

ORIGINAL

No. 81225-0

IN THE SUPREME COURT
STATE OF WASHINGTON

In re the Personal Restraint of,
RICHARD DALE HARTMAN,
Petitioner,
v.
State of Washington,
Respondent.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 FEB 25 AM 7:46
Y RONALD R. CARPENTER
CLERK

PERSONAL RESTRAINT PETITION

PETITIONER'S OPENING BRIEF

Presented by:

Richard Dale Hartman, pro-se
DOC #299896, Unit H3, Cell 22
Stafford Creek Correction Center
191 Constantine Way
Aberdeen WA 98520

TABLE OF CONTENTS

1. STATUS OF PETITIONER.....1

2. ISSUE PRESENTED FOR REVIEW

THE PETITIONER WAS ERRONEOUSLY SENTENCED WITH AN OFFENDER SCORE OF 9.....4

(1). IS THE PETITIONER UNDER COGNIZABLE RESTRAINT?.....4

(2). IS THE WASHOUT PROVISION CONTRACTED BY THE PETITIONER IN HIS PRIOR CLASS C FELONY ADJUDICATIONS AN INDIVISIBLE NON-SEVERABLE FEATURE OF THOSE PLEA AGREEMENTS?.....9

(3). DOES THE SAVINGS CLAUSE PROTECT THE PETITIONER'S ENTITLEMENT TO WASHOUT OR DECAY OF HIS PRIOR CLASS C FELONIES AT HIS MOST RECENT SENTENCING?.....12

(4). DO ARTICLE 1, SECTION 10, OF THE UNITED STATES CONSTITUTION, AND ARTICLE 1, SECTION 23 OF WASHINGTON'S CONSTITUTION, REQUIRE THE CURRENT SENTENCING COURT TO HONOR THE WASHOUT / DECAY PROVISIONS IN FORCE WHEN THE PRIOR CLASS C FELONIES WERE BARGAINED FOR?.....15

(i). DOES THE USE OF OFFENSES CONTRACTED TO WASH OUT IN PRIOR PLEA BARGAINS, IN SUBSEQUENT SENTENCINGS, VIOLATE EX POST FACTO PROSCRIPTIONS?.....15

(ii). DID THE TRIAL COURT IMPAIR THE OBLIGATION OF CONTRACTS, WITHIN THE MEANING OF STATE AND FEDERAL CONSTITUTIONAL PROHIBITIONS, WHEN IT USED THE PRIOR CLASS C FELONIES WHICH WERE CONTRACTED TO 'WASH OUT', WHEN IT CALCULATED THE OFFENDER SCORE?.....22

3. OATH OF PETITIONER.....27

TABLE OF AUTHORITIES
Washington Cases Cited

State v. Hern, No. 18464-1-III (Div. 3, 2002): 3, 5, 6.

(i)

<u>Washington v. Roberts</u> , 117 Wn.2d 576; 817 P.2d 855 (1991).....	4
<u>In re Collins</u> , No. 55951-6-I (Div. 1, 2007).....	4
<u>State v. Cruz</u> , 139 Wn.2d 186; 985 P.2d 384 (1999).....	5
<u>State v. Smith</u> , No. 70683-2 (S.Ct. 2001).....	5
<u>State v. Hern</u> , No. 18464-1-III (Div. 3, 2002)....	5
<u>State v. Sullivan</u> , No. 30127-0-II (Div. 2, 2005).	6
<u>State v. Varga</u> , No. 74375-4 (S.Ct. 2004).....	7
<u>State v. Thorne</u> , 129 Wn.2d 736 (1996).....	8
<u>State v. Mulcare</u> , 189 Wash. 625 (1937).....	8
<u>Windust v. L&I</u> , 52 Wn.2d 33 (1958).....	8
<u>Waremart v. Progressive</u> , 139 Wn.2d 623 (1999)...	10
<u>State v. Turley</u> , 149 Wn.2d 395 (2003).....	10
<u>Saletic v. Stamnes</u> , 51 Wn.2d 696 (1958).....	11
<u>Wilson Ct. Ltd. v. Tony Maroni's</u> , 134 Wn.2d 692 (1998).....	11
<u>In re Hegney</u> , No. 34085-2-II (2007).....	12
<u>State v. Crediford</u> , 130 Wn.2d 747 (1996).....	13
<u>State v. Anderson</u> , 81 Wn.2d 234 (1972).....	13
<u>State v. Conlee</u> , No. 33397-0-II (2006).....	13
<u>State v. Hendricks</u> , No. 25159-1-II (2000).....	16
<u>In re Burns</u> , 131 Wn.2d 104 (1997).....	16
<u>State v. Smith</u> , No. 56604-1-I (2007).....	17
<u>State v. T.K.</u> , 139 Wn.2d 320 (1999).....	18
<u>State v. Hennings</u> , 129 Wn.2d 512 (1996).....	19
<u>State v. Miller</u> , No. 29288-2-II (2004).....	19

<u>State v. McRae</u> , 96 Wn.App. 298 (Div. 1, 1999)...	20
<u>Johnson v. Morris</u> , 87 Wn.2d 922 (1976).....	21
<u>Anderson v. Seattle</u> , 78 Wn.2d 201 (1970).....	21
<u>City of Bellevue v. Lorang</u> , 140 Wn.2d 19 (2000).	23
<u>Amalgamated Transit v. State</u> , No. 69433-8 (2000)	23
<u>State v. Sledge</u> , 133 Wn.2d 828 (1997).....	23
<u>Waremart v. Progressive</u> , 139 Wn.2d 623 (1999)...	24
<u>Southcenter v. N.D.P.C.</u> , 113 Wn.2d 413 (1989)...	25

Cases From Other Venues

<u>Kristian v. Comcast</u> , No. 04-2619 (1st Cir. 2006)	14
<u>Weaver v. Graham</u> , 450 US 24 (1981).....	16
<u>Landgraf v. USI</u> , 511 US 244 (1994).....	16
<u>Garcia V. United States</u> , 469 US 70 (1984).....	21

Revised Code of Washington

RCW 9.94A.360(2).....	3
RCW 9.94A.360(6)(c).....	3
RCW 9.94A.525 (15).....	4
RCW 10.01.040.....	12
RCW 9.94A.535.....	13
RCW 71.09.090.....	17
RCW 9A.98.020.....	18
RCW 9.98.010.....	18
RCW 9.92.020.....	19
RCW 9.94A.030.....	22
RCW 9.94A.525.....	22

Constitutional Provisions

U.S. Const. art. 1, sec. 10.....15ff
Wash. Const. art. 1, sec. 23.....15ff
U.S. Const. Amend. V and XIV (by inference)...15ff

Other Authority

E. Freund, Legislative Regulation 178 (1932)....21
Blacks Law Dictionary, 8th ed.....24
John Salmond, Jurisprudence 460 (1947).....25

A Note to the Court

This case may become moot due to the recent realization of prima facie violations of public trial mandates. The public trial issue is being raised in Mason County, concomitant to the filing of this action.

Generally, a court should decline to reach the merits of a moot case where it can no longer provide effective relief. See, e.g., Dunner v. McLaughlin, 100 Wn.2d 832, 838; 676 P.2d 444 (1984). But this case raises matters of continuing and significant public interest, as well as providing resolution to questions about the stare decisis of jurisprudence regarding Washington criminal sentencing.

Accordingly, I ask this court to rule on these issues and to publish its ruling to provide future guidance to lower courts. See, e.g., State v. Blilie, 132 Wn.2d 484, 488; 939 P.2d 691 (1997).

//
//
//
//
//
//
//
//
//

1. STATUS OF PETITIONER

I, RICHARD DALE HARTMAN, hereby swear under penalty of perjury under the laws of the State of Washington that the following is true and that I am competent to testify to these facts.

I ask this court's consideration of the deficient legal access scheme at the Stafford Creek Correction Center law library which relies primarily on the VersusLaw computer system, and lacks up-to-date Washington Reports and other resources necessary to obtain proper citations of the cases relied upon.

I ask this court to maintain jurisdiction over this issue as affecting the sentences of hundreds of prisoners whose offender scores have been miscalculated if this argument is substantially correct. This case revolves around the contractual nature of pre-SRA plea agreements, and the Washington Legislature's later actions undermining those contracts to prevent past offenses from 'washing out.'

I am currently incarcerated on a charge of Second Degree Burglary pursuant to a jury verdict in Mason County Superior Court, No. 06-1-00-246-6, sentenced by the honorable Tony Sheldon on December 7, 2006. See: Exhibit 1, Judgment and Sentence.

During the colloquy at sentencing, disagreement arose over the offender score appropriate for sentencing, and the disagreement was never resolved. See: Exhibit 2, Certified Transcript of the Sentencing Colloquy, RP 246 through 262.

All my prior convictions were the products of plea agreements. These prior convictions are listed in the Judgment and Sentence (J&S) for my current conviction. Ex. 1, p.11. *and p. 2*

I was never given notice in any of the prior plea negotiations that subsequent legislation could obstruct the operation (or, "impair the obligation") of those contracts. The obstructive impairment at issue is the prevention of past crimes from "washing out", or "decaying", as it was known then.

I gave up valuable rights in the plea agreements in exchange for the known consequences of the law at the time of the pleas. Had I known that the Washington Legislature could pass laws which would prevent these convictions from 'washing out' for future scoring purposes, I would not have entered into the contracts.

I was sentenced with an offender score of 9. As will be argued, I should have an offender score of 7.

PROPERLY CALCULATING THE OFFENDER SCORE

Offenses 1, 2, 6, 7, 8, 9 and 10 are each class C felonies properly washed out - I will contend - because I had no felony convictions between the date of my release from prison on July 19, 1991 and April 16, 1998, when I was sentenced to the four crimes listed as 11 through 14 at Ex. 1, p.11, in Mason County.

In 1995, the language of RCW 9.94A.360(2) was amended to prevent washouts for intervening crimes of any sort - not just felonies - though this court later ruled this amendment applied prospectively only. See: State v. Hern, No. 18464-1-III (Div. 3, 2002) at VersusLaw ¶30 and 41. Accordingly, the April 16, 1998 sentencing was in error, though water under the bridge at this point.

THE CALCULATION

The first point in the properly calculated offender score is crime #3 in Ex. 1's list. Because all applicable sentencing schemes required ten felony-free years before any kind of vesting, this point remains calculable.

The second and third points are obtained from crimes listed as #4 and #5 in Ex. 1's list. This requires some explanation: Crimes 4 and 5 are class B felonies viewed as concurrent for the purposes of RCW 9.94A.360(6)(c). See: Washington v. Roberts,

117 Wn.2d 576; 817 P.2d 855 (1991). This court's ruling in Roberts controls here: (1) the latter sentence was imposed with specific reference to the first; (2) the offenses were committed prior to July 1, 1986; and (3) the concurrent relationship of the sentences was "judicially imposed" (see Roberts at VersusLaw ¶s 59-61). Even though these two crimes merge for scoring purposes pursuant to Roberts, they double for the purposes of RCW 9.94A.525 (15). Here the trial court erroneously added four points to my offender score, instead of two.

The fourth, fifth, sixth and seventh points are obtained from reviewing Ex.1's p.11 list of crimes numbered #11, #12, #13 and #14.

2. ISSUE PRESENTED FOR REVIEW

A. THE PETITIONER WAS ERRONEOUSLY SENTENCED WITH AN OFFENDER SCORE OF 9.

(1). IS THE PETITIONER UNDER COGNIZABLE RESTRAINT?

Due to constitutional error, I was sentenced with an offender score of 9. The standard range sentence I received would be an exceptional sentence at the proper calculation of 7 points.

A sentence based on a miscalculated offender score is a fundamental defect that inherently results in a complete miscarriage of justice. In re Collins, No. 55951-6-I (Div. 1, 2007), at Versus-

Law ¶20, citing Goodwin, 146 Wn.2d at 867; and Cook 114 Wn.2d at 812 (1990).

Therefore, if my unique contentions have merit at law, "[t]he conditions or manner of [my] restraint are in violation of the Constitution of the United States or the laws of the State of Washington." Id. RAP 16.4(c)(6).

THE GENESIS OF THE ISSUE IN WASHINGTON

In State v. Cruz, 139 Wn.2d 186; 985 P.2d 384 (1999), at issue was whether the 1990 SRA amendments to the juvenile washout provision for sex offenders applied retroactively as a matter of law, without reaching the question as to whether revival of prior offenses for scoring purposes would run afoul of the constitutional prohibition against ex post facto legislation. Cruz at VersusLaw ¶24.

In State v. Smith, No. 70683-2 (S.Ct. 2001), four consolidated cases addressed whether the 1997 amendment to the juvenile washout provisions of the SRA applied retroactively so as to revive the appellants' previously 'washed out' juvenile felony adjudications for purposes of calculating offender scores. Finding the 1997 amendment not retroactive, all four cases were remanded for resentencing. Smith at VersusLaw ¶12.

In State v. Hern, No. 18464-1-III (Div. 3,

2002), Division 3 noted that prior class C felony convictions other than a sex offense would not count toward an offender's score for the purpose of sentence determination if, since the day of release from confinement, the defendant spent five consecutive years in the community without being convicted of any felonies. Former RCW 9.94A.360(2), amended by Laws of 1995, ch. 316, sec.1.

In 1995, the language of the SRA was amended, requiring the defendant to spend five consecutive years in the community without being convicted of any crimes, not just felonies. RCW 9.94A.360(2), (1995). *Hern* at VersusLaw ¶30.

The *Hern* court ruled the 1995 amendment did not apply retroactively. It also ruled, despite the 2000 amendment to the SRA explicitly intending retroactivity, that pursuant to *Cruz* and *Smith*, supra, they could not apply even the 2000 amendment retroactively. *Hern* at VersusLaw ¶41.

State v. Sullivan, No. 30127-0-II (Div. 2, 2005), clarified the issue, citing *Hern*, 111 Wn. App. at 656, stating "the 1995 amendments contain no language expressing a legislative intent to apply the amendments retroactively. *Sullivan* at VersusLaw ¶29.

Then came *Varga*. In State v. Varga, No. 74375-4

(S.Ct. 2004), the Supreme Court addressed the Laws of 2002, ch. 107, holding "that the 2002 SRA amendments properly and unambiguously require that sentencing courts include defendants' previously 'washed out' prior convictions when calculating defendants' offender scores at sentencing for crimes committed on or after the amendments' effective date." Varga at VersusLaw ¶26.

Reasoning that "those prior convictions need not be 'revived' [for scoring purposes] because they were never vacated" this supports my contention that subsequent legislation cannot impair the obligation of those contracts (by withdrawing the wash-out provisions) without running afoul of the State and Federal constitutions.

My contention is supported by four interrelated reasons: (1) the contractual nature of the prior plea agreements; (2) the Savings Clause's effect upon these contracts; (3) Wash. Const. art. 1, sec. 23 / U.S. Const. art. 1, sec. 10's prohibitions on ex post facto legislation and laws impairing the obligation of contracts; and (4) the impropriety of a subsequent legislature's speaking for the intent of a prior seated legislature, as well as the separation of powers concerns that raises by this intrusion upon the role of the judiciary.

The legislature baldly asserts it "has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score." Varga at VersusLaw ¶31. But this is an entitlement specifically created by the plea bargain contract, remains in effect because those contracts "were never vacated" (Varga at VersusLaw ¶30), and is entitled to a form of contractual vesting upon the action of the defendant remaining felony free five years from release from supervision. I fulfilled my obligation to those prior plea agreement contracts.

I claim the 2002 amendments to the SRA improperly and unconstitutionally contravene the State's contractual obligation to my prior class C felony plea agreements, for the above reasons.

"Fixing of penalties or punishments for criminal offenses is a legislative function, and the power of the legislature in that respect is plenary and subject only to constitutional provisions." State v. Thorne, 129 Wn.2d 736, 767; 921 P.2d 514 (1996), quoting State v. Mulcare, 189 Wash. 625, 628; 66 P.2d 360 (1937). What I propose does not require a contrary finding. Windust v. Labor & - Ind., 52 Wn.2d 33; 323 P.2d 241 (1958) ("Of course, it is the duty of the court to invalidate [or mod-

ify] a statute if it contravenes the constitution. Such a holding has as its purpose the implementation of the supremacy of the constitution"). Windust, 52 Wn.2d at 37.

Impairing the obligation of contracts, and violating the separation of powers doctrine to conduct ex post facto legislation - improperly defining the intent of a previous legislature - are each, in light of the Savings Clause, and the contractual nature of plea agreements, serious abridgements of the constitutions by our legislature.

Therefore, the 2002 amendment to the SRA is unconstitutional, and the holding in Varga - especially as related to plea agreement contracts - must be reversed.

(2). IS THE WASHOUT PROVISION CONTRACTED BY THE PETITIONER IN HIS PRIOR CLASS C FELONY ADJUDICATIONS AN INDIVISIBLE NON-SEVERABLE FEATURE OF THOSE PLEA AGREEMENTS?

It seems well established that the answer here is no, and that since this aspect of the plea bargain was not specifically mentioned in each of the prior contract instruments, it cannot be enforced.

Inasmuch as prior contrary findings to my arguments might be termed 'established rules,' I address the doctrine of stare decisis which requires

a clear showing that an established rule is incorrect and harmful before it is abandoned. Waremart Inc. v. Progressive Campaigns Inc., 139 Wn.2d 623, at VersusLaw ¶45; 989 P.2d 525 (1999).

Because this argument is unique, it may seem at times to run far afield of the issue. Please bear with me.

In State v. Turley, 149 Wn.2d 395; 69 P.3d 388 (2003), the State affirmatively told Daniel Turley there was no community placement in a plea negotiation involving multiple charges. Turley at VersusLaw ¶35 et passim.

The State attempted to restrict Turley to withdrawal of plea to the sole charge requiring community placement. The Supreme court held the manifold aspect "plea agreement will be treated as indivisible, absent objective evidence of a contrary intent in the agreement." Thus, the plea was a "package deal" whose elements could not be divided.

Though broadly distinguishable from the case at hand, Turley's value here lies in its restatement of plea agreement as "a contract between a defendant and the State." VersusLaw ¶37. Closer to the point here, that under normal contract principles, whether a contract is considered separable or indivisible is dependent upon the intent of the par-

ties. Saletic v. Starnes, 51 Wn.2d 696, 699; 321 P.2d 547 (1958). However, when determining intent, we do not concern ourselves with unexpressed subjective intent, only objective manifestations of intent. See, e.g., Wilson Ct. Ltd. P'ship v. Tony Maroni's, 134 Wn.2d 692, 699; 952 P.2d 590 (1998). I would contrast the objective vs. subjective intent issue with the reasonable expectation of a contract at law. Contrary to current treatment of this issue, I submit a criminal defendant entering into a plea agreement contract with the State is entitled to an expectation that the contract he or she is entering into will forever be ~~interpreted in~~ light of the law existing on the date the plea bargain is reached. Remember that enforcement of a contract is already twice removed from the decision to enter into that contract by the defendant. The manifold considerations the accused must make, giving up valuable rights in exchange for an expectation of foreseeability, certainly include whether or not an offense will 'wash out', or 'decay', upon certain successful, non-criminal participation in the body politic of the community.

While the Turley court interpreted these principles in the context of multiple charges within a single plea, the same principles apply to the

manifold motivations for a defendant to even consider entering into a plea agreement - that those motivations are indivisible at law in light of the savings clause.

(3). DOES THE SAVINGS CLAUSE PROTECT THE PETITIONER'S ENTITLEMENT TO WASHOUT OR DECAY OF HIS PRIOR CLASS C FELONIES AT HIS MOST RECENT SENTENCING?

RCW 10.01.040, also known as the Savings Clause, in relevant part provides that: Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act. In re Pers. Rest. of Hegney, No. 34085-2-II (Div. 2, 2007); RCW 10.01.040.

The caveat in the final phrase of the savings clause is the real issue here. I claim that any contrary intention by the legislature, no matter how expressly declared, cannot apply to the prior plea bargains because of U.S. Const. art. 1, sec. 10; and Wash. Const. art. 1, sec. 23. Additionally, in the legislature's recent attempts to make end runs around prior judicial interpretation, and improperly speak for the intent of prior seated legislatures, it has run afoul of ex post facto and

separation of powers proscriptions. My argument in this section is that the rest of the savings clause still applies.

An act of the legislature is not unconstitutional in its entirety because one or more of its provisions is unconstitutional unless the invalid provisions are unseverable and it cannot reasonably be believed that the legislature would have passed the one without the other, or unless the elimination of the invalid part would render the remainder of the act incapable of accomplishing the legislative purpose. State v. Crediford, 130 Wn.2d 747; 927 P.2d 1129 (1996) quoting State v. Anderson, 81 Wash. 2d 234, 236; 501 P.2d 184 (1972). The irony here, in relation to the previous argument, is not lost on me. And some reflection on the purposes of savings clauses, generally, is in order.

The savings clause saves the substantive rights of a repealed statute. State v. Conlee, No. 33397-0-II (Div. 2, 2006). In Conlee, Division Two rejected the defendant's challenge to the application of RCW 9.94A.535 (2005) to the crimes he committed in 2004. Conlee argued the savings clause, RCW 10.01.040 prohibited the amended guidelines' retroactive application "because it altered his sentencing expectations". Conlee at VersusLaw ¶136.

Conlee is distinguishable for his attempt to apply the savings clause to the uncontracted expectation in a previous - more lenient - version of the SRA. But similarly, he argued "the amendments alter the procedure in which the trial court decides if aggravating [sentencing] factors exist". Conlee at VersusLaw ¶39. This is similar to my argument against the use of my 'washed out' criminal history to raise my offender score, and thus increase the length of my sentence. My expectation is greater than Conlee's because I bargained for a predictable status quo regarding use of my prior offenses against me later.

"In essence, a savings clause serves as an expression of the intent of the parties [in a contract] that limits the remedies an arbitrator or court may use in situations of conflict between contract terms and applicable law." Kristian v. Comcast, No. 04-2619 (1st Cir. 2006), fn.17. "[S]avings clauses [] provide for the severance of invalid provisions." Kristian at VersusLaw ¶12. The invalid provision at issue here is the application of subsequent legislation to defeat my fulfilled expectation (fulfilled by my spending five felony-free years in the community) that my prior class C felonies would not count against me later.

Here, the invalid provision of the 2002 amendment to the SRA is its application to my recent sentencing - even in light of Varga - because the constitutionally valid portion of the Savings Clause, as properly applied to my prior pleas, commands that they yield an offender score of zero, in light of the constitutional proscriptions against the impairment of the obligation of contracts.

(4). DO ARTICLE 1, SECTION 10, OF THE UNITED STATES CONSTITUTION, AND ARTICLE 1, SECTION 23 OF WASHINGTON'S CONSTITUTION, REQUIRE THE CURRENT SENTENCING COURT TO HONOR THE WASHOUT / DECAY PROVISIONS IN FORCE WHEN THE PRIOR CLASS C FELONY PLEAS WERE BARGAINED FOR?

"No State shall... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." U.S. Const. art. 1, sec. 10, cl. 1; accord: Wash. Const. art. 1, sec. 23.

(i). DOES THE USE OF OFFENSES CONTRACTED TO WASH OUT IN PRIOR PLEA BARGAINS, IN SUBSEQUENT SENTENCINGS, VIOLATE EX POST FACTO PROSCRIPTIONS?

I ask whether not only the trial court, but the legislature also, violated ex post facto proscriptions by (1) using properly washed out offenses to calculate my current offender score, and (2) by enacting laws which improperly spoke for a prior seated legislature's intent, thus violating the separation of powers doctrine to conduct ex post facto

legislation. I claim that since Washington's highest court already interpreted the intent of the prior seated legislature which enacted the prior sentencing guidelines, those interpretations must stand as uniquely within the province of the judicial branch of government.

The ex post facto clause protects against potential harm from retroactive application of newly enacted laws. State v. Hendricks, No. 25159-1-II (Div. 2, 2000). The ex post facto clause not only ensures that individuals have fair warning about the effect of newly enacted criminal statutes, but it also "restricts governmental power by restraining arbitrary and potentially vindictive legislation." Hendricks at VersusLaw ¶57, citing Weaver v. Graham, 450 US 24, 28-29; 101 S.Ct. 960; 67 L. Ed.2d 17 (1981); Landgraf v. USI Film Prod., 511 US 244 at 266; 114 S.Ct. 1483; 128 L.Ed.2d 229 (1994).

This court summarized Landgraf as holding that "a statute has a genuinely retroactive effect if it impairs the rights a party possessed when he acted, increases his liability for past conduct, or imposes new duties with respect to completed transactions." In re Estate of Burns, 131 Wn.2d 104; 928 P.2d 1094 (1997).

I fulfilled my obligations to the prior class C felony plea bargains when I did my time in prison and was released from supervision, and was subsequently felony-free for over five years. This was a type of vesting in a substantive right created by the contracts of those prior plea bargains. This was a completed transaction of the type this court saw in its interpretation of Landgraf, supra. It can be viewed as similar to the vesting in T.K., infra, and contrasted to State v. Smith, No. 56604-1-I (Div. 1, 2007).

In the State v. Smith just cited, sexually violent predator Kim Smith argued the pre-2005 version of RCW 71.09.090 permitted him to have a release trial solely because he had grown older. The court noted that growing older did not require any action on Smith's part. VersusLaw ¶49. It then noted that a vested right, entitled to protection from legislation, "must be something more than a mere expectation upon an anticipated continuance of the existing law." Burns, supra, 131 Wn.2d at 116, n.2.

My completed performance of the statutory conditions for obtaining a washout - more than five felony-free years in the community - was certainly more than 'mere expectation,' especially in light

of the Saving Clause, and the constitutional prescriptions against impairing the obligation of contracts. More similar to my case is T.K.

In State v. T.K., 139 Wn.2d 320; 987 P.2d 63 (1999), this court reviewed a former statute that entitled a juvenile offender to seek expungement of his record two years after his discharge from State agency supervision. T.K. at 325. This court held that the lower courts must expunge the juvenile records upon petition, holding specifically that each appellants' right to seek expungement under the former law had matured before the law had changed when they had satisfied the statutory conditions of expungement. This is identical in theory to the proposition that a vested substantive right of sorts had matured, for me, when I completed five felony-free years in the community. Allow me a brief digression back into saving clause theory.

RCW 9A.98.020, in this case, provides some needed perspective. In the 'Laws Repealed' section of Washington Criminal Code, at Chapter 9A.98, is a savings clause referenced at .020 which reads:

"The laws repealed by RCW 9A.98.010 are repealed except with respect to rights and duties which matured, penalties which were incurred, and

proceeding which were begun before July 1, 1976." 1975 1st Ex. S. c260 § 9A.92.020.

The important part above is the duties which matured reference. The duty of the State to wash out my prior class C felony convictions, for the purposes of calculating future offender scores, is one which matured - according to the interpretation of T.K. - nearly two years before my subsequent sentencing on April 16, 1998. See: Ex. 1, p. 11. In T.K., this court reasoned that the appellants had a vested substantive right to seek expungement because they had met the statutory requirements. 139 Wn.2d at 333-34.

In State v. Hendricks, supra, Division Two held that "[a]lthough one test of the constitutionality of retroactive legislation is whether the retroactive law defeats the reasonable expectations of the parties, a vested right entitled to due process protections must be more than a mere expectation based upon an anticipated continuance of the existing law." State v. Hennings, 129 Wn.2d 512, 524; 919 P.2d 580 (1996).

A jury verdict might give rise to what could be termed just such a "mere expectation" See, e.g., State v. Miller, No. 29288-2-II (Div. 2, 2004) at VersusLaw ¶63.

In State v. McRae, 96 Wn.App. 298; 979 P.2d 911 (Div. 1, 1999), McRae argued the use of four prior convictions to calculate his offender score in his current offense thus violated his prior plea agreements with the State. Division One ruled that absent a specific promise in the agreements to exclude the convictions, McRae could not establish that the use of his prior convictions breached his prior plea agreements. McRae at VersusLaw ¶35. However, McRae did not argue, as do I, that he had a vested substantive right to clear his record, as in T.K. McRae at fn.7.

I have just that sort of vested substantive right to washout of my prior class C felony convictions because I acted to overcome my prior pattern of criminal behavior for a term exceeding the statutory requirement for those washouts. Growing older did not require any action on SVP Kim Smith's part. Remaining felony-free for nearly seven years on my part - in light of the then-existing statute - should be considered as an equivalent type of vesting.

The second half of this argument is that our legislature transgressed ex post facto prohibitions when it dubiously spoke for the intent of past legislative sessions denying any intent to create

vested rights in washouts. The membership of the later legislature is not the same as the membership of the earlier one, and even assuming some overlap, a random group of members from the earlier body cannot dispositively declare the earlier body's intent. Garcia v. United States, 469 US 70, 76; 105 S.Ct. 479; 83 L.Ed.2d 472 (1984).

Legislatures are not empowered to retroactively clarify existing statutes, when that clarification contravenes construction placed upon that statute by this court. Such a proposition is disturbing in that it would effectively be giving license to the legislature to overrule this court, raising separation of powers problems. Johnson v. Morris, 87 Wn.2d 922, 926; 557 P.2d 1299 (1976).

In seeking the intent of the legislature, the judicial branch of government must ultimately be guided by the language used by those members of the legislature who passed the measure and not by an expression by a session of different composition which addressed the same subject nine years later. Anderson v. Seattle, 78 Wn.2d 201, 205; 471 P.2d 87 (1970) (Finley, J., concurring, and citing E. Freund, Legislative Regulation 178 (1932)).

Washington Session Laws, c107's interpretation of past legislative intent, recorded at RCW

9.94A.030, is thus void as a matter of law. And consequently, RCW 9.94A.525's offender score scheme - inasmuch as it contravenes this court's prior construction in Cruz and similar cases - is void as a matter of law.

If the ex post facto clause 'restricts governmental power by restraining arbitrary and potentially vindictive legislation', then any attempts by the legislature to quash 'rights and duties which matured' before the change in the law, 'imposing new duties' with respect to my 'completed' class C felony plea agreement 'transactions', thus 'increasing my liability for past conduct', does indeed violate ex post facto prohibition.

(ii). DID THE TRIAL COURT IMPAIR THE OBLIGATION OF CONTRACTS, WITHIN THE MEANING OF STATE AND FEDERAL CONSTITUTIONAL PROHIBITIONS, WHEN IT USED THE PRIOR CLASS C FELONIES WHICH WERE CONTRACTED TO 'WASH OUT', WHEN IT CALCULATED THE OFFENDER SCORE?

I can find no reported cases that construe this provision of U.S. Const. art. 1, sec. 10; or Wash. Const. art. 1, sec. 23. I believe this is what's called an 'issue of first impression' for this court. Unfortunately, I am also a pro-se prisoner litigant with very limited skill and legal access. Please bear with me.

Applying the familiar (to the court) maxim that

each word in a constitutional provision must be accorded its own separate meaning, the court should not embrace a construction causing redundancy or rendering words superfluous. City of Bellevue v. Lorang, 140 Wn.2d 19, 25; 992 P.2d 496 (2000).

I ask this court not to subvert the plain language of U.S. Const. art. 1, sec. 10, or Wash. Const. art. 1, sec. 23, by essentially rewriting this constitutional provision not to apply to the contractual nature of plea bargains. See, e.g., Amalgamated Transit Union Local 587 v. State, No. 69433-8 (2000), at VersusLaw ¶273, Sanders, J., dissenting.

A plea agreement is a contract and it is to be analyzed in accord with contract principles. State v. Sledge, 133 Wn.2d 828, 838-39; 947 P.2d 1199 (1997). As quoted above at p.15, no State shall pass any law impairing the obligation of contracts.

Our legislature passed a law impairing the obligation of my plea bargain contracts in Washington Session Laws, c107, now codified in RCW 9.94A.030. That act by the legislature violated my rights under both State and federal constitutions, when the trial court counted my class C felony convictions which washed out after five felony-free years in the community, in my offender score.

Inasmuch as prior contrary findings might be termed 'established rules,' I address the doctrine of stare decisis which requires a clear showing that an established rule is incorrect and harmful before it is abandoned. Waremart v. Progressive Campaigns, 139 Wn.2d 623, at VersusLaw ¶45; 989 P.2d 525 (1999).

The clearest showing I can think of is the definition of terms related to the issue (but then, I'm not a lawyer):

Impair vb.

To diminish the value of (property or a property right). This term is commonly used in reference to diminishing the value of a contractual obligation[.] Blacks Law Dictionary, 8th Ed. Bryan A. Garner, Ed. Thomson / West, p.767.

Impairment n.

The state of being damaged, weakened, or diminished[.] Blacks 8th, supra, p.767.

Obligation n.

A legal or moral duty to do or not do something. [] It may refer to anything a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, [etc.]. Blacks 8th, supra, p. 1104.

Blacks contains an additional helpful quote

here:

"Looked at from the point of view of the person entitled, an obligation is a right; looked at from the point of view of the person bound, it is a duty... An obligation, therefore, may be defined as a proprietary right in personam or a duty which corresponds to such a right." John Salmond, Jurisprudence 460, Glanville L. Williams Ed. 10th ed. 1947.

I know that I'm a simpleton here, and I know or can imagine the impact that altering the jurisprudence on this issue might have, but from what I can see, from these simple definitions, our legislature most definitely passed a law impairing the obligation of my plea agreement contracts, and then the trial court violated the State's obligation, in 'washing out' my prior offenses for calculating future offender scores, when it used those points to sentence me for my current charge.

This court is not at liberty to disregard the fundamental nature of our constitution in order to advance theories that may be perceived by some to constitute desirable social policy. Waremart Inc., supra, at VersusLaw ¶88, Sanders, J., dissenting and quoting Southcenter Joint Venture v. National Dem. Pol. Comm., 113 Wn.2d 413, 429-30; 780 P.2d

1282 (1989).

The statutory obligation to wash out my prior class C felony offenses for scoring purposes by the recent sentencing court was a corollary to the contract of the plea agreement. Any other finding runs counter to the plain language of the constitutional requirements not to impair the obligation of those contracts.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

3. OATH OF PETITIONER

After first being duly sworn on oath, I depose and say: I am the petitioner in this cause and I submit this entire petition as an affidavit, verified as set forth on page 1.

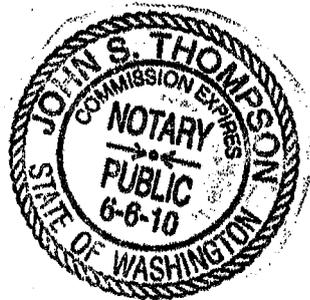
I believe the contents of this brief to be true and correct, absent some typographical errors, and some citation deficiencies caused by poor equipment, and deficient legal access, respectively. I also hereby attest to the veracity of the exhibits in the contexts they are presented, and I believe I am entitled to the relief I seek at law.

SO SWORN this 21 day of Feb,
2008.

Richard Hartman
RICHARD DALE HARTMAN

John Thompson
Notary Public in and for the State
of Washington, at Grays Harbor County.
My Commission expires: 6/6/10.

//
//
//
//
//
//
//
//
//



PROOF OF SERVICE

I, RICHARD DALE HARTMAN, hereby swear under penalty of perjury under the laws of the State of Washington that I mailed true and complete copies of the preceding PERSONAL RESTRAINT PETITION to

John Scott Blonien -
Senior Assistant Attorney General
Criminal Justice Division
P.O. Box 40116
Olympia WA 98504-0116

...on this _____ of _____,
200_____, in Grays Harbor County, Washington.

RICHARD DALE HARTMAN
DOC# 299896, Unit H3, Cell 22
Stafford Creek Correction Center
191 Constantine Way
Aberdeen WA 98520

//

//

//

//

//

//

//

//

//

//

//

//

//

JUDGMENT AND SENTENCE
MASON COUNTY SUPERIOR COURT
No. 06-1-00-246-6

RECEIVED & FILED

DEC - 7 2006

PAT SWARTOS, Clerk of the Superior Court of Mason Co. Wash.

(13)

Superior Court of Washington in the County of Mason

State of Washington, Plaintiff,

vs.

RICHARD D. HARTMAN, Defendant.

SID: WA11789595 If no SID, use DOB: 012262

No. 06-1-00246-6

06-9-1054-9

Felony Judgment and Sentence (FJS)

- [X] Prison [] RCW 9.94A.712 Prison Confinement [] Jail One Year or Less [] First-Time Offender [] Special Sexual Offender Sentencing Alternative [] Special Drug Offender Sentencing Alternative [] Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8

I. Hearing

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

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 NOVEMBER 22, 2006 by [] plea [X] jury-verdict [] bench trial of: [Date]

Table with 4 columns: Count, Crime, RCW, Date of Crime. Row 1: I, BURGLARY IN THE SECOND DEGREE, 9A.52.030, 062406.

(If the crime is a drug offense, include the type of drug in the second column.) as charged in the Original Information.

- [] Additional current offenses are attached in Appendix 2.1. [] The court finds that the defendant is subject to sentencing under RCW 9.94A.712. [] A special verdict/finding that the offense was predatory was returned on Count(s) _____. RCW 9.94A.____. [] A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) _____ RCW 9.94A.____. [] A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) _____ RCW 9.94A.____, 9A.44.010.

Sg 2007 10 11

Handwritten signature/initials

- A special verdict/finding of **sexual motivation** was returned on Count(s) _____, RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) involve(s) **domestic violence**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult, Juv.	Type of Crime
1	THEFT 2°	022784	KITSAP; WA 83-1-00437-1	101783	A	
2	MALICIOUS MISCHIEF 2°	092385	KITSAP; WA 85-1-00108-5	022085	A	
3	THEFT 1°	022086	SKAGIT; WA 85-1-00227-9	082185	A	
4	BURGLARY 2°	011189	KITSAP; WA 87-1-00550-8	111484	A	
5	BURGLARY 2°	011189	KITSAP; WA 87-1-00550-8	122084	A	

- Additional criminal history is attached in Appendix 2.2. *pre 1986* ←
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count Nos.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	9	III	51 – 68 MONTHS	N/A	51 – 68 MONTHS	TEN YRS.
				N/A		
				N/A		

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 Exceptional Sentence. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: _____

III. Judgment

3.1 The defendant is **Guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court **Dismisses** Count(s): . The defendant is found **Not Guilty** of Counts

IV. Sentence and Order

It is Ordered:

4.1 Defendant shall pay to the clerk of this court:

<u>JASS CODE</u>	\$ _____	Restitution to: _____	
<u>RTN/RJN</u>	\$ _____	Restitution to: _____	
	\$ _____	Restitution to: _____	(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)
<u>PCV</u>	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
	\$ _____	Domestic Violence assessment	RCW 10.99.080
<u>CRC</u>	\$ 499.59 <u>1336.50</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u>	FRC
		Witness costs \$ <u>139</u>	WFR
		Sheriff service fees \$ <u>747.50</u>	SFR/SFS/SFW/WRF
		Jury demand fee \$ <u>250.00</u>	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
<u>PUB</u>	\$ <u>150.00</u>	Fees for court appointed attorney	RCW 9.94A.760
<u>WFR</u>	\$ <u>330.00</u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
<u>FCM/MTH</u>	\$ _____	Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430	
<u>CDF/LDI/PCD</u> <u>NTF/SAD/SDI</u>	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
<u>CLF</u>	\$ _____	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ <u>100.00</u>	Felony DNA collection fee [] not imposed due to hardship	RCW 43.43.7541
<u>RTN/RJN</u>	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ <u>2,416.50</u>	Total	RCW 9.94A.760

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] **Restitution** Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

<u>Name</u> of other defendant	<u>Cause Number</u>	(Victim's name)	(Amount-\$)
--------------------------------	---------------------	-----------------	-------------

[X] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$25.00 \$50.00 _____ per month commencing 30 60 90 days from release from confinement commencing on _____.
RCW 9.94A.760

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____. (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with NORTH MASON SCHOOL DISTRICT ^{PROPERTIES} (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 Other: _____

Pursuant to the court's authority under Chapter 9.41 RCW, the firearm used /possessed by the defendant in the commission of the crime(s) herein is ordered forfeited to the Mason County Sheriff's Office (Case No. _____) Shelton Police Department (Case No. _____). Firearm: _____; Serial No. _____.

The court reserves jurisdiction to grant day-for-day credit toward confinement imposed herein for the defendant's successful completion of an in-patient chemical-dependancy / substance abuse treatment program.

4.5 Confinement Over One Year. The defendant is sentenced as follows:

- (a) **Confinement.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

68 months on Count I _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: 68 TAS
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____ minimum term _____ maximum term _____
Count _____ minimum term _____ maximum term _____

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 **Community Placement** is ordered as follows: Count _____ for _____ months;
Count _____ for _____ months; Count _____ for _____ months.

Community Custody for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

Community Custody is ordered as follows:

Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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: _____

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).

The defendant shall participate in the following crime-related treatment or counseling services: _____

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse
 mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions: SEE CONDITIONS FILED THIS DATE.

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 Work Ethic Camp. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 Off Limits Order. (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 Length of Supervision.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Restitution Hearing.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____.
- 5.5** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 Firearms.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. ~~RCW 9A.44.130, 10.01.200.~~

~~1. General Applicability and Requirements:~~ Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

~~2. Offenders Who Leave the State and Return:~~ If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

- 5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Other: _____

Done in Open Court and in the presence of the defendant this date: 12-7-2006

Toni A. Sheldon
 Judge/Print or Type Name: **TONI A. SHELDON**

<u>Reinhold P. Schuetz</u> Chief Criminal Deputy WSBA No. 9070 Type Name: Reinhold P. Schuetz	<u>E. Valley</u> Attorney for Defendant WSBA No. <u>21184</u> Print or Type Name: <u>E Valley</u>	<u>Richard Hartman</u> Defendant Print or Type Name: <u>Richard Hartman</u>
--	--	---

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: Richard Hartman

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of Defendant

SID No. WA11789595
 (If no SID take fingerprint card for State Patrol)

Date of Birth 012262

FBI No. 290595CA5

Local ID No. .

PCN No. 940932939

Other DOC # 299896

Alias name, DOB: GUNDERSON

Race:

- Asian/Pacific Islander Black/African-American Caucasian
 Native American Other:.

Ethnicity:

- Hispanic
 Non-Hispanic

Sex:

- Male
 Female

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, Sharon L. Jago Dated: 12-7-06

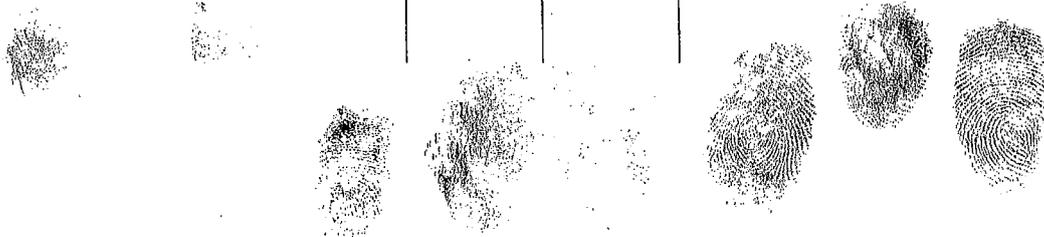
Defendant's Signature: Richard Hartman

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



**Superior Court of Washington
County of**

State of Washington, Plaintiff,

No. 06-1-00246-6

vs.

RICHARD D. HARTMAN,
Defendant.

**Additional Current Offenses, Criminal History
and Current Offense Sentencing Data
(Appendix 2.1, 2.2 and 2.3, Judgment and
Sentence) (APX)**

2.1 The additional current offenses of defendant are as follows:

Count	Crime	RCW	Date of Crime

(If the crime is a drug offense, include the type of drug in the second column.)

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult, Juv.	Type of Crime
6 THEFT 2°	011189	KITSAP; WA 87-1-00550-8	1985	A	
7 THEFT 2°	011189	KITSAP; WA 87-1-00550-8	1985	A	
8 THEFT 2°	011189	KITSAP; WA 87-1-00550-8	1985	A	
9 ASSAULT 3°	011789	PIERCE; WA 88-1-00475-9	031288	A	
10 ATTEMPTING TO ELUDE	011789	PIERCE; WA 88-1-00475-9	012688	A	
11 PSP 1°	041698	MASON; WA 97-1-00055-6	022697	A	
12 ATTEMPTING TO ELUDE	041698	MASON; WA 97-1-00198-6	070397	A	
13 PSP 2°	041698	MASON; WA 97-1-00359-8	100197	A	
14 THEFT 2°	041698	MASON; WA 98-1-00036-8	021398	A	

2.3 The additional current offense sentencing data is as follows:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520 (JP) Juvenile Present, (SM) sexual motivation, RCW 9.94A.533(8).

[] See additional sheets for more current offenses, criminal history and current offense sentencing data.

DEFENDANT shall receive credit for time served.
[XX] To be calculated by the staff of the Mason County Jail
[] In the amount of _____ Days.

[] YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

[XX] YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

[] The DEFENDANT is committed for up to (30) days evaluation at the Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery to the proper officers of the Secretary of the Department of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

Dated this 4th Day of December, 20 06.

By Direction of the HONORABLE

TONI A. SHELDON

Judge

PAT SWARTOS

Mason County Clerk

Shawn K. Jago
By Deputy Clerk

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

WARRANT OF COMMITMENT
(RCW 9.9A.120)

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

STATE OF WASHINGTON,)
Plaintiff,) NO. 06-1-00246-6
)
vs.) WARRANT OF COMMITMENT
) (WC)
RICHARD D. HARTMAN,)
Defendant.)

THE STATE OF WASHINGTON

TO: The Sheriff of Mason County.

The defendant: RICAHRD D. HARTMAN
has been convicted in the Superior Court of the State of
Washington of the crime of:
COUNT I: BURGLARY IN THE SECOND DEGREE

and the Court has ordered that the defendant be punished by
serving the determined sentence of:

- 68 (~~Days~~) (Months) JAIL/PRISON on Count No. I
- _____ (Days) (Months) JAIL/PRISON on Count No. _____
- _____ (Days) (Months) JAIL/PRISON on Count No. _____

PARTIAL CONFINEMENT. Defendant may serve the sentence,
if eligible and approved, in partial confinement in the following
programs, subject to the following conditions:

- work crew home detention
- work release day reporting

- _____ (Days) (Months) of partial confinement in the
County **JAIL**
- _____ (Days) (Months) of total confinement in the
county **JAIL**
- _____ Days confinement converted to _____ hours
community service

CERTIFIED TRANSCRIPT OF
SENTENCING COLLOQUY
IN MASON COUNTY SUPERIOR COURT
No. 06-1-00-246-6

1 MR. SCHUETZ: Yes.

2 THE COURT: Okay.

3 MR. SCHUETZ: Although there are some corrections that
4 counsel and I have discussed. This line here is superfluous.
5 It was simply cut and pasted from up here because I wanted to
6 use the prison line and update it. There is no prison line.
7 And this should be 11, 12, 13, 14 as shown.

8 The defendant has 14 prior felonies, and as this worksheet
9 reflects, after the first two, he went to prison for basically
10 three months, from September 24th to December 16th of '85, based
11 on the offender reporting system, FORS, Felony Offender
12 Reporting System that we get out of SCOMIS. It tracks movement
13 history once they are linked to DOC.

14 He then got out, and between '84 and '88 committed felonies
15 3 through 10 in Skagit, Kitsap and Pierce. And there are three
16 Class Bs in there, number 3, 4 and 5; the rest are Class Cs.

17 And then we move to the prison and work release time that
18 he did as a result of being sentenced out of Kitsap on January
19 11th of '89. On January 13th of '89, he began his prison term.
20 He was sentenced the next week at Pierce County on January 17th,
21 but SCOMIS indicates that that was recognized in there. And he
22 did an unbroken prison and/or work release stretch from January
23 13th of '89 to July 19th of '91.

24 There was then, as far as I could tell, only one
25 intervening potentially - potentially that might have kept

1 anything not a - anything lower than a Class B alive, we show a
2 PSP 3rd out of Shelton Municipal. It has a date of August 8th,
3 '95. It's really more a - much ado about nothing because, even
4 if you ignore that, he's still a 9, in that the next four
5 felonies, 11, 12, 13 and 14 out of this county, committed in '97
6 and '98, and all sentenced on April 16th, '98, resulted in his
7 being in prison from April 17th, '98, to September 19th of '02.

8 He has not had a 5-year stretch, obviously, since that
9 release from prison, since we are now in '06, and that wouldn't
10 have happened until next year sometime. And so, as a result,
11 the three Class Bs in the second group, No. 3, 4 and 5, remain
12 alive because he has never done a 10-year stretch, and the four
13 felonies, both Class B and Class C, from 11 through 14, remain
14 alive because he hasn't done 5 years, much less 10, since being
15 released from prison in '02.

16 Nos. 4 and 5 have the multipliers of two as burglaries as
17 to this cause, and so he's got 4 for those and then a 5 for the
18 other 5, for a total of 9. And even if the Shelton Muni PSP
19 kept anything else alive, he would be a 9 plus, and there are no
20 aggravating factors available to the Court in a single felony
21 conviction in this case.

22 MR. HARTMAN: Your Honor?

23 THE COURT: You just need to wait, Mr. Hartman. I'll
24 first listen to the State --

25 MR. HARTMAN: Okay.

1 THE COURT: -- and then I'll listen to Mr. Valley.

2 MR. SCHUETZ: So that's the criminal history. He is a
3 9, his range as such for a burglary in the second degree as
4 convicted here is 51 to 68. And I'm recommending top of the
5 range, 68 months, because of the extensive criminal history.
6 Mr. Hartman is a career criminal.

7 And costs have been set out by the Clerk. I've got a total
8 of \$747.50 in sheriff's service fees. I have witness costs of
9 \$139.00 that are not reflected on the printout but were given
10 verbally this afternoon and, of course, the jury demand fee and
11 the filing fee, for a total of 1,336.50. Separately lined out,
12 itemized, is the 330.00 for the defense expert that was
13 authorized and expended, and other standard assessments,
14 together with any attorney's fees.

15 I'm not aware of any restitution being requested, as
16 established at trial. The defendant may have gotten some
17 diesel, but it couldn't be proven, and we'll leave it at that.
18 That's the State's position.

19 THE COURT: Mr. Valley.

20 MR. VALLEY: Thank you, Your Honor. Mr. Hartman has
21 gotten me about as close as he could to actually getting under
22 my skin, Your Honor.

23 MR. HARTMAN: We, we can --

24 THE COURT: And, Mr. Hartman, it's not your turn right
25 now.

1 anything not a - anything lower than a Class B alive, we show a
2 PSP 3rd out of Shelton Municipal. It has a date of August 8th,
3 '95. It's really more a - much ado about nothing because, even
4 if you ignore that, he's still a 9, in that the next four
5 felonies, 11, 12, 13 and 14 out of this county, committed in '97
6 and '98, and all sentenced on April 16th, '98, resulted in his
7 being in prison from April 17th, '98, to September 19th of '02.

8 He has not had a 5-year stretch, obviously, since that
9 release from prison, since we are now in '06, and that wouldn't
10 have happened until next year sometime. And so, as a result,
11 the three Class Bs in the second group, No. 3, 4 and 5, remain
12 alive because he has never done a 10-year stretch, and the four
13 felonies, both Class B and Class C, from 11 through 14, remain
14 alive because he hasn't done 5 years, much less 10, since being
15 released from prison in '02.

16 Nos. 4 and 5 have the multipliers of two as burglaries as
17 to this cause, and so he's got 4 for those and then a 5 for the
18 other 5, for a total of 9. And even if the Shelton Muni PSP
19 kept anything else alive, he would be a 9 plus, and there are no
20 aggravating factors available to the Court in a single felony
21 conviction in this case.

22 MR. HARTMAN: Your Honor?

23 THE COURT: You just need to wait, Mr. Hartman. I'll
24 first listen to the State --

25 MR. HARTMAN: Okay.

1 MR. SCHUETZ: Yes.

2 THE COURT: Okay.

3 MR. SCHUETZ: Although there are some corrections that
4 counsel and I have discussed. This line here is superfluous.
5 It was simply cut and pasted from up here because I wanted to
6 use the prison line and update it. There is no prison line.
7 And this should be 11, 12, 13, 14 as shown.

8 The defendant has 14 prior felonies, and as this worksheet
9 reflects, after the first two, he went to prison for basically
10 three months, from September 24th to December 16th of '85, based
11 on the offender reporting system, FORS, Felony Offender
12 Reporting System that we get out of SCOMIS. It tracks movement
13 history once they are linked to DOC.

14 He then got out, and between '84 and '88 committed felonies
15 3 through 10 in Skagit, Kitsap and Pierce. And there are three
16 Class Bs in there, number 3, 4 and 5; the rest are Class Cs.

17 And then we move to the prison and work release time that
18 he did as a result of being sentenced out of Kitsap on January
19 11th of '89. On January 13th of '89, he began his prison term.
20 He was sentenced the next week at Pierce County on January 17th,
21 but SCOMIS indicates that that was recognized in there. And he
22 did an unbroken prison and/or work release stretch from January
23 13th of '89 to July 19th of '91.

24 There was then, as far as I could tell, only one
25 intervening potentially - potentially that might have kept

1 THE COURT: -- and then I'll listen to Mr. Valley.

2 MR. SCHUETZ: So that's the criminal history. He is a
3 9, his range as such for a burglary in the second degree as
4 convicted here is 51 to 68. And I'm recommending top of the
5 range, 68 months, because of the extensive criminal history.
6 Mr. Hartman is a career criminal.

7 And costs have been set out by the Clerk. I've got a total
8 of \$747.50 in sheriff's service fees. I have witness costs of
9 \$139.00 that are not reflected on the printout but were given
10 verbally this afternoon and, of course, the jury demand fee and
11 the filing fee, for a total of 1,336.50. Separately lined out,
12 itemized, is the 330.00 for the defense expert that was
13 authorized and expended, and other standard assessments,
14 together with any attorney's fees.

15 I'm not aware of any restitution being requested, as
16 established at trial. The defendant may have gotten some
17 diesel, but it couldn't be proven, and we'll leave it at that.
18 That's the State's position.

19 THE COURT: Mr. Valley.

20 MR. VALLEY: Thank you, Your Honor. Mr. Hartman has
21 gotten me about as close as he could to actually getting under
22 my skin, Your Honor.

23 MR. HARTMAN: We, we can --

24 THE COURT: And, Mr. Hartman, it's not your turn right
25 now.

1 MR. HARTMAN: -- he can resign.

2 MR. VALLEY: He has threatened me, abused me verbally,
3 insulted me. I don't believe he wants me to continue to
4 represent him. I would ask that the Court allow me to withdraw.
5 We are here at sentencing. I'm well advised in the premises,
6 prepared to proceed. I'd rather not. I'm able to proceed. I
7 don't think that I should have to.

8 THE COURT: Alright, Mr. Hartman then.

9 MR. HARTMAN: Your Honor, I tried to fire Mr. Valley
10 during the trial. He seemed to be more than willing to lead me
11 on down the path to prison without even putting up a decent
12 fight for a jury trial. The only thing that I would ask that
13 Mr. Valley do at this time is file a notice of appeal. Other
14 than that, I would be more than happy if he would have resigned
15 a long time ago.

16 THE COURT: And what is the nature of the conflict
17 you're having with Mr. Valley not to be able to proceed as your
18 attorney today for sentencing?

19 MR. HARTMAN: My conflict stands the same as it was
20 before, Your Honor. I never finished paying him, and he said he
21 would not defend me - which he hasn't - due to the lack of
22 payment.

23 MR. VALLEY: And I disputed that at trial, Your Honor.
24 I did make the comment, because the fact is he's paid me less
25 than half of the agreed upon fee, but I represented him

1 diligently and zealously, and I think fairly well. The record -
2 I'll submit for the record, the jury was out for a period of
3 several hours. I recall they were out for about four hours. It
4 was not a slam dunk jury verdict.

5 MR. HARTMAN: Two hours. They got the case to the
6 jury --

7 THE COURT: And, Mr. Hartman, it's not your turn to
8 talk. I will call on you.

9 MR. HARTMAN: Thank you, Your Honor.

10 MR. VALLEY: The record reflects already that I
11 refused or I asked the Court's per - the Court's leave not to
12 present testimony that I believe was false. I understand Mr.
13 Hartman is disgruntled. I do feel that I have performed to the
14 best of my ability in this case, and I've done my job.

15 Frankly, I really don't think I've ever been personally
16 abused by a criminal defendant. Maybe that comes with the
17 territory.

18 I'm expressing his wish that I not continue to represent
19 him. I'm not just begging that the Court let me out of this
20 chair this morning. I'm happy to proceed. I would rather not.
21 As Bartleby the scrivener said, I would prefer not to, but
22 unlike him, I am prepared to proceed. It's Mr. Hartman's
23 request.

24 THE COURT: In saying that you're prepared to proceed
25 and that he is not, did you get the idea that he's asking for a

1 continuance?

2 MR. VALLEY: No, no. What I meant is I'm prepared to
3 proceed; it's his wish that I not proceed - that I not continue
4 to represent him, that I not represent him at this sentencing.
5 He hasn't even told me that he wants a continuance.

6 MR. HARTMAN: No. I would, I would just as soon have
7 Mr. Valley finish up this mud puddle that I am in right now.
8 We're done with the jury trial. I mean, you know, you've done
9 your part.

10 THE COURT: So, Mr. Hartman, let's be clear. Now
11 you're asking that he not be allowed to step down?

12 MR. HARTMAN: I ask that he allow - be allowed to
13 finish out this day and then file the notice of appeal and step
14 down.

15 THE COURT: Alright.

16 MR. VALLEY: Okay, well, then I'll proceed right now,
17 Your Honor. I'm well advised in the premises - now what I'm
18 referring to is his criminal history. He says that the - and
19 the record, not so much the record, but the submission of his
20 criminal history that Mr. Schuetz prepared for us, does bear
21 this out to a certain extent. I'm talking about - he says that
22 the burglary in the second degrees from January 11th, 1989, the
23 date of sentence. Clearly, that he says they were sentenced on
24 the same day. Clearly, they were. I don't know that the Court
25 made a finding that they were the same criminal conduct. Our

1 argument is that those count as same criminal conduct and count
2 as only 2 points, not 4.

3 THE COURT: And let me interrupt and ask the question,
4 it says in the fourth column over, date of crime that they
5 occurred, the first one, which is labeled item No. 4, 11/14/84,
6 and the second one labeled item No. 5 is said to have occurred
7 on 12/20/84.

8 MR. VALLEY: To a certain extent, Your Honor, I'm
9 parroting, P-A-R-R-O-T-I-N-G, things he wants me to say, which
10 may run me up against Rule 11 because - but he and I have a
11 disagreement. He says that they don't have - by they, I mean
12 the crimes - he says that the crimes don't have to have occurred
13 on the same day for them to have been the same criminal conduct.
14 Frankly, I disagree, so I can't present a good-faith argument
15 that the law should be other than what I believe it is.

16 MR. HARTMAN: Do we have --

17 THE COURT: I'm just touching base with you that that
18 issue was explored, and perhaps this document is incorrect and
19 they occurred at the same time, the same place. But that's what
20 I was interested in, whether you realize that this set out two
21 different dates.

22 MR. VALLEY: I do realize that it sets out two
23 different dates, and I have confirmation from Mr. Hartman that
24 they in fact did occur on two separate dates. He says that they
25 are same criminal conduct. I'm just being candid about my

1 understanding of the law. I don't - I think the law is that
2 they aren't and can't be, for that reason, but that's an
3 argument he has asked me to present to the Court.

4 Frankly, that I think - even assuming that that takes away
5 2 points - well, not even - I'll strike the word assuming,
6 strike the word even. Assuming that that does make that 2
7 points instead of 4, that would maybe bring into question the
8 PSP three that Mr. Schuetz said we needn't address because he
9 was over a 9. I think that would take us down to a 7, and then
10 the PSP three would take us back up to an 8. But other than
11 that, I don't have any other argument to make.

12 THE COURT: The PSP three, though, I believe is there
13 because it may be a misdemeanor conviction. It's not --

14 MR. SCHUETZ: It's the potential intervening offense.
15 It's not a point, but it could certainly keep alive everything
16 in the second group, which would bring you to a 9-plus.

17 MR. HARTMAN: PSP three?

18 MR. SCHUETZ: Right.

19 Pause while defendant has discussion
20 with his counsel.

21 MR. VALLEY: Your Honor, I believe we've presented
22 argument on the burglary two issue. I'm having difficulty
23 thinking on my feet because of what's going on as to how the PSP
24 three would or would not keep things alive. However, I feel
25 I've made a record and presented the argument to the Court.

The issue is does he have 9 points. I think our argument

1 is, right or wrong, he has 7, and certainly counsel can respond
2 to that.

3 And I don't - did we get into the recommendation as far as
4 middle --

5 THE COURT: The State did make a recommendation.

6 MR. SCHUETZ: Top, top end.

7 MR. VALLEY: I advised - and I think this one reason
8 why Mr. Hartman is unhappy with me today - I advised him - he
9 asked me what are you asking for, and I said middle of the
10 standard range. I think it's appropriate. Actually what I told
11 him, and what I think is this Court's practice, the Courts start
12 in the middle of the standard range. I don't have anything to
13 recommend him to go down to the bottom of the standard range,
14 and --

15 MR. HARTMAN: How about a terminal illness of
16 hepatitis C in the late stages? That seems like it should have
17 some bearing on it. You don't have any argument because you
18 haven't come and seen me. You haven't asked my opinion.

19 THE COURT: If you're finished, I'll turn to Mr.
20 Hartman.

21 MR. VALLEY: Actually, Your Honor, I wasn't finished,
22 and I was going to address what he had to say.

23 THE COURT: Alright. And, Mr. Hartman, you need to
24 wait, and you'll have an opportunity to talk. Go ahead, Mr.
25 Valley.

1 MR. VALLEY: What I - actually what I was gonna say is
2 I think his criminal history does show some prior similar
3 offenses, which might militate in favor of going higher into the
4 standard range. So I'm just asking that the Court agree with me
5 that the legislature has taken his criminal history into
6 account, he being at the top of the scale, top of the offender
7 score range, and that they - there's nothing in particular about
8 this crime that warrants going up.

9 And then I was going to move into his request, his explicit
10 and specific request that I ask the Court for an exceptional
11 sentence downward on the basis of a terminal health condition,
12 for which he's provided me no medical documentation. But he
13 tells me - and I think he can do that because I think a person
14 is presumed to know his own medical condition - he tells me he
15 has late-stage hepatitis C, that it is terminal and that -
16 frankly, Your Honor, and I do feel for Mr. Hartman for various
17 reasons - he has not long to live. This is what he tells me and
18 this is what we tell the Court.

19 With reference to the things that I, you know, sympathy I
20 feel, empathy I feel for Mr. Hartman, it's exactly what Mr.
21 Schuetz said. He's got a considerable criminal history. You
22 know, I doubt he's led the most rewarding, fulfilling life, and
23 I think that's sad and I do feel for him. And he's facing a
24 considerable prison term here of, I believe, 53 to 68 months.

25 THE COURT: 51 to 68.

1 MR. VALLEY: 51 to 68 months. So he - as I said when
2 Mr. Dorcy asked the Court to hold him pending sentencing, you
3 know, he will be going to prison for approximately six years,
4 even if the Court gives him the middle of the standard range.
5 One moment please.

6 Pause.

7 MR. VALLEY: Your Honor, so he's asked me to ask for
8 an exceptional sentence downward for reasons of health, and
9 really that is all - those are the points I wanted to address.
10 Thank you.

11 THE COURT: Mr. Hartman, now it is your turn. Is
12 there anything you would like to say before the Court decides
13 upon a sentence?

14 MR. HARTMAN: Your Honor, I don't know if the
15 availability of community supervision applies with this crime or
16 not. I would ask that the Court consider an exceptional
17 sentence downward and offer me community supervision and/or
18 placement to monitor me, you know, so that the Court can keep a
19 handle over the top of me, in lieu of a full-length prison
20 sentence.

21 I would like to get out and spend some time with my family.
22 My mother is elderly. And I do have a terminal illness, which I
23 cannot produce the documents for right now, but I can produce
24 them. I would just ask that the Court consider an exceptional
25 sentence downward or a minimum of the low end of the standard

1 range. Thank you, Your Honor.

2 MR. VALLEY: Your Honor, Mr. Hartman's mother has
3 asked me to ask the Court to speak. I don't know if the Court
4 is inclined.

5 THE COURT: And the Court is not inclined. We do
6 listen to a victim or representative of the victim but not to
7 the family member. Anything further from the State?

8 MR. SCHUETZ: No, thank you.

9 THE COURT: The Court was the trial judge, so the
10 Court is familiar with the facts that were presented and
11 accepted by the jury beyond a reasonable doubt in entering their
12 verdict of guilty on the crime of burglary in the second degree.
13 The Court has reviewed the table of criminal history that has
14 been provided by the State and heard argument with respect to
15 that from counsel, with the input of Mr. Hartman as well on his
16 theories as to the calculation of his offender score.

17 The Court will find that Mr. Hartman does have an offender
18 score of 9. That the items that are listed on the table as item
19 4, burglary in the second degree, which was sentenced on January
20 11, 1989, in Kitsap County, the date of the crime being January
21 14, 1984, and the item No. 5, burglary in the second degree,
22 sentenced on the same date January 11, 1989, Kitsap County, with
23 a date of crime of December 20, 1984, are not the same criminal
24 conduct because the two occurred on different dates. There may
25 be other reasons why they're not the same criminal conduct, but

1 that is one that is shown to the Court at this time.

2 The Court will sentence Mr. Hartman within the standard
3 range and provide for a sentence at the top end of 68 months.
4 The Court finds that, based upon the overall criminal history,
5 that Mr. Hartman has spent a majority of his adult life in
6 either criminal activity or incarceration therefor, and that
7 there is no community supervision or community placement
8 available under this particular offense, and the Court finds
9 that the top of the standard range, 68 months, is appropriate.

10 Court costs are the filing fee of \$200.00, sheriff's return
11 on service - and I added up the four different entries as
12 \$747.50. Is that the same as the State's addition?

13 MR. SCHUETZ: That's what I got, yeah.

14 THE COURT: \$250.00 for the jury fee, \$330.00 for the
15 defense investigator funds, \$500.00 to the crime victim's
16 compensation fund, \$139.00 for the witness fees, \$100.00 for the
17 DNA fund.

18 Initially, Mr. Sergi was appointed to represent Mr. Hartman
19 under this cause number, and I'll - he took Mr. Hartman through
20 the omnibus. I see an omnibus response, actually two of them.
21 So Mr. Sergi was counsel at public expense for a period of time,
22 and I will see when that came to an end. It looks like that
23 came to an end after the omnibus. The Court will require that
24 \$150.00 be a recoupment paid by Mr. Hartman towards the expense
25 of court-appointed counsel.

1 All of the legal financial obligations must be paid at no
2 less than \$25.00 per month, with the first payment being made
3 within 60 days of his release from confinement. That will not
4 preclude the Department of Corrections, under their normal
5 regulations, to take a percentage of any funds Mr. Hartman has
6 in his name with the institution and forwarding the same under
7 their formula for distribution to the clerk for distribution
8 under the legal financial obligations.

9 Mr. Hartman --

10 MR. HARTMAN: May I address the Court, Your Honor.

11 THE COURT: Not right now. Mr. Hartman, your
12 conviction was the result of a jury trial, and as such, you have
13 the right to appeal the finding of guilt and any mistakes or
14 errors you felt made along the way in your case. This is a
15 time-limited right, however. It begins today and it extends for
16 30 days into the future. I've heard that on the record you've
17 asked Mr. Valley to fill out a notice of appeal, and I'm certain
18 that he will take that step for you today. If you did not file
19 a notice of appeal within 30 days, your right to appeal would be
20 lost because, again, it's time limited.

21 If you do not have the money to be able to pay for an
22 attorney to go forward with your appeal or to have the necessary
23 transcription of the court record made, and if you qualify as
24 being indigent, the Court will provide those services at public
25 expense.

1 MR. SCHUETZ: Lastly, on behalf of the victim, I would
2 ask that he be ordered to have no contact with North Mason
3 School District properties for the 10 years allowable by law.

4 THE COURT: Mr. Valley, in response to the request for
5 a 10-year no contact order?

6 MR. VALLEY: The victim being the North Mason School
7 District, Your Honor?

8 THE COURT: Correct.

9 MR. VALLEY: Just with the exception of traveling on a
10 public roadway - again, you were the trial judge - Highway 3
11 runs right by it.

12 THE COURT: Alright. The Court will order no contact
13 except for ordinary and necessary travel on that highway.

14 MR. SCHUETZ: Well, that's not school property, so I
15 don't even know that we need to put that in there. It's a state
16 highway.

17 MR. VALLEY: Good point.

18 MR. HARTMAN: May I address the Court, Your Honor?

19 THE COURT: Not at this time, Mr. Hartman. You had
20 your opportunity to address the Court. You can address Mr.
21 Valley and he may, if appropriate, address the Court.

22 MR. HARTMAN: Mr. Valley, is no longer my attorney.

23 Pause.

24 MR. VALLEY: Approaching, Your Honor.

25 THE COURT: And he needs to sign the first one. He

1 may keep the second.

2 MR. VALLEY: And, Your Honor, just for the record, I
3 note please, I believe we handed up a signed notice of appeal
4 that Mr. Hartman completed pro se.

5 THE COURT: And I will hand that to the Clerk; the
6 notice of appeal is being filed at this time.

7 MR. VALLEY: And, of course it has not yet been
8 served, and I believe - do I need to ask the Court to relieve -
9 to withdraw now post-trial, just to be clear on the obligations
10 as far as service of the notice of appeal.

11 THE COURT: Does the State have any objection to
12 accepting a copy of the notice of appeal today --

13 MR. SCHUETZ: No.

14 THE COURT: -- and having that indicated in the court
15 record?

16 MR. VALLEY: And I'll make that copy immediately.

17 THE COURT: Service then will be taken care of by the
18 State accepting service today, and our minutes should indicate
19 as much.

20 MR. SCHUETZ: Frankly, we'll accept a transmittal by
21 the Clerk through the courthouse channels.

22 THE COURT: Alright. So service is done and can be
23 documented in our minutes, and at this point, Mr. Valley is
24 permitted to withdraw.

25 MR. VALLEY: Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: The Court has signed the judgment and sentence in the presence of Mr. Hartman and counsel, and we have concluded our hearing. Thank you.

MR. HARTMAN: Thank you, Your Honor.

Court is adjourned.
