: Yes.

25 THE COURT: There are a number of initials

1 next to paragraphs which have been crossed out,
2 and they appear to be in black ink and they appear
3 to be a little bit unclear but they appear to say
4 C, then an initial appears to be B and B. Is that
5 your initials?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you just placed them on the
8 paragraphs crossed out?

9 THE DEFENDANT: Yes. I have.

10 THE COURT: Do you understand, Mr. Beito,
11 that for the offense of murder in the first degree
12 a sentencing court will be required to impose at
13 least a sentence of twenty years?

14 THE DEFENDANT: Yes. I do.

15 THE COURT: Do you understand that the
16 maximum sentence a court could impose for the
17 crime of murder in the first degree is life in
18 prison and \$50,000?

19 THE DEFENDANT: Yes. I do.

20 THE COURT: Do you understand that by
21 entering a plea you essentially are agreeing that
22 the court will have a range between twenty years
23 and life in prison?

24 THE DEFENDANT: Yes. I do.

25 THE COURT: I am going to ask you again if

1 you have had enough time to think about and also
2 talk with Mr. Roberson about your decision to
3 enter a plea to the amended charge?

4 THE DEFENDANT: Yes. I have.

5 THE COURT: Do you have any questions at all
6 remaining in your mind now that you want to ask
7 Mr. Roberson or me before I proceed to take your
8 plea?

9 THE DEFENDANT: No.

10 THE COURT: How do you plead at this time to
11 the charge of murder in the first degree, guilty
12 or not guilty?

13 THE DEFENDANT: Can I have one second
14 please? I am sorry.

15 THE COURT: Yes.

16 THE DEFENDANT: Guilty by way of an Alford
17 plea, Your Honor.

18 THE COURT: Do you understand for all
19 purposes an Alford plea is essentially the same as
20 a straight plea of guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: For purposes of sentencing the
23 effect of entering the Alford plea, in terms of a
24 determination of guilt, is the same. Do you
25 understand that?

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THE DEFENDANT: Yes.

THE COURT: Any questions at all about that issue?

THE DEFENDANT: No.

THE COURT: Mr. Beito, I have reviewed the Certification for Determination of Probable Cause in this case which was handed up to me, and based on that review I find that there is a factual basis to for the plea you have just given to murder in the first degree, and I also find that should the matter have gone to trial there is a substantial likelihood you would be found guilty of that charge.

I have had the opportunity to listen to you and observe you as you have answered the questions from the prosecutor Mr. Bradshaw, as well as my questions. I have had the benefit of hearing from your attorney regarding his perception of your understanding.

Based on all of that I do find that you understand the nature of the charges against you, including the elements the state would have been required to prove if you had exercised your right under the constitution to go to trial. And I also find that you understand the consequences of

1 entering a plea of guilty to the charge of murder
2 in the first degree.

3 Among those consequences, giving up the
4 rights under the constitution that Mr. Roberson
5 reviewed with you; that I have reviewed with you
6 again on the record, as well as other
7 consequences; and I do find that your plea is
8 knowingly, intelligently and voluntarily made. I
9 accept your plea, and I will sign the documents
10 that have been handed to me, including the
11 Statement of Defendant on Plea of Guilty, and I
12 will based on your representation to me that you
13 have read the document I will check the box that
14 says you have previously read this.

15 Mr. Roberson, do you have pages 8 and 9 of
16 the document?

17 MR. ROBERSON: I do have page 8. I don't
18 know what happened to page 9.

19 THE COURT: I have up to page 7 with the new
20 changes that you added.

21 MR. ROBERSON: Page 8 is the judge's
22 signature line. I don't know about page 9.

23 THE COURT: I don't know, either, but it says
24 8 of 9.

25 MR. ROBERSON: Your Honor, unfortunately I

1 don't have any other plea forms to find out what
2 page 9 would say. Your Honor, 8 appears to be the
3 one I have handed forward, probably not the most
4 current of the forms, that Madame Bailiff handed
5 me, a form that was printed in 1997. Page 9
6 simply is the judge's signature page, as well as
7 the translator's page. I don't know what would be
8 on page 9 of this one.

9 MR. BRADSHAW: I agree, and the fact page 8
10 is superfluous to the plea. I can't imagine what
11 9 would be.

12 THE COURT: That is the only place for my
13 signature.

14 MR. BRADSHAW: Oh, that.

15 THE COURT: That would suggest that you would
16 like to have that. I have signed the Plea
17 Agreement, reviewed Appendix C and signed the
18 Statement of Defendant on Plea of Guilty.

19 I will sign the second amended Information at
20 this time, together with the motion and
21 declaration associated with it and hand back to
22 you the Statement of Defendant together with the
23 Certification and the extra copy, if you wish.
24 Mr. Roberson, will you obtain the sentencing date
25 and sentencing judge?