

ORIGINAL

NO. 79003-5

SUPREME COURT OF THE STATE OF WASHINGTON

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2001 JUL 31 P 2:23  
BY RONALD R. CARPENTER

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

JACOB L. T. MINOR,

Defendant/Appellant/Petitioner.

FILED  
AUG 09 2007  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
*am*

BRIEF *AMICUS CURIAE* OF  
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS  
IN SUPPORT OF POSITION ADVANCED BY APPELLANT

WASHINGTON ASSOCIATION OF CRIMINAL  
OF CRIMINAL DEFENSE LAWYERS  
Sheryl Gordon McCloud, Co-Chair  
710 Cherry St.  
Seattle, WA 98104-1925  
(206) 224-8777  
Attorney for WACDL

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. THE FORM WITH UNCHECKED BOXES NEXT TO THE DEPRIVATION-OF-FIREARMS-RIGHTS PARAGRAPHS PROVIDED AFFIRMATIVE, WRITTEN, JUDICIAL ADVICE THAT MINOR’S FIREARM POSSESSION RIGHTS REMAINED INTACT ..... 3

III. EVEN IF THE UNCHECKED BOXES ARE CONSIDERED AMBIGUOUS ABOUT WHETHER THEY AFFIRMATIVELY MISADVISED MR. MINOR ABOUT FORFEITURE OF FIREARMS RIGHTS, ANY SUCH AMBIGUITY MUST BE CONSTRUED AGAINST THE STATE..... 11

IV. IN WASHINGTON, GIVEN OUR ROBUST CONSTITUTIONAL PROTECTION OF FIREARM POSSESSION RIGHTS, THE CITIZEN IS ENTITLED TO RELY ON THE DEFAULT PRESUMPTION THAT THE CONSTITUTIONAL RIGHT TO POSSESS ARMS – NO LESS THAN THE RIGHTS TO FREE SPEECH OR RELIGIOUS CHOICE – REMAINS INTACT..... 12

V. UNDER THE DUE PROCESS CLAUSE, RELIANCE UPON AN OFFICIAL GOVERNMENT MISSTATEMENT PROVIDES A DEFENSE TO EVEN A STRICT LIABILITY CRIME ..... 14

VI. EVEN IF THE DUE PROCESS CLAUSE DID NOT COMPEL THIS COURT TO IMPOSE THE REMEDY DESCRIBED ABOVE, THIS COURT WOULD STILL HAVE THE POWER TO CRAFT A REMEDY FOR THE VIOLATION OF RCW 9.41.047(1) ..... 18

VII. CONCLUSION..... 20

## TABLE OF AUTHORITIES

### STATE CASES

<u>In re S.B.</u> , 130 Cal. App. 4th 1148, 30 Cal.Rptr.3d 726 (2005), <u>modified</u> , July 28, 2006, <u>review denied</u> , October 12, 2005 .....	6
<u>In re the Personal Restraint of Vega</u> , 118 Wn.2d 449, 823 P.2d 1111 (1992).....	3, 19, 20
<u>Malo v. Alaska Trawl Fisheries, Inc.</u> , 92 Wn. App. 927, 965 P.2d 1124 (1998), <u>review denied</u> , 137 Wn.2d 1029 (1999).....	9
<u>McElroy v. State</u> , 703 N.W.2d 385 (Iowa 2005).....	7
<u>Motorists Insurance Co. v. Emig</u> , 444 Pa. Super. 524, 664 A.2d 559 (Pa. Super. 1995).....	7
<u>Parreco v. District of Columbia Rental Housing Commission</u> , 885 A.2d 327 (D.C. 2005), <u>as amended</u> , Dec. 6, 2005 .....	5-6
<u>Pope v. University of Washington</u> , 121 Wn.2d 479, 852 P.2d 1055 (1993), <u>amending opinion</u> , 871 P.2d 590, <u>cert. denied</u> , 510 U.S. 1115 (1994).....	9
<u>South Salt Lake City v. Terkelson</u> , 61 P.3d 282 (Utah 2002) .....	18
<u>State v. Bisson</u> , 156 Wn.2d 507, 130 P.3d 820 (2006).....	11
<u>State v. Delgado</u> , 148 Wn.2d 723, 63 P.3d 792 (2003) .....	10
<u>State v. Eckenrode</u> , 159 Wn.2d 488, 150 P.3d 1116 (2007).....	13
<u>State v. Gurske</u> , 155 Wn.2d 134, 118 P.3d 333 (2005) .....	13
<u>State v. Leavitt</u> , 107 Wn. App. 361, 27 P.3d 622 (2001).....	14
<u>State v. Minor</u> , 133 Wn. App. 636, 137 P.3d 872 (2006), <u>review granted</u> , 160 Wn.2d 1001 (2007) .....	18
<u>State v. Rupe</u> , 101 Wn.2d 664, 683 P.2d 571 (1984) .....	12, 14

<u>State v. Semakula</u> , 88 Wn. App. 719, 946 P.2d 795 (1997), review denied, 134 Wn.2d 1022 (1998).....	14
<u>Whitten v. State</u> , 690 N.W.2d 561 (Minn. App. 2005).....	7, 8, 10

**FEDERAL CASES**

<u>In re Arnett</u> , 804 F.2d 1200 (11th Cir. 1986).....	11
<u>In re Matthews</u> , 360 B.R. 732 (Bkrtcy. M.D. Fla. 2007).....	6
<u>Innes v. Dalsheim</u> , 864 F.2d 974 (2d Cir. 1988), cert. denied, 493 U.S. 809 (1989).....	11
<u>Mapp v. Ohio</u> , 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).....	3, 18
<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).....	9, 219
<u>Raley v. Ohio</u> , 360 U.S. 423, 79 S. Ct. 1257, 3 L.Ed.2d 1344 (1959).....	8-9, 17
<u>Rowe v. Griffin</u> , 676 F.2d 524 (11th Cir. 1982).....	12
<u>United States v. Abcasis</u> , 45 F.3d 39 (2nd Cir. 1995) .....	15
<u>United States v. Austin</u> , 915 F.2d 363 (8th Cir. 1990) .....	18
<u>United States v. Brady</u> , 710 F. Supp. 290 (D. Colo. 1989).....	16, 17, 19
<u>United States v. Garcia</u> , 519 F.2d 1343 (9th Cir. 1975) .....	10
<u>United States v. Gutierrez-Gonzalez</u> , 184 F.3d 1160 (10th Cir. 1999).....	17
<u>United States v. Harvey</u> , 791 F.2d 294 (4th Cir. 1986) .....	11
<u>United States v. Lansing</u> , 424 F.2d 225 (9th Cir. 1970).....	16

<u>United States v. Levin</u> , 973 F.2d 463 (6th Cir. 1992).....	16
<u>United States v. McBride</u> , 571 F. Supp. 596 (S.D. Tex. 1983), <u>aff'd without published opinion</u> , 915 F.2d 1569 (1990).....	12
<u>United States v. Nichols</u> , 21 F.3d 1016 (10th Cir.), <u>cert. denied</u> , 513 U.S. 1005 (1994).....	16, 17-18
<u>United States v. Packwood</u> , 848 F.2d 1009 (9th Cir. 1988) .....	10
<u>United States v. Patane</u> , 542 U.S. 630, 124 S.Ct. 2620, 199 L.Ed.2d 667 (2004).....	19
<u>United States v. Pelletier</u> , 898 F.2d 297 (2d Cir. 1990).....	11
<u>United States v. Pennsylvania Industrial Chemical Corp.</u> [“PICCO”], 411 U.S. 655, 93 S.Ct. 1804, 36 L.Ed.2d 567 (1973).....	15, 16
<u>United States v. Read</u> , 778 F.2d 1437 (9th Cir. 1985), <u>cert. denied</u> , 479 U.S. 835 (1986).....	10
<u>United States v. Smith</u> , 940 F.2d 710 (1st Cir. 1991).....	16
<u>United States v. Spires</u> , 79 F.3d 464 (5th Cir. 1996).....	18
<u>United States v. Tallmadge</u> , 829 F.2d 767 (9th Cir.), <u>cert. denied</u> , 471 U.S. 1139 (1985).....	16
<u>United States v. Thompson</u> , 25 F.3d 1558 (11th Cir. 1994).....	15
<u>United States v. Timmins</u> , 464 F.2d 385 (9th Cir. 1972).....	16
<u>United States v. Travis</u> , 735 F.2d 1129 (9th Cir. 1984).....	10

#### STATE STATUTES

RCW 9.41.010(12).....	3
-----------------------	---

RCW 9.41.040(1).....3  
RCW 9.41.047(1).....3, 4, 5, 18  
RCW 10.73.120 .....19

**FEDERAL STATUTES**

33 U.S.C. § 407.....15

**CONSTITUTIONAL PROVISIONS**

WASH. CONST. art 1, § 24 .....2, 12, 13

## I. INTRODUCTION

Mr. Minor was adjudicated guilty of residential burglary as a juvenile in 2003. The convicting court did not tell him, verbally, that this meant he could no longer possess a firearm. Indeed, the 2003 Order on Adjudication and Disposition – that is, the Judgment – contained blanks, rather than checks, in the boxes concerning loss of the right to possess firearms.

In 2006, Mr. Minor was seen in possession of a firearm; he was then adjudicated guilty of being a felon in possession of a firearm. He appealed. The appellate court upheld this 2006 adjudication of guilt, despite the fact that the convicting court in 2003 never told Mr. Minor that he could no longer possess a firearm and despite the fact that the 2003 Order on Adjudication and Disposition had blanks, rather than checks, in the boxes concerning loss of firearm rights. The appellate court ruled that those blanks were the equivalent of silence on whether firearm rights were lost – rather than the equivalent of affirmative misadvice that his firearm possession rights remained intact.

This is not the way that blank boxes on pre-printed forms are commonly understood. A checked box on a preprinted form means that the paragraph does apply. An empty box on a preprinted form means that

the paragraph does not apply. When a form contains both checked boxes and empty boxes – as the 2003 Order in Mr. Minor’s case did – the checked boxes do apply, and the empty ones do not. That is how courts across the country treat preprinted forms in all sorts of cases, from employment discrimination to bankruptcy. Section II.

In fact, if there were any question about what the unchecked boxes on the Order form meant, that ambiguity should be resolved against the state. Section III.

That is especially true in Washington, where the individual right to possess arms is long-standing, robust, and constitutionally protected by Wash. Const. art. 1, § 24. That means that we have a default presumption in favor of firearm possession rights, in the absence of clear and affirmative notice to the contrary. Section IV.

The trial court ruled that only the legislature could fashion a remedy for such affirmative misadvice. But under the due process clause, the courts must fashion a remedy for such affirmative misadvice if it leads to a subsequent conviction; the Supreme Court itself has ruled that reasonable reliance upon affirmative government misadvice forms a valid defense to even a strict liability crime. Reliance upon the advice of a state court judge is reasonable under this standard. Section V.

Even if the due process clause did not compel this Court to fashion

a remedy for this misadvice, this Court would still have the power to remedy the violation of the statute requiring affirmative advice of loss of firearm possession rights upon conviction. Courts have always crafted remedies for violations of statutory and constitutional requirements. The U.S. Supreme Court did it in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), when it adopted the judicially-crafted exclusionary remedy for violations of the Fourth Amendment; this Court did it in In re the Personal Restraint of Vega, 118 Wn.2d 449, 823 P.2d 1111 (1992), when it extended the time for filing a personal restraint petition (PRP) beyond the one-year time limit, given DOC's violation of the statute requiring it to notify prisoners of that new time limit. This Court thus has the power to adopt the limited remedy that we advance here. Section VI.

**II. THE FORM WITH UNCHECKED BOXES NEXT TO THE DEPRIVATION-OF-FIREARMS-RIGHTS PARAGRAPHS PROVIDED AFFIRMATIVE, WRITTEN, JUDICIAL ADVICE THAT MINOR'S FIREARM POSSESSION RIGHTS REMAINED INTACT**

RCW 9.41.040(1) provides that it is a felony for a person convicted of a "serious offense" to own, possess or control "any firearm." RCW 9.41.010(12) makes Mr. Minor's prior burglary a "serious offense."

Under RCW 9.41.047, however, the sentencing court must "notify" any person who is subject to this disability, "*orally and in writing*, that the

person must immediately surrender any concealed pistol license *and that the person may not possess a firearm* unless his or her right to do so is restored by a court of record.” RCW 9.41.047(1) (emphasis added).

When Mr. Minor was adjudicated guilty of burglary in 2003, the court failed to do this. It did not provide him with such notice “orally” and it did not provide him with such notice “in writing.”

We know that the 2003 court did not provide such notice “orally” because Mr. Minor so testified at the disposition hearing in the current case.

VRP 17. The transcript shows:

Q: No one ever told you that a convicted felon couldn’t have a  
firearm?

A: No, sir. Not to my knowledge. I thought I was – no, sir.

Id. The state presented no evidence to the contrary.

We know that the 2003 court did not provide such notice “in writing” because its Order on Adjudication and Disposition (Appendix A) shows this. In fact, it shows that the 2003 court told Mr. Minor just the opposite. Twice.

The first time was in paragraph 4.11 of that Order. In that paragraph, there are three boxes checked: (F), for curfew; (L), for meeting with a probation counselor; and (Q), for dismissal of previously ordered conditions of release. The rest of those boxes (A) through (Q) are unchecked.

That leaves box (G) unchecked, and it states in full:

Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.

Id. (capitalization as in original).

The second time was in paragraph 4.18. In that paragraph of that final Order, there is only one paragraph. The box next to it is also blank.

That paragraph reads in full:

FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047.

Id. (capitalization as in original). (Interestingly, those same two boxes are left unchecked on even the current Order on Adjudication and Disposition in this very felon-in-possession case now under review. See Appendix B.)

What is the significance of these unchecked boxes? A layman would certainly read a form with some boxes checked, and some unchecked, as providing that only the checked boxes apply –the other ones do not.

Courts read forms the same way. If a box is unchecked, it means that the preprinted material there is inapplicable. This is true in all areas of the law, from landlord-tenant to the Indian Child Welfare Act. E.g., Parreco v.

District of Columbia Rental Housing Comm'n, 885 A.2d 327, 330 (D.C. 2005), as amended, Dec. 6, 2005 (petitioner did not adequately raise issue challenging rent increase in part because he did not check the boxes on the preprinted form with those claims; “Important for this appeal, the tenant did not check the box provided on the form for claiming that ‘[t]he rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985,’ i.e., higher than the rent ceiling, nor did he check the box claiming that ‘[a] proper ... notice of rent increase was not provided’ to him by the landlord.”); In re S.B., 130 Cal.App.4<sup>th</sup> 1148, 1161, 30 Cal.Rptr.3d 726 (2005), modified, July 28, 2006, review denied, October 12, 2005 (sufficient inquiry done to determine if Indian Child Welfare Act applied to child’s placement, because “it was fairly inferable that the social worker did make the necessary inquiry, [since] boxes in Judicial Council forms indicating that the ICWA did apply were not checked ...”).

If some boxes are checked and others are unchecked on the same legal form, it still means that only the boxes that are checked apply – the unchecked ones do not. Again, this is true in all sorts of areas of the law – from property rights, to employment, to insurance law. E.g., In re Matthews, 360 B.R. 732, 745 (Bkrtcy. M.D. Fla. 2007) (“by checking the Joint Tenant box, and not checking the Tenants by Entirety box, Debtor and Mrs.

Mathews *expressly disclaimed* the tenancy by the entirety form of ownership.”) (emphasis added); McElroy v. State, 703 N.W.2d 385, 390 (Iowa 2005) (where graduate student complained of sex harassment from professor, and checked box on form indicating that the ground for the complaint was “sex” but leaving blank the box on the form for “retaliation,” she did not exhaust a retaliation claim against the employer; “McElroy checked the box labeled ‘sex’ but not the ‘retaliation’ box”); Motorists Ins. Co. v. Emig, 444 Pa.Super. 524, 664 A.2d 559, 561 (Pa. Super. 1995) (holding that state statutory requirement of written request was not met where neither of the blank boxes applicable to UM/UIM coverage on insured’s policy change request for were checked).

Checked boxes apply. Unchecked boxes are inapplicable.

In fact, that is exactly what the Minnesota Court of Appeals said in a firearms possession case similar to this one, where the unchecked boxes involved firearms rights. In Whitten v. State, 690 N.W.2d 561 (Minn. App. 2005), the defendant was convicted of being a felon in possession of a firearm. But he produced a probation-discharge form entered following his prior conviction, which showed that his civil rights had been restored – and which left blank the boxes exempting restoration of firearms rights from the general promise of restoration of civil rights:

The order was on a standard, preprinted form listing

two provisions with a box beside each for the court to check if applicable:

This offense is deemed to be a misdemeanor under the provisions of M.S.A. 609.13.

You are not entitled to ship, transport, possess or receive a firearm until 10 years have elapsed since you have been restored to civil rights and during that time you are not to have been convicted of any other crime of violence.

Neither box was checked.

Id. 690 N.W.2d at 562-63.

The appellate court in that Minnesota case acknowledged that the fact that those boxes were left unchecked was error. Nevertheless, it reversed the subsequent felon-in-possession conviction because it treated the discharge form with that blank box as affirmative misadvice upon which the defendant could have justifiably relied:

Here, appellant signed probation agreements in 1992 and 1994, stating he could not possess a firearm “until civil rights are restored.” When appellant was discharged from probation, the district court informed appellant he was “restored to all civil rights and to full citizenship with full right to vote and hold office the same as if said conviction had not taken place.” *The district court did not check the box on the preprinted discharge order to inform him he could not possess a firearm for another ten years.* When the district court denied appellant's second petition, the district court called the failure to check the box “a clerical mistake.” But permitting the state to charge appellant “for exercising a privilege which the State clearly had told him was available to him” is much more than a clerical mistake, it is “the most indefensible sort of entrapment.” Raley, 360

U.S. at 438, 79 S.Ct. at 1266.

Id., 690 N.W.2d at 565 (emphasis added).

The rule that checked boxes apply and unchecked boxes do not apply is simple and straightforward. It is the only way to make sense of the thousands upon thousands of preprinted forms that are filed for all sorts of court proceedings every year: omnibus hearing applications, pretrial hearing minute orders, judgments, plea agreements and guilty pleas, even Miranda<sup>1</sup> warnings and waivers of other rights. If a preprinted form were to be read as including, or not excluding, material that is left unchecked, it would make a complete mess of interpreting all sorts of forms upon which the courts rely.

Further, the rule that checked boxes apply and unchecked boxes do not apply is the one that is consistent with rules of statutory construction. Statutes are construed using the interpretive rule that provisions in a statute are to be read in the context of the statute as a whole.<sup>2</sup> If the form in this case is read as a whole, the unchecked boxes would have to be treated differently from the checked boxes. Similarly, statutes are interpreted using

---

<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>2</sup> Pope v. University of Washington, 121 Wn.2d 479, 489, 852 P.2d 1055 (1993), amending opinion, 871 P.2d 590, cert. denied, 510 U.S. 1115 (1994); Malo v. Alaska Trawl Fisheries, Inc., 92 Wn. App. 927, 930, 965 P.2d 1124 (1998), review denied, 137 Wn.2d 1029 (1999).

the rule “expressio unius est exclusio alterius,” that is, express inclusion of one thing implies exclusion of others. State v. Delgado, 148 Wn.2d 723, 728-29, 63 P.3d 792 (2003). If the form in this case is read with that interpretive aid in mind, its express inclusion of certain paragraphs implies exclusion of the unchecked paragraphs.

We therefore disagree with the parties’ assertion that the record is “silent” about whether Mr. Minor was advised about these consequences. According to the record before this Court, he was never advised verbally and he was affirmatively misadvised, in writing, by the judge, in the formality of an Order, about his firearms rights. The state is bound by the explicit representations made to Mr. Minor in the Order drafted by the state, signed by the judge, and filed by the court.<sup>3</sup>

In fact, the state made this very argument about the Order’s terms being binding on the parties in trial court – apparently without realizing what that Order really said. The deputy prosecutor argued that the terms of the 2003 Order are binding, and the court must assume that Mr. Minor relied upon that Order’s explicit terms:

---

<sup>3</sup> United States v. Packwood, 848 F.2d 1009, 1012 (9<sup>th</sup> Cir. 1988) (“government will be held to the literal terms of the [cooperation] agreement”); United States v. Read, 778 F.2d 1437, 1441 (9<sup>th</sup> Cir. 1985), cert. denied, 479 U.S. 835 (1986) (same, in context of plea agreement); United States v. Travis, 735 F.2d 1129, 1132 (9<sup>th</sup> Cir. 1984) (same); United States v. Garcia, 519 F.2d 1343, 1344-45 (9<sup>th</sup> Cir. 1975) (same).

Mr. COLARUCIO: Your Honor, if the law requires that Mr. Minor sign a piece of paper acknowledging that as a felon he should not be in the custody of weapons, then the J&D (sic) is going to have to speak for itself. Mr. Minor clearly understood his circumstances, and the evidence weighs very heavily against him. Thank you.

VRP:18. Now we can see what the Order really says. The prosecutor, however, should remain bound by his assertion that it must be assumed that Mr. Minor knew exactly what the Order said.

**III. EVEN IF THE UNCHECKED BOXES ARE CONSIDERED AMBIGUOUS ABOUT WHETHER THEY AFFIRMATIVELY MISADVISED MR. MINOR ABOUT FORFEITURE OF FIREARMS RIGHTS, ANY SUCH AMBIGUITY MUST BE CONSTRUED AGAINST THE STATE**

Even if the unchecked boxes are considered ambiguous about whether they affirmatively misadvised Mr. Minor about forfeiture of firearms rights, any such ambiguity must be construed in Mr. Minor's favor and against the state. State v. Bisson, 156 Wn.2d 507, 523, 130 P.3d 820 (2006) (ambiguity in plea agreement drafted by state must be construed against the state and in favor of the defendant). This is consistent with the general rule in other jurisdictions, also.<sup>4</sup>

---

<sup>4</sup> United States v. Pelletier, 898 F.2d 297, 302 (2d. Cir. 1990); Innes v. Dalsheim, 864 F.2d 974, 979 (2d Cir. 1988), cert. denied, 493 U.S. 809 (1989) (state bears burden of any lack of clarity and ambiguity must be resolved in favor of defendant); In re Arnett, 804 F.2d 1200, 1202-04 (11th Cir. 1986) (ambiguous plea agreement construed against government); United States v. Harvey, 791 F.2d 294, 301 (4th Cir. 1986) (imprecision in

Once again, the conclusion is inescapable that Mr. Minor was affirmatively misinformed that he could retain possession of firearms by a state court judge, in a formal Order.

**IV. IN WASHINGTON, GIVEN OUR ROBUST CONSTITUTIONAL PROTECTION OF FIREARM POSSESSION RIGHTS, THE CITIZEN IS ENTITLED TO RELY ON THE DEFAULT PRESUMPTION THAT THE CONSTITUTIONAL RIGHT TO POSSESS FIREARMS – NO LESS THAN THE RIGHTS TO FREE SPEECH OR RELIGIOUS CHOICE – REMAINS INTACT**

The trial court in this case thus failed to comply with the statute requiring notification, both orally and in writing, to the criminal defendant, that his conviction caused him to lose his firearm possession rights. Instead, it affirmatively advised him that he did retain those rights because those paragraphs did not apply to him.

There was no reason for Mr. Minor to second-guess the advice that his firearms rights remained intact, given the robust protection of firearms rights provided by Washington Constitution, art. 1, § 24.

This is clear from State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984). In that case, this Court held that Wash. Const. art. 1, § 24, protects

---

written agreement construed against government); Rowe v. Griffin, 676 F.2d 524, 526 n.4 (11th Cir. 1982); United States v. McBride, 571 F. Supp. 596, 605 (S.D. Tex. 1983), aff'd without published opinion, 915 F.2d 1569 (1990).

the “right of the individual citizen to bear arms.” It was therefore reversible, constitutional error to admit evidence of the defendant’s lawful gun collection in the penalty phase of that death penalty case. This Court reiterated that under Wash. Const., art 1, § 24, “possession of legal weapons falls squarely within the confines of the right guaranteed by” the state Constitution. Rupe, 101 Wn.2d at 706. See generally State v. Gurske, 155 Wn.2d 134, 151, 118 P.3d 333 (2005) (Chambers, J., concurring); State v. Eckenrode, 159 Wn.2d 488, 493-94, 150 P.3d 1116 (2007).

Given this robust and long-standing protection of the individual right to bear arms, a citizen cannot be expected to intuitively guess that a conviction extinguishes that constitutional right – any more than he can be expected to guess that a conviction extinguishes rights to freedom of speech, press, or association. That is likely the reason that the legislature mandated oral and written advice to the defendant when that right is abridged. Without affirmative notice; and with a form that says the opposite; the citizen is justified in believing that those pre-existing constitutional rights remain intact, just as the citizen’s pre-existing constitutional rights to freedom of speech, assembly or religion remain intact following a conviction.

**V. UNDER THE DUE PROCESS CLAUSE, RELIANCE UPON AN OFFICIAL GOVERNMENT MISSTATEMENT PROVIDES A DEFENSE TO EVEN A STRICT LIABILITY CRIME**

It is true that the state does not need to prove that the defendant knew that his firearm possession was illegal in order to prove that he violated the felon-in-possession law. State v. Semakula, 88 Wn. App. 719, 726, 946 P.2d 795 (1997), review denied, 134 Wn.2d 1022 (1998).

But reliance upon an official government misstatement of the law provides a defense to even a strict liability crime. In State v. Leavitt, 107 Wn. App. 361, 371, 27 P.3d 622 (2001), for example, the court ruled that reliance upon the judge's advice that the right to possess firearms would be suspended for only one year, provided a defense to a charge that the defendant-felon illegally possessed a firearm after that one year elapsed. The Leavitt court ruled that the judge's statement of the law – even though it was wrong – barred the state from convicting the criminal defendant from doing what the judge had told him he could do.

This protection is guaranteed by the due process clause of the U.S. constitution, also. It was recognized in United States v. Pennsylvania Industrial Chem. Corp., 411 U.S. 655, 93 S.Ct. 1804, 36 L.Ed.2d 567 (1973) ["PICCO"], in which the Supreme Court upheld the Third Circuit's reversal of a corporation's conviction for violating a portion of the Rivers and

Harbors Act imposing strict liability for discharge of refuse without a permit (33 U.S.C. § 407). The Supreme Court held that the U.S. Army Corps of Engineers, the agency authorized to implement the Act, had a consistent and long-standing practice of interpreting the Rivers and Harbors Act to prohibit only the discharge of refuse that would obstruct navigation. The Court therefore concluded that the defendant should be permitted to present evidence showing that it relied on this authoritative interpretation. PICCO, 411 U.S. at 670.

Courts following PICCO continue to apply the reliance upon official government misstatement defense to even strict liability crimes, because the defense “does not merely negate intent, it negates the criminality of the act.” United States v. Brady, 710 F. Supp. 290, 296 (D. Colo. 1989) (reversing felon in possession conviction, even though it is irrelevant whether defendant knew he was a convicted felon or that he was prohibited from possessing a firearm, because state court judge “specifically told him that he could continue to possess a firearm when hunting and trapping. There is a difference between merely acting reasonably and in good faith, and acting under the affirmative advice of a judge.”).<sup>5</sup>

---

<sup>5</sup> Accord United States v. Abcasis, 45 F.3d 39 (2nd Cir. 1995) (accepting entrapment by estoppel defense where defendants contended that government agent induced them to commit drug offenses in reasonable belief that they were acting as informants); United States v. Thompson, 25

The most important prerequisite is that the misadvice must come from someone upon whom it is reasonable to rely. United States v. Tallmadge, 829 F.2d 767, 769 (9<sup>th</sup> Cir.), cert. denied, 471 U.S. 1139 (1985) (defendant must show “that his reliance was reasonable”); United States v. Lansing, 424 F.2d 225, 227 (9<sup>th</sup> Cir. 1970) (to establish defense, one must show “that his reliance on the misleading information was reasonable -- in the sense that a person sincerely desirous of obeying the law would have accepted the information as true, and would not have been put on notice to make further inquiries”).

Using this standard, reliance on official government forms is reasonable. United States v. Timmins, 464 F.2d 385, 386-87 (9<sup>th</sup> Cir. 1972) (reversing conviction for refusal to submit to induction, where defendant relied upon advice of local draft board and upon language of ambiguous Form 150 concerning application for conscientious objector status;

---

F.3d 1558, 1563 (11<sup>th</sup> Cir. 1994) (recognizing availability of entrapment by estoppel defense in felon in possession case) (numerous citations in support of availability of entrapment by estoppel defense omitted); United States v. Nichols, 21 F.3d 1016, 1017 (10<sup>th</sup> Cir.), cert. denied, 513 U.S. 1005 (1994) (defense warranted where government agent affirmatively misleads defendant as to lawfulness of his conduct and defendant reasonably relies on the misrepresentation); United States v. Levin, 973 F.2d 463, 468 (6<sup>th</sup> Cir. 1992) (defense available where government agency announced that the charged criminal act was legal and defendant relied thereon); United States v. Smith, 940 F.2d 710, 714 (1<sup>st</sup> Cir. 1991) (defense available “when an official assures a defendant that certain conduct is legal, and the defendant reasonably relies on that advice and continues or initiates the conduct”).

“defendant must show that the local board conveyed false or misleading information to him and that he was in fact misled by the information or conduct of the board. Further, he must show that his reliance on the misleading information was reasonable ...”).

Using this standard, reliance upon a statement of someone as official as a judge is reasonable. E.g., United States v. Brady, 710 F. Supp. 290, 296 (reasonable to rely on state court judge who told convicted felon he could still possess guns for hunting and trapping).

As one court explained, there are many factors to consider, but the more authoritative the source of the advice, the more reasonable it is for the defendant to rely upon that advice:

... a determination of whether a citizen’s due process rights have been violated because of lack of fair notice is extremely fact-intensive. Other courts that have addressed the issue have considered, among other things, the rank, title, and position of the person providing advice or legal interpretation; the actual or apparent authority of the person providing advice or legal interpretation; whether the state or its agent actively misled a citizen; and the reasonableness of the citizen’s reliance. See, e.g., Raley, 360 U.S. at 437, 79 S.Ct. at 1266 (noting that the party who provided erroneous advice was “Chairman of the Commission, who clearly appeared to be the agent of the State in a position to give such assurances”); United States v. Gutierrez-Gonzalez, 184 F.3d 1160, 1168-69 (10<sup>th</sup> Cir. 1999) (finding illegal immigrant’s reliance upon statements by INS worker as well as a non-governmental agency employee unreasonable); United States v. Spires, 79 F.3d 464, 466-67 (5<sup>th</sup> Cir. 1996) (noting that task force agent was not an authorized federal government agent); United

States v. Nichols, 21 F.3d 1016, 1018 (10<sup>th</sup> Cir. 1994) (noting that “[t]here must be an 'active misleading' by the government agent and actual reliance by the defendant" (citation omitted)); United States v. Austin, 915 F.2d 363, 366-67 (8<sup>th</sup> Cir. 1990) (holding that a license to sell firearms does not “transform [pawn shop owners] into government officials, at least for purposes of the entrapment by estoppel defense”); United States v. Brady, 710 F. Supp. 290, 294-95 (D. Colo. 1989) (holding it would violate due process to convict for weapons possession a two-time felon who had been incorrectly told by a judge that he could use a gun for the vocation of hunting and trapping).

South Salt Lake City v. Terkelson, 61 P.3d 282, 286 (Utah 2002).

Under all of these authorities, it is certainly reasonable to rely on the advice of a judge, in a formal Order.

**VI. EVEN IF THE DUE PROCESS CLAUSE DID NOT COMPEL THIS COURT TO IMPOSE THE REMEDY DESCRIBED ABOVE, THIS COURT WOULD STILL HAVE THE POWER TO CRAFT A REMEDY FOR THE VIOLATION OF RCW 9.41.047(1)**

The appellate court in this case ruled that the only body which could provide a remedy for the failure of the Superior Court to give the defendant the legislatively-required advice concerning loss of firearms rights, is the legislature. State v. Minor, 133 Wn. App. 636, 645, 137 P.3d 872 (2006), review granted, 160 Wn.2d 1001 (2007).

But courts fashion remedies for violations of statutory and constitutional rights all the time. That is what the Supreme Court did in Mapp v. Ohio, 367 U.S. 643, when it first adopted the exclusionary rule

for Fourth Amendment violations in the states. That is what the Supreme Court did in Miranda v. Arizona, 384 U.S. 436, when it mandated that Miranda warnings be given to protect against incursions on the Fifth Amendment right to remain silent. See generally United States v. Patane, 542 U.S. 630, 124 S.Ct. 2620, 199 L.Ed.2d 667 (2004).

That is what this Court did in In re the Personal Restraint of Vega, 118 Wn.2d 449. In that case, this Court recognized that the legislature told the Department of Corrections [DOC] to inform criminal defendants who were already convicted and imprisoned of the new one-year time limit for filing a PRP, in RCW 10.73.120. The legislature did not provide a remedy if DOC failed to give such notice. Well, DOC did fail to give, or even to try to give, such notice: “There [was] no factual dispute that the [DOC] neither notified petitioner Vega nor attempted to notify petitioner Vega of the change of statute limiting filing of personal restraint petitions to within 1 year from the date a judgment becomes final.” Id., 118 Wn.2d at 450. The legislature provided no remedy for DOC’s breach of that statute.

This Court, however, did. In a brief, unanimous decision in In re the Personal Restraint of Vega, 118 Wn.2d 449, this Court held that since DOC made no attempt at all to notify the convict of new one-year time limit for filing PRP’s, the prisoner’s PRP filed after that year had elapsed

would be treated as timely. Id., 118 Wn.2d at 451.

If this Court can craft a judicial remedy for the state's failure to follow a statute that requires advice to the criminal defendant about the PRP right, it can certainly craft a remedy for the state's failure to follow a statute that requires advice about the constitutional right at issue here.

## VII. CONCLUSION

The appellate court's decision should be reversed.

DATED this 27<sup>th</sup> day of July, 2007.

Respectfully submitted,



---

Sheryl Gordon McCloud  
WSBA No. 16709  
Attorney for Washington Association  
of Criminal Defense Lawyers  
Co-Chair, WACDL *Amicus* Committee

CERTIFICATE OF SERVICE

I certify that on the 2<sup>nd</sup> day of July, 2007, a true and correct copy of the foregoing BRIEF AMICUS CURIAE OF WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF POSITION ADVANCED BY APPELLANT was served upon the following individuals by depositing same in the United States Mail, first class, postage prepaid:

Brett D. Colacurcio  
Sr. Deputy Prosecuting Attorney  
Gray's Harbor Prosecuting Attorney's Office  
102 West Broadway, Rm. 102  
Montesano, WA 98563

Peter B. Tiller  
The Tiller Law Firm  
Rock & Pine  
P.O. Box 58  
Centralia, WA 98531

  
\_\_\_\_\_  
Sheryl Gordon McCloud

CLERK

BY RONALD R. CARPENTER

2007 JUL 31 P 2:23

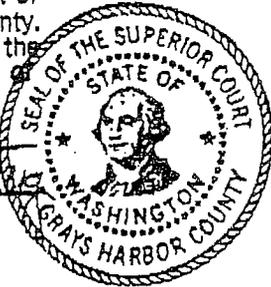
RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

# **APPENDIX A**

JLW  
DTC  
dl

Certificate of Clerk of the Superior Court of Washington in and for Grays Harbor County. The above is a true and correct copy of the original instrument which is on file of record in this court.

Done this 25<sup>th</sup> day of Jan. 2005  
Cheryl Brown, Clerk By B. McKeally  
Deputy Clerk



FILED  
IN THE OFFICE  
OF COUNTY CLERK  
GRAYS HARBOR CO. WA.

2003 NOV -6 1 P 1:49

CHERYL BROWN  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON  
COUNTY OF GRAYS HARBOR  
JUVENILE COURT

STATE OF WASHINGTON v.  
Jacob Lucas Minor  
Respondent(s).  
D.O.B.: 10/13/88

NO: 03-8-00453-5  
ORDER ON ADJUDICATION AND  
DISPOSITION J031092  
(ORD)  
 Clerk's Action Required. Paragraphs 4.1, 4.6,  
4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 11/06/03 (Date).

1.2 Persons appearing were:

- Respondent
- Respondent's Attorney
- Prosecuting Attorney
- Probation Counselor
- Parent(s)
- Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to:  Respondent was found guilty at an adjudicatory hearing of:

Count: <u>1</u>	Offense: <u>Residential Burg</u>	Committed on or about: <u>10/8/03</u>
Count: <u>  </u>	Offense: <u>  </u>	Committed on or about: <u>  </u>
Count: <u>  </u>	Offense: <u>  </u>	Committed on or about: <u>  </u>

The State failed to prove the following offense(s) and Count(s) \_\_\_\_\_

SAME COURSE OF CONDUCT. The conduct in Count(s) \_\_\_\_\_ is the same course of conduct.

Respondent waived the right to  counsel,  arraignment on amended information, and/or  speedy disposition.

13

Respondent has violated the terms of his/her DEFERRED DISPOSITION entered on \_\_\_\_\_

Respondent's offender score is 1.50, which is based upon his/her criminal history.

The court considered the respondent's eligibility for the chemical dependency disposition alternative.

Respondent has declined to enter a Diversion Agreement.

Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Court(s) \_\_\_\_\_, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

The following mitigating factors exist in this case.

The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;

The respondent acted under strong and immediate provocation;

The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;

Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

There has been at least one year between the respondent's current offense and any prior criminal offense.

Other: \_\_\_\_\_

The following aggravating factors exist in this case:

In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

The offense was committed in an especially heinous, cruel, or depraved manner;

The victim was particularly vulnerable;

The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;

The respondent was the leader of a criminal enterprise involving several persons;

There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and

The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.

Other: Youth is a threat to the community & to self, NEED FOR TREATMENT.

III. CONCLUSIONS OF LAW

Respondent is guilty of the offense(s) as stated in the findings.

Respondent is not guilty of the offense(s) as stated in the findings.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

Respondent is eligible for the chemical dependency disposition alternative on Count \_\_\_\_\_  
A standard range disposition for that Count would constitute a manifest injustice.

Respondent's Deferred Disposition is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1  The state's motion  respondent's motion to dismiss Count(s) \_\_\_\_\_  
Crimes(s) \_\_\_\_\_  
Statute(s) \_\_\_\_\_  
is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

4.2  Count \_\_\_\_\_: Disposition shall be within the standard range.

4.3  Count \_\_\_\_\_: Disposition within the standard range for this offense would effectuate a manifest injustice.

4.4  Count \_\_\_\_\_: Disposition shall be within the Special Sex Offender Dispositional Alternative.

4.5  Count \_\_\_\_\_: Chemical Dependency Disposition Alternative (RCW 13.40.165):

Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of \_\_\_\_\_ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

Count: _____	_____ months
Count: _____	_____ months
Count: _____	_____ months

4.7 COMMUNITY RESTITUTION WORK:

Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served

4.8  CONFINEMENT:

Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served

These days are to be served  immediately,  upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9  COMMITMENT to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

Count: <u>1</u>	<u>30</u> weeks to <u>40</u> weeks	With credit for <u>28</u> days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served

Respondent shall be held in detention facility pending transportation.

#### 4.10 STATUTORY FIREARMS ENHANCEMENTS:

The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to \_\_\_\_\_ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.

The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:

6 months (Class A felony)  4 months (Class B felony)  2 months (Class C felony)  
confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

#### 4.11 CONDITIONS OF SUPERVISION:

A. The respondent is ordered to refrain from committing new offenses.

B. Respondent is further ordered to comply with the MANDATORY SCHOOL ATTENDANCE provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend \_\_\_\_\_ School.

C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.

D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.

E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

F.  CURFEW to be set at the discretion of the probation counselor.

\_\_\_\_\_ p.m. - \_\_\_\_\_ a.m.

G.  Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.

H.  Respondent shall participate in counseling, in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.

I.  Respondent shall be EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY at the direction of the probation counselor and shall comply with all treatment recommendations.

J.  Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the probation counselor and shall fully cooperate.

K.  Respondent is ordered not to go upon the following premises or geographic areas:

L.  MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.

M.  Respondent shall not contact, except through counsel or a probation counselor, the following person(s): \_\_\_\_\_

N.  Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.

O.  Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.

P.  Other conditions: \_\_\_\_\_

Q.  The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the  
Grays Harbor County Clerk  
102 West Broadway, Room 203  
Montesano, Washington 98563

4.12 Respondent is ordered to pay:

A FINE of \$ \_\_\_\_\_, which respondent shall pay as scheduled by probation counselor.

Court costs of \$5.00.

Victims' Compensation Fund statutory ASSESSMENT:  \$100  \$75

Pursuant to RCW 43.43.690 Washington crime laboratory fees:  \$100  Waived.

Restitution in the total sum of \$ 130

COUNT I: <sup>NOT AGREED</sup> 1,15680 Payable to: GINNIE BRUCE KRUGER  
Address: PO BOX 93 Moclips WA 98563

COUNT II: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Address: \_\_\_\_\_

COUNT III: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Address: \_\_\_\_\_

- A hearing to confirm restitution discovery is set for \_\_\_\_\_
- A restitution hearing is set <sup>to be</sup> ~~for~~ \_\_\_\_\_
- Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.
- The respondent waives his/her right to be present at the restitution hearing.
- Restitution liability is joint and several with: (if and when convicted)

\_\_\_\_\_ Cause No.: \_\_\_\_\_

\_\_\_\_\_ Cause No.: \_\_\_\_\_

\_\_\_\_\_ Cause No.: \_\_\_\_\_

Monetary amounts ordered shall be paid at the rate of at least \$ \_\_\_\_\_ per month.  
The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

\_\_\_\_\_

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18<sup>th</sup> birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13  HIV TESTING. The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14  DNA TESTING. The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15  JURISDICTION IS HEREBY TRANSFERRED TO \_\_\_\_\_ County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of \_\_\_\_\_ County Superior Court.

4.16  EXTENDED JURISDICTION: Jurisdiction is extended beyond the minor's eighteenth birthday until \_\_\_\_\_ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17  DRIVER'S LICENSE REVOCATION: The court finds that Count \_\_\_\_\_ is  a felony in the commission of which a motor vehicle was used; or  the unlawful possession of a firearm in a motor vehicle; or  unlawful possession of a firearm 2<sup>nd</sup>; or  \_\_\_\_\_. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18  FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19  OTHER ORDERS:

75% of any monies earned within JPA shall  
be sent to the County Clerk for disposal

DATED: 11/6/03

Jamasa J. Jant  
JUDGE/COMMISSIONER

Presented by:

Richard P. Wells  
DEPUTY PROSECUTING ATTORNEY  
WSBA # 11342

Copy Received; Approved for Entry; Notice of Presentation Waived:

ADMINISTRATIVE MEMORANDUM

Does conviction require a license surrender?  
 Yes  No  
Surrendered  Refused   
No/Lost license affidavit given  Yes  No  
Respondent held in custody  Yes  No  
RCW 46.20.270

\_\_\_\_\_  
ATTORNEY FOR RESPONDENT  
WSBA #

\_\_\_\_\_  
RESPONDENT

COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

## **APPENDIX B**

24

FILED  
IN THE OFFICE  
OF COUNTY CLERK  
GRAYS HARBOR CO. WA.

2005 APR -51 A 10: 58

CHERYL BROWN  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON COUNTY OF GRAYS HARBOR JUVENILE COURT
STATE OF WASHINGTON v.  JACOB LUCAS MINOR  Respondent(s). D.O.B.: 10-13-88

J050289

NO: 05-8-00018-8

ORDER ON ADJUDICATION AND  
DISPOSITION  
(ORD)

Clerk's Action Required. Paragraphs 4.1, 4.6,  
4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 03-31-05 (Date).

1.2 Persons appearing were:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Respondent            | <input checked="" type="checkbox"/> Prosecuting Attorney | <input checked="" type="checkbox"/> Parent(s) |
| <input checked="" type="checkbox"/> Respondent's Attorney | <input checked="" type="checkbox"/> Probation Counselor  | <input type="checkbox"/> Other                |

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to:  Respondent was found guilty at an adjudicatory hearing of:

Count: <u>II</u>	Offense: <u>UPSFR1</u>	Committed on or about: <u>09-30-04</u>
Count: _____	Offense: _____	Committed on or about: _____
Count: _____	Offense: _____	Committed on or about: _____

The State failed to prove the following offense(s) and Count(s) \_\_\_\_\_

SAME COURSE OF CONDUCT. The conduct in Count(s) \_\_\_\_\_ is the same course of conduct.

Respondent waived the right to  counsel,  arraignment on amended information, and/or  speedy disposition.

25

- Respondent has violated the terms of his/her DEFERRED DISPOSITION entered on \_\_\_\_\_.
- Respondent's offender score is 2.25, which is based upon his/her criminal history.
- The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- Respondent has declined to enter a Diversion Agreement.
- Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) \_\_\_\_\_, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- The following mitigating factors exist in this case:
- The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
  - The respondent acted under strong and immediate provocation;
  - The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
  - Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and
  - There has been at least one year between the respondent's current offense and any prior criminal offense.
  - Other: \_\_\_\_\_

- The following aggravating factors exist in this case:
- In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
  - The offense was committed in an especially heinous, cruel, or depraved manner;
  - ~~The victim was particularly vulnerable;~~
  - The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
  - The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
  - The respondent was the leader of a criminal enterprise involving several persons;
  - There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
  - The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
  - Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

### III. CONCLUSIONS OF LAW

- Respondent is guilty of the offense(s) as stated in the findings.
- Respondent is not guilty of the offense(s) as stated in the findings.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

Respondent is eligible for the chemical dependency disposition alternative on Count \_\_\_\_\_.  
A standard range disposition for that Count would constitute a manifest injustice.

Respondent's Deferred Disposition is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1  The state's motion  respondent's motion to dismiss Count(s) \_\_\_\_\_  
Crimes(s) \_\_\_\_\_  
Statute(s) \_\_\_\_\_  
is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

4.2  Count \_\_\_\_\_: Disposition shall be within the standard range.

4.3  Count \_\_\_\_\_: Disposition within the standard range for this offense would effectuate a manifest injustice.

4.4  Count \_\_\_\_\_: Disposition shall be within the Special Sex Offender Dispositional Alternative.

4.5  Count \_\_\_\_\_: Chemical Dependency Disposition Alternative (RCW 13.40.165):

Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of \_\_\_\_\_ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

Count: _____	_____ months
Count: _____	_____ months
Count: _____	_____ months

4.7 COMMUNITY RESTITUTION WORK:

Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served

4.8  CONFINEMENT:

Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served

These days are to be served  immediately,  upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9  COMMITMENT to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

PC

Count: <del>II</del>	<del>II</del> weeks to <del>II</del> weeks	With credit for _____ days served
Count: <u>IV</u>	<u>190</u> weeks to <u>238</u> weeks	With credit for <u>60</u> days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served

Respondent shall be held in detention facility pending transportation.

4.10 STATUTORY FIREARMS ENHANCEMENTS:

The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to \_\_\_\_\_ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.

The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:

6 months (Class A felony)  4 months (Class B felony)  2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

4.11 CONDITIONS OF SUPERVISION:

A. The respondent is ordered to refrain from committing new offenses.

B. Respondent is further ordered to comply with the MANDATORY SCHOOL ATTENDANCE provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend \_\_\_\_\_ School.

C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.

D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.

E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

F.  CURFEW to be set at the discretion of the probation counselor.

\_\_\_\_\_ p.m. - \_\_\_\_\_ a.m.

- G.  Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- H.  Respondent shall participate in counseling; in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.
- I.  Respondent shall be EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY at the direction of the probation counselor and shall comply with all treatment recommendations.
- J.  Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the probation counselor and shall fully cooperate.
- K.  Respondent is ordered not to go upon the following premises or geographic areas:  
\_\_\_\_\_
- L.  MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.
- M.  Respondent shall not contact, except through counsel or a probation counselor, the following person(s): \_\_\_\_\_
- N.  Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- O.  Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- P.  Other conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q.  The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the  
 Grays Harbor County Clerk  
 102 West Broadway, Room 203  
 Montesano, Washington 98563.

4.12 Respondent is ordered to pay:

- A FINE of \$ \_\_\_\_\_, which respondent shall pay as scheduled by probation counselor.
- Court costs of \$5.00.
- Victims' Compensation Fund statutory ASSESSMENT:  \$100  \$75
- Pursuant to RCW 43.43.690 Washington crime laboratory fees:  \$100  Waived.
- Restitution in the total sum of \$ \_\_\_\_\_

COUNT I: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Address: \_\_\_\_\_

COUNT II: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Address: \_\_\_\_\_

COUNT III: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Address: \_\_\_\_\_

130

A hearing to confirm restitution discovery is set for \_\_\_\_\_

A restitution hearing is set for ~~To be determined~~ \_\_\_\_\_

Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.

The respondent waives his/her right to be present at the restitution hearing.

Restitution liability is joint and several with: (if and when convicted)

\_\_\_\_\_ Cause No.: \_\_\_\_\_

\_\_\_\_\_ Cause No.: \_\_\_\_\_

\_\_\_\_\_ Cause No.: \_\_\_\_\_

Monetary amounts ordered shall be paid at the rate of at least \$ \_\_\_\_\_ per month.  
The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

\_\_\_\_\_

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18<sup>th</sup> birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13  HIV TESTING. The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14  DNA TESTING. The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15  JURISDICTION IS HEREBY TRANSFERRED TO \_\_\_\_\_ County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of \_\_\_\_\_ County Superior Court.

4.16  EXTENDED JURISDICTION: Jurisdiction is extended beyond the minor's eighteenth birthday until \_\_\_\_\_ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17  DRIVER'S LICENSE REVOCATION: The court finds that Count \_\_\_\_\_ is  a felony in the commission of which a motor vehicle was used; or  the unlawful possession of a firearm in a motor vehicle; or  unlawful possession of a firearm 2<sup>nd</sup>; or  \_\_\_\_\_. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18  FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19  OTHER ORDERS:

75% of any monies earned in JRA shall be sent to the  
clerk's office for dispersal toward monies owed.

DATED: April 5, 2005

[Signature]  
JUDGE/COMMISSIONER

Presented by:  
[Signature]  
DEPUTY PROSECUTING ATTORNEY  
WSBA # \_\_\_\_\_

ADMINISTRATIVE MEMORANDUM  
Does conviction require a license surrender?  
 Yes  No  
Surrendered  Refused   
No/Lost license affidavit given  Yes  No  
Respondent held in custody  Yes  No  
RCW 46.20.270

AS TO FORM  
Copy Received; Approved for Entry; Notice of Presentation Waived:

[Signature]  
ATTORNEY FOR RESPONDENT  
WSBA # 21310

[Signature]  
RESPONDENT

COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

IN THE JUVENILE COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

JACOB L. MINOR  
Respondent.

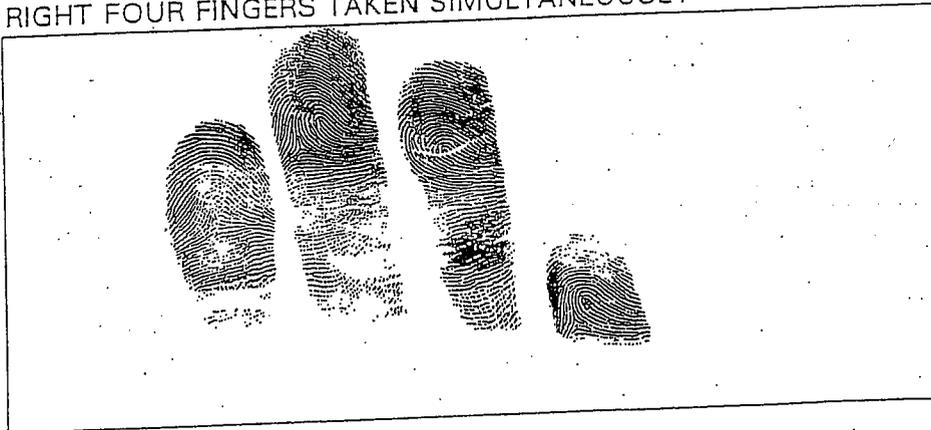
D.O.B 10/13/88

No. 05-8-00018-8

FINGERPRINTS OF RESPONDENT

I hereby certify that I am the Clerk of Grays Harbor County Superior Court,  
and I hereby attest that the fingerprints affixed below are those of the respondent herein,  
said fingerprints having been affixed in my presence.

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY



x Jacob L. Minor  
Signature of Respondent Fingerprinted

WITNESS MY HAND AND SEAL of the Superior Court this 5th day of  
April, 2005

CHERYL BROWN, COUNTY CLERK

By B. M. M. M.  
Deputy County Clerk

