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THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON, Respondent, vs. MICHAEL FOXHOVEN, Appellant.	)	No. 54723-3-I STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Michael Foxhoven, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

The trial court erred when it sentenced Mr. Foxhoven to fifty (50) months when co-defendant Desmond Hanson was sentenced to one (1) year and one (1) day, and when co-defendant Anthony

Sanderson was sentenced to eighteen (18) months. The operation of the Multiple Offense policy results in a presumptive sentence that is clearly excessive because it is clearly unreasonable. No factors are present which distinguish the offenses from co-defendants. State v. Alexander, 125 Wn.2d 717,888 P.2d 1169(1995). I invoke State v. Hughes, ___ Wn.2d ___,___,___ P.3d ___(2005)(No. 74147-6)(En Banc)(Slip Opinion). See Verbatim Report of Proceedings (here in VRP) Vol.7 p.1029 ll.9-25 and p.1030 ll.1-13.

The facts of this case justify a departure below the standard range, in order to promote respect for the law by imposing just and proportionate sentences.

In United States v. Daas, 198 F.3d 1167,1180-1182(9th Cir.1999), cert den, 531 U.S.999,121 S.Ct.498,148 L.ed.2d 463(2000), the court found that a downward departure from the standard range sentence was appropriate where one defendant received a severe sentence that was disparate from the lower sentences imposed on co-defendants.

The court here essentially abdicated its sentencing responsibilities by sentencing Mr. Fokhoven

to terms without engaging in any analysis that would ensure the sentence was proportionate to those of his co-defendants. Revised Code of Washington (RCW) 9.94A.010(1), (2), (3). (Purpose of Sentencing Reform Act (SRA), as stated in RCW 9.94A.010 (3) are "Be commensurate with the punishment imposed on others committing similar offenses....").

ADDITIONAL GROUND 2

The restitution order entered by the trial court is manifestly unreasonable and based on untenable grounds. RCW 9.94A.753(3). Here the evidence supporting restitution subjected the trial court judge to mere speculation or conjecture. State v. Fleming, 75 Wn.App.270,377 P.2d 243(1994). See VRP Vol. 3 p.319, 321, 354-355, 360-361, 363-364, 366-367, 370-372; 373-374, 376, 377-378, 380, 381-382, and 383-384, Vol. 4 p.387-390.

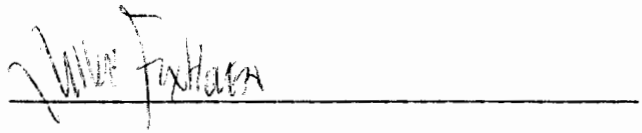
Here, as in State v. Hughes, supra, the restitution order entered by the trial court is manifestly unreasonable or based on untenable grounds.

The state put on witnesses at sentencing. The

trial court relied upon speculation and conjecture from the state's witnesses in ascertaining the amount of restitution to order. The state did not meet its burden. The court's restitution order is manifestly unreasonable and based on untenable grounds.

EXECUTED ON this 11 day of July, 2005.

Respectfully submitted,



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July 10, 2005

Re. State v. Foxhoven case No. 54793-3-I

Sir;

Please find an original and one copy of my Statement of Additional Grounds for Review, for filing in the above cause. Thank you for your kind attention to this matter.

Respectfully,
Michael Foxhoven
Michael Foxhoven 874167

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