

NO. 84861-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

WILLIAM JOSEPH SMITH, Petitioner

FROM THE COURT OF APPEALS, DIVISION II, NO. 40669-1-II
CLARK COUNTY SUPERIOR COURT CAUSE NO. 02-1-00234-0

RESPONSE TO PERSONAL RESTRAINT PETITION

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SUPREME COURT

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By way of letter of November 15, 2010 from the Supreme Court the State was notified of a Ruling made by the Supreme Court Commissioner requiring a response from the State of Washington concerning the Personal Restraint Petition filed by the defendant and how it applies in reference to the more recent case law concerning community placement and facial invalidity.

I. BACKGROUND INFORMATION

The defendant pled guilty in 2002 to Second Degree Child Rape and Third Degree Child Molestation. A copy of the Statement of Defendant on Plea of Guilty is attached hereto and by this reference incorporated herein. After a presentence investigation was ordered the defendant was sentenced on August 5, 2002. A copy of the Judgment and Sentence (Prison – Community Placement/Community Custody, Non-Persistent Offender) is attached hereto and by this reference incorporated herein.

As the ruling by the Supreme Court Commissioner indicates, the defendant has, since the sentencing, filed multiple Personal Restraint Petitions. Of the five that he has filed, all have been dismissed by Division II of the Court of Appeals.

II. ANALYSIS OF STATE V. BAHL AND STATE V. SANCHEZ-
VALENCIA

The State submits that there is a fundamental difference between what the defendant did in our case and the determinations made in State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008) and State v. Sanchez-Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010). In both of those cases these matters had gone to adjudication in front of a jury or trier of fact. In our situation the defendant pled guilty and stipulated and agreed to conditions set forth in a pre-plea offer by the State in exchange for a recommendation of SSOSA if he qualified after evaluation.

In the Statement of Defendant on Plea of Guilty is incorporated and attached as an appendices to that document, the stipulation of the prosecution and defense as it relates to the plea. The preamble to the pretrial offer indicates:

Should the defendant wish to accept the following offer, this form shall be attached to the Statement of Defendant on Plea of Guilty and Judgment and Sentence.

The following is the stipulation of the prosecution and defense attorney:

The sections that the defendant complains of are contained in this stipulation, specifically beginning on page 5 of the pretrial offer. This

form is also attached to the Judgment and Sentence and thus is incorporated into the sentencing of the defendant. In other words, the defendant agreed to the provisions set forth in this documentation.

Rule 2A. Stipulations.

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

A trial court has authority to impose conditions of community custody that are directly authorized by statute or are related to the crime of conviction. RCW 9.94A.700(4), (5); RCW 9.94A.715; State v. Julian, 102 Wn. App. 296, 304-305, 9 P.3d 851 (2000), review denied, 143 Wn.2d 1003 (2001). The court can order affirmative acts necessary to monitor compliance with the conditions. *Id.* at 305. A court also can order an offender to participate in rehabilitative programs that are “reasonably related to the circumstances of the offense.” RCW 9.94A.715(2)(a). The decision to impose a crime-related prohibition is a matter of discretion for the trial judge. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

RCW 9.94A.505(8) constitutes an independent grant of authority to impose crime-related prohibitions is supported by the overall structure

of RCW 9.94A.505. This statute provides a general outline of how courts are to impose felony sentences under the SRA. Subsection (2) of this statute refers to trial court sentencing authority specifically related to matters of community custody, RCW 9.94A.505(2)(a)(ii)-(iv). Subsection (8) provides that “[a]s a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.” RCW 9.94A.505(8). This organizational structure supports the conclusion that trial court authority to impose crime-related prohibitions under subsection (8) exists separately from authority to impose conditions on community custody under subsection (2).

§ 9.94A.505. Sentences

(2) (a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

...

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

...

A “crime-related prohibition” is “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(13).

The defendant in our case has made specific reference to the language contained in the body of the Judgment and Sentence on Page 7 where the indication is as follows:

Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand-held electronic scheduling and data storage devices.

The checkbox is extremely faint. This is also found in the original of the Judgment and Sentence. It appears to be an erasing of that box. In other words this particular section has not been ordered by the court. Rather, this section is covered in the pre-trial offer on Page 6 of the pre-trial offer, section 15, which reads, "You shall not possess any paraphernalia for the use of controlled substances." The State submits that the language is fundamentally different than that found in Sanchez-Valencia and is agreed to by the defendant in exchange for a recommendation by the State. Because of this fundamental difference the State questions whether or not the concept of facial invalidity even exists in our particular case. In deciding whether a judgment and sentence arising from a plea is valid "on its face," the Appellate Court will consider documents signed as part of the plea agreement or incorporated into it as well as the judgment and sentence itself. In re Pers. Restraint of Thompson, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). Plea documents are "relevant only where they may disclose invalidity in the judgment and

sentence.” In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 533, 55 P.3d 615 (2002).

The defendant had agreed as part of a plea bargain contract between himself and the State to not possess or use paraphernalia for the ingestion of controlled substances. This contract was ratified by the trial court at the time that the Judgment and Sentence was entered and the pre-trial offer was attached to the sentencing paperwork.

The State submits that if this analysis is accurate then the rulings by Division II at previous PRPs involving timeliness of his Personal Restraint Petition and the concept of a mixed petition would clearly come into play. Where one or more of the grounds asserted for relief fall within the exceptions in RCW 10.73.100 and one or more do not, then the petition is a "mixed petition" that must be dismissed. In re Pers. Restraint of Hankerson, 149 Wn.2d 695, 697, 702, 72 P.3d 703 (2003); In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 349, 5 P.3d 1240 (2000); *see* RCW 10.73.100 ("the time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based *solely* on one or more of the following grounds" (emphasis added)). Therefore, once the court determines that any one of the claims raised does not fall within an exception, the petition must be dismissed without any further consideration. Hankerson, 149 Wn.2d at 701-02. The court will not advise

as to which claims are time barred and which are not, nor will the court decide claims under RCW 10.73.100 that are not time barred. *Id* at 703.

One of the issues that the ruling by the Supreme Court Commissioner wanted us to consider was whether or not Bahl and Sanchez-Valencia have retroactive effect. The State agrees that it's difficult to respond to that and specifically in our situation because clearly any violation (having drug paraphernalia) would not be an issue with the defendant while he is incarcerated in a prison setting. Further, it would require additional factual information and factual determinations as to the nature of paraphernalia and whether or not it was used with any type of controlled substances. This is not a situation where the State is vaguely requesting a probation officer to determine whether or not the man can have a cell phone or some types of handheld devices that are obviously innocent and requires some type of action on the part of the defendant to turn them into matters that would be in violation of the court orders. The term "drug paraphernalia" has been well-known in the legal circles for some time now. In fact, there is a misdemeanor crime of Possession of Drug Paraphernalia. Because there are definitions of drug paraphernalia in the criminal arena it is difficult for the defendant to argue that this is a vague concept. Drug Paraphernalia is found defined at RCW 69.50.102. This is an extremely long list of drug paraphernalias and primarily

depends on how the user intends to use the items before they become contraband.

RCW 69.50.102(a): As used in this chapter, “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substances. It includes, but is not limited to: . . .

Also, as part of this section of the code in Washington is RCW 69.50.102(b), which gives the court various ways of interpreting and the information that would be needed to determine whether or not an object is drug paraphernalia under that section. Clearly, none of this can be done while the defendant is incarcerated in a prison setting, nor can it be accomplished at the time of sentencing but before he is sent to the department of corrections. It’s also to be noted that in this particular plea bargain that the defendant entered into he was attempting to get a SSOSA which would allow him to remain free in the community. This provision, therefore, would make a lot of sense in reference to the overall fine line that a defendant convicted of sex offenses has to traverse in the State of Washington.

The foregoing analysis by the State is similar to the discussion that is held in State v. Sanchez-Valencia, 169 Wn.2d at 788-789:

Nevertheless, the Court of Appeals below was correct that in order to determine if a question is ripe for review, a court must first decide whether the issue is primarily legal. *Id.* at 751. The Bahl court noted that “[i]n many cases, vagueness questions will be amenable to resolution as questions of law.” *Id.* at 752. The case upon which Bahl principally relied for its ripeness analysis, United States v. Loy, 237 F.3d 251 (3d Cir. 2001), offers a sound prescription for determining whether a question is purely legal. “In this case, the question is purely one of law: whether the pornography proscription is unconstitutionally vague and does not provide Loy with sufficient notice of what he may do. *Nothing about this contention will change between now and the time when he is released from prison.*” *Id.* at 258 (emphasis added). Although the conditions in Bahl and Loy are distinguishable from the condition here, it is equally true of the condition here that if it suffers from vagueness, time will not cure the problem. The reasoning in Loy is persuasive: “The government’s approach would have Loy discover the meaning of his supervised release condition only under continual threat of reimprisonment, in sequential hearings before the court. Such an exercise is not necessary, nor will it clarify the issues.” *Id.* We conclude that, as in Bahl and Loy, the claim here is primarily legal and therefore meets the first prong of the ripeness test.

The second prong of the ripeness test asks whether the issues require further factual development. Again, although the Court of Appeals treated the petitioners’ claim as an as-applied challenge that required further factual development, in the context of ripeness, the question of whether the condition is unconstitutionally vague does not require further factual development. The condition at issue places an immediate restriction on the petitioners’ conduct, without the necessity that the State take any action. This is in contrast to conditions imposing financial obligations or allowing for the search of a person or residence, as

identified in Bahl, 164 Wn.2d at 749 (challenge to sentencing condition imposing financial obligation not ripe until State takes action to collect fines (*citing State v. Ziegenfuss*, 118 Wn. App. 110, 113-15, 74 P.3d 1205 (2003))); State v. Massey, 81 Wn. App. 198, 200-01, 913 P.2d 424 (1996) (challenge to sentencing condition subjecting defendant to search premature until search actually conducted); State v. Phillips, 65 Wn. App. 239, 243-44, 828 P.2d 42 (1992) (same as Ziegenfuss). Such conditions are not ripe for review until the State attempts to enforce them because their validity depends on the particular circumstances of the attempted enforcement. With respect to a financial obligation, for example, the relevant question is whether the defendant is indigent *at the time the State attempts to sanction the defendant for failure to pay*. See, e.g., Ziegenfuss, 118 Wn. App. at 113-15. Thus, the factual development of the claim is essential to assessing its validity. Here, in contrast, the question is not fact-dependent; either the condition as written provides constitutional notice and protection against arbitrary enforcement or it does not.

The language quoted from Sanchez-Valencia would certainly seem to indicate that some issues might require further factual development and because of that the question may not be ripe for review in the appellate system until the factual development is presented. A factual development of the claim may be “essential to assessing its validity”. The State submits that the question relating to the agreed to matters in the Statement of Defendant on Plea of Guilty and later in the Judgment and Sentence are fact dependent and would clearly require additional inquiry by a trier of fact.

Finally, the State would offer that if this matter is to be reviewed by the appellate system that the remedy has been previously set forth. In re Postsentence Review of Leach, 161 Wn.2d 180, 163 P.3d 782 (2007), it was held that a sentencing court may impose a sentence only if authorized by law. In re Petition of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). A sentence that includes unauthorized components does not require the court to vacate the entire judgment or to grant a new trial; but it does require the court to reverse or to vacate the erroneous portion of the sentence. Leach, 163 P.3d at 786 (*citing In re Personal Restraint of West*, 154 Wn.2d 204, 215, 110 P.3d 1122 (2005)).

III. CONCLUSION

The defendant entered into a contract with the State of Washington for a specific recommendation in exchange for reduced charges and a plea. The State made the recommendation as set forth but the defendant was found not to be amendable to treatment in the community and thus was sentenced to the Department of Corrections. The defendant is now attempting to undercut the agreement that he reached by raising and re-raising issues for at least the sixth time in the appellate system.

The State submits that there is no facial invalidity in the documentation. Because of that, the prohibitions against length of time,

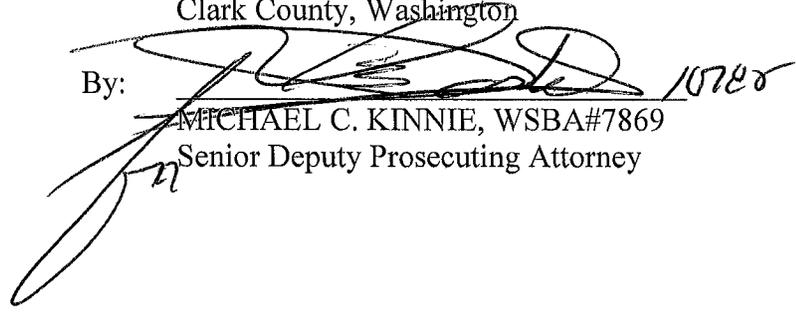
numbers of PRPs, and the concept of mixed petition that has previously been discussed in Division II with this individual's case would still apply and that his Personal Restraint Petition should be denied.

DATED this 8th day of December, 2010.

Respectfully submitted:

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By:

 10728

~~MICHAEL C. KINNIE, WSBA#7869~~
Senior Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM JOSEPH SMITH,)
)
 Defendant.)

No. 02-1-0234-0

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

FILED

MAY 9 - 2002

JoAnne McBride, Clerk, Clark Co.

- 1. My true name is William Joseph Smith.
- 2. My age is 41 years.
- 3. I went through the 2nd grade.
- 4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

I have the right to representation by a lawyer and that if I cannot afford to pay a lawyer, one will be provided at no expense to me. My lawyer is: John N. Harp, Jr.

(a) I am charged with the crimes of: Rape of a Child in the Second Degree and Child Molestation in the Third Degree.

(b) The elements are: in Clark County Washington;

on or about October 29, 2001 have sexual intercourse with another, to-wit: E.J.M. (female dob: 10/20/88) who is at least twelve but less than fourteen years old, of whom I am not married to and am at least thirty-six months older than, and

between April 23, 2001 and October 29, 2001 have sexual contact with another person, to-wit: A.N.W. (female dob: 4/23/87) who

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1 was at least fourteen but less than sixteen years old, of whom
2 I am not married to and am at least forty-eight months older
than.

3 5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM
4 ALL UP BY PLEADING GUILTY.

- 5 (a) The right to a speedy and public trial by an impartial jury in
the county where the crime is alleged to have been committed.
- 6 (b) The right to remain silent before and during trial, and the
7 right to refuse to testify against myself.
- 8 (c) The right at trial to hear and question witnesses who testify
against me.
- 9 (d) The right at trial to have witnesses testify for me. These
witnesses can be made to appear at no expense to me.
- 10 (e) I am presumed innocent until the charge is proven beyond a
11 reasonable doubt or I enter a plea of guilty.
- 12 (f) The right to appeal a determination of guilty after a trial.

13 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND
14 THAT:

- 15 (a) The crimes with which I am charged carry a maximum sentence of
16 life imprisonment and/or a \$50,000 fine for count one and 5
17 years imprisonment and/or a \$10,000 fine for count four. The
standard sentencing range is from 102 to 136 months confinement
and 36 to 48 months of community custody based upon the
prosecuting attorney's understanding of my criminal record.
- 18 (b) The standard sentencing range is based on the crime charged and
19 my criminal history. Criminal history includes prior
20 convictions, juvenile adjudications or convictions whether in
this state, in federal court or elsewhere.
- 21 (c) The prosecuting attorney's statement on my criminal history is
22 attached to this agreement. Unless I have attached a different
statement, I agree the prosecuting attorney's statement in
23 correct and complete. If I attach my own statement, I assert
it is correct and complete. If I am convicted of any
24 additional crimes between now and the time I am sentenced, I am
obligated to tell the sentencing judge about those convictions.
- 25 (d) If I am convicted of any new crimes before sentencing, or if
26 any additional criminal history is discovered, both the
standard range and the prosecuting attorney's recommendation
may increase. Even so, my plea of guilty to this charge is

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1 binding on me. I cannot change my mind if additional criminal
2 history is discovered even though the standard sentencing range
3 and the prosecuting attorney's recommendation increase or a
4 mandatory sentence of life imprisonment without possibility of
5 parole is required by law.

6 (e) In addition to sentencing me to confinement, the judge will
7 order me to pay \$500.00 as a victim's compensation fund
8 assessment. If this crime resulted in injury to any person or
9 damage to or loss of property, the judge will order me to make
10 restitution, unless extraordinary circumstances exist which
11 make restitution inappropriate. The amount of restitution may
12 be up to double my gain or double the victim's loss. The judge
13 may also order that I pay a fine, court costs, attorney fees,
14 defense expert costs, and the cost of incarceration.

15 (f) In addition to sentencing me to confinement, the judge may
16 order me to serve up to one year of community custody if the
17 total period of confinement ordered is less than 12 months. If
18 the crime I have been convicted of falls into one of the
19 offence types listed below the court will sentence me to
20 community custody for the community custody range established
21 for that offense type unless the judge finds substantial and
22 compelling reasons not to do so. If the period of earned
23 release awarded per RCW 9.94A.150 is longer, that will be the
24 term of community custody. If the crime I have been convicted
25 of falls into more than one category of offense type listed
26 below, then the community custody range will be based on the
offense type that dictates the longest term of community
custody. If I have been convicted of a crime that is not
listed below and my sentence is more than twelve months, I will
be placed on community custody for a period of earned release.

OFFENCE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

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1 During the period of community custody, I will be under the
2 supervision of the Department of Corrections, and I will have
3 restrictions placed on my activities. My failure to comply
4 with these conditions will render me ineligible for general
5 assistance, RCW 74.04.005(6)(h), and may result in the
6 Department of Corrections transferring me to a more restrictive
7 confinement status or other sanctions.

8 (g) The prosecuting attorney will make the following recommendation
9 to the judge: see attached.

10 (h) The judge does not have to follow anyone's recommendation as to
11 sentence. The judge must impose a sentence within the standard
12 range unless the judge finds substantial and compelling reasons
13 not to do so. If the judge goes outside the standard range,
14 either I or the State can appeal the sentence. If the
15 sentence is within the standard range, no one can appeal the
16 sentence.

17 (i) This offense is a most serious offense or strike as defined by
18 RCW 9.94A.030, and if I have at least two prior convictions for
19 most serious offenses, whether in this state, in federal court
20 or elsewhere, the crime for which I am charged carries a
21 mandatory sentence of life imprisonment without the possibility
22 of parol. In addition, if this offense is (1) rape in the first
23 degree, rape of a child in the first degree, rape in the second
24 degree, rape of a child in the second degree, indecent liberties
25 by forcible compulsion, or child molestation in the first
26 degree, or (2) murder in the first degree, murder in the second
degree, homicide by abuse, kidnapping in the first degree,
kidnapping in the second degree, assault in the first degree,
assault in the second degree, assault of a child in the first
degree, or burglary in the first degree with a finding of sexual
motivation, or (3) any attempt to commit any of the crimes
listed in this sentence and I have at least one prior
convictions for one of these listed crimes in this state, in
federal court or elsewhere, the crime for which I am charged
carries a mandatory sentence of life imprisonment without
possibility of parol.

(j) The judge may suspend execution of the standard range term of
confinement under the special sex offender sentencing
alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the
judge suspends execution of the standard range term of
confinement, I will be placed on community custody for the
length of the suspended sentence or three years, which ever is
greater; I will be ordered to serve up to 180 days of total
confinement; I will be ordered to participate in sex offender
treatment; and I will be subject to all conditions described in
paragraph (e). Additionally, the judge could require me to
devote time to a specific occupation and to pursue a prescribed

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1 course of study or occupational training. If a violation of the
2 sentence occurs during community custody, the judge may revoke
the suspended sentence.

3 (k) If this crime involves a sex offense or a violent offense, I
4 will be required to provide a sample of my blood for purposes of
DNA identification analysis.

5 (l) Because this crime involves a sex offense, I will be required
6 to register with the sheriff of the county of the State of
7 Washington where I reside. I must register immediately upon
being sentenced unless I am in custody, in which case I must
register within 24 hours of my release.

8 If I leave the state following my sentencing or release from
9 custody but later move back to Washington, I must register
10 within 30 days after moving to this state or within 24 hours if
I am under the Department of Corrections.

11 If I change my residence within a county, I must send a written
12 notice of my change of residence to the sheriff with 10 days of
13 establishing a new residence. If I change my residence to a
14 new county within this state, I must register with the sheriff
of the new county and I must give written notice to the sheriff
of the county where I last registered, both within 10 days of
establishing my new residence.

15 (m) If this crime involves a sexual offense, prostitution, or a drug
16 offense associated with hypodermic needles, I will be required
to undergo testing for the human immunodeficiency (AIDS) virus.

17 (n) I understand that I may not possess, own or have under my
18 control any firearm unless my right to do so is restored by a
court of record and that I must immediately surrender any
concealed pistol license.

19 7. I Plead guilty to the crime of Rape of a Child in the Second Degree
20 as charged in the first count of the Information and Child Molestation
in the Third Degree as charged in the fourth count of the information.
I have received a copy of that Information.

21 8. I make this plea freely and voluntarily.

22 9. No one has threatened harm of any kind to me or to any other
23 person to cause me to make this plea.

24 10. No one has made promises of any kind to cause me to enter this
25 plea except as set forth in this statement.

26 ///

///

STATEMENT OF DEFENDANT ON PLEA OF GUILTY - 5

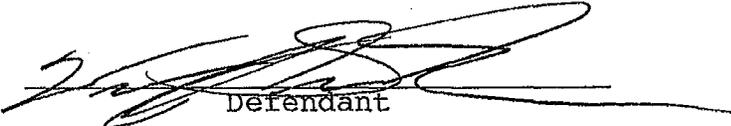
1 11. The judge has asked me to state briefly in my own words what I did
2 that makes me guilty of this crime. This is my statement:

3 I, William Joseph Smith, in Clark County Washington did;

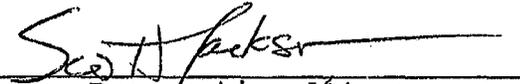
4 on October 29, 2001, have sexual intercourse with E.J.M. (female
5 dob: 10/20/88) who is at least twelve but less than fourteen years
6 old, not married to me and of whom I am at least 36 months older
7 than, and

8 between April 23, 2001 and October 29, 2001, have sexual contact
9 with A.N.W. (female dob: 4/23/87) who is at least fourteen but less
10 than sixteen years old, not married to me and of whom I am at least
11 forty-eight months older than.

12 12. My lawyer has explained to me, and we have fully discussed all of
13 the above paragraphs. I understand them all. I have been given a copy
14 of this "Statement of Defendant on Plea of Guilty". I have no further
15 questions to ask the judge.

16 
17 Defendant

18 I have read and discussed this statement with the defendant and
19 believe the defendant is competent and fully understands the
20 statement.

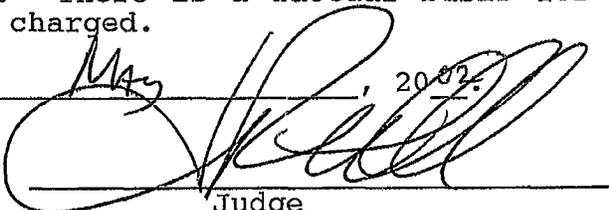
21 
22 Prosecuting Attorney
23 16330

24 
25 Defendant's Attorney

26 The foregoing statement was signed by the defendant in open court
in the presence of the defendant's lawyer and the undersigned Judge.
The defendant asserted that the defendant had previously read the entire
statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly,
intelligently and voluntarily made. Defendant understands the charges
and the consequences of the plea. There is a factual basis for the
plea. The defendant is guilty as charged.

Dated this 9 day of May, 2002.


Judge

///

///

STATEMENT OF DEFENDANT ON PLEA OF GUILTY - 6

JOHN N. HARP, JR
Attorney at Law
2901 Main Street
Vancouver, Washington 98665
(360) 696-8366

APPENDIX "A"

STATE v.

William Joseph Smith

CAUSE NUMBER:

02-1-00234-0

DATE:

4/11/02

PROSECUTOR:

Kathleen Hart

Should the defendant wish to accept the following offer, this form shall be attached to the Statement of The Defendant of Plea of Guilty and Judgment and Sentence:

THE FOLLOWING IS THE STIPULATION OF PROSECUTION AND DEFENSE ATTORNEY:

(1) Should the Defendant plead guilty to:

CT. I: Rape of Child 2^o

CT. IV: Child Molest 3^o

(dismiss CTs II, III)

PRETRIAL OFFER - 1

Revised. October 3, 2000

	OFFENDER SCORE	SERIOUSNESS LEVEL	PRESUMPTIVE STANDARD RANGE
Count I:	<u>3</u>	<u>XI</u>	<u>102-136mo</u> Months
Count II:	<u>3</u>	<u>V</u>	<u>15-20</u> Months
Count III:	_____	_____	_____ Months
Count IV:	_____	_____	_____ Months

(2) then the State and the defense stipulate that the sentence shall be:

sentencing within the standard range
 remain free to recommend any sentence
that sentence shall be _____.

(2) Cont.

The State shall remain free to recommend any sentence, but the Defense may argue for SSOSA with the following stipulated preconditions:

- A) The Court finds the defendant amenable to treatment and safe to be at large after a state licensed sexual offender treatment evaluation, which shall include in addition to the requirements of RCW 9.94A.120(7)(a)(i), a polygraph (on the issue of full disclosure and other child victims). A plethysmograph may be included if requested by the evaluator. Failure to provide a free disclosure polygraph will result in the State exercising its right pursuant to RCW 9.94A.120(8)(e) to demand a second evaluation.
- B) Defense shall provide to the Prosecutor's Office, no later 7 days prior to sentencing:
 - a complete SSOSA evaluation
 - full polygraph report
 - pre- and post-test polygraph interview
 - the sexual history questionnaire and responses
 - any and all other documents as requested by the State.
- C) The defendant shall sign the attached Waiver of Confidentiality Regarding Sex Offender Evaluation at the time of plea of guilty.
- D) If the SSOSA option is used, the parties stipulate to 131 mo. months of the above-listed standard range in prison suspended upon successful entry and completion of all phases of a state licensed sex

PRETRIAL OFFER - 2

Revised: October 3, 2000

offender treatment program to be entered into by the sentencing date if out of custody or within 30 days of release from custody.

E) The State further recommends 180 days of local jail to be served:

- straight time
 work release (if qualified and accepted)

F) The State reserves the right pursuant to RCW 9.94A.120(8)(e) to request a second SSOSA evaluation. If the State makes such a request, the defense stipulates such evaluation shall include a full disclosure polygraph.

G) Court Costs:	\$ 110.00
Victim's Comp. Fee:	\$ 500.00
Court Appointed Attorney Fee:	\$ TO BE SET
Court Appointed Investigator Fee:	\$ TO BE SET
Restitution for Victim:	\$ TO BE SET
Rape Exam (if applicable)	\$ TO BE SET
SSOSA Evaluation Fee:	\$ TO BE SET
Fine	\$ 500.00
Sheriff's Office Service Fee:	\$ TO BE SET
Other: _____	\$ _____
_____	\$ _____

H) The Defendant shall follow all conditions as set by the Pre-Sentence Investigator and the SSOSA evaluator.

I) _____

(3) Should the defendant be placed on any release conditions prior to sentencing and violate any of those conditions then the State's above offer is null and void, and the State shall be free to make any recommendation.

(4) Defense stipulates to a waiver of RCW 9.94A.142(1) for the setting of restitution and waives the defendant's presence at a restitution hearing. The hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

(5) By accepting this offer, the defendant stipulates to the conditions as set forth herein.

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY PLACEMENT AND/OR SUPERVISION

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of Life years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER 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.

7. You shall not loiter, enter, or remain in parks, arcades, malls, schools, or any area routinely used by minors or where they are known to congregate.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.

PRETRIAL OFFER - 5

Revised October 3, 2000

10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
11. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
12. You shall not possess, use, or own any firearms, ammunition, or deadly weapon. Your community corrections officer shall determine what those deadly weapons are.
13. You shall not possess or consume alcohol.
14. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
15. You shall not possess any paraphernalia for the use of controlled substances.
16. You shall not be in any place where alcoholic beverages are the primary sale item.
17. You shall take antabuse per community corrections officer's direction.
18. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
19. You shall participate in Sexual Offender Treatment with a state certified sex offender therapist as directed by your community corrections officer and you shall not terminate nor transfer your treatment provider without prior approval of the therapist, your community corrections officer, the Prosecuting Attorney, and the court after an appropriate hearing.
20. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.

PRETRIAL OFFER - 6

Revised October 3, 2000

21. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
22. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
23. You shall not use/possess pornographic material or equipment of any kind.
24. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney.
25. You shall have no association with persons known to be on probation, parole or community placement.
26. If you are in the SSOSA program you shall enter into sex offender treatment with a State certified provider within thirty (30) days of sentencing or release from custody, whichever comes first.
27. If you are in the SSOSA program, your treatment plan shall include polygraph exams as set forth in condition number 19. Your treatment provider and/or the defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

21

HARP

S5

FILED

AUG 05 2002

JoAnne McBride, Clerk, Clark Co.

02 9 04081 0

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
v
WILLIAM JOSEPH SMITH
aka
Defendant
SID: WA16013984
DOB: 03/21/1961

No 02-1-00234-0
JUDGMENT AND SENTENCE (JS)
PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY
NON PERSISTENT OFFENDER -
RCW 9.94A.712
 Clerk's action required Paragraph 5.7

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 MAY 9, 2002
(Date)

by plea jury-verdict bench trial of.

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A 44 076	10/29/2001
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	04/23/2001 to 10/29/2001

as charged in the Information.

The court finds that the Defendant is subject to sentencing under RCW 9 94A.712.

- A special verdict/finding for use of **firearm** was returned on Count(s) _____
RCW 9 94A 602, 510
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on
Count(s) _____ . RCW 9 94A.602

37
SP

- A special verdict/finding of **sexual motivation** was returned on Count(s) _____, RCW 9 94A.835
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** 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.
- 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.
- 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
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are Domestic Violence offense(s) as that term is defined in RCW 10 99.020:
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- 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 NO KNOWN FELONIES					

- Additional criminal history is attached in Appendix 2.2.
- 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: _____
- The State has moved to dismiss count(s) 02 (RAPE OF A CHILD IN THE SECOND DEGREE), 03 (CHILD MOLESTATION IN THE SECOND DEGREE)

2.3 SENTENCING DATA.

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	3	XI	102 MONTHS to 136 MONTHS			LIFE \$50000
04	3	V	15 MONTHS to 20 MONTHS			5 YEARS \$10000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

- 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 above within below the standard range for Count(s) _____ Findings of fact and conclusions of law are attached in Appendix 2.4. 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.750/753
- 2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: _____ . If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

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 Counts 02 (RAPE OF A CHILD IN THE SECOND DEGREE), 03 (CHILD MOLESTATION IN THE SECOND DEGREE).
- The defendant is found NOT GUILTY of Counts .
- 3.3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$To Be Set	Restitution to be paid to <input type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/753
\$110.00	Criminal filing fee	RCW 9.94A 505
\$500.00	Victim assessment	RCW 7 68.035
\$100.00	Collection of biological sample (for crimes committed on or after July 1, 2002)	Chapter 289, Laws of 2002

\$595.00	Fees for court appointed attorney	RCW 9.94A.505/760/030
\$500.00	Fine	RCW 9A 20.021
\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A 760
\$ _____	Crime lab fee	RCW 43.43.690
\$ _____	Witness costs	RCW 10.01.160 and RCW 2.40.010
Court costs, including:		RCW 9.94A.030, 9.94A 505, 9.94A.760, 10.01.160, 10 46.190
\$ <u>5.25</u>	Sheriff service fees	RCW 10.01 160 and RCW 36.18.040
\$ _____	Jury demand fee	RCW 10.01.160 and RCW 10.46.190
\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.505, 760, RCW 9.94A.030
\$ _____	Extradition costs	RCW 9.94A 505
\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To _____ (List Law Enforcement Agency)	RCW 38.52.430
\$ _____	Other Costs for: _____	RCW 9 94A.760

- The above financial obligations do 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.750/753. A restitution hearing:
- shall be set by the prosecutor
- is scheduled for _____
- The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602
- All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here. Not less than \$ _____ per month commencing _____ RCW 9 94A.760
- 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 statutory rate of \$ _____ RCW 9.94A 760
- The defendant shall pay the costs of services to collect unpaid legal financial obligations.

RCW 36.18 190

- 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, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement RCW 43.43.754
- HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340
- 4.3 The defendant shall not have contact with E J.W (female, DOB: 10/20/88) and A.N.W. (female, DOB. 4/23/87) including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).
- Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4.3.
- 4.4 OTHER: _____

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 confinement in the custody of the Department of Corrections:

136 days/months on Count 01

20 days/months on Count 04

Actual number of months of total confinement ordered is: 136 mo.
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

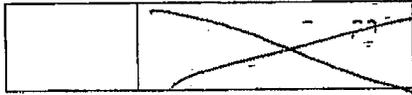
All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **CONFINEMENT** 9.94A.712. The Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections:

COUNT	SENTENCE RANGE
01	136 mo. ← (minimum) to life ← (maximum)



(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.

Credit for 131 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4.6 **COMMUNITY PLACEMENT** is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY for Count I, 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 on Count IV for a range from 36 to 48 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 700/705(9) for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, 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. Community custody follows a term for a sex offense --RCW 9.94A.505 Use paragraph 4.7 to impose community custody following work ethic camp. Community placement/custody shall be for 12 months or for the period of earned early release, whichever is longer, for sex offenses or serious violent offenses committed between 7/1/88 and 7/1/90, Assault 2, Assault of a Child 2, deadly weapon enhancements and drug offenses under RCW 69.50 or 69.52; 24 months or for the period of early earned release, whichever is longer, for sex offenses occurring between 7/1/90 and 6/6/96, serious violent offenses, and vehicular homicides or vehicular assaults; 36 months or for the period of earned early release, whichever is longer, for sex offenses committed after 6/6/96.]

The defendant shall be on community supervision/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community supervision/community custody and any other conditions stated in this Judgment and Sentence.

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 Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody, (5) pay supervision fees as determined by the Department of Corrections, (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders 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's conditions of Community Placement/Community Custody include the following:

- The defendant shall not consume any alcohol
- Defendant shall have no contact with E J.W. (female, DOB: 10/20/88) and A N.W. (female, DOB: 4/23/87)
- Defendant shall remain within outside of a specified geographical boundary, to wit:

- For Sentences imposed under RCW 9 94A 712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by the Department of Corrections. Emergency conditions shall not remain in effect longer than seven working days unless approved by the Indeterminate Sentence Review Board pursuant to law. RCW 9.94A.713
- Other conditions may be imposed by the court or Department during community custody, or are set forth here
-
- The conditions of community supervision/community custody shall begin immediately or upon the defendant's release from confinement unless otherwise set forth here:
-
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:
-
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages at all to excess.
The defendant will will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for substance abuse mental health anger management treatment and fully comply with all recommended treatment

- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment program as established by the community corrections officer and/or the treatment facility.
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):
-
- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but

are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.

- Defendant shall not have any contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity
- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

4.7 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).

4.8 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.

4.9 **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 Department of Corrections:

4.10 Other

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 ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes 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).

- 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 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 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 court clerk 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
- 5.7 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, who must revoke the defendant's driver's licenses. RCW 46.20.285.

Cross off if not applicable:

5.8 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., 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 you are not the minor's parent), 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.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 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 out a vocation in Washington, or attend school in Washington, you must register within 30 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

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the

time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4 24 550

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing a residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State

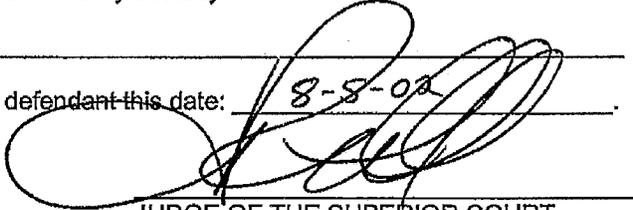
If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(7).

5.9 Persistent Offense

- The crime(s) in Count I is/are "most serious offense(s)." Upon a third conviction of a "most serious offense"; the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9 94A 505
- The crime(s) in Count I is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 8-8-02

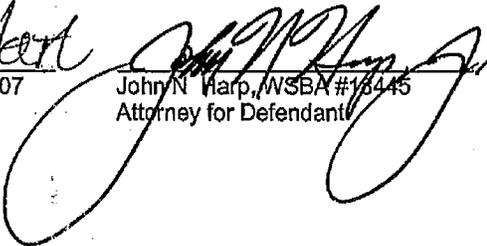


JUDGE OF THE SUPERIOR COURT

Print Name: JOHN P. WULLE



Kathleen A. Hart, WSBA #24207
Deputy Prosecuting Attorney



John N. Harp, WSBA #16445
Attorney for Defendant



WILLIAM JOSEPH SMITH
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff

NO. 02-1-00234-0

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

v
WILLIAM JOSEPH SMITH,
aka
Defendant.

SID: WA16013984
DOB: 03/21/1961

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A 44.076	10/29/2001
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A 44.089	04/23/2001

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of .

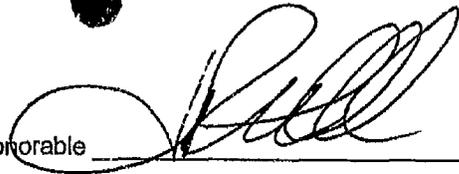
COUNT	CRIME	SENTENCE RANGE TERM
01	RAPE OF A CHILD IN THE SECOND DEGREE	136 mo.
04	CHILD MOLESTATION IN THE THIRD DEGREE	20 mo.

These terms shall be served concurrently to each other unless specified herein.

The defendant has credit for 131 days served.
And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



John P. Wulle

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

8/5/02

JOANNE McBRIDE, Clerk of the
Clark County Superior Court

By:

Sherry W Parks
Deputy



CAUSE NUMBER of this case: 02-1-00234-0

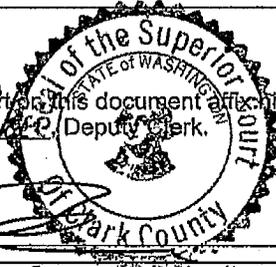
I, JOANNE McBRIDE, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

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

Clerk of said County and State, by _____, Deputy Clerk

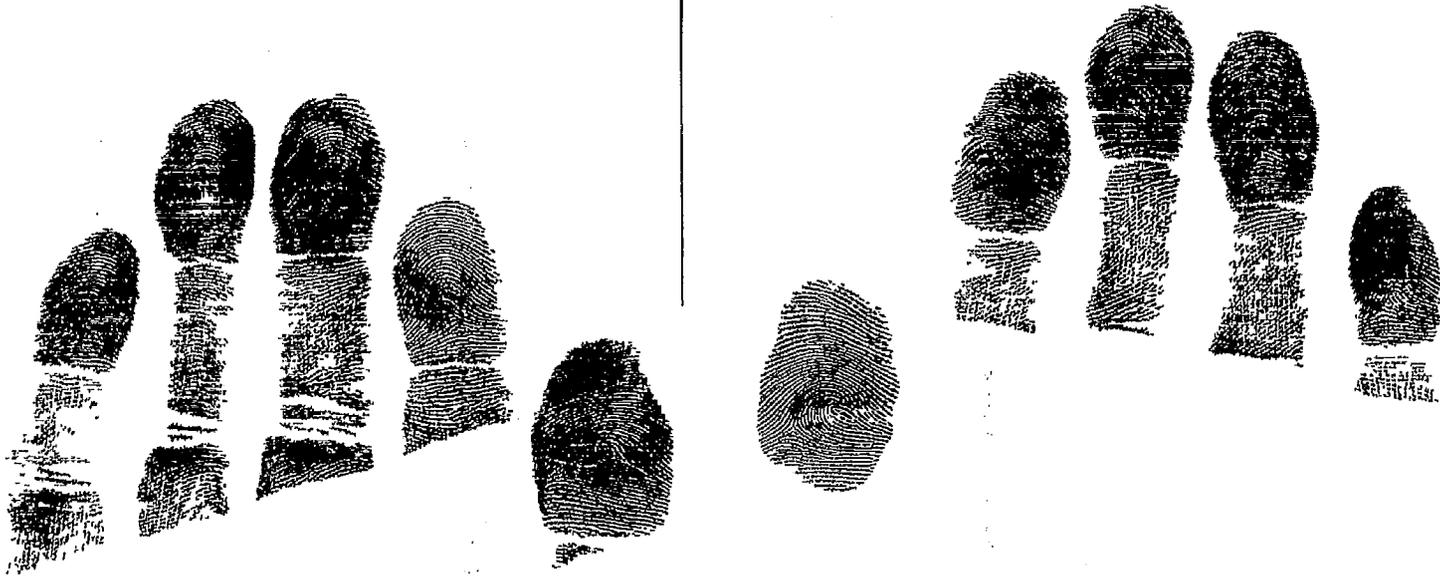
IDENTIFICATION OF DEFENDANT WILLIAM JOSEPH SMITH		
SID No. WA16013984 (If no SID take fingerprint card for State Patrol)	Date of Birth 03/21/1961	
Driver License No SMITHWJ390D1	Driver License State: WA	
FBI No. 850364V9	Local ID No. (CFN): 129052	
SSN:	Corrections No.	
PCN No. _____	Other _____	
Alias name, SSN, DOB:		
Race: W	Ethnicity:	Sex: M

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, *Joanne McBride*, Deputy Clerk.
Dated: 8/5/02



DEFENDANT'S SIGNATURE *William Joseph Smith*

Left four fingers taken simultaneously Left Thumb Right Thumb Right four fingers taken simultaneously



APPENDIX "A"

STATE v. William Joseph Smith
CAUSE NUMBER: 02-1-00234-0
DATE: 4/11/02
PROSECUTOR: Kathleen Hart

Should the defendant wish to accept the following offer, this form shall be attached to the Statement of The Defendant of Plea of Guilty and Judgment and Sentence:

THE FOLLOWING IS THE STIPULATION OF PROSECUTION AND DEFENSE ATTORNEY:

(1) Should the Defendant plead guilty to:

CT. I: Rape of Child 2^o

CT. IV: Child Molest 3^o

(Dismissal CTs II, III)

	OFFENDER SCORE	SERIOUSNESS LEVEL	PRESUMPTIVE STANDARD RANGE
Count I	<u>3</u>	<u>XI</u>	<u>102-136mo</u> Months
Count II	<u>3</u>	<u>V</u>	<u>15-20</u> Months
Count III	_____	_____	_____ Months
Count IV	_____	_____	_____ Months

(2) then the State and the defense stipulate that the sentence shall be:

sentencing within the standard range
 remain free to recommend any sentence
that sentence shall be _____

(2) Cont.

The State shall remain free to recommend any sentence, but the Defense may argue for SSOSA with the following stipulated preconditions:

- A) The Court finds the defendant amenable to treatment and safe to be at large after a state licensed sexual offender treatment evaluation, which shall include in addition to the requirements of RCW 9.94A.120(7)(a)(i), a polygraph (on the issue of full disclosure and other child victims). A plethysmograph may be included if requested by the evaluator. Failure to provide a free disclosure polygraph will result in the State exercising its right pursuant to RCW 9.94A.120(8)(e) to demand a second evaluation.
- B) Defense shall provide to the Prosecutor's Office, no later 7 days prior to sentencing:
 - a complete SSOSA evaluation
 - full polygraph report
 - pre- and post-test polygraph interview
 - the sexual history questionnaire and responses
 - any and all other documents as requested by the State.
- C) The defendant shall sign the attached Waiver of Confidentiality Regarding Sex Offender Evaluation at the time of plea of guilty.
- D) If the SSOSA option is used, the parties stipulate to 131 mo. months of the above-listed standard range in prison suspended upon successful entry and completion of all phases of a state licensed sex

offender treatment program to be entered into by the sentencing date if out of custody or within 30 days of release from custody.

E) The State further recommends 180 days of local jail to be served:

- straight time
 work release (if qualified and accepted)

F) The State reserves the right pursuant to RCW 9.94A.120(8)(e) to request a second SSOSA evaluation. If the State makes such a request, the defense stipulates such evaluation shall include a full disclosure polygraph.

G) Court Costs: \$ 110 00
Victim's Comp. Fee: \$ 500.00
Court Appointed Attorney Fee: \$ TO BE SET
Court Appointed Investigator Fee: \$ TO BE SET
Restitution for Victim: \$ TO BE SET
Rape Exam (if applicable) \$ TO BE SET
SSOSA Evaluation Fee: \$ TO BE SET
Fine \$ 500.00
Sheriff's Office Service Fee: \$ TO BE SET

Other: _____ \$ _____
_____ \$ _____

H) The Defendant shall follow all conditions as set by the Pre-Sentence Investigator and the SSOSA evaluator.

I) _____

(3) Should the defendant be placed on any release conditions prior to sentencing and violate any of those conditions then the State's above offer is null and void, and the State shall be free to make any recommendation.

PRETRIAL OFFER - 3

Revised October 3, 2000

(4) Defense stipulates to a waiver of RCW 9.94A.142(1) for the setting of restitution and waives the defendant's presence at a restitution hearing. The hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

(5) By accepting this offer, the defendant stipulates to the conditions as set forth herein

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY PLACEMENT AND/OR SUPERVISION

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 18c years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER 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.

7. You shall not loiter, enter, or remain in parks, arcades, malls, schools, or any area routinely used by minors or where they are known to congregate.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.

PRETRIAL OFFER - 5

Revised October 3, 2000

10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
11. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
12. You shall not possess, use, or own any firearms, ammunition, or deadly weapon. Your community corrections officer shall determine what those deadly weapons are.
13. You shall not possess or consume alcohol.
14. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
15. You shall not possess any paraphernalia for the use of controlled substances.
16. You shall not be in any place where alcoholic beverages are the primary sale item.
17. You shall take antabuse per community corrections officer's direction.
18. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
19. You shall participate in Sexual Offender Treatment with a state certified sex offender therapist as directed by your community corrections officer and you shall not terminate nor transfer your treatment provider without prior approval of the therapist, your community corrections officer, the Prosecuting Attorney, and the court after an appropriate hearing.
20. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.

PRETRIAL OFFER - 6

Revised October 3, 2000

21. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
22. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
23. You shall not use/possess pornographic material or equipment of any kind.
24. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney.
25. You shall have no association with persons known to be on probation, parole or community placement.
26. If you are in the SSOSA program you shall enter into sex offender treatment with a State certified provider within thirty (30) days of sentencing or release from custody, whichever comes first.
27. If you are in the SSOSA program, your treatment plan shall include polygraph exams as set forth in condition number 19. Your treatment provider and/or the defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

PRETRIAL OFFER - 7

Revised October 3, 2000