



purposes of a special verdict, the jury was instructed, in Instruction #37, to make a specific finding regarding whether Mr. Rivera was armed with a deadly weapon at the time of the commission of the crime. See Exhibit B. In addition to finding Mr. Rivera guilty of the murder, the jury returned a special verdict finding that Mr. Rivera was armed with a deadly weapon at the time of the commission of the crime. see Exhibit C.

The Information did not contain an allegation that a firearm enhancement applied, nor did the jury return a special verdict concluding that Mr. Rivera was armed with a firearm. See Exhibit A, B, and C.

At sentencing, the court imposed 333-months for the murder, the high end of the standard sentence range, plus a 60-month firearm enhancement. See Exhibit D. However, the court was required to impose the deadly weapon enhancement charged in the Information and found by the jury. See Exhibits A, B, and C.

The error in this case occurred at sentencing when the court made a firearm finding on the basis of a jury's deadly weapon finding. The State has

the authority and responsibility for bringing charges against a person. In that regard, the State possesses wide discretion to choose the charges it wants to pursue, if any. the prosecutor chose to charge the lesser enhancement of deadly weapon. This provided Mr. Rivera with notice of the charged offense and the ability to prepare a defense, as required by our State and Federal Constitutions. See U.S. Const. amend VI ("In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation...."), and Wash. Const. art. 1, sec. 22 ("In criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him...").

The court exceeded its authority in imposing a sentence not authorized by the charges. By doing so, the court applied the enhancement statute in a manner that violated the Fifth Amendment's Due Process Clause and the Sixth Amendment's notice and jury trial guarantees: When a jury determination has not been waived, judicial factfinding by a preponderance may not support the application of a provision that increases the potential severity of

the penalty for a variant of a given crime.

The error in this case is similar to the error in State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005), where the trial court based its imposition of a firearm enhancement on the jury's response to a special verdict form regarding use of a deadly weapon. Our Supreme Court reversed and remanded for resentencing on the deadly weapon enhancement, holding that the imposition of a firearm enhancement without a jury finding that Recuenco was armed with a firearm beyond a reasonable doubt violated his Sixth Amendment right to a jury trial. Because the sentencing judge committed error by imposing a sentence outside the judge's authority, a sentence that was not authorized by the jury, Mr. Rivera's sentence should be vacated and remanded for resentencing.

### III. STATEMENT OF ISSUES

Mr. rivera's sentence should be vacated and remanded for resentencing on the deadly weapon enhancement because the imposition of a firearm enhancement without a jury finding that he was armed with a firearm beyond a reasonable doubt violates

the Sixth Amendment's notice and jury trial guarantees, and the Fourteenth Amendment's Due Process Clause. The sentence is invalid and evidences the invalidity without further elaboration. See Exhibits A - D.

#### IV. EVIDENCE RELIED UPON

The evidence relied upon are the files and records herein, the affidavit of Mr. Rivera, and the Exhibits attached: Exhibit A - First Amendment Information; Exhibit B - Court's Instructions to Jury (Instruction #37); Exhibit C - Special Verdict form (Deadly Weapon); Exhibit D - (Judgment and Sentence).

#### V. LEGAL AUTHORITY

##### a. The Trial Court Exceeded It's Authority.

The trial court exceeded its authority in imposing a sentence not authorized by the charges. By sentencing Mr. Rivera to a term beyond the maximum allowed by the jury verdict, the court exceeded it's authority and the sentence is not valid on its face. The court may consider the merits of this claim for relief even though the may be untimely because "when a sentence has been

imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered." See In re Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

b. Did This Court Apply The Enhancement Statute In a Manner That Violate The Fifth Amendment's Due Process Clause And The Sixth Amendment's Notice And Jury Trial Guarantees: When a jury determination has not been waived, may judicial factfinding by a preponderance support the application of a provision that increases the potential severity of the penalty for a variant of a given crime?

In Jones v. United States, 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the United States Supreme Court held that "[i]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed", 526 U.S. at 252-253, and the court noted that "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior

conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt". Id., at 243, n.6. The Fourteenth Amendment commands the same answer in this case involving a state statute. See Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed2d 435 (2000).

In State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005), both the charges and the jury instructions referred to a deadly weapon. Our Supreme Court found a "deadly Weapon" special verdict form insufficient for a firearm enhancement, 154 Wn.2d at 164, even when the evidence shows that a firearm was used, 154 Wn.2d at 160, unless the jury explicitly finds beyond a reasonable doubt that the defendant was armed with a firearm.

In State v. Recuenco, supra, Recuenco was charged with Second Degree Assault with a deadly weapon enhancement because he assaulted his wife while holding a gun. At trial, the jury returned a guilty verdict on the assault charge and a special verdict that Recuenco was armed with a deadly weapon. But the trial court imposed a sentence enhancement based on Recuenco's being armed with a firearm,

MOTION TO VACATE SENTENCE - page 7 of 9 -  
State v. Rivera, No. 98-1-00289-4

which was greater than that for a deadly weapon. The Supreme Court granted review to consider whether imposition of a firearm enhancement without a jury finding that Recuenco was armed with a firearm beyond a reasonable doubt violated Recuenco's Sixth Amendment right to a jury trial as defined by Apprendy v. New Jersey, supra, and its progeny. The Supreme court concluded that "under Washington Law, harmless error analysis does not apply in these circumstances". State v. Recuenco, Supreme Court # 74964-7. (April 07-2008).

The Washington Supreme Court in Recuenco, supra, overruled State v. Meggyesy, 90 Wn.App. 693, 958 P.2d 319, review denied, 136 Wn.2d 1028, 972 P.2d 465 (1998), State v. Rai, 97 Wn.App. 307, 983 P.2d 712 (1999), State v. Olney, 97 Wn.App. 913, 987 P.2d 662 (1999), and other "cases that allowed judges to impose firearm enhancements where juries found only the presence of deadly weapons .....". See In State v. Recuenco, 154 Wn.2d 156, n.2.

Mr. Rivera is entitled to the relief requested.  
A proposed Order accompanies this motion.

DATED this 4 day of June, 2008, at Aberdeen,  
in Grays Harbor County, Washington.



Salvador Rivera, #790179  
Stafford Creek Corr. Ctr.  
191 Constantine Wa , H1-Unit  
Aberdeen, Wa 98520



special verdict finding that I was armed with a firearm. See Exhibits A, B, and C.

4. However, at sentencing, Judge Moynihan imposed the high end of the standard sentence range, 333-months for The Murder, plus a 60-months firearm enhancement, instead of the 24-month deadly weapon enhancement as charged in the Information and found by the jury. See Exhibit D.

5. I recently discovered that the court exceeded its authority in imposing a sentence not authorized by the charges and by sentencing me to a term beyond the maximum allowed by the jury verdict, the sentence is erroneous and invalid on its face.

6. The law is clear that "when a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered". See In re Calle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

7. Judge Moynihan erred when he sentenced me to an enhancement of 60-months for a firearm, rather than 24-months for a deadly weapon. A difference of three years in prison exists between an enhancement for a "deadly weapon" and an enhancement for a "firearm". See RCW 9.94A.310.

8. The State opted to charge the lesser enhancement of "deadly weapon", and under RCW 9.94A.125 and RCW 9.94A.310, the jury could have been instructed to make a firearm finding, instead of a deadly weapon finding.

9. The Hard Time For Armed Crime Act of 1995 (Hard Time Act) removed "firearm" from the definition of "deadly weapon". See Laws of 1995, ch 129, sec. 2. The Hard time Act "split the previous deadly weapon enhancement into separate enhancements for firearms and for other deadly weapons". See State v. Brown, 139 Wn.2d 20, 25, 983 P.2d 608 (1999) (quoting State of Washington Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual Cmt. at II-67 (1997)).

10. In my case, because the Prosecutor charged only a deadly weapon and the Judge instruct the jury in a special verdict to return only a finding on a deadly weapon, the sentencing Judge committed error by imposing a sentence outside the judge's authority, a sentence that was not authorized by the jury. Therefore I was not given notice

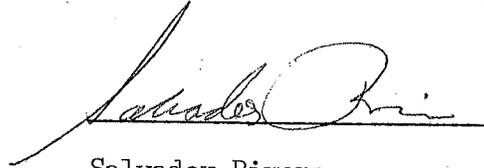
that I could be sentenced under the firearm enhancement.

11. I ask this Court to vacate my sentencing and remand for re-sentencing under the 24-month deadly weapon enhancement instead of the 60-month firearm enhancement.

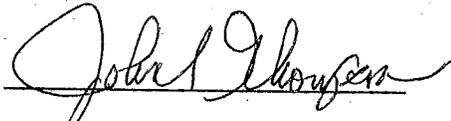
12. This action is brought in good faith.

13. I pray for the relief sought.

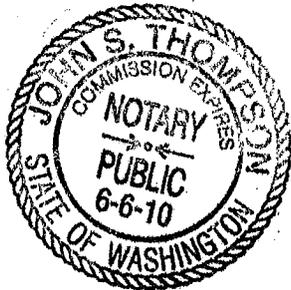
Dated this 4 day of May, 2008, at Aberdeen, in Grays Harbor County, Washington.



Salvador Rivera  
Defendant Pro Se.



NOTARY PUBLIC in and for the State of  
Washington.



My commission expires on:

6 / 6 / 10

FILED  
COUNTY CLERK

2008 JUN -4 PM 3:41

WHATCOMB COUNTY  
WASHINGTON

E X H I B I T

BY \_\_\_\_\_

EXHIBIT A: First Amended Information ~~(deadly weapon)~~

EXHIBIT B: Court's Instruction to Jury  
\* Instruction #37 (Deadly weapon)

EXHIBIT C: Special Verdict Form (Deadly weapon)

EXHIBIT D: Judgment and Sentence.

E X H I B I T    A

First Amended Information  
(Deadly Weapon)

State v. Rivera  
Case No. 98-1-00289-4

Exhibit A

FILED  
COUNTY CLERK

98 MAR 31 PM 3:12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA,  
JOSE MANUEL RIVERA-HERNANDEZ,  
ARTURO H. RIVERA,  
and each of them,

Defendants.

No. 98-1-00289-4  
98-1-00290-8  
98-1-00287-8

FIRST AMENDED  
INFORMATION FOR:

MURDER IN THE FIRST DEGREE,  
COUNT I (AS TO SALVADOR RIVERA  
AND JOSE RIVERA-HERNANDEZ ONLY)

ATTEMPTED RENDERING CRIMINAL  
ASSISTANCE IN THE FIRST DEGREE,  
COUNT II (AS TO ARTURO RIVERA  
ONLY)

I, DAVID S. MCEACHRAN, Prosecuting Attorney in and for the County of Whatcom, State of Washington, come now in the name and by the authority of the State of Washington, and by this first amended information do accuse SALVADOR HERNANDEZ RIVERA, JOSE MANUEL RIVERA-HERNANDEZ, AND ARTURO H. RIVERA, and each of them with the crimes of MURDER IN THE FIRST DEGREE, COUNT I (AS TO SALVADOR RIVERA AND JOSE RIVERA-HERNANDEZ ONLY), and ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II (AS TO ARTURO RIVERA ONLY) committed as follows:

then and there being in Whatcom County, Washington,

MURDER IN THE FIRST DEGREE, COUNT I: That the defendants, SALVADOR HERNANDEZ RIVERA AND JOSE MANUEL RIVERA-HERNANDEZ, and each of them, then and there being in said county and state, on or about the 20th day of March, 1998, with premeditated intent to cause the death of another person, did shoot Matthew Garza, thereby causing the death of Mr. Garza, a human being, in

*Ja*

violation of RCW 9A.32.030(1)(a), which violation is a Class "A" Felony, and during the course or commission of said crime, the defendants or one of them was armed with a deadly weapon, to-wit: a .22 caliber handgun, for the purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a);

ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II: That the defendant, ARTURO H. RIVERA, then and there being in said county and state, on or about the 20th day of March, 1998, with intent to prevent or hinder the apprehension and prosecution of SALVADOR HERNANDEZ RIVERA, a person whom the accused knew had committed the crime of Murder in the First Degree and/or was being sought by law enforcement officials for the commission of this crime, did attempt to provide such person with clothing and other assistance as means of avoiding his apprehension and did take a substantial step toward the commission of that offense, in violation of RCW 9A.76.070(2)(a), RCW 9A.76.050(3), and 9A.28.020, which violation is a Misdemeanor;

contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

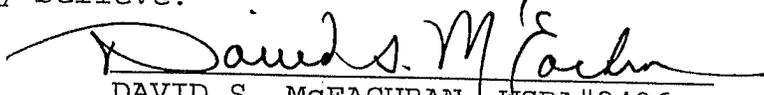
DATED this 31st day of March, 1998.



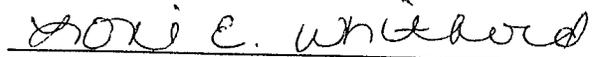
.....  
DAVID S. MCEACHRAN, Prosecuting Attorney in and for Whatcom County, State of Washington.

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

I, DAVID S. MCEACHRAN, being first duly sworn on oath, depose and say: that I am a duly elected and acting Prosecuting Attorney in and for Whatcom County, State of Washington, I have read the foregoing information, know the contents thereof and the same is true as I verily believe.

  
DAVID S. MCEACHRAN, WSBA#2496  
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 31st day of March, 1998.

  
NOTARY PUBLIC in and for the  
State of Washington. MCE: 5/9/01

E X H I B I T B

Court's Instruction to Jury  
\* Instruction #37 (Deadly Weapon)

State v. Rivera  
Case No. 98-1-00289-4

Exhibit B

JAN 11 1998

FILED IN OPEN COURT

11-10 19 98  
WHATCOM COUNTY CLERK

By [Signature]  
Deputy

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  
26  
27  
28  
29  
30  
31  
32  
33  
34

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,  
JOSE MANUEL RIVERA HERNANDEZ,  
and each of them,

Defendants.

No. 98-1-00289-4  
98-1-00290-8

COURT'S INSTRUCTIONS

November 10, 1998  
Bellingham, Washington

[Signature]

HONORABLE MICHAEL MOYNIHAN  
Superior Court Judge

INSTRUCTION NO. 37

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

E X H I B I T C

Special Verdict Form (Deadly Weapon)

State v. Rivera  
Case No. 98-1-00289-4

Exhibit C

FILED IN OPEN COURT

11-13 19 98

WHATCOM COUNTY CLERK

By

  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

SPECIAL VERDICT FORM

We, the jury in the above-entitled cause, return a special verdict by answering as follows:

Was the defendant, SALVADOR HERNANDEZ RIVERA, armed with a deadly weapon at the time of the commission of the crime?

ANSWER: yes

  
PRESIDING JUROR

E X H I B I T D

Judgment and Sentence

State v. Rivera  
No. 98-1-00289-4

Exhibit D

ORIGINAL

FILED IN OPEN COURT

12-15 19 98

WHATCOM COUNTY CLERK

By \_\_\_\_\_ Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 98-1-00289-4
	)	
vs.	)	
	)	
SALVADOR HERNANDEZ RIVERA	)	JUDGMENT AND SENTENCE
	)	(FELONY)
Defendant.	)	
_____	)	

790179  
12-21-98

I. HEARING

- 1.1 A sentencing hearing in this case was held: December 15, 1998.
- 1.2 Present were:  
 Defendant: SALVADOR HERNANDEZ RIVERA  
 Defendant's Lawyer: JON C. KOMOROWSKI  
 Prosecuting Attorney: DAVID S. MCEACHRAN  
 Judge: MICHAEL F. MOYNIHAN
- 1.3 The State has moved for dismissal of Count(s) N/A.
- 1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the Court finds:

2.1 CURRENT OFFENSE(S): The defendant was found GUILTY on October 13 ~~December 15,~~ 1998, by JURY VERDICT of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon):

Count No. I  
Crime: MURDER IN THE FIRST DEGREE  
RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a  
Crime Code: Class "A" Felony  
Date of Crime: 3/20/98  
Incident.No. 98A-5437

JUDGMENT AND SENTENCE (FELONY)  
CONFINEMENT OVER ONE YEAR - 1

- (XX) With a special verdict/finding for use of deadly weapon on Count(s): I.
- ( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
- ( ) Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: POSSESSION OF MARIJUANA (for sale)  
 Sentencing Date: 1/13/95  
 Adult or Juvenile Crime: Adult

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
COUNT NO. I:	1	XIV	250-333 mos.	LIFE
	(deadly weapon clause)		60 mos.	
TOTAL:			310-393 mos.	

- ( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

- ( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) \_\_\_\_\_ . Finding of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

- (a) (XX) An offender who shall be sentenced to confinement over one year.
- (b) ( ) An offender who shall be sentenced to confinement one year or less.

- (c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).
- (d) ( ) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) ( ) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

### III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon).

### IV. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$110.00 court costs;
- (b) \$500.00 victim fund assessment;
- (c) \$ TBD (for burial expenses) - restitution
  - \_\_\_\_\_ Joint & several with co-defendant;
  - \_\_\_\_\_ On all counts charged;
  - \_\_\_\_\_ Other:

- ( ) Schedule of Restitution is attached as Appendix E.
- (d) \$ 1,425.00 recoupment for court-appointed attorney's fees;
- (e) \$ \_\_\_\_\_ fine;
- (f) \$ \_\_\_\_\_ drug enforcement fund;
- (g) OTHER COSTS FOR:

(XX) \$100.00 = CRIME LABORATORY ANALYSIS

(h) \$ 2,135.00 + RESTITUTION = TOTAL MONETARY OBLIGATIONS

(i) Payments shall be made in the following manner:

(XX) That the defendant shall set up a payment schedule with his/her community corrections officer. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

( ) That defendant shall pay the amount of \$\_\_\_\_\_ per month toward his/her legal financial obligations. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

(j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) N/A.

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the DEPARTMENT OF CORRECTIONS as follows commencing IMMEDIATELY:

*25 yr mandatory*  
333 + 60 months MONTHS for Count No. I.

*For Deadly Weapon* 393

(XX) Credit is given for TIME SERVED OF *275 days JT* 48 days *or* DAYS as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

( ) The terms in COUNTS No. are CONCURRENT for a total term of .

( ) The sentence/s herein shall run CONCURRENTLY / CONSECUTIVELY with the sentence/s imposed in Cause No. .

(XX) CUSTODIAL RECOMMENDATION FOR COMMUNITY PLACEMENT FOR TWENTY-FOUR (24) MONTHS OR UP TO THE PERIOD OF EARNED EARLY RELEASE AWARDED, WHICHEVER IS LONGER conditioned upon full compliance with the following terms, all of which are imposed pursuant to RCW 9.94A.120(8)(b):

(XX) Defendant shall not sell, use or under any circumstances have in her possession any illicit drug; that is, any drug such as marijuana, cocaine, LSD or any others which are not compounded, manufactured or refined by a licensed commercial pharmaceutical company. That the defendant shall not knowingly be anywhere where illegal or unprescribed drugs are being sold or used. In addition, the defendant shall not sell, use or have in her possession any prescription drugs except those which have been prescribed specifically for her personally by a duly licensed physician and then these prescribed drugs shall be used only in accordance with the instructions of such physician.

(XX) Defendant shall not possess or own weapons of any kind at any time.

( ) Defendant shall submit to random urine analysis as requested by her supervising community corrections officer at the defendant's own expense.

( ) Defendant shall undergo evaluation for poly drug abuse with strict and full compliance with all treatment recommendations.

(XX) Defendant shall not consume alcohol of any kind at any time.

( ) Defendant shall abstain from using alcohol in excess. Due to the fact that the Court does not know whether the defendant has the ability to totally abstain from alcohol at the present time, defendant will be allowed to MODERATELY consume alcohol. However, if there any evidence of criminal activity resulting from alcoholic consumption in regard to driving, disorderly conduct, or any other type of non - socially accepted behavior, such activity will be

considered by the Court to be grounds for further sanctions to be imposed upon the defendant.

( ) Defendant shall undergo counseling as approved by his/her community corrections officer.

(XX) NO CONTACT PROVISION: Defendant shall not approach or communicate with, directly or indirectly, or through any third person or by any means, with:



( ) Violation of this NO CONTACT PROVISION is a criminal offense under Chapter 10.99 RCW, and will subject the violator to arrest; any assault or reckless endangerment that is a violation of this Order is a felony.

The NO CONTACT ORDER previously entered in this cause number is hereby:

(XX) Extended for the statutory maximum sentence, to wit:

- (XX) Permanent: Class A Felony
- ( ) Ten Years: Class B Felony
- ( ) Five Years: Class C Felony
- ( ) One Year: Gross Misdemeanor

( ) Rescinded as of the date affixed to this order.

(XX) That the defendant shall follow all of the rules of his Community Corrections Officer.

(XX) HIV TESTING: The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.

(XX) DNA TESTING: That the defendant shall submit a blood sample of FIVE (5) m.l. to be acquired under medically safe conditions under the supervision of a Whatcom County Corrections Officer. This sample shall be safely transported to the Washington State Crime Laboratory in Seattle, DNA Section, pursuant to RCW 43.43.754.

Violations of the conditions or requirements of this sentence are punishable by up to SIXTY (60) days of confinement for each violation (RCW 9.94A.200(2)).

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- ( ) Appendix A Additional Current Offenses
- ( ) Appendix B Additional Criminal History
- ( ) Appendix C Current Offense(s) Sentencing Information
- ( ) Appendix D Findings of Fact and Conclusions of Law for an Exceptional Sentence
- ( ) Appendix E Schedule of Restitution
- ( ) Appendix F Additional Conditions

SIGNED IN THE PRESENCE OF THE DEFENDANT.

Date: DECEMBER 15, 1998

  
JUDGE MICHAEL F. MOYNIHAN

TIME OF ENTRY: \_\_\_\_\_ am/pm

Approved as to form:

Presented by:

  
DAVID S. MCEACHRAN,  
Prosecuting Attorney  
WSBA #2496

  
JON C. KOMOROWSKI  
Attorney for Defendant  
WSBA#91001

\*\*\* Defendant's Name: SALVADOR HERNANDEZ RIVERA  
Date of Birth: 6/30/65; Sex: MALE; Race: HISPANIC

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) No. 98-1-00289-4  
 )  
 vs. )  
 )  
 SALVADOR HERNANDEZ RIVERA, ) WARRANT OF COMMITMENT  
 )  
 Defendant. )  
 )

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, SALVADOR HERNANDEZ RIVERA, has been convicted in the Superior Court of the State of Washington of the crime or crimes of MURDER IN THE FIRST DEGREE, and the Court has ordered that the defendant be punished by serving the determined sentence of 333 + months on Count No. I.

*60 months for deadly weapon = 393 months*

Defendant shall receive credit for time served of \_\_\_\_\_ as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

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.

DATED: DECEMBER 15, 1998

By Direction of the HONORABLE

[Signature]  
JUDGE MICHAEL F. MOYNIHAN

N.F. JACKSON, JR., Clerk

By: [Signature]  
Deputy Clerk

CAUSE NUMBER: 98-1-00 289-4

Thumb prints of: Salvador Hernandez Rivera

Attested by:

(Seal)

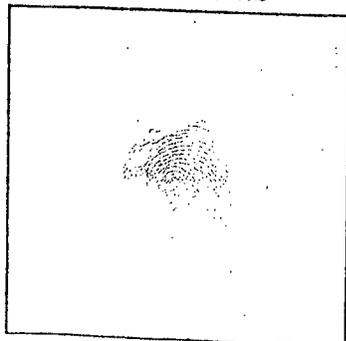
Salvador Hernandez Rivera  
(Defendant's Signature)

Aleen DeYoung  
(Deputy County Clerk)

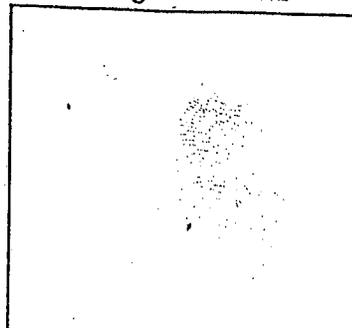
WA0370000

12-15-98 (date)

Left Thumb



Right Thumb



FILED  
COUNTY CLERK

2008 JUN -4 PM 3:41

WHATCOM COUNTY  
WASHINGTON

BY \_\_\_\_\_ 

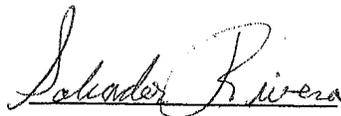
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

STATE OF WASHINGTON,	)	Case No. 98-1-00289-4
	)	
Plaintiff,	)	PRO SE NOTICE OF
	)	APPEARANCE
v.	)	
	)	
SALVADOR HERNANDEZ RIVERA,	)	CLERK'S ACTION REQUIRED
	)	
Defedant.	)	
	)	
	)	

The undersigned Defendant enters an appearance in this action, and request that any notice of all further proceedings be provided and/or served upon him. The Clerk of the Court and the opposing party will be informed of any changes in address. Any notice may be sent to:

Salvador Rivera, #790179  
Stafford Creek Correction Center  
191 Constantine Way, Unit H1  
Aberdeen, Wa 98520

Date June 4, 2008

  
Salvador Rivera  
Defendant Pro Se.

107



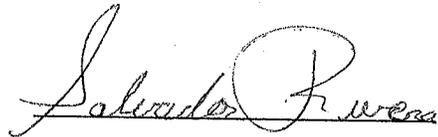
Whatcom County Prosecutor  
311 Grand Avenue  
Bellingham, Wa 98225

Working copy to:

The Honorable Charles R. Snyder  
Whatcom County Superior Court  
County Courthouse  
311 Grand Avenue, Rm 301  
Bellingham, Wa 98225-4048

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 4 day of June, 2008.



Salvador Rivera, #790179  
Stafford Creek Corr. Ctr.  
191 Constantine Way, H1-Unit  
Aberdeen, Wa 98520