

Supreme Court No. 80834-1  
Court of Appeals No. 60245-4-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint of

JAY R. PULLMAN,

Petitioner.

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ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

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SUPPLEMENTAL BRIEF OF PETITIONER

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MAUREEN M. CYR  
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ISSUES PRESENTED

1. When a statute requires the Department of Corrections (DOC) to grant early release to certain eligible prison inmates, the State creates a liberty interest in early release that is subject to due process protections. Did Jay Pullman obtain a liberty interest in early release when, pursuant to RCW 9.94A.728(1)(b), DOC determined he was eligible to earn up to 50 percent of his sentence in early release credits?

2. The State must provide minimum due process protections, including advance notice and a hearing, before it may revoke an inmate's liberty interest in early release. Did the State violate due process when it revoked Mr. Pullman's liberty interest in half-time early release without advance notice and a hearing?

B. STATEMENT OF THE CASE

In May 2002, Jay Pullman was convicted of delivery of cocaine, possession with intent to deliver cocaine, and bail jumping. Appendix B. He received a Drug Offender Sentencing Alternative (DOSA) sentence of 35.75 months incarceration and 35.75 months community custody. Id. In October 2004, Mr. Pullman was convicted in a separate case of possession with intent to deliver cocaine. Appendix C. He received another DOSA sentence of 20

months incarceration and 20 months community custody, to run consecutively to his sentence in the other case. Id.

Prior to July 2003, inmates could receive, at most, a 33 percent reduction in their sentence for good conduct. Former RCW 9.94A.728 (2002). In 2003, the Legislature enacted Engrossed Substitute Senate Bill 5990 amending former RCW 9.94A.728. Laws of 2003, ch. 379, § 1. RCW 9.94A.728(1)(b) allows eligible inmates to earn up to 50 percent of their sentence in early release credits instead of the previous 33 percent. Whether an inmate is eligible for enhanced early release depends on his criminal history and DOC's risk assessment. RCW 9.94A.728(1)(b). There are four classification levels: RM-A, RM-B, RM-C, and RM-D. DOC Policy 320.400. Only inmates whose risk assessment scores fall within classifications RM-C and RM-D are eligible for enhanced early release. RCW 9.94A.728(1)(b)(ii)(A). DOC must perform a risk assessment on every qualified<sup>1</sup> inmate to determine if he is eligible for enhanced early release. If the inmate is eligible, DOC *must* establish an early release date. RCW 9.94A.728(1)(b)(iv).

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<sup>1</sup> Qualified inmates are those who have no current or prior convictions for particular enumerated offenses. RCW 9.94A.728(1)(b)(iii).

DOC performed two risk assessments of Mr. Pullman in February and April, 2005. DOC Response to PRP, at 2; Appendix D and E. DOC determined Mr. Pullman had a risk assessment score of "40," making him eligible to earn up to 50 percent of his sentence in early release time. Id. Based on this score, DOC established an early release date of August 24, 2006. Id.

On February 3, 2006, DOC performed a third risk assessment and determined Mr. Pullman's risk assessment score had changed from "40" to "41." Appendix D. This one-point change caused Mr. Pullman's classification level to change from RM-C to RM-B, removing his eligibility for half-time early release. Id. Mr. Pullman's early release date changed to May 21, 2007. Id.

Mr. Pullman was not immediately notified of the change in his risk category or expected release date,<sup>2</sup> and no hearing was held prior to the reassessment. Mr. Pullman was notified in a letter from Kevin Mauss, Correctional Program Manager for DOC, dated

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<sup>2</sup> In fact, a "facility plan report" dated February 3, 2006, the same date on which the reassessment occurred, erroneously states Mr. Pullman's risk category is still "RMC" and that his three recent infractions "ha[ve] not affected his custody review score." Appendix F. Mr. Pullman was notified of this error when the prison superintendent sent him a memo dated April 13, 2006, explaining that "an error was made in the calculation of your custody level giving the impression that you were R.M.C. status when in fact, you were R.M.B." Appendix G.

July 11, 2006, five months after the reassessment occurred, that his risk assessment score had changed due to four "serious" prison infractions he received after his prior risk assessment. Appendix D.

Mr. Mauss informed Mr. Pullman he had "the right to review any information in your offender file which was used in the risk assessment process, except for the risk assessment instrument itself." Id. To do so, Mr. Pullman would have to "make a written request to the Records manager at the Institution in which you are located." Id. Although Mr. Pullman could appeal the half-time eligibility decision to the institutional superintendent, he was not provided a hearing before the initial decision-maker. Id.

Mr. Pullman, *pro se*, filed a personal restraint petition (PRP) in the Court of Appeals, arguing he had a liberty interest in his earned early release date, and that he was denied his right to constitutional due process when his risk classification level was changed without prior notice to him or an opportunity to be heard.

The Court of Appeals acknowledged that, under its earlier decision in In re Personal Restraint of Adams, 132 Wn. App. 640, 134 P.3d 1176 (2006), an inmate is entitled to written notice of the reasons DOC is seeking to change an inmate's classification and an opportunity to challenge the facts DOC intends to rely upon,

before DOC may increase the inmate's risk assessment score and render him newly ineligible for enhanced early release. Appendix A, at 3. The court further agreed Mr. Pullman was reclassified without advance notice or a hearing. Id. But the court nonetheless concluded Mr. Pullman's due process rights were protected, because he was reclassified only after being found guilty of "serious" disciplinary infractions following hearings at which he received due process. Id. at 3-4. The court further concluded Mr. Pullman could not establish a constitutional violation without showing prejudice. Id. at 4. Thus the court dismissed the PRP.

This Court granted discretionary review and ordered counsel be appointed to represent Mr. Pullman.

### C. ARGUMENT

MR. PULLMAN'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WAS VIOLATED WHEN DOC CHANGED HIS EARLY RELEASE DATE AND REVOKED HIS PRIOR ELIGIBILITY FOR ENHANCED EARLY RELEASE, WITHOUT NOTIFYING HIM IN ADVANCE AND GIVING HIM AN OPPORTUNITY TO BE HEARD

1. A prison inmate has a liberty interest in DOC's established early release date based on its assessment he is eligible for enhanced early release, which DOC may not revoke without providing minimum due process protections. In Adams, 132 Wn. App. 640, the Court of Appeals held inmates have a liberty

interest, protected by the Due Process Clause, in their established early release date based on DOC's assessment they are eligible for enhanced early release under RCW 9.94A.728(1)(b). Appendix A, at 2-3. That holding is consistent with well-settled case law from this Court and the United States Supreme Court.

The Due Process Clause of the Fourteenth Amendment provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law." Article I, section 3 of the Washington Constitution provides, "No person shall be deprived of life, liberty, or property, without due process of law."

Prison inmates retain rights under the Due Process Clause, subject to restrictions imposed by the nature of the prison environment. Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Analysis of procedural due process questions involves asking: (1) whether the state has interfered with an inmate's protected liberty interests; and (2) whether procedural safeguards provided are constitutionally sufficient to protect against unjustified deprivations. See Kentucky Dep't of Corr. v. Thompson, 490 U.S. 454, 460, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1989).

Protected liberty interests can arise from the Due Process Clause itself or from statutes or regulations. See Sandin v. Conner, 515 U.S. 472, 483-84, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).

Although the Constitution does not guarantee prison inmates the right to early release for good behavior, see Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), it is well established that the state may create such a right that it cannot revoke without providing minimum due process procedural protections. The seminal case is Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). In Wolff, the United States Supreme Court held that where the state provides a statutory right to early release for good behavior, and specifies that the right may be forfeited for serious misbehavior, "the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." Id. at 557.

The Supreme Court has not wavered from this holding. In Sandin, for example, the Court affirmed that due process protections apply where the state's action will inevitably affect the

duration of the prisoner's sentence. Sandin, 515 U.S. at 487; see also Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 447, 453, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (affirming Wolff's holding that due process protections apply to deprivation of earned good-time credits, which inevitably affects duration of sentence).

This Court's cases are consistent with Wolff. In Monohan v. Burdman, 84 Wn.2d 922, 927-29, 530 P.2d 334 (1975), this Court held that where the Parole Board sets a tentative parole release date based on good behavior, the prospective parolee has a liberty interest in the established release date and is entitled to minimum due process safeguards before the date may be cancelled. See also In re Pers. Restraint of Sinka, 92 Wn.2d 555, 599 P.2d 1275 (1979) (holding liberty interest in Parole Board's minimum term). Similarly, in In re Personal Restraint of Gronquist, 138 Wn.2d 388, 397, 978 P.2d 1083 (1999), this Court held prisoners are entitled to minimum due process protections in serious infraction hearings, where sanctions may include loss of earned good-time credits.<sup>3</sup> See also In re Pers. Restraint of Piercy, 101 Wn.2d 490, 681 P.2d

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<sup>3</sup> "Good conduct time credits" are "that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions." WAC 137-28-160.

223 (1984) (due process protections apply to revocation of earned good-time credits).

In accordance with these principles, the Court of Appeals held that the statutory and regulatory scheme at issue in this case creates a liberty interest protected by the Due Process Clause. In re Pers. Restraint of Wheeler, 140 Wn. App. 670, 675, 166 P.3d 871 (2007); Adams, 132 Wn. App. 640. RCW 9.94A.728(1)(b) *requires* DOC to perform a risk assessment on every qualified inmate, and, if the inmate is eligible for enhanced early release, DOC *must* establish an expected early release date. Any subsequent change in the early release date inevitably affects the duration of the prisoner's sentence. See Sandin, 515 U.S. at 487; Hill, 472 U.S. at 447. Thus, DOC may not revoke an inmate's eligibility for enhanced early release without providing minimum due process protections. Adams, 132 Wn. App. at 643-44, 651; Wheeler, 140 Wn. App. at 675.

In sum, DOC's initial determination pursuant to RCW 9.94A.728(1)(b) that Mr. Pullman was eligible for enhanced early release created a liberty interest that DOC could revoke only upon providing the required due process protections.

2. Mr. Pullman did not receive the required procedures.

a. The procedures required are those set forth in *Wolff and Hill*. In *Wolff and Hill*, the United States Supreme Court specified the procedures that apply when the State seeks to revoke a prison inmate's State-created liberty interest in early release: (1) written notice of the proposed reasons for the deprivation, at least 24 hours in advance, so that the inmate may "marshal the facts and prepare a defense;" (2) a hearing before an impartial decision-maker; (3) the right to call witnesses and present documentary evidence; (4) a written statement by the fact-finder as to the evidence relied upon and the reasons for the revocation; and (5) that "some evidence" support the decision. *Wolff*, 418 U.S. at 563-66, 571; *Hill*, 472 U.S. at 455.

*Wolff* explained these are the *minimum* requirements of procedural due process appropriate for the prison environment. 418 U.S. at 558, 560-61. *Wolff* acknowledged due process requires flexible procedures that must be matched to the prison

context.<sup>4</sup> Id. at 560, 572. Thus, because the State has a compelling interest in reducing the adversarial nature of proceedings held in prison, inmates are not entitled to confront witnesses or the assistance of counsel. Id. at 561-63, 568, 570. But Wolff does not suggest the State may ever dispense with the fundamental requirements of advance notice and a hearing before it deprives an inmate of his liberty interest in early release.

To the contrary, the Supreme Court's decisions consistently emphasize that the two procedures absolutely essential to the minimum requirements of due process are notice and an opportunity to be heard *before* the State deprives a person of his liberty interest. See Wolff, 418 U.S. at 563, 557-58; Paratt v. Taylor, 451 U.S. 527, 540, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) (noting that meaningful opportunity to be heard is most fundamental component of due process); Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (explaining fairness

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<sup>4</sup> Determining what procedures the Due Process Clause requires in a given situation involves balancing: (1) the importance of the private interest affected; (2) the importance of the governmental interests affected, including the fiscal and administrative costs of the additional procedural requirements; and (3) the probable value of the additional procedural requirements, including reduction in the risk of erroneous deprivations under current procedures. See Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

requires that individual threatened with government deprivation receive notice of pending deprivation and opportunity to be heard). The opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong, 380 U.S. at 552. The opportunity to be heard is not meaningful if the inmate is permitted only the opportunity to rebut findings already made. See Id.

This Court has already held that, at a minimum, DOC must provide the procedures outlined in Wolff and Hill before it may revoke an inmate's liberty interest in early release. In Monohan, this Court held DOC must provide even more extensive procedural protections before it may revoke an inmate's tentative parole release date.<sup>5</sup> Monohan, 84 Wn.2d at 929-30. Similarly, in Gronquist, 138 Wn.2d at 397-98, this Court held DOC must provide

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<sup>5</sup> Monohan held prisoners faced with cancellation of their established parole release dates are entitled to the procedures set forth in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). 84 Wn.2d at 929-30. Those procedures are more extensive than the procedures in Wolff, as they include a conditional right to confront and cross-examine adverse witnesses. Monohan, 84 Wn.2d at 930 (citing Morrissey, 408 U.S. at 489).

the procedures outlined in Wolff before it may deprive an inmate of earned good-time credits based on serious infractions.<sup>6</sup>

For the same reasons this Court held the procedures set forth in Wolff and Hill apply when DOC seeks to revoke earned good-time credits, they also apply when DOC seeks to revoke an inmate's established eligibility for enhanced early release. The enhanced early release program determines what percentage of a prisoner's sentence may be reduced by earned good-time credits. RCW 9.94A.728(1)(b). Thus, when an inmate qualifies for half-time early release and DOC establishes a corresponding early release date, the inmate obtains an expectation of early release comparable to the expectation created when an inmate earns good-

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<sup>6</sup> Other jurisdictions agree the Wolff and Hill minimum due process procedures apply when the State seeks to revoke earned good-time credits based on misbehavior. See, e.g., Scruggs v. Jordan, 485 F.3d 934, 939 (7th Cir. 2007); Grossman v. Bruce, 447 F.3d 801, 804-05 (10th Cir. 2006); Henson v. United States Bureau of Prisons, 213 F.3d 897, 898 (5th Cir. 2000); Meeks v. McBride, 81 F.3d 717, 719 (7th Cir. 1996); Moran v. Farrier, 924 F.2d 134, 137 (8th Cir. 1991); Burnell v. Coughlin, 975 F.Supp. 473, 475-76 (W.D. N.Y. 1997); Frankenberry v. Williams, 677 F. Supp. 793, 796 (M.D. Pa. 1988), aff'd, 860 F.2d 1074 (3rd Cir. 1988); Miranda v. Coutee, 334 Ill. App. 3d 1057, 1059-60, 269 Ill. Dec. 75, 779 N.Ed.2d 929 (Ill. App. Ct. 2002) Maghee v. Iowa Dist. Court Judge, 712 N.W.2d 687, 692 (Iowa 2006); Laureano v. Kuhlmann, 75 N.Y.2d 141, 146, 550 N.E.2d 437 (N.Y. 1990); Mitchell v. Meachum, 1988 OK 131; 770 P.2d 887, 890-91 (Okla. 1988); Al-Shabazz v. State, 338 S.C. 354, 370, 372-73, 527 S.E.2d 742 (S.C. 2000).

time credits. Comparable protections should therefore apply when DOC seeks to revoke that interest.

The need for an evidentiary hearing is just as compelling when an inmate's risk level is reclassified as when the inmate is accused of a serious infraction for which he may lose good-time credits. In reclassifying inmates, DOC relies upon a variety of information contained in the inmate's file, including criminal history, the inmate's "community circumstances" prior to incarceration, and "circumstances during incarceration." Appendix C; DOC Policy 320.400, at 3-4; Adams, 132 Wn. App. at 645 (explaining that, in reclassifying Adams, DOC relied upon his criminal history, prison infraction record, "family history," "absence of contact with pro-social individuals," and "severe long-standing drug addiction"). Adams recognized that, given the variety of documents contained in an inmate's file, much of that information can be inaccurate. Adams, 132 Wn. App. at 653-54 (citing Sinka, 92 Wn.2d at 567). Thus, the inmate is entitled to an opportunity to challenge the facts DOC intends to rely upon in reclassifying him.

Finally, requiring DOC to provide advance written notice and a hearing should not be overly burdensome to the State. DOC engages in risk reassessments under certain limited circumstances:

(1) to correct any scoring or information inaccuracies from the most recent risk assessment, within 30 days of the inmate's arriving at a new facility; (2) if new conviction or behavioral information is discovered; or (3) when an event occurs that demonstrates an increase in risk, such as prison infractions. DOC Policy 320.400, at 4; Appendix C. When those circumstances arise, DOC should have the time and ability to notify the inmate of the pending reassessment and the information DOC intends to rely upon, and to provide the inmate an opportunity to challenge that information.

DOC already implements comparable procedures when it seeks to find an inmate guilty of a serious infraction. See WAC 137-28-270(1); WAC 137-28-290(1), (2); WAC 137-28-300; WAC 137-28-310. Thus, DOC already has the resources and ability to implement the procedures required in this case.

In sum, before revoking an inmate's prior eligibility for early release under RCW 9.94A.728(1)(b), DOC must provide: (1) advance written notice of the proposed reasons for the deprivation; (2) a hearing before an impartial decision-maker at which the inmate may present evidence; and (3) a written statement by the fact-finder as to the evidence relied upon and the reasons for the revocation. Wolff, 418 U.S. at 563-66; Hill, 472 U.S. at 455.

b. Mr. Pullman did not receive adequate procedures.

The procedures Mr. Pullman received when DOC reclassified him were: (1) he received a letter, *five months after the fact*, informing him he was no longer eligible for enhanced early release and that his early release date had changed, and explaining why; (2) he was informed he could "review any information in [his] offender file which was used in the risk assessment process," but only if he "ma[d]e a written request to the Records manager;" and (3) he was allowed to appeal to the superintendent. Appendix C and D.

These procedures did not satisfy the requirements of constitutional due process outlined above. In particular, Mr. Pullman received no advance notice of the proposed reasons for his reassessment and no hearing before the decision-maker.

The Court of Appeals ruled Mr. Pullman was not entitled to advance notice or a hearing, because reclassification was "virtually preordained by the outcome of the underlying disciplinary hearings," and since Mr. Pullman presumably received due process at those hearings, his rights were adequately protected. Appendix A, at 4. But due to the nature of the risk assessment process, the outcome was not "preordained." An inmate's risk assessment score does not automatically change as a result of prison

infractions, as DOC must evaluate the *effect* of the infractions on the risk of reoffense.<sup>7</sup> Moreover, Mr. Pullman's risk assessment score was based on a weighing of various diverse information beyond the mere fact of the prison infractions; Mr. Pullman was entitled to an opportunity to challenge any inaccuracies in that information before DOC changed his early release date. See Sinka, 92 Wn.2d at 568 ("Both the inmate and the State have an interest in ensuring that the setting of minimum terms is based on accurate information and informed discretion.").

Finally, even if Mr. Pullman was not entitled to re-litigate the factual bases for the four serious infractions, he was entitled to challenge the *fact* of the infractions. 138 Wn.2d 388. In Gronquist, this Court considered whether an inmate is entitled to a hearing before being found guilty of a "657" serious infraction, defined as "[b]eing found guilty of four or more general infractions" arising out

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<sup>7</sup> The Legislature defined "risk assessment" as: the application of an objective instrument supported by research and adopted by the department for the purpose of assessing the offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to the victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations. RCW 9.94A.030(30).

of separate incidents within a six-month period.<sup>8</sup> 138 Wn.2d at 391 (citing former WAC 137-28-260(657)<sup>9</sup>). Relying on principles of res judicata, this Court concluded inmates are not entitled to re-litigate the underlying facts of every predicate infraction forming the basis of a 657 violation. Id. at 399. But, as at sentencing hearings, due process requires the inmate be allowed to contest whether he was actually found guilty of the alleged predicate infractions within the required time period. Id. at 406-07. Similarly, here, Mr. Pullman was entitled to challenge whether he was actually found guilty of the serious infractions DOC alleged.

In sum, because DOC revoked Mr. Pullman's liberty interest in enhanced early release without providing him advance notice and a hearing, DOC violated his constitutional right to due process.

3. Mr. Pullman is entitled to a new hearing. When, as here, an inmate in a PRP challenges a decision from which he has had "no previous or alternative avenue for obtaining state judicial review," RAP 16.4(a) requires that he show he has been unlawfully

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<sup>8</sup> Inmates are entitled to notice and a hearing before being found guilty of "serious" but not "general" infractions. WAC 137-28-230 (general infraction procedure); WAC 137-28-270, 290, 300, 10 (serious infraction procedures).

<sup>9</sup> "657" serious infractions are now defined as "[b]eing found guilty of four or more general infractions arising out of separate incidents within a 90-day period." WAC 137-25-030 (effective 2006).

restrained. Adams, 132 Wn. App. at 646; In re Pers. Restraint of Liptrap, 127 Wn. App. 463, 469, 111 P.3d 1227 (2005). Mr. Pullman is restrained, as he is currently incarcerated and subject to DOC's decision he is no longer eligible for enhanced early release.

A restraint is unlawful if the challenged action is unconstitutional or violates the laws of the State of Washington. Liptrap, 127 Wn. App. at 469; RAP 16.4(c)(2), (c)(6). As argued above, the challenged action violated Mr. Pullman's constitutional right to due process and therefore his restraint is unlawful. See, e.g., In re Pers. Restraint of Dutcher, 114 Wn. App. 755, 758, 60 P.3d 635 (2002) (decision by DOC that deprives inmate of earned early release into community custody results in unlawful restraint).

Mr. Pullman need not show prejudice in order to obtain a new hearing. A petitioner need not prove the threshold requirements from In re Personal Restraint of Cook where he "has had no previous or alternative avenue for obtaining state judicial review." In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994) (citing Cook, 114 Wn.2d 802, 809-12, 792 P.2d 506 (1990) (requiring petitioner seeking collateral review to show actual prejudice for constitutional issues and complete miscarriage of justice for nonconstitutional issues). In particular, where a

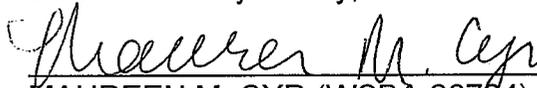
procedural violation is reviewable only by PRP, the petitioner need not show prejudice in order to obtain a new hearing, as "[i]t would be inconsistent to eliminate the threshold prejudice requirement ("actual and substantial prejudice" or "a fundamental defect"), but impose a subsequent prejudice requirement before relief can be granted to a petitioner." In re Pers. Restraint of Mines, 146 Wn.2d 279, 288-90, 45 P.3d 535 (2002) (holding petitioner who establishes procedural violation from parole revocation hearing is entitled to new hearing without showing prejudice).

Thus, as the Court of Appeals concluded in Wheeler, 140 Wn. App. at 676, where DOC revokes an inmate's eligibility for enhanced early release without providing minimum due process protections, the petitioner is entitled to a new hearing at which proper procedures are observed. That is the remedy here.

D. CONCLUSION

Because the State revoked Mr. Pullman's liberty interest in early release without adequate procedures, this Court must grant the petition and remand for a new hearing.

Respectfully submitted this 15th day of July, 2008.



MAUREEN M. CYR (WSBA 28724)  
Washington Appellate Project - 91052  
Attorneys for Petitioner

# **APPENDIX A**



Following his imprisonment, Pulliam was screened on February 24, 2005, and found to be eligible to receive 50 percent earned release time under RCW 9.94A.728(1)(b). Pulliam's eligibility for the earned early release program was reassessed on February 3, 2006.

Pulliam challenges the DOC's decision to award him earned early release credits at a rate less than the maximum authorized by law. In 2003, the Legislature amended the Sentencing Reform Act of 1981 to allow an inmate, who DOC classifies in the two lowest risk categories, to qualify for earned early release at 50 percent of the sentence instead of the previous 33 percent. RCW 9.94A.728(1)(b). The statute requires DOC to perform a risk assessment on every eligible inmate to determine eligibility for the enhanced early release program. Based on the answers an inmate gives in the Level of Service Inventory – Revised (LSI-R), together with other relevant information, DOC calculates a risk assessment score. The score, in turn, determines the inmate's classification level, RM-A, RM-B, RM-C, or RM-D. Only inmates whose DOC scores fall within classifications RM-C and RM-D qualify to earn early release time at 50 percent.

Pulliam argues that DOC's decision to reclassify him as RM-B was unlawful. Pulliam claims that, under his original classification, he was eligible to receive 50 percent earned release time under RCW 9.94A.728(1)(b)(ii). Because the change to his risk management score was done in violation of his due process rights, Pulliam argues, he should be immediately released from DOC custody "in the interest of justice." This claim fails.

The case of In re Pers. Restraint of Adams, 132 Wn. App. 640, 134 P.3d 1176 (2006) is instructive. In that case, the DOC initially informed Adams that he would be

eligible to earn early release credits at a rate of 50 percent pursuant to RCW 9.94A.728(1)(b). At some later date, the DOC reassessed Adam's risk of reoffending, raising his risk assessment score over 40. This revised score rendered him ineligible for the enhanced early release program. The court in Adams held that in these circumstances "minimum due process requires written notice of the reasons DOC is seeking to change [an inmate's] classification and an opportunity to challenge the facts DOC relied on from his files to reach that decision." 132 Wn. App. at 653.

Here the reclassification resulted in Pulliam's risk assessment score changing from 40 to 41, which rendered him ineligible to receive 50 percent earned early release credit. Even before Pulliam filed his petition, the DOC notified him by letter of the specific factors used to increase his risk assessment score.<sup>1</sup> The letter also advised Pulliam that he had the right to challenge "any inaccuracies." And while Pulliam complains that the reclassification occurred without any input from him,<sup>2</sup> he fails to establish that he was denied any process due him under Adams.

Pulliam's argument unquestionably has a certain appeal. While Pulliam is correct that he was reclassified without any advance notice or opportunity to respond, the reclassification was made only after Pulliam had been given prison disciplinary hearings

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<sup>1</sup> At the time the risk assessment was reviewed by your classification counselor on 2/3/2006 you had incurred several events that impacted your risk assessment scoring. The change in the risk assessment score is based on your behaviors while incarcerated and events that occurred after the 4/4/2005 risk assessment. The one item which was changed to increase the risk assessment score is based on the following:

- Offender Based Tracking System (OBTS) indicates guilty findings of four (4) serious major infractions:

1. 4/21/200[5] WAC #557 Refusing to Program
2. 6/4/2005 WAC 505 Fighting
3. 6/30/2006 WAC 740 Fraud
4. 1/6/2006 WAC 657 Four or more general infraction within a 6-month period of time.

<sup>2</sup> Pulliam asks rhetorically, "[h]ow can a letter sent July 11, 2006 give notice to an event that took place February 3, 2006[?]"

and found guilty of disciplinary violations. Pulliam does not dispute that he violated certain prison rules or that he was afforded a disciplinary hearing after being accused of each violation. Minimum due process hearings are provided in situations where an inmate is accused of violating disciplinary rules within the correctional facility. Monohan v. Burdman, 84 Wn.2d 922, 530 P.2d 334 (1975). In all but one case, Pulliam does not challenge the results of the disciplinary hearings on due process or other grounds.<sup>3</sup> Since the reclassification was virtually preordained by the outcome of the underlying disciplinary hearings, and since Pulliam was afforded due process at those hearings, it appears his rights were adequately protected. See In re Pes. Restraint of Piercy, 101 Wn.2d 490, 495-96, 681 P.2d 223 (1984). Under the circumstances, Pulliam has not shown, either legally or factually, that the change in his risk assessment level unfairly prejudiced him. A due process violation is not established without a showing of prejudice. See Smith v. United States Parole Comm'n, 875 F.2d 1361, 1368 (9<sup>th</sup> Cir. 1989); Standlee v. Rhay, 557 F.2d 1303, 1307-08 (9<sup>th</sup> Cir. 1977); In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294, 678 P.2d 323 (1984).

Finally, Pulliam appears to dispute whether prison disciplinary infractions can properly be included as one of the criteria for establishing an offender's risk assessment score. The premise underlying this argument is flawed. The Legislature granted DOC discretion to select the appropriate risk assessment instrument. In re Pers. Restraint of

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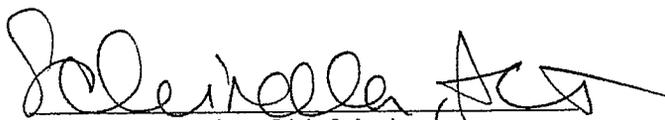
<sup>3</sup> Pulliam appears to argue that he would have done things differently had he known that the fraud disciplinary infraction could be used to increase his risk assessment score. This argument is based on pure speculation and cannot be the basis for relief in a personal restraint proceeding. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

Adams, 132 Wn. App. 640, 648, 134 P.3d 1176 (2006). "It appears the LSI-R is consistent with the requirement of RCW 9.94A.030(35)<sup>4</sup> and RCW 9.94A.728." Adams, 132 Wn. App. at 649. Accordingly, Pulliam has not stated a ground upon which relief can be granted by way of a personal restraint petition.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 10<sup>th</sup> day of October, 2007.

  
Acting Chief Judge

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COURT OF APPEALS  
STATE OF WASHINGTON  
2007 OCT 18 AM 9:36

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<sup>4</sup> The term "risk-assessment" is defined in RCW 9.94A.030(35) as: "the application of an objective instrument supported by research and adopted by the department for the purposes of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations."

## **APPENDIX B**

VUCSA OVER 21

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE WA

CERTIFIED COPY TO COUNTY JUDGE 1-9-2002

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON )

Plaintiff )

No 01 C-08905 2 SEA

Vs )

JUDGMENT AND SENTENCE  
FELONY

JAY ROBERT PULLMAN *aka Pullman* )

*Counts I & II*

Defendant, )

I HEARING

*Thomas Cole*  
I 1 The defendant, the defendant s lawyer *BENNY LAMENDOLA* and the deputy prosecuting attorney were present at the sentencing hearing conducted today Others present were \_\_\_\_\_

II FINDINGS

There being no reason why judgment should not be pronounced the court finds  
2 1 CURRENT OFFENSE(S) The defendant was found guilty on 5 29 2002 by jury verdict of

Count No I Crime VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT / DELIVER COCAINE  
RCW 69.50.401 (a) (1) (i) Crime Code 07319  
Date of Crime 9 13 2001 Incident No SPD 01-436257

Count No II Crime VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT / POSSESS WITH INTENT TO MANUFACTURE OR DELIVER COCAINE  
RCW 69.50.401 (a) (1) (i) Crime Code 07318  
Date of Crime 9 13 2001 Incident No SPD 01-436257

Count No III Crime BAIL JUMPING  
RCW 9A 76.170 (1), (2) (c) Crime Code 05158  
Date of Crime 9-13-2001 12/7/01 Incident No \_\_\_\_\_

Count No \_\_\_\_\_ Crime \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S)**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9 94A 310(3)
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9 94A 310(4)
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9 94A 127
- (d)  A V U C S A offense committed in a protected zone in count(s) I & II RCW 69 50 435
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41 61 5055 RCW 9 94A 310(7)
- (g)  Non parental kidnapping or unlawful imprisonment with a minor victim RCW 9A 44 130
- (h)  Domestic violence offense as defined in RCW 10 99 020 for count(s) \_\_\_\_\_
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9 94A 400(1)(a)

2 2 **OTHER CURRENT CONVICTION(S)** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number) \_\_\_\_\_

2 3 **CRIMINAL HISTORY** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9 94A 360)

- Criminal history is attached in Appendix B
- Prior convictions counted as one offense in determining the offender score (RCW 9 94A 360(5) are \_\_\_\_\_
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2 4 SENTENCING DATA**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	4	VIII	41 TO 54	24 MONTHS	41 TO 54 MONTHS	20 YRS AND/OR \$50 000
Count II	4	VIII	41 TO 54	24 MONTHS	41 TO 54 MONTHS	20 YRS AND/OR \$50 000
Count III (Separate JES)	2	III	4 TO 12		4 TO 12	5 YRS AND/OR \$10 000
Count						

Additional current offense sentencing data is attached in Appendix C

**2 5 EXCEPTIONAL SENTENCE**

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D The State  did  did not recommend a similar sentence

**III JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2 1 above and Appendix A

The Court DISMISSES Count(s) \_\_\_\_\_

IV ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below

4.1 RESTITUTION AND VICTIM ASSESSMENT

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9 94A 142(2) sets forth those circumstances in attached Appendix E
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m
  - Date to be set
  - Defendant waives presence at future restitution hearing(s)
  - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7 68 035 in the amount of \$500

4.2 OTHER FINANCIAL OBLIGATIONS Having considered the defendant's present and likely future financial resources the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court

- (a)  \$ \_\_\_\_\_, Court costs  Court costs are waived, (RCW 9 94A 030 10 01 160)
- (b)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs  Recoupment is waived (RCW 9 94A 030)
- (c)  \$ \_\_\_\_\_, Fine  \$1 000 Fine for VUCSA  \$2 000 Fine for subsequent VUCSA  VUCSA fine waived (RCW 69 50 430)
- (d)  \$ \_\_\_\_\_, King County Interlocal Drug Fund  Drug Fund payment is waived, (RCW 9 94A 030)
- (e)  \$ \_\_\_\_\_, State Crime Laboratory Fee  Laboratory fee waived (RCW 43 43 690)
- (f)  \$ \_\_\_\_\_, Incarceration costs  Incarceration costs waived (RCW 9 94A 145(2))
- (g)  \$ 0, Other costs for interest & trust fees waived

4.3 PAYMENT SCHEDULE Defendant's TOTAL FINANCIAL OBLIGATION is \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms  Not less than \$ \_\_\_\_\_ per month  On a schedule established by the defendant's Community Corrections Officer. Financial obligations shall bear interest pursuant to RCW 10 82 090. The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from the date of sentence or release from confinement to assure payment of financial obligations

**1999 EXPANDED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (D O S.A.)**

The Court finds the defendant eligible pursuant to RCW 9 94A 120(6)(a) as amended by CH 197 1999 LAWS eff 7 25 99 [recodified RCW 9 94A 660 eff 7 1 01] that the defendant and the community will benefit from use of D O S A waves imposition of sentence within the tandard range and sentences the defendant as follows

- (a) **TOTAL CONFINEMENT** RCW 9 94A 120(6)(b) The defendant is sentenced to the following term(s) of commitment in he custody of the DEPT OF CORRECTIONS to commence  immediately  not later than October 11, 2002 at 4W P.M
- 3575 months on Count No I \_\_\_\_\_ months on Count No \_\_\_\_\_
- 3575 months on Count No II \_\_\_\_\_ months on Count No \_\_\_\_\_
- \_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No \_\_\_\_\_

(b) The above term(s) of confinement represent one half of the midpoint of the standard range.

(c) The terms imposed herein shall be served concurrently

The term(s) imposed herein shall run concurrent/consecutive with cause No(s) \_\_\_\_\_

The term(s) imposed herein shall run consecutively to any previously imposed commitment not referred to in this judgment

(d) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause RCW 9 94A 120(17) The time shall be compiled by the JAIL unless specifically set by the court as follows \_\_\_\_\_

(e) While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive within available resources appropriate treatment services

4 5 **COMMUNITY CUSTODY** The court further imposes 3575 months, the remainder(s) of the midpoint(s) of the standard range(s) as a term of community custody during which time the defendant shall comply with the instructions, rules and regulations promulgated by the Department for conduct of the defendant during community custody shall perform affirmative acts necessary to monitor compliance shall obey all laws and comply with the following mandatory statutory requirements

- (1) The defendant shall not own, use or possess any firearm or ammunition. RCW 9 94A.120(16)
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance RCW 9 94A 120 (6)(b)(ii) and (iii)
- (3) The defendant shall complete appropriate substance abuse treatment in a program approved by D S H S Division of Alcohol and Substance Abuse RCW 9 94A 120(6)(b)(i)

The court further imposes the following non mandatory conditions of Community Custody (if checked)

- (4)  The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance
- (5)  Devote time to a specific employment or training
- (6)  Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender s address or employment.
- (7)  Report as directed to a community corrections officer
- (8)  Pay all court ordered legal financial obligations
- (9)  Perform community service work

(10)  Stay out of designated areas as follows \_\_\_\_\_

(11)  Other conditions as set forth in Appendix F \_\_\_\_\_

4.6 **NON-COMPLIANCE RCW 9 94A 120(6)(c)(e)** If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

For offenses committed after 7/1/2000 the court further imposes the following additional terms of Community Custody upon failure to complete or administrative termination from DOSA program: the entire period of earned early release or for any "crime against person" in section 2.1 herein 9-18 months for any violation of 69.50/52 in section 2.1 herein 9-12 months whichever is longer. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.5 herein.

4.7  **BLOOD TESTING** (Prostitution offense or drug offense associated with the use of hypodermic needles) Appendix G covering blood testing and counseling is attached and incorporated by reference into this Judgment and Sentence.

4.8  **OFF LIMITS ORDER** The defendant, having been found to be a known drug trafficker shall neither enter nor remain in the protected against drug trafficking area(s) as described in Appendix I during the term of community supervision. Appendix I is attached and incorporated by reference into this Judgment and Sentence.

4.9  **NO CONTACT** For the maximum term of \_\_\_\_\_ years defendant shall have no contact with \_\_\_\_\_

Date August 14, 2002

JUDGE \_\_\_\_\_  
Print Name ALSPÖRE

Presented by

[Signature]  
Deputy Prosecuting Attorney WSBA# 21914  
Print Name Balin

Approved as to form.

[Signature]  
23689  
Attorney for Defendant, WSBA #  
Print Name Thomas P. Coe

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF

JAY ROBERT PULLMAN

DATED AUG 16 2002

Robert H. Alsdorf  
JUDGE, KING COUNTY SUPERIOR COURT  
ROBERT H ALSDORF

DEFENDANT'S SIGNATURE  
DEFENDANT'S ADDRESS

*Jay Robert Pullman* #02  
11506 STONE AVE NE-102  
Seattle WA 98133

ATTESTED BY BARBARA MINER,  
SUPERIOR COURT CLERK  
BY Victoria J. Anderson  
DEPUTY CLERK

CERTIFICATE

I, \_\_\_\_\_  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE  
DATED \_\_\_\_\_

OFFENDER IDENTIFICATION

S I D NO  
DOB APRIL 15, 1974  
SEX M  
RACE B

\_\_\_\_\_  
CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

vs

JAY ROBERT PULLMAN

Defendant,

No 01 C-08905 2 SEA

JUDGMENT AND SENTENCE

APPENDIX H

COMMUNITY PLACEMENT / COMMUNITY

CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9 94A 120(9)(b) RCW 9 94A 120(10) RCW 9 94A 120(11) or RCW 9 94A 137 for Work Ethic Camp approved offenders

- Report to and be available for contact with the assigned community corrections officer as directed
2) Work at Department of Corrections-approved education, employment, and/or community service
3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions
4) Pay supervision fees as determined by the Department of Corrections
5) Receive prior approval for living arrangements and residence location and
6) Not own, use or possess a firearm or ammunition. (RCW 9 94A 120(16)
7) Notify community corrections officer of any change in address or employment,
8) Remain within geographic boundary as set forth in writing by the Department of Corrections Officer or as set forth with SODA order

OTHER SPECIAL CONDITIONS

- [ ] The defendant shall not consume any alcohol
[ ] Defendant shall have no contact with
[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary to wit
[ ] The defendant shall participate in the following crime related treatment or counseling services
[ ] The defendant shall comply with the following crime related prohibitions
[ ]
[ ]
[ ]

Other conditions may be imposed by the court or Department during community custody

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9 94A 120(15)] and may issue warrants and/or detain defendants who violate a condition [RCW 9 94A 207]

Date August 16, 2002

Judge signature and title

APPENDIX H



**SPECIAL VERDICT or FINDING(S)**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9 94A.310(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.310(4).
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9 94A.127
- (d)  A V U C.S.A. offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69 50 435
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41 61.5055  
RCW 9 94A.310(7)
- (g)  Non parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A 44 130
- (h)  Domestic violence offense as defined in RCW 10 99 020 for count(s) \_\_\_\_\_
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW  
9 94A 400(1)(a)

2.2 OTHER CURRENT CONVICTION(S) Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number) \_\_\_\_\_

2.3 CRIMINAL HISTORY Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9 94A.360)  
 Criminal history is attached in Appendix B.  
 Prior convictions counted as one offense in determining the offender score (RCW 9 94A.360(5) are \_\_\_\_\_  
 One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count	2	III	4-12		4-12	342, 210, 020
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C

**2.5 EXCEPTIONAL SENTENCE**

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D The State  did  did not recommend a similar sentence

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) \_\_\_\_\_

IV ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below

4.1 RESTITUTION AND VICTIM ASSESSMENT

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9 94A.142(2) sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
  - Date to be set.
  - Defendant waives presence at future restitution hearing(s)
  - Restitution is not ordered
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7 68 035 in the amount of \$500

4.2 OTHER FINANCIAL OBLIGATIONS Having considered the defendant s present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court.

- (a)  \$ \_\_\_\_\_ Court costs  Court costs are waived, (RCW 9 94A.030 10 01 160)
- (b)  \$ \_\_\_\_\_ Recoupment for attorney s fees to King County Public Defense Programs  
 Recoupment is waived (RCW 9 94A 030)
- (c)  \$ \_\_\_\_\_ Fine  \$1 000 Fine for VUCSA  \$2,000 Fine for subsequent VUCSA  
 VUCSA fine waived (RCW 69 50 430)
- (d)  \$ \_\_\_\_\_ King County Interlocal Drug Fund,  Drug Fund payment is waived (RCW 9 94A 030)
- (e)  \$ \_\_\_\_\_ State Crime Laboratory Fee  Laboratory fee waived (RCW 43 43 690)
- (f)  \$ \_\_\_\_\_ Incarceration costs  Incarceration costs waived (RCW 9 94A 145(2))
- (g)  \$ \_\_\_\_\_ Other costs for \_\_\_\_\_

*Ordered by Judge S for  
Cours I & II*

4.3 PAYMENT SCHEDULE Defendant s TOTAL FINANCIAL OBLIGATION is \$ 0 The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms  Not less than \$ \_\_\_\_\_ per month,  On a schedule established by the defendant s Community Corrections Officer Financial obligations shall bear interest pursuant to RCW 10 82.090 The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from the date of sentence or release from confinement to assure payment of financial obligations

4.4 CONFINEMENT OVER ONE YEAR Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing  immediately  (Date)

10/11/02 by 4:00 p.m.

4 months/days on count I \_\_\_\_\_ months/days on count \_\_\_\_\_ months/day on count \_\_\_\_\_  
\_\_\_\_\_ months/days on count \_\_\_\_\_ months/days on count \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I, II, III are concurrent/consecutive

The above terms shall run concurrent/consecutive with cause No (s) \_\_\_\_\_

The above terms shall run consecutive to any previously imposed sentence not referred to in this order

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2 ) \_\_\_\_\_

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause (Use this section only for crimes committed after 6-10-98)

The enhancement term(s) for any special WEAPON findings in section 2 ) is/are included within the term(s) imposed above (Use this section when appropriate but for crimes before 6-11-98 only per In Re Charles)

The TOTAL of all terms imposed in this cause is ~~35~~ 35.75 months each Cys I & II, 4 mos, CA III

Credit is given for  \_\_\_\_\_ days served  days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9 94A.120(17)

4.5 NO CONTACT For the maximum term of \_\_\_\_\_ years, defendant shall have no contact with \_\_\_\_\_

4.6 Blood Testing (sex offense violent offense prostitution offense drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence

4.7 (a)  COMMUNITY PLACEMENT pursuant to RCW 9 94A 120(9) for qualifying crimes committed before 7 1 2000 is ordered for \_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9 94A 150 whichever is longer [24 months for any serious violent offense, vehicular homicide vehicular assault, or sex offense prior to 7 6-96 12 months for any assault 2° assault of a child 2 felony violation of RCW 69 50/52 any crime against person defined in RCW 9 94A 440 not otherwise described above ] APPENDIX H for Community Placement conditions is attached and incorporated herein

(b)  COMMUNITY CUSTODY pursuant to RCW 9 94 120(10) for any SEX OFFENSE committed after 6-6-96 but before 7 1 2000 is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9 94A 150 whichever is longer Appendix H for Community Custody Conditions and Appendix J for sex offender registration is attached and incorporated herein.

NOT applicable.

(c) ~~5~~  COMMUNITY CUSTODY pursuant to RCW 9 94A 120(11) for qualifying crimes committed after 6-30-2000 is ordered for the following established range

- Sex Offense RCW 9 94A 030(36) 36 to 48 months
- Serious Violent Offense RCW 9 94A 030(34) 24 to 48 months
- Violent Offense RCW 9 94A 030(41) 18 to 36 months
- Crime Against Person, RCW 9 94A 440 9 to 18 months
- Felony Violation of RCW 69 50/52 9 to 12 months

or for the entire period of earned early release awarded under RCW 9 94A.150, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9 94A.205.

- APPENDIX H for Community Custody conditions is attached and incorporated herein.
- APPENDIX J for sex offender registration is attached and incorporated herein

4 8  WORK ETHIC CAMP The court finds that the defendant is eligible for work ethic camp is likely to qualify under RCW 9 94A 137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9 94A 120(9)(b). Appendix H for Community Custody Conditions is attached and incorporated herein.

4 9  ARMED CRIME COMPLIANCE RCW 9 94A 103,105 The State's plea/sentencing agreement is attached  as follows

Date August 16, 2002

JUDGE [Signature]  
Print Name ALSDORF

Presented by [Signature]  
Deputy Prosecuting Attorney WSBA# 21912  
Print Name Balin

Approved as to form. [Signature]  
27689  
Attorney for Defendant WSBA #  
Print Name [Signature] Coe

## **APPENDIX C**

FILED

2004 CV - 8 142 5



CERTIFIED COPY TO COUNTY JAIL NOV 8 2004

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

No 04 1 10110 3 SEA

Vs

JUDGMENT AND SENTENCE  
FELONY

JAY ROBERT PULLMAN

Defendant

I HEARING

I 1 The defendant the defendant s lawyer CLORETTA JAMES and the deputy prosecuting attorney were present at the sentencing hearing conducted today Others present were \_\_\_\_\_

II FINDINGS

There being no reason why judgment should not be pronounced the court finds  
2 1 CURRENT OFFENSE(S) The defendant was found guilty on 10/6/2004 by jury verdict of

Count No 1 Crime VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT/  
POSSESS WITH INTENT TO DELIVER/COCAINE

RCW 69 50 401 (A)(1) (I)

Crime Code 07316

Date of Crime 11/18/2003

Incident No 587 03 - 529954

Count No \_\_\_\_\_ Crime \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime \_\_\_\_\_

Crime Code \_\_\_\_\_

Incident No \_\_\_\_\_

Count No \_\_\_\_\_ Crime \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime \_\_\_\_\_

Crime Code \_\_\_\_\_

Incident No \_\_\_\_\_

Count No \_\_\_\_\_ Crime \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime \_\_\_\_\_

Crime Code \_\_\_\_\_

Incident No \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S)**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9 94A 510(3)
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9 94A 510(4)
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9 94A 835
- (d)  A VUCSA offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69 50 435
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41-61-5055  
RCW 9 94 A 510(7)
- (g)  Non parental kidnapping or unlawful imprisonment with a minor victim RCW 9A 44 130
- (h)  Domestic violence offense as defined in RCW 10 99 020 for count(s) \_\_\_\_\_
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW  
9 94A 589(1)(a)

2.2 OTHER CURRENT CONVICTION(S) Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number) \_\_\_\_\_

2.3 CRIMINAL HISTORY Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9 94A 525)

Criminal history is attached in Appendix B

One point added for offense(s) committed while under community placement for count(s) 1

**2.4 SENTENCING DATA**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count 1	5	II	20+ TO 60 MONTHS		20+ TO 60 MONTHS	20 YRS AND/OR \$50,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C

**2.5 EXCEPTIONAL SENTENCE (RCW 9 94A 535)**

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D The State  did  did not recommend a similar sentence

**III JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A

The Court DISMISSES Count(s) \_\_\_\_\_

IV ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below

4.1 RESTITUTION AND VICTIM ASSESSMENT

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist and the court pursuant to RCW 9 94A 753(2) set forth those circumstances in attached Appendix E
- Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m
- Date to be set
- Defendant waives presence at future restitution hearing(s)

Restitution is not ordered

\* Defendant shall pay Victim Penalty Assessment pursuant to RCW 7 68 035 in the amount of \$500

4.2 OTHER FINANCIAL OBLIGATIONS Having considered the defendant's present and likely future financial resources the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court

- (a)  \$\_\_\_\_\_ Court costs  Court costs are waived (RCW 9 94A 030 10 01 160)
- (b)  \$100 DNA collection fee  DNA fee waived (RCW 4 43 754)(crimes committed after 7/1/02)
- (c)  \$\_\_\_\_\_ Recoupment for attorney's fees to King County Public Defense Programs  Recoupment is waived (RCW 9 94A 030)
- (d)  \$\_\_\_\_\_ Fine  \$1 000 Fine for VUCSA  \$2 000 Fine for subsequent VUCSA  VUCSA fine waived (RCW 69 50 430)
- (e)  \$\_\_\_\_\_ King County Interlocal Drug Fund  Drug Fund payment is waived (RCW 9 94A 030)
- (f)  \$\_\_\_\_\_ State Crime Laboratory Fee  Laboratory fee waived (RCW 43 43 690)
- (g)  \$\_\_\_\_\_ Incarceration costs  Incarceration costs waived (RCW 9 94A 760(2))
- (h)  \$\_\_\_\_\_ Other costs for \_\_\_\_\_

4.3 PAYMENT SCHEDULE Defendant's TOTAL FINANCIAL OBLIGATION is \$ 500.00. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms  Not less than \$\_\_\_\_\_ per month  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10 82 090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations for crimes committed before 7/1/2000 for up to ten years from the date of sentence or release from total confinement whichever is later for crimes committed on or after 7/1/2000 until the obligation is completely satisfied. Pursuant to RCW 9 94A 7602 if the defendant is more than 30 days past due in payments a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9 94A 760(7)(b) the defendant shall report as directed by DJA and provide financial information as requested

- Court Clerk's trust fees are waived
- Interest is waived except with respect to restitution

4.4 1999 EXPANDED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (D O S A )  
The Court finds the defendant eligible pursuant to RCW 9 94A 120(6)(a) as amended by CH 197 1999  
LAWS eff 7 25 99 [recodified RCW 9 94A 660 eff 7 1 01] that the defendant and the community will  
benefit from use of D O S A waives imposition of sentence within the standard range and sentences the  
defendant as follows

(a) TOTAL CONFINEMENT RCW 9 94A 120(6)(b) The defendant is sentenced to the following term(s)  
of commitment in the custody of the DEPT OF CORRECTIONS to commence  immediately  not  
later than \_\_\_\_\_ at \_\_\_\_\_ P M

20 months on Count No I \_\_\_\_\_ months on Count No \_\_\_\_\_  
\_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No \_\_\_\_\_  
\_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No \_\_\_\_\_

(b) The above term(s) of confinement represent one half of the midpoint of the standard range

(c) The terms imposed herein shall be served concurrently

The term(s) imposed herein shall run ~~concurrent~~ consecutive with cause No(s) 01-1-08905-2 SEA

The term(s) imposed herein shall run consecutively to any previously imposed commitment not referred to  
in this judgment

(d) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under  
this cause RCW 9 94A 120(17) The time shall be compiled by the JAIL unless specifically set by the  
court as follows 200 days

(e) While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive  
substance abuse assessment and receive within available resources appropriate treatment services

4 COMMUNITY CUSTODY The court further imposes 20 months the remainder(s) of the  
midpoint(s) of the standard range(s) as a term of community custody during which time the defendant shall  
comply with the instructions rules and regulations promulgated by the Department for conduct of the  
defendant during community custody shall perform affirmative acts necessary to monitor compliance shall  
obey all laws and comply with the following mandatory statutory requirements

- (1) The defendant shall not own use or possess any firearm or ammunition RCW 9 94A 120(16)
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to  
monitor compliance RCW 9 94A 120 (6)(b)(ii) and (iii)
- (3) The defendant shall complete appropriate substance abuse treatment in a program approved by D S H S  
Division of Alcohol and Substance Abuse RCW 9 94A 120(6)(b)(i)

The court further imposes the following non mandatory conditions of Community Custody (if checked)

- (4)  The defendant shall not use any alcohol or controlled substances without prescription and shall  
undergo testing to monitor compliance
- (5)  Devote time to a specific employment or training
- (6)  Remain within prescribed geographical boundaries and notify the court or the community corrections  
officer of any change in the offender's address or employment
- (7)  Report as directed to a community corrections officer
- (8)  Pay all court ordered legal financial obligations
- (9)  Perform community service work

(10)  Stay out of designated areas as follows \_\_\_\_\_

(11)  Other conditions as set forth in Appendix # H

46 **NON COMPLIANCE RCW 9A 120(6)(c)(e)** If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

For offenses committed after 7/1/2000 the court further imposes the following additional terms of Community Custody upon failure to complete or administrative termination from D O S A program: the entire period of earned early release or for any crime against person in section 2.1 herein 9-18 months for any violation of 69-052 in section 2.1 herein 9-12 months whichever is longer. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.5 herein.

47  **BLOOD TESTING** (Prostitution offense or drug offense associated with the use of hypodermic needles) Appendix G covering blood testing and counseling is attached and incorporated by reference into this Judgment and Sentence.

48  **OFF LIMITS ORDER** The defendant having been found to be a known drug trafficker shall neither enter nor remain in the protected against drug trafficking area(s) as described in Appendix I during the term of community supervision. Appendix I is attached and incorporated by reference into this Judgment and Sentence.

49  **NO CONTACT** For the maximum term of \_\_\_\_\_ years defendant shall have no contact with \_\_\_\_\_

Date NOV 5, 2004

[Signature]  
JUDGE  
Print Name Downing

Presented by  
[Signature]  
Deputy Prosecuting Attorney WSBA # 28289  
Print Name Erin H Becker

Approved as to form  
[Signature] 28938  
Attorney for Defendant WSBA #  
Print Name Christa James

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF

JAY ROBERT PULLMAN

DATED 15 NOV 2004

[Signature]  
JUDGE KING COUNTY SUPERIOR COUPT

DEFENDANT'S SIGNATURE  
DEFENDANT'S ADDRESS

[Signature]  
11506 Stone Ave N APT E102  
Seattle WA 98133

ATTESTED BY BARBARA MINER  
SUPERIOR COURT CLERK  
BY [Signature]  
DEPUTY CLERK

CERTIFICATE

I \_\_\_\_\_  
CLERK OF THIS COURT CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE  
DATED \_\_\_\_\_

CLERK

BY

DEPUTY CLERK

OFFENDER IDENTIFICATION

S I D NO WA19930713

DOB APRIL 15 1974

SEX M

RACE B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintif

No 04 1 10110 3 SEA

vs

IAY ROBERT PULLMAN

Defendant

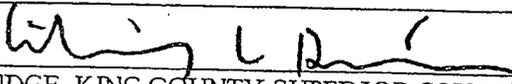
JUDGMENT AND SENTENCE  
(FELONY) APPENDIX B  
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9 94A 525)

Crime	Sentencing Date	Adult or Juv Crime	Cause Number	Location
BAIL JUMPING	10/11/2002	ADULT	011059323	KING CO
VUCSA PWI DELIVER COCAINE	8/16/2002	ADULT	011089052	KING CO
VUCSA PWI DELIVER COCAINE	8/16/2002	ADULT	011089052	KING CO
BAIL JUMPING	8/16/2002	ADULT	011089052	KING CO

1 | The following prior convictions were counted as one offense in determining the offender score (RCW 9 94A 525(5))

Date NOV 5, 2004

  
JUDGE KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

No 04 1 10110 3 SEA

vs

JAY ROBERT PULLMAN

Defendant

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43 43 754)

The Court orders the defendant to cooperate with the King County Department of Adult Detention King County Sheriff's Office and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant if out of custody shall promptly call the King County Jail at 296 1226 between 8 00 a m and 1 00 p m to make arrangements for the test to be conducted within 15 days

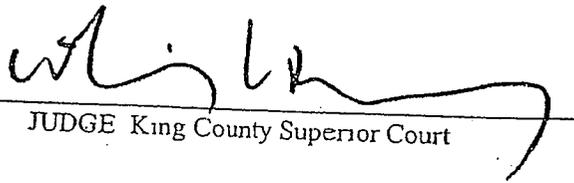
(2)  HIV TESTING AND COUNSELING (RCW 70 24 340)

(Required for defendant convicted of sexual offense drug offense associated with the use of hypodermic needles or prostitution related offense )

The Court orders the defendant contact the Seattle King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70 24 RCW. The defendant if out of custody shall promptly call Seattle King County Health Department at 205 7837 to make arrangements for the test to be conducted within 30 days

If (2) is checked two independent biological samples shall be taken

Date NOV 5, 2004

  
JUDGE King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

No 04 1.10110 3 SEA

vs

JAY ROBERT PULLMAN

Defendant

JUDGMENT AND SFN1 ENCF  
APPENDIX H  
COMMUNITY PLACEMENT OR  
COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9 94A 700(4) (5)

- 1) Report to and be available for contact with the assigned community corrections officer as directed
- 2) Work at Department of Corrections approved education employment and/or community service
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions
- 4) Pay supervision fees as determined by the Department of Corrections
- 5) Receive prior approval for living arrangements and residence location
- 6) Not own use or possess a firearm or ammunition (RCW 9 94A 720(2))
- 7) Notify community corrections officer of any change in address or employment and
- 8) Remain within geographic boundary as set forth in writing by the Department of Corrections Officer or as set forth with SODA order

OTHER SPECIAL CONDITIONS

- The defendant shall not consume any alcohol
- Defendant shall have no contact with \_\_\_\_\_

Defendant shall remain  within  outside of a specified geographical boundary to wit \_\_\_\_\_

The defendant shall participate in the following crime related treatment or counseling services  
substance abuse evaluation and follow  
all treatment recommendations

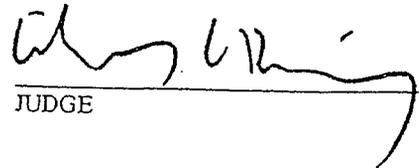
The defendant shall comply with the following crime related prohibitions  
do not loiter in high narcotics areas

\_\_\_\_\_

Other conditions may be imposed by the court or Department during community custody

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9 94A 720] and may issue warrants and/or detain defendants who violate a condition [RCW 9 94A 740]

Date NOV 5, 2004

  
JUDGE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

State of Washington	No 04 1 10110 3 SEA
Plaintiff	FELONY WARRANT OF TRANSFER TO DEPARTMENT OF CORRECTIONS PENDING APPEAL
vs	
JAY ROBERT PULLMAN	2
Defendant	

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF KING COUNTY AND DIRECTOR OF INSTITUTIONS AND THE SUPERINTENDENT OF THE WASHINGTON CORRECTIONS CENTER OF THE STATE OF WASHINGTON

WHEREAS Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of King that the defendant be punished as specified in the Judgment and Sentence a full true and correct copy of which is attached hereto

WHEREAS the defendant (X ) has ( ) has not given Notice of Appeal from said Judgment and Sentence to the Court of Appeals of the State of Washington and has not posted bond pending said appeal and

- ( ) Thirty (30) days have elapsed since entry of judgment
- (X ) A defendant s waiver of thirty (30) day delay prior to transfer to Department of Corrections (RCW 36 63 255) has been filed
- ( ) A signed order waiving the thirty (30) day delay has been filed

All of which appears of record certified copies of said Judgment and Sentence and other required documents being endorsed hereon and made a part hereof

NOW THIS IS TO COMMAND YOU the said Director of Adult Detention to detain the said defendant until called for by the transportation officers of the Department of Corrections authorized to conduct him to the Washington Corrections Center and THIS IS TO COMMAND YOU the said Superintendent of the Washington Corrections Center to receive of and from the said officers the said defendant for confinement in a penal institution or correctional facility designated by the Director of Institutions until further order of the Court of Appeals of the State of Washington and/or the Superior Court of the State of Washington in and for the County of King

Dated December 7, 2004

By Direction of the Honorable

WILLIAM DOWNING  
Judge

DOC 845002  
 JAIL LOCATION ESLC BARBARA MINER Clerk  
 DAS 20401611 By [Signature]  
 Deputy Clerk  
 CCNE 1741168  
 SDE WA 19930713  
 POB 4-15-74

## **APPENDIX D**



STATE OF WASHINGTON.  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1100

July 11, 2006

Mr. Jay R. Pullman, DOC#845002  
Stafford Creek Correctional Center  
191 Constantine Way  
Aberdeen, WA 98520

Re: ESSB 5990 Decision and Risk Assessment

Dear Mr. Pullman,

Thank you for your correspondence sent to the Department of Corrections, Headquarters, on 7/09/2006. The 5990 eligibility decision is considered a classification action and is only appealed through the institutional superintendent which it appears based on your correspondence you have already pursued. Once the superintendent responds to your appeal, the action is final. Headquarters does not review the decision. You also have the right to review any information in your offender file which was used in the risk assessment process, except for the risk assessment instrument itself. To review your file, you must make a written request to the Records Manager at the institution in which you are located. You may review DOC policy #280.510 "Public Disclosure of Records", and submit your written request on form #DOC 05-066 or a written letter of correspondence to the Records office.

The ESSB 5990 legislation requires that the department review the criminal history of offenders and determine if the offender is eligible to be awarded the 50% earned time credit and/or supervision closure based on past or current criminal convictions. If no criminal convictions exist that exclude the offender from 5990 considerations, the next step is to complete a risk assessment. That risk assessment (LSI-R/RMI) is designed to place offenders in one of four risk categories (RMA, RMB, RMC, or RMD). The offender is excluded from 5990 eligibility if placed in one of the two higher risk categories (RMA/RMB). The 50% earned time and supervision closure is awarded to those offenders placed in one of two lower risk categories (RMC/RMD).

Your current risk assessment is based on all information available to the assessor at the time of the review. The risk assessment is based on all criminal convictions and behaviors (past and present), community circumstances prior to your most recent incarceration and some circumstances during incarceration. The risk management level is used to assure that those individuals who pose an elevated risk in the community are not released inappropriately, as well as ensure those offenders receive community services after release. Your risk assessment score changed from 40 (risk assessment completed on 4/4/2005) to 41 (risk assessment completed on 2/3/2006). The Level of Service Inventory-

*"Working Together for SAFE Communities"*

Revised (LSI-R) score changed from 40 to 41 and the Risk Management Identification (RMI) designation was reassessed from RMC to RMB, which excludes your case from being awarded the 50% earned time credit.

At the time the risk assessment was reviewed by your classification counselor on 2/3/2006 you had incurred several events that impacted your risk assessment scoring. The change in the risk assessment score is based on your behaviors while incarcerated and events that occurred after the 4/4/2005 risk assessment. The one item which was changed to increase the risk assessment score is based on the following:

- Offender Based Tracking System (OBTS) indicates guilty findings of four (4) serious major infractions:
  1. 4/21/2005 WAC #557 Refusing to Program
  2. 6/4/2005 WAC 505 Fighting
  3. 6/30/2006 WAC 740 Fraud
  4. 1/6/2006 WAC 657 Four or more general infraction within a 6-month period of time.

Per DOC policy #320.400 Risk Assessment Process; the Counselor/Facility CCO will complete an LSI-R/RMI reassessment to correct any scoring inaccuracies identified during review of the most recent LSI-R/RMI assessment within 30 days of arrival at a new facility/placement; if new or additional conviction or behavioral information not previously considered in the risk assessment process is discovered; when an event occurs that demonstrates an increase in risk-related behaviors.

With a score of 41 it is certain that you have a number of dynamic risk/need factors that need your attention so that you can increase your chances for success in the community and avoid further incarceration. With a Release date of 5/21/2007, I am hopeful that you will spend some of that time developing a transition plan that addresses/reduces your risk/need factors and ensures the safety of any community in which you choose to reside.

Sincerely,



Kevin Mauss  
Correctional Program Manager  
Department of Corrections

cc: Offender Central File  
Cindy Tully, Classification Counselor  
Jayme Rudloff, Correctional Unit Supervisor  
Kathy Reninger, Correctional Program Manager  
Arrel Dayton, Records Manager

## **APPENDIX E**

P//N 1 845002

03/16/05 07.45.07

IISO005

RELEASE DATE CALCULATION

PAGE 001

DOC NO: 845002 NME: PULLMAN, JAY R.

STA MAX: 10/09/09 STATUS: ACTIVE

COMMITMENT: "AA" COMM.STATUS: EXPIRED

	"AA"	"AA-AA"
TIME START DATE-----*	03/16/2004	
+ MAX ( 0Y 9M 0D)	274	
- CREDIT TIME SERVED	27	
+ OUT-TIME + WICKERT	234	
+ CCI OUT/PAR ABSC TIME	0	
MAXIMUM EXPIRATION DATE---*	07/10/2005	
+ MIN ( 0Y 9M 0D)	274	
- CREDIT TIME SERVED(SRA)	27	
- GOOD TIME (JAIL)	0	
+ OUT-TIME + WICKERT	234	50%
MINIMUM EXPIRATION DATE---*	07/10/2005	
+ MAND ( 0Y 0M 0D)	0000000	
- CREDIT TIME SERVED	0	
+ OUT-TIME + WICKERT	0	
- EARNED RELEASE	0	
MANDATORY EXPIR. DATE-----*	00/00/0000	
TIME SERVED TO-DATE	151	
MINIMUM EXPIR. DATE-----*	07/10/2005	
GCT CERT. & ADDR.	0	0
GCT CERT. ONLY	0	0
+ GCT DENIED & ADDR.	0	0
+ GCT NOT CERTIFIED	0	0
FUTURE/UNCERT.GCT	82	82
ET I & II	19.17	19.17
+ ET NOT EARNED	0.00	0.00
FUTURE ET	22.00	22.00
EARNED RELEASE DATE-----*	03/09/2005	
ADJ. EARNED RELEASE-----*	03/09/2005	
EARLY POSS. REL. DATE-----*	03/09/2005	
ADJ. EARLY POSS. REL-----*	03/09/2005	
TIME REMAINING TO SERVE	0	
SANCTION ADMIT DATE-----*		
SANCTION RELEASE DATE-----*		

adjusted for 5990

P//N 1 845002

03/16/05 07.45.07

IISO005

RELEASE DATE CALCULATION

PAGE 002

DOC NO: 845002 NME: PULLMAN, JAY R.

STA MAX: 10/18/24 STATUS: ACTIVE

COMMITMENT: "AB" COMM.STATUS: ACTIVE

CONCURRENT TO "AA"

DOSA-2

"AB"

"AB"

"AA-AB"

TIME START DATE-----\* 03/16/2004

TIME SERVED TO-DATE 158

+ MAX ( 2Y11M21D) 1086

MINIMUM EXPIR. DATE-----\* 09/30/2007

- CREDIT TIME SERVED 18

GCT CERT. & ADDR. 0 0

+ OUT-TIME + WICKERT 234

GCT CERT. ONLY 0 0

+ CCI OUT/PAR ABSC TIME 0

+ GCT DENIED & ADDR. 0 0

MAXIMUM EXPIRATION DATE---\* 10/09/2007

+ GCT NOT CERTIFIED 0 0

FUTURE/UNCERT.GCT 353 435

+ MIN ( 2Y11M21D) 1086

ET I & II 19.17 38.34

- CREDIT TIME SERVED(SRA) 18

+ ET NOT EARNED 0.00 0.00

- GOOD TIME (JAIL) 9

FUTURE ET 157.33 179.33

+ OUT-TIME + WICKERT 234 50%

EARNED RELEASE DATE-----\* 04/18/2006

MINIMUM EXPIRATION DATE---\* 09/30/2007

ADJ. EARNED RELEASE-----\* 04/18/2006

+ MAND ( OY OM OD) 0000000

EARLY POSS. REL. DATE-----\* 04/18/2006

- CREDIT TIME SERVED 0

ADJ. EARLY POSS. REL-----\* 04/18/2006

+ OUT-TIME + WICKERT 0

TIME REMAINING TO SERVE 398

- EARNED RELEASE 0

SANCTION ADMIT DATE-----\*

MANDATORY EXPIR. DATE-----\* 00/00/0000

SANCTION RELEASE DATE-----\*

adjusted for 5990

P//1 1 845002

03/16/05 07.45.07

IIS0005

RELEASE DATE CALCULATION

PAGE 003

DOC NO: 845002 NME: PULLMAN, JAY R.

STA MAX: 04/19/24 STATUS: ACTIVE

COMMITMENT: "AC" COMM.STATUS: FUTURE

CONSECUTIVE TO "AB"

DOSA-2

"AC"

"AC"

"AA-AC"

TIME START DATE-----\* 04/18/2006

TIME SERVED TO-DATE 0

+ MAX ( 1Y 8M 0D) 608

MINIMUM EXPIR. DATE-----\* 12/30/2006

- CREDIT TIME SERVED 235

GCT CERT. & ADDR. 0 0

+ OUT-TIME + WICKERT 0

GCT CERT. ONLY 0 0

+ CCI OUT/PAR ABSC TIME 0

+ GCT DENIED & ADDR. 0 0

MAXIMUM EXPIRATION DATE--\* 04/26/2007

+ GCT NOT CERTIFIED 0 0

+ MIN ( 1Y 8M 0D) 608

FUTURE/UNCERT.GCT 85 520

- CREDIT TIME SERVED(SRA) 235

ET I & II 0.00 38.34

- GOOD TIME (JAIL) 117

+ ET NOT EARNED 0.00 0.00

+ OUT-TIME + WICKERT 0 508

FUTURE ET 42.67 222.00

MINIMUM EXPIRATION DATE--\* 12/30/2006

EARNED RELEASE DATE-----\* 08/24/2006

+ MAND ( 0Y 0M 0D) 0000000

ADJ. EARNED RELEASE-----\* 08/24/2006

- CREDIT TIME SERVED 0

EARLY POSS. REL. DATE-----\* 08/24/2006

+ OUT-TIME + WICKERT 0

ADJ. EARLY POSS. REL-----\* 08/24/2006

- EARNED RELEASE 0

TIME REMAINING TO SERVE 480

MANDATORY EXPIR. DATE-----\* 00/00/0000

SANCTION ADMIT DATE-----\*

SANCTION RELEASE DATE-----\*

adjusted for 5990

## **APPENDIX F**

RECEIVED

MAR 04 2006

CBCC RECORDS OFFICE

FACILITY PLAN

	STATE OF WASHINGTON
	DEPARTMENT OF CORRECTIONS

**Offender Information**

Offender Name (last, first, middle initial, suffix): PULLMAN, JAY R.				DOC Number: 845002	Offender Status: Active inmate
DOB: 04/15/1974	Time Start: 03/16/2004	(P)ERD: 10/13/2006	Maximum Exp Date: 10/09/2007	Mandatory Exp. Date:	Current Custody: MED
LSI-R Score 41	RMI Level: RMC	SMIO: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	RMIT Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Comm Custody/Placement Yes <input type="checkbox"/> NO <input checked="" type="checkbox"/>	Community Custody Range: From: 9 To: 12 months
ISRB: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	SRA 10-day Release Status: Eligible	End of Sentence Review Screening Completed: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Special Sentence Alternative: Select one:	
Detainer / Warrant: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If "Yes", please list:				

**Purpose of Report**

Purpose of Report:	<input type="checkbox"/> Intake (P) Facility Plan	<input type="checkbox"/> HCSC
<input type="checkbox"/> Board Report	<input type="checkbox"/> Scan Only	<input type="checkbox"/> Override
<input checked="" type="checkbox"/> Plan Change (P) Review	<input type="checkbox"/> Extraordinary Medical Placement	<input type="checkbox"/> Map
<input type="checkbox"/> Time Exceeds 6 years	<input type="checkbox"/> Other (Specify):	
Prepared By: C. Palmer, CCII	Referral Location: CBCC/MSC	Date: 02/03/06

**Offender Community Support**

Anticipated Release Address: 11506 Stone Avenue N. Apt. #E102, Seattle, WA 98133 Phone Number 206-363-6844	Residence Sponsor: Janice Spivey Relationship to Offender: Aunt
---	--

**Additional Individuals in the Home**

Name: (last, first, MI)	Adult / Minor	Relationship to Offender:
Has the sponsor or others residing in the home been a victim of the offender? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

**Programs**

Basic Skills	Narrative: Inmate Pullman has a verified GED. There are no further basic skills requirements.
Job/Work	Narrative: Inmate Pullman is currently not working. He is expected to obtain and maintain a work program as required and approved by Policy.
Offender Change	Narrative: Inmate Pullman is not currently enrolled in any offender change programming. He may be referred to offender change programs as indicated by his behavior, risk assessment or other documented needs.

Offender DOC # 845002	Offender Name: PULLMAN, JAY R.
Don 20-402 ( Rev. 03/04/03)	1 of 3

Vocational	Narrative: Inmate Pullman is currently programming in Information Technology, and Mathematics. He may be referred to an appropriate vocational program as determined by the FRMT.
------------	---

**Additional Offender Classification Expectations**

Expectations: Compliance with court imposed conditions	Frequency: Ongoing	Due Date:
Narrative:		
Expectations: Chemical Dependency Evaluation	Frequency: As available	Due Date:
Narrative: Must participate in substance abuse evaluation/treatment if recommended.		
Expectations:	Frequency: As Available	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		

**Targeted Custody/Placement**

Target Date	Targeted Custody	Targeted Placement (if applicable)	Inmate Preferred Location:	Comments
04/13/06	MI1	700-Work Release		Target date set six-months from ERD of 10/13/06.
	Select one:	Select one:		

**Current Classification Action**

Counselor Comments and Recommendations: Inmate Pullman arrived at CBCC on 05/04/05 from CCCC as a custody demotion due to WAC violation 505-fighting on 06/04/05 and 740-fraud on 06/30/05. He has a current custody review score of 57 points, minimum custody. He has received one infraction since his arrival at CBCC a 657 on 01/06/06 for four general infractions however this has not affected his custody review score. 5990 has been addressed. The counselor recommendations are as follows:

1. Assign MIP custody.
2. Transfer to A03/Camp facility.
3. Validate earn time from 05/01/05 to 02/01/06.
4. Target recommendations listed above.

Counselor: C. Palmer, CCII *C. Palmer* Date: 02/03/06

Offender DOC # 845002	Offender Name: <b>PULLMAN, JAY R.</b>
Don 20-402 (Rev. 03/04/03)	2 of 3

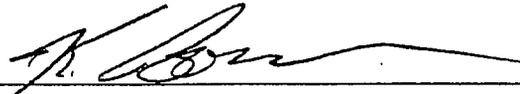
Facility Risk Management Team

CONCUR  DO NOT CONCUR

Comments and Recommendations: On 02/10/06 the FRMT met to review the facility plan developed by Counselor Palmer. Inmate Pullman was provided with Notice of Meeting. The FRMT concurs with the Counselor recommendations listed above.

FRMT: C. Palmer CCII;

FRMT Chair: K. Bowen, CUS



Date: 02/10/06

Offender Comments: Inmate Pullman stated the report was accurate. He added that he prefers to go to CCCC.

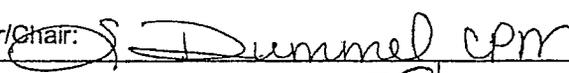
Date: 02/10/06

Reviewer

CONCUR  DO NOT CONCUR

Comments and Recommendations:

Reviewer/Chair:



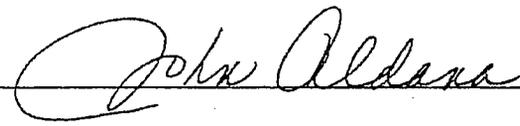
Date: 2/22/06

Superintendent/Designee

CONCUR  DO NOT CONCUR

Comments/Decisions:

Superintendent/Designee:



2/23/06

Date:

Headquarters Decisions:

Date:

DISTRIBUTION:

Upon Completion of Headquarters Action, Return to:

*The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, REW 42.17, and RCW 40.14.*

Offender DOC #  
845002

Offender Name:  
PULLMAN, JAY R.

## **APPENDIX G**



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
OFFICE OF CORRECTIONAL OPERATIONS  
OLYMPIC CORRECTIONS CENTER  
11235 Hoh Mainline • Forks, Washington 98331

April 13, 2006

TO: Jay Pullman, DOC #845002  
FROM:  Karen Brunson, Superintendent  
SUBJECT: **DENIAL 5990**

I have received your letter and reviewed the documentation. Unfortunately, an error was made in the calculation of your custody level giving the impression that you were R.M.C. status when in fact, you were R.M.B. The current documentation has been audited by the headquarters team and found to be correct. I have spoken to the unit CUS who will work to provide you with work release given the new classification.

I encourage you to work closely with your counselor when you have questions or concerns.

KDB:dd

*"Working Together for SAFE Communities"*

