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**FILED**  
KING COUNTY, WASHINGTON

FEB 20 2009

SUPERIOR COURT CLERK  
BY DAVID J. ROBERTS  
DEPUTY

FEB 23 2009

COPY TO COURT OF APPEALS

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

STATE OF WASHINGTON

63040-7

NO. 01-1-10919-3 SEA

V.

ORDER ON CRIM MOTION 7.8(A)  
AND (B) TO AMEND SENTENCE

MANSOUR HEIDARI Doc # 847716

Personal Restraint Petition

This matter comes before the Court on Mr. Mansour's Motion under CrR 7.8.

The Motion should be raised as a personal restraint petition. It is referred to the Court of Appeals.

Dated February 20, 2009.

Hon. James E. Rogers  
King County Superior Court  
Department 45

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2009 FEB 24 AM 11:13

HON. JIM ROGERS  
KING COUNTY SUPERIOR COURT  
DEPT. 45  
KING COUNTY COURTHOUSE  
SEATTLE, WASHINGTON 98104

ORIGINAL

**FILED**  
KING COUNTY, WASHINGTON

FEB 20 2009

**SUPERIOR COURT CLERK**

COPY TO COURT OF APPEALS **FEB 23 2009**

**IN THE SUPERIOR COURT OF WASHINGTON STATE  
FOR KING COUNTY**

MANSOUR HEIDARI

Movant/defendant

-v-

State of Washington

Respondent/Plaintiff.

No. 01-1-10919-3 Sea

**Motion to Modify  
Judgment and Sentence  
Pursuant to CrR 7.8(a) and (b)**

**FILED**  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON  
2009 FEB 24 AM 11:13

**A. Parties/Relief**

COMES NOW the Movant\defendant, **Mansour Heidari** , appearing pro se and moves this court for an ORDER amending his Judgment and Sentence, changing the date of the crime for Count I and dismissing Count IV. Mr. Heidari's motion asserts two grounds. First, under CrR 7.8(a), he argues the trial record proved that his conviction on count I occurred before June 15, 1997. This date should have been used on the Judgment & Sentence because the legislature amended the seriousness levels in 1997, effective 7/1/1997. Inputting the correct date will lower the Seriousness Level to XI from XII and the sentencing range. Second, under CrR 7.8(b), Mr. Heidari argues that the evidence is insufficient as a matter of law to convict on count IV. Mr. Heidari's motion is supported by the trial record, his subjoined affidavit, the attached appendices and exhibits.

## B. Time Barred Issue—Authority.

1. *Gatekeeping function.* Rule CrR 7.8(c)(2) states:

“[t]he court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and ... (i) the defendant has made a substantial showing that he ... is entitled to relief...”

Clearly, Mr. **Heidari**'s motion is brought more than one year after his judgment and sentence became final. However, for the two reasons discussed below, Mr. Heidari's motion is not time barred, as a result, transferring his motion as a personal restraint petition to the Court of Appeals would be inappropriate.

2. *CrR 7.8(a). “Clerical Mistake.”*

Movant's first ground is brought under Criminal Rule CrR 7.8(a). “Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court *at any time* of its own initiative or on the motion of any party...” (My emphasis.). Obviously, RCW 10.73.090 does not operate on criminal Rule CrR 7.8(a).

3. *Insufficiency of the Evidence.*

Ground two is brought under CrR 7.8(b) and is subject to the constraints under RCW 10.73.090. However, ground two is exempt under RCW 10.73.100(4) where the defendant/movant raises the claim that the evidence at trial is insufficient on one or more elements of the crime charged, RCW 10.73.100(4) reads:

“The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction.”

In sum, ground one of this motion is brought under CrR 7.8(a); the time bar statute does not operate on it; and ground two is exempt under RCW 10.73.100(4). This motion is properly before the court and the issues should be considered on the merits. See *State v. Priest*, 100 Wn.App. 451, 456, 997 P.2d 452 (2000).

4. Certification under RCW 10.73.140.

Mr. **Heidari** certifies that he has not previously raised either ground on direct appeal or in his first personal restraint petition. He claims *Good Cause* for bringing this motion after his direct appeal became final. To wit: **Heidari** declares that he is an immigrant from Iran; he reads and writes English with great difficulty. Indeed, at trial, he required an interpreter. Though **Heidari** did receive a copy of the transcripts and clerk's papers after the appellate brief, he could not understand their purpose because he could not read English and because he had no experience with the legal system. He had a court appointed appellate counsel, so he didn't understand why they were sent to him. Even after his PRP, he still did not understand. It was only later when he sought help at the TRU law library that he was provided adequate assistance. In other words, but for the aid of the brief writer, **Heidari** could not have discovered the errors. See Appendix A, "Mr. **Heidari**'s Affidavit."

**C. Issues Presented.**

1. Whether defendant is entitled to clerical correction of his Judgment & Sentence, inputting the proven crime date between September 1996 and June 15, 1997? If so, whether defendant is entitled to resentencing at the lower Seriousness Level of XI and a sentencing range of 146 – 194 months?
2. Based on the victim's testimony, was the evidence sufficient to prove all elements of the crime of "Child molestation in the First degree" charged in Count IV?

**D. Relevant Facts.**

*1. Charging Document and Judgment & Sentence.*

**Heidari** was charged by amended information with five counts of child sexual abuse: Count I, Rape of a Child in the 1st degree; Count II, Child Molestation in the 1st degree; Count III, Rape of a Child in the 1st degree; Count IV, Child Molestation in the 1st degree; and Count V, Child Molestation in the 3rd degree. (Appendix B Amended Information). The jury returned a guilty verdict on Counts I, IV and V, and not guilty on count II and III. (See appendix C. "Judgment & Sentence"). For purposes here, neither Count II and III are addressed.

## 2. Sentencing.

For purposes of sentencing on Count I, the court listed a crime date between March 29, 1995 and March 28, 1998. (Appendix C). These were the same dates given in the Amended Information. (Appendix B). The sentencing record is silent on the difference between the alleged date and the proven date. In any event, **Heidari's** offender score was 6 points with a seriousness level of XII, the court selected level XII by reliance on the 2001 Adult Sentencing Guidelines Manual. Based on a level XII and 6 points, the standard sentencing range was 162—216 months. The judge imposed a 162 month sentence, the bottom end of the sentencing range. RCW 9.94A.310, Table 1 RCW 2000.

## E. Argument.

### GROUND ONE.

The date used on the Judgment & Sentence was wrong, the correct date based on testimony at trial should have been between 3/28/1995 and 6/15/1997 and a Seriousness Level of XI rather than XII.

### 1. Legal authority.

The purpose of Rule CrR 7.8(a) is to give the sentencing court the first opportunity to correct simple sentencing errors and avoid the potential for unnecessary punishment. To fall within the purview of CrR 7.8(a), the court must determine whether the claimed error is clerical by “oversight or omission”. A clerical error is one that when amended would correctly convey the intention of the court based on the existing record. *Priest*, 100 Wn.App. at 455. The court in *Priest* recognized that certain uncontested errors, which have record support are best resolved by a CrR 7.8(a) motion. *Id* at 456. In deciding whether an error is clerical, the *Priest* court looked to the trial record and noted that “...the verbatim report clearly shows the sentencing court did not intend to have Mr. Priest register as a sex offender”. In a second case, directly on point, the court in *State v. Casarez*, 64 Wn.App. 910, 826 P.2d 1102 (1992), tackled the problem of incorrect crime dates on the judgment &

sentence. In *Casarez*, as here, the defendant claimed that "...the judgment sets forth incorrect dates for the commission of the crimes. The crimes, as charged in the information... ." To resolve the claimed error, the *Casarez* court noted that a 'clerical mistake' includes mechanical mistakes apparent on the record which do not involve matters of substance." *Id* at 915. After reviewing the trial record, the *Casarez* court determined that the dates in the judgment were in error and ordered the judgment amended. *Id*.

In this case, the error occurs because the parties (it is assumed) were not aware that the Legislature had amended the sentencing laws in 1997, changing the Seriousness Level from XI to XII for First degree Rape of a Child—effective July 1, 1997. See Laws of Washington 1997, Vol 2, Ch. 340, sec 1., page 2060.

## **2. Relevant evidence.**

At the start of trial, to prove the victim's age (i.e. Beeta Z.), the prosecutor introduced a large chart that matched the Beeta's age with her year in school and with the Count charged. RP 326. (See Ex. 1, "Table of Grade, Age and Counts").

During Beeta's testimony, she stated that the charge of Rape of a Child (i.e. Count I) happened when she was in the Fifth Grade. RP340-46. (Ex. 2. "Report of Proceedings"). The fifth graded ended before June 14, 2007. More demonstrative is the fact that Beeta traveled to Iran before June 1, 2007 and remained in Iran during the summer of 1997. RP 330. See Ex. #3. ("Report of Proceedings.")

By reference to the trial record, the facts are undisputable, the crime date for Count I must be between September 1995 and June 14, 1997. It was an "oversight" by the prosecutor, defense counsel and the judge to *rubber stamp* the date set forth on the Amended Information. When corrected, the seriousness level will be XI and the standard range sentence will be 146–194 months. Mr. **Heidari** asks the court to grant his motion on this ground and order resentencing based on the law in effect at the time of the offense. *PRP of Lachapelle*, 153 Wn.2d 1, 6 (2004).

## GROUND TWO <sup>1</sup>

Mr. **Heidari** claims that his conviction on Count IV, Child Molestation in the Second degree was constitutionally insufficient as a matter of law because the critical element of "Sexual Contact" was denied by the victim's testimony.

### *1. Facts or elements of the Crime.*

To convict **Heidari** of the crime of Child molestation in the Second degree, the jury was required to find the critical element of "*sexual contact*". Jury instruction, WPIC 44.23 (1) reads: "that on or about (date) the defendant had *sexual contact* with Beeta Z.; [and] (2) that Beeta was at least 12 years old but less than fourteen years old at the time of the sexual contact ... ."

The term sexual contact "...means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party." See RCW 9A.44.010(2), WPIC 45.07.

In this case, when Beeta described the circumstances of Count IV, she stated that "... he put my head towards it and trying [sic] to get me to put it in my mouth." Ex 4, ("Report of Proceedings.") However, the questioning unequivocally demonstrated that no touching ever happened:

Q. Did your mouth ever touch his penis?

A. No.

Q. And how did you prevent that, or what did you do?"

A. I moved my head to the side.

When Beeta described the incident, she give no testimony and no evidence was admitted that the defendant ever touched any of her private areas or that she touched defendant's genitals. Pushing Beeta's head, does not constitute "sexual contact" nor could one conclude that sexual gratification follows pushing of the head. Beeta's testimony also lacks details concerning proximity. The jury was left with Beeta's

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<sup>1</sup> The judgment & sentence is facially invalid as to count IV, in that it listed the crime as RCW 9A.44.083, but the jury returned a verdict under RCW 9A.44.086.

inference of what pushing her head meant. In any event, neither pushing Beeta's head or her inference of what that meant constitutes "sexual contact." Though Beeta's testimony may constitute an element of "*intent*" to commit a different crime, that inferred "*intent*" is not an element of the crime of Child molestation in the Second degree. Beeta's testimony was straight forward, she denied any sexual contact. Given her unequivocal testimony that no "sexual contact" happened, the jury erred in finding the defendant guilty of count IV. RP 359-360

## 2. *Legal standards for Sufficiency of Evidence.*

The test for sufficiency of evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Whisenhunt*, 96 Wn.App. 18, 22, 980 P.2d 232 (1999); (quoting *State v. Green*, 94 Wn.2d 216, 221 (1980). All reasonable inferences (from proven facts) must be drawn in the State's favor and interpreted most strongly against the defendant. *Whisenhunt*, *id* at 23. In those cases in which the evidence shows touching through clothing, or touching of intimate parts of the body other than the primary erogenous areas, the courts have required some additional evidence of sexual gratification." *State v. Powell*, 62 Wn.App 914, 917, 816 P.2d 86 (1991), *reviewed denied*, 118 Wn.2d 1013 (1992).

In *Powell*, the victim knew the defendant as Uncle Harry. *Id.* at 916. The defendant hugged the victim around the chest while she was seated in his lap and later touched her front and bottom on her underpants under her skirt when he lifted her off of his lap. On another occasion, he touched both of her thighs on the outside of her clothing. Both times the contact was fleeting. *Id.* at 918. The court held the evidence was insufficient to support the inference the defendant touched the victim for sexual gratification. *Id.*

In, yet another case, *State v. R.P.*, 122 Wn.2d 735, 736, 862 P.2d 127 (1993), the court found that there was insufficient evidence of sexual contact to sustain one

count. In that case, R.P. was accused of indecent liberties where he allegedly "...picked up, hugged and kissed his classmate after track practice," [and placed] "... what is commonly referred to as a 'hickey' or 'passion mark' on her right neck area." The court in R.P. examined the record and facts and found that the evidence insufficient on the element of "sexual contact." *Id.*

In contrast, in *Whisenhunt, supra.*, the victim "...testified unequivocally that Mr. Whisenhunt touched her privates indicating her genital area, ... under her skirt but over her body suit. [She] testified that Mr. Whisenhunt ... [touched] her in the vaginal area." The court found the evidence sufficient in the *Whisehunt* case because the defendant actually touched the private or genital areas.<sup>2</sup> That is not the case here.

In sum, not only did Beeta never alleged "sexual contact"—she flatly denied it. Though she spoke to her perceptions of what intent the defendant may have had by pushing her head, the "*intent*" to commit a crime was not an elements the crime charged in Count IV. Therefore, this court should find that the evidence was insufficient to support the element of "sexual contact" and dismiss court IV.

#### **F. Conclusion.**

For the reason argued and presented, Mr. **Heidari** prays that the court grant his motion, issue an order for resentencing with the corrected crime dates placed on the Judgment & Sentence with a seriousness level of XI, and for an order dismissing Court IV.

Respectfully submitted this 4 day of February 2009.

  
\_\_\_\_\_  
**Mr. Monsour Heidari,**  
Monroe Correction Complex  
Box 888, TRU C-506  
Monroe, WA 98272.

<sup>2</sup> *State v. Price*, 127 Wn.App. 193, 110 P.3d 1171 (2005); *State v. Clark*, 139 Wn.2d 152 154 (Touching alleged to be touching of the penis.); *State v. AHO*, 137 Wn.2d 736, 975 P.2d 512 (1999).

# CERTIFICATE OF MAILING

Cause No. 01-1-10919-3 SEA

Today, I Mansur Heidari, deposited in the United States mail by delivering to prison authorities a properly stamped envelope (or an authority to affix postage) processed as inmate "LEGAL MAIL" and addressed to the below named parties:

TO:

PROSECUTING ATTORNEY OFFICE  
KING COUNTY COURT HOUSE W554  
516 THIRD AVE  
SEATTLE, WA 98104

Containing:

1. Motion to Modify Judgment & Sentence CR7.8(2) & (6)
2. DECLARATION of MAILING
3. Appendices, Exhibits
4. Application for JFP

Pursuant to Rule GR 13, I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct. [See RCW 9A.72.085 - 2004].

2/4/09

Date

Heidari

Signature

Type Name: \_\_\_\_\_

Monroe Correctional Complex  
Twin Rivers Unit  
P. O. Box 888 -  
Monroe, Washington 98272-0888

IN THE SUPERIOR COURT OF WASHINGTON STATE  
FOR KING COUNTY

State of Washington

Plaintiff/Respondent,

vs.

Monsour Heidari

Defendant.

No. 01-1-10919-3 *Sec*

**DECLARATION OF  
Monsour Heidari**

**DECLARATION**

I, Monsour Heidari, do declare that I am the defendant in the above titled cause number and have personal knowledge of the facts and history of the proceedings, that the facts and events are true and correct to the best of my knowledge, to wit:

1. I am an inmate at the Monroe Correctional Complex at Monroe, Washington. I am over the age of 18.
2. I am the defendant in cause number 01-1-10919-3. I am serving a sentence of 162 months imposed by judge Alsdorf for Counts I, IV and V.
3. My appendix B is a true copy of the "Amended Information" filed by the King County Prosecutor's office.
4. My appendix C is a true copy of the "Judgment & Sentence" filed with the clerk of the King County Superior Court and signed by Judge Alsdorf.

5. My exhibit #1 is a accurate recreation of the chart used at my trial that captures the victim's school years, ages and allegations of abuse.
6. My exhibit #2 is a true and accurate copy, in part, of the trial transcript and reflects the victim's testimony that places her allegation of Count I in the school year 1996-1997.
7. My exhibit #3 is a true and accurate copy, in part, of the trial transcript and reflects the victim's testimony that she traveled to Iran at the end of her Fifth grade or before June 15, 1997.
8. My exhibit #4 is a true and accurate copy, in part, of the trial transcript and reflects the victim's testimony concerning Count IV of the charges filed.
9. I read and write English very poorly and had to seek the assistance of a brief writer at the TRU law library to have my transcripts read to me so I could understand what had happened. But for the aid of the prison brief writer, I could not have identified the errors argued in this motion.

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

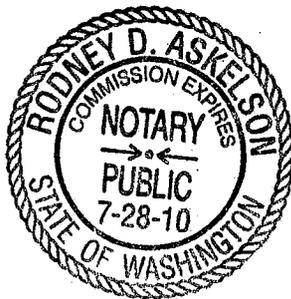
Respectfully submitted this 4 day of February 2009.

Haydara Urd

Mr. Monsour Heidari,  
 Monroe Correctional Complex  
 P.O. Box 888, TRU C-506  
 Monroe WA. 98272

Subscribed and sworn to, or affirmed before me this 4th day of February 2009.

By [Signature]  
 NOTARY PUBLIC, in and for the State  
 of Washington, Snohomish County  
 My Commission expires: 7/28/2010



APPROVED THIRD-PARTY  
LEGAL MATERIALS

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 01-1-10919-3 SEA
	)	
v.	)	
	)	AMENDED INFORMATION
MANSOUR HEIDARI	)	
	)	
	)	
Defendant.	)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse MANSOUR HEIDARI of the crime of Rape of a Child in the First Degree - Domestic Violence, committed as follows:

That the defendant MANSOUR HEIDARI in King County, Washington, during a period of time intervening between March 29, 1995, through March 28, 1998, being at least 24 months older than Beeta Zadegan had sexual intercourse with Beeta Zadegan, who was less than 12 years old and was not married to the defendant;

Contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse MANSOUR HEIDARI of the crime of Child Molestation in the First Degree - Domestic Violence, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 occasion that it would be difficult to separate proof of one charge  
2 from proof of the other, committed as follows:

3 That the defendant MANSOUR HEIDARI in King County, Washington,  
4 during a period of time intervening between March 29, 1995, through  
5 March 28, 1998, being at least 36 months older than Beeta Zadegan  
6 had sexual contact for the purpose of sexual gratification with  
7 Beeta Zadegan, who was less than 12 years old and was not married  
8 to the defendant;

9 Contrary to RCW 9A.44.083, and against the peace and dignity  
10 of the State of Washington.

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COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse MANSOUR HEIDARI of the crime of Rape of a Child in the First  
Degree - Domestic Violence, a crime of the same or similar  
character and based on the same conduct as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

That the defendant MANSOUR HEIDARI in King County, Washington  
during a period of time intervening between March 29, 1995 through  
March 28, 1998, being at least 24 months older than Beeta Zadegan,  
had sexual intercourse with Beeta Zadegan, who was less than 12  
years old and was not married to the defendant;

Contrary to RCW 9A.44.073, and against the peace and dignity  
of the State of Washington.

COUNT IV

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse MANSOUR HEIDARI of the crime of Child Molestation in the  
First Degree - Domestic Violence, a crime of the same or similar  
character and based on the same conduct as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

That the defendant MANSOUR HEIDARI in King County, Washington  
during a period of time intervening between March 29, 1995 through  
March 28, 1995, being at least 36 months older than Beeta Zadegan,  
had sexual contact for the purpose of sexual gratification with  
Beeta Zadegan, who was less than 12 years old and was not married  
to the defendant;

Contrary to RCW 9A.44.083, and against the peace and dignity  
of the State of Washington.

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

COUNT V

1  
2 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
3 accuse MANSOUR HEIDARI of the crime of Child Molestation in the  
4 Third Degree - Domestic Violence, a crime of the same or similar  
5 character and based on the same conduct as another crime charged  
6 herein, which crimes were part of a common scheme or plan and which  
7 crimes were so closely connected in respect to time, place and  
8 occasion that it would be difficult to separate proof of one charge  
9 from proof of the other, committed as follows:

10 That the defendant MANSOUR HEIDARI in King County, Washington  
11 during a period of time intervening between March 29, 2000 through  
12 March 29, 2001, being at least 48 months older than Beeta Zadegan,  
13 had sexual contact for the purpose of sexual gratification with  
14 Beeta Zadegan, who was 14 or 15 years old and was not married to  
15 the defendant;

16 Contrary to RCW 9A.44.089, and against the peace and dignity  
17 of the State of Washington.

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NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Cheryl L. Snow, WSBA #26757  
Deputy Prosecuting Attorney

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

APPROVED THIRD-PARTY  
LEGAL MATERIALS

APPROVED THIRD-PARTY  
LEGAL MATERIALS

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

MANSOUR HEIDARI

Defendant,

No. 01-1-10919-3 SEA

JUDGMENT AND SENTENCE  
FELONY

I. HEARING

1.1 The defendant, the defendant's lawyer, GABRIEL BANFI, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Beeta Zategarz + her mother and father

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/15/2002 by jury verdict of:

Count No.: I Crime: RAPE OF A CHILD IN THE FIRST DEGREE-DOMESTIC VIOLENCE  
RCW 9A.44.073 Crime Code: 01065  
Date of Crime: 03/29/1995-03/28/1999 Incident No. \_\_\_\_\_

Count No.: IV Crime: CHILD MOLESTATION IN THE SECOND DEGREE-DOMESTIC VIOLENCE  
RCW 9A.44.083 Crime Code: 01073  
Date of Crime: 03/29/1995-03/28/1998 Incident No. \_\_\_\_\_

Count No.: V Crime: CHILD MOLESTATION IN THE THIRD DEGREE-DOMESTIC VIOLENCE  
RCW 9A.44.089 Crime Code: 01075  
Date of Crime: 03/29/2000-03/29/2001 Incident No. \_\_\_\_\_

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

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(4).
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9.94A.835.
- (d)  A V.U.C.S.A. offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69.50.435.
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g)  Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h)  Domestic violence offense as defined in RCW 10.99.020 for count(s) \_\_\_\_\_
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).

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

**2.3 CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	6	XII	162 TO 216		162 TO 216 MONTHS	LIFE AND/OR \$50,000
Count IV	6	X	98 TO 130		98 TO 130 MONTHS	LIFE AND/OR \$50,000
Count V	6	V	41 TO 54		41 TO 54 MONTHS	5 YRS AND/OR \$10,000
Count						

Additional current offense sentencing data is attached in Appendix C.

**2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):**

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

**III. JUDGMENT**

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

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
- Date to be set.

~~GR~~  Defendant waives presence at future restitution hearing(s).

Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

- (a)  \$ \_\_\_\_\_, Court costs;  Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b)  \$100 DNA collection fee;  DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;  
 Recoupment is waived (RCW 9.94A.030);
- (d)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  
 VUCSA fine waived (RCW 69.50.430);
- (e)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived;  
(RCW 9.94A.030)
- (f)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (g)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (RCW 9.94A.760(2));
- (h)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. plus any restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from the date of sentence or release from confinement to assure payment of financial obligations.

Court Clerk's trust fees are waived.

Interest is waived except with respect to restitution.

APPROVED THIRD-PARTY  
LEGAL MATERIALS

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: [ ] immediately; [ ] (Date): \_\_\_\_\_ by \_\_\_\_\_, m.

162 months days on count I; 41 months days on count IV; \_\_\_\_\_ months/day on count \_\_\_\_\_  
98 months days on count IV; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I, IV, V are concurrent/consecutive.

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

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

[ ] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: \_\_\_\_\_

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

[ ] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is \_\_\_\_\_ months.

Credit is given for  35 days served [ ] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with Beeta Zadeqar

4.6 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, as ordered in APPENDIX G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [ ] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for \_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [ ] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c)  COMMUNITY CUSTODY - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
  - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
  - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
  - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
  - Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

APPENDIX H for Community Custody conditions is attached and incorporated herein.

APPENDIX J for sex offender registration is attached and incorporated herein.

4.8  WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

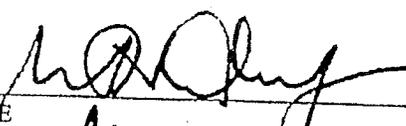
4.9  ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480. The State's plea/sentencing agreement is  attached  as follows:

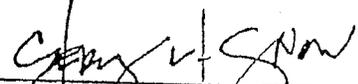
\_\_\_\_\_

\_\_\_\_\_

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 11/22/02

  
 \_\_\_\_\_  
 JUDGE  
 Print Name: ALSDORF

Presented by:  
  
 \_\_\_\_\_  
 Deputy Prosecuting Attorney, WSBA# 86757  
 Print Name: Cheryl Snow

Approved as to form:  
  
 \_\_\_\_\_  
 Attorney for Defendant, WSBA # 17810  
 Print Name: Gregory J. Bant

SUMMARY OF TRIAL TESTIMONY AND PROVEN FACTS<sup>1</sup>

SCHOOL GRAD	YEAR	AGE <sup>2</sup>	VERBATIM	COUNT <sup>3</sup>	Location
1st Allegation Fourth Grade	Sept 1995 June 1996	9/10	RP 327, 329, 335, 340	Count II Not Guilty	Defendant's Bedroom
2nd Allegation Fifth Grade	Sept 1996 June 1997	10/11	RP 327, 340 - 346	Count I Guilty RCW 9A.44.073	Video game Mohsen's bedroom

Change in the Law, Serious Level changes from XI to XII  
Laws of Washington 1997, Vol. 2, House Bill 1924, Chapter 340, Sec. 1., pg 2060.<sup>4</sup>

3rd Allegation Sixth Grade	Sept. 1997 June 1998	11/12	RP 329, 348, 349 357 361	Count III Not Guilty	BMW
4 <sup>th</sup> Allegation Sixth Grade	as above		RP 354	Count IV Guilty RCW 9A.44.086	Shower incident Pushing of Beeta's hea
Seventh Grade	Sept 1998 June 1999	12/13	RP 358-360		
Eighth Grade	Sept 1999 June 2000	13/14	RP 327	None	
5 <sup>th</sup> Allegation Ninth Grade	Sept.2000 Sept.2001	14/15	RP 326	Count V Guilty RCW 9A.44.089	Second Home , during Grand mother visit
Tenth Grade	Sept 2001 Sept 2002	15/16	RP 326, 362 - 366		

1 The prosecutor referred to a "Chart" when addressing the court and jury. The "Chart" was not entered into evidence but viewed by the jury and judge. RP 326.  
 2 DOB March 29, 1986; RP 324.  
 3 Amended Information Appendix B.  
 4 The victim Beeta traveled to Iran in May 1997 and returned in August 1997. She describes her Fifth grade and Fourth grade allegations as occurring before her trip to Iran. RP 319, 330, 335.

1 Q. What did you do after that happened?

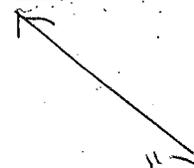
2 A. I didn't do anything. I just felt kind of awkward.

3 But, I didn't know whether I was supposed to be

4 touched this way or not. \_\_\_\_\_

→ when

5 Q. Was there <sup>"</sup>another time <sup>"</sup> that he touched you in a  
6 sexual way?



7 A. Yes.

8 Q. Can you tell me about the <sup>"</sup>next time <sup>"</sup> that you recall?

9 A. Well, I was playing video games. Then he said, "Come  
10 upstairs, I am going to show you something." And

11 then I went. And then when we went upstairs, it was

12 in Mohsen's bedroom, which is my aunt's brother.

13 When we were up there, he touched me.

14 Q. You said that you were playing video games. Okay.

15 Where did this happen at?

16 A. In the his first house.

17 Q. At the time that this happened, do you recall what  
18 grade you were in? ?

19 A. I don't remember.

20 Q. What grade do you think that you may have been in?

21 A. Fifth grade. 5-4

22 Q. This occurred before or after that first incident  
23 that you told us about?

24 A. Yes.

25 Q. The place where you were playing video games, in what

- 1 A. Yes.
- 2 Q. Third grade, '94 to '95?
- 3 A. Yes.
- 4 Q. Second grade, '93 to '94?
- 5 A. Right.
- 6 Q. First grade, '92 you to '93?
- 7 A. Yes.
- 8 Q. And kindergarten, '91 through '92?
- 9 A. Yes.
- 10 Q. Was there ever a time period while you were in
- 11 elementary school that you took a trip to Iran?
- 12 A. Yes.
- 13 Q. What grade did that fall in with regards to your
- 14 schooling? IRAN
- 15 A. It happened when we were in the fifth grade, in the
- 16 year '97, end of the school year.
- 17 Q. So, it ended with the school year between fifth and
- 18 sixth grade?
- 19 A. Yes.
- 20 Q. Who did you go to Iran with?
- 21 A. My mom and my sister.
- 22 Q. So, there may be times that we will maybe come back
- 23 to this chart. That should help us when we ask
- 24 specific questions regarding times.
- 25 A. Okay.

Mark  
Event

- 1                    were positioned in regards to one another?
- 2           A.    I don't remember, but I remember his hand was over my
- 3           head.    And he pushed my head down.
- 4           Q.    And could you tell what he was trying to do?
- 5           A.    Yes.    Definitely.
- 6           Q.    How could you tell?
- 7           A.    Because he had it out.    And he put my head towards it
- 8           and trying to get me to put it in my mouth.
- 9           Q.    Did your mouth ever touch his penis?
- 10          A.    No.
- 11          Q.    And how did you prevent that, or what did you do?
- 12          A.    I moved my head to the side.
- 13          Q.    An when you did that, do you recall how he reacted?
- 14          A.    I knew.
- 15          Q.    What happened next?
- 16          A.    I couldn't tell.    He didn't say anything to me.    I
- 17          ran out of the bedroom.
- 18          Q.    You left the bedroom?
- 19          A.    Yes.
- 20          Q.    I want to talk to you about the last incident.    You
- 21          told us that happened when you were a freshman?
- 22          A.    Yes.
- 23          Q.    Do you recall what month that was?
- 24          A.    My birthday.
- 25          Q.    Your birthday is in March?