

  
RECEIVED BY E-MAIL

NO. 86018-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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LOWELL DERAY FINSTAD, Petitioner

v.

STATE OF WASHINGTON, Respondent.

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FROM THE COURT OF APPEALS, DIVISION II – NO. 41877-1-II  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-01137-6, 06-  
1-02072-3, 07-1-00611-7, 07-1-01996-1

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ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent, the State of Washington, hereby replies to and answers the Motion for Discretionary Review filed by the Petitioner subsequent to the decision of the Court of Appeals, Division II.

II. CITATION TO COURT OF APPEALS DECISION

On April 21, 2011, the Court of Appeals, Division II, entered an Order dismissing the Petitioner's (hereafter, "defendant's") Personal Restraint Petition. On May 17, 2011, the defendant subsequently filed with this Court a motion for discretionary review. On August 19, 2011, this court filed a Ruling in which it requested an answer to the defendant's motion for discretionary review from the Respondent, State of Washington (hereafter, "the State").

III. ISSUE PRESENTED FOR REVIEW

When the defendant and the State of Washington entered into a plea agreement in which the parties agreed the defendant would be sentenced to consecutive sentences for two of his four pending felony cases, in exchange for the State dismissing multiple sentencing enhancements, should this Court grant the defendant's motion for discretionary review because Division II erred in finding the defendant was not entitled to be resentenced to concurrent sentences?

#### IV. STATEMENT OF THE CASE

On November 9, 2007, the defendant pled guilty in Clark County Superior Court to four felony cause numbers. To wit:

- Cause no. 06-1-01137-6, Count One: Possession of Controlled Substance with Intent to Deliver Methamphetamine and Count Two: Possession of Controlled Substance with Intent to Deliver Cocaine (occurring on or about June 7, 2006). (APPENDIX A).
- Cause no. 06-1-02072-3, Delivery of a Controlled Substance Methamphetamine (occurring on or about October 25, 2006). (APPENDIX B).
- Cause no. 07-1-00611-7, Intimidating a Witness (on or about November 29, 2005, the defendant threatened a former witness because he believed the witness provided information in a criminal investigation). (APPENDIX C).
- Cause no. 07-1-01996-6, Attempted Arson in the First Degree (on or about November 30, 2006, the defendant knowingly and maliciously attempted to cause a fire in a dwelling belonging to Vancouver Police Department Detective Bryan Acee). (APPENDIX D).

The defendant pled guilty to the four cause numbers listed above pursuant to a global offer of settlement. A copy of the global offer of settlement is attached. (APPENDIX E). In the global offer, the State offered to recommend a total sentence of 80 months confinement. This sentence would run consecutive to cause number 06-1-01073-6 (for which the defendant had already been sentenced to 40 months confinement)<sup>1</sup>.

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<sup>1</sup> The defendant was sentenced to 40 months confinement on cause no. 06-1-01073-6 on March 2, 2007, following a trial by jury. The defendant was found guilty of one count of Possession of Controlled Substance with Intent to Deliver Cocaine (with a finding of a

The specifics of the global offer were as follows (the defendant's offender score was calculated at 4 points for each offense):

- On cause no. 06-1-01137-6, the defendant's standard range sentence was 20-60 months confinement. Both counts were considered the same criminal conduct. The State agreed to dismiss two charged school-zone enhancements in exchange for 40 months confinement, which would run CONSECUTIVE to cause no. 06-1-02072-3.
- On cause no. 06-1-02072-3, the defendant's standard range sentence was 20-60 months confinement. The State agreed to dismiss a school-zone enhancement, in exchange for 40 months confinement, which would run CONSECUTIVE to cause no. 06-1-01137-6.
- On cause No. 07-1-00611-7, the defendant's standard range was 31-41 months confinement. The State offered 40 months confinement, which would run CONCURRENT to all other cause numbers.
- On cause no. 07-1-01996-6, the defendant's standard range was 30.75-40.50 months confinement. The State indicated it intended to file a sentencing aggravator because the victim of the attempted arson was a law enforcement officer. The State agreed to not file this aggravator and offered a 40 month sentence, which would run CONCURRENT to all other cause numbers.

In its global offer of settlement, the State wrote "in accepting this offer, the defendant is agreeing to stipulate to its terms". (APPENDIX E, p. 1). The defendant attached a copy of the State's global offer to each of

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school-zone enhancement) and one count of Possession of Controlled Substance Methamphetamine (both crimes occurring on or about November 17, 2005). A copy of the judgment and sentence is attached. (APPENDIX F). A copy of the mandate from Division II is also attached. (APPENDIX G).

his Statements on Plea of Guilty. (APPENDIX A, B, C, D). On page 4 of each Statement on Plea of Guilty, the defendant acknowledged he was pleading guilty pursuant to the global offer and he acknowledged that a copy of the global offer was attached to his Statement on Plea of Guilty. The defendant signed each statement on plea of guilty.

On November 14, 2007, the defendant was sentenced on cause numbers 06-1-01137-6, 06-1-02072-3, 07-1-00611-7, and 07-1-01996-1. The relevant portions of the Judgment and Sentence for each cause number are attached. (APPENDIX H, I, J, K). Each judgment and sentence indicated the following: the defendant was sentenced to 40 months confinement on each cause number. Cause no.06-1-01137-6 would run CONSECUTIVE to cause no. 06-1-02072-3 and cause numbers 07-1-00611-7 and 07-1-01996-1 would run CONCURRENT to all cause numbers. (APPENDIX H, I, J, K, p. 6). The defendant signed each judgment and sentence.

There is no indication that the defendant objected to the imposition of an exceptional sentence when he pled guilty on November 9, 2007 or when he was sentenced on November 14, 2007. However, on the face of

the judgment and sentences, it is evident the court did not make findings that the defendant was being sentenced to exceptional sentences.<sup>2</sup>

The defendant did not appeal any of the sentences issued on November 14, 2007. The defendant filed his Personal Restraint Petition on January 18, 2011, over three years after his judgment was final. In his Petition, the defendant argued he was sentenced to an illegal sentence when the court sentenced him to consecutive sentences on cause number 06-1-01137-6 and 06-1-02072-3 because, pursuant to RCW 9.94A.589(1)(a), when a defendant is sentenced to two or more current offenses, his/her sentences must be concurrent.<sup>3</sup> The defendant asked the court to remand his case to the trial court for resentencing to concurrent sentences on cause number 06-1-01137-6 and 06-1-02072-3, only. A copy of the defendant's Petition is attached. (APPENDIX L).

Division II denied the defendant's Petition. A copy of the Court's Order is attached. (APPENDIX M). The Court did not address whether the defendant was time-barred from filing his Petition, pursuant to RCW 10.73.090(1). Instead, the Court found, pursuant to *State v. Ermels*, the

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<sup>2</sup> The defendant did not provide a verbatim report of proceedings and he has made no citation to the record in either his Personal Restraint Petition or in his Motion for Discretionary Review. For this reason, we do not know what was said on the record on November 9, 2007, or on November 14, 2007.

<sup>3</sup> RCW 9.94A.589(1)(a) provides, "whenever a person is to be sentenced for two or more current offenses... [the sentences] shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535...". RCW 9.94A.589(1)(a).

defendant was not entitled to the relief he sought. 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006).

In determining whether it will grant the defendant's Motion for Discretionary Review, this Court has asked the State to answer whether the defendant's Petition is time-barred and whether its decisions in *Goodwin* and *Wilson* control in this case. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 870, 50 P.3d 618 (2002); *In re Pers. Restraint of Wilson*, 170 Wn.2d 682, 688-91, 224 P.3d 950 (2010). In both *Goodwin* and *Wilson* this court found the judgment and sentences were facially invalid and the remedy was to resentence the defendants. A copy of the defendant's Motion and this Court's Ruling is attached. (APPENDIX N, O).

## V. ARGUMENT

- A. The defendant is not time-barred from filing a collateral attack and this court should grant the defendant's motion for discretionary review.

RCW 10.73.090 provides:

1) [n]o petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a

personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction...

...  
- (RCW 10.73.090).

A judgment and sentence is “invalid on its face’ when it evidences the invalidity without further elaboration.” *Goodwin*, 146 Wn.2d at 866 (citing *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000), *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)). Under RCW 9.94A.589, when the court sentences an offender to two or more current offenses, the sentences shall be served concurrently. A sentence is exceptional when the confinement for two or more current offenses is ordered to run consecutively instead of concurrently. *See In re Pers. Restraint of Breedlove*, 138 Wn.2d 298, 304, 979 P.2d 417 (1999). In order to sentence a defendant to an exceptional sentence, the court must “set forth the reasons for its decision in written findings of fact and conclusions of law.” RCW 9.94A.535.

RAP 13.4 (b) provides a petition for discretionary review will be accepted by the Supreme Court only if: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

In the present case, the defendant's judgment and sentences are facially invalid. This is the case because the court ordered the sentences for two of the defendant's four pending felony cases to be run consecutive. However, there is no evidence on the face of any of the judgment and sentences that the court set forth its reasons for issuing an exceptional sentence. Because his sentence is facially invalid, the defendant is not time-barred, under RCW 10.73.090(1), from filing a collateral attack. To the extent that Division II did not address whether the defendant was time-barred from filing a collateral attack, the Court's ruling was in conflict with case law. RAP 13.4(b)(1). For this reason, the State does not oppose this Court granting the defendant's motion for discretionary review.

B. The defendant is not entitled to relief because the judgment and sentence did not constitute a fundamental defect that resulted in a complete miscarriage of justice.

A personal restraint petition is an extraordinary remedy that is designed to address fundamental legal defects that lead to restraints on an individual's freedom. *See In re Hagler*, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982) (stating the standard of review in a direct appeal is much more favorable for the complaining party than the standard of review in a personal restraint petition). In order to prevail on a claim of constitutional error, in a personal restraint petition, the complaining party must show "actual prejudice." *Hagler*, 97 Wn.2d at 825-26. In order to prevail on a claim of non-constitutional error, in a personal restraint petition, the complaining party must show the "error constitutes a fundamental defect which inherently results in a complete miscarriage of justice." *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

A facially invalid judgment and sentence is not a constitutional error. *Goodwin*, 866-67. Therefore, when a party challenges a facially invalid judgment and sentence in a PRP, he or she must show the error in the sentence was a fundamental defect, which inherently resulted in a complete miscarriage of justice.

In *Goodwin*, the Court found the judgment and sentence was fundamentally defective when the defendant was sentenced pursuant to a

miscalculated offender score. *Goodwin*, at 875-76. This sentence was fundamentally defective because the sentencing court does not have statutory authority to order a sentence pursuant to an erroneous offender score. *Id.*, at 867-68. The Court found it was irrelevant that the parties had stipulated to the erroneous offender score as part of a plea agreement, because such an agreement did not provide the sentencing court with the statutory authority it inherently lacked. *Id.*, at 875-76, 867-68.

Similarly, in *Wilson*, the Court found the petitioner's judgment and sentence was fatally defective when a criminal "attempt" was improperly included in his offender score as a completed offense because the sentencing court had no statutory authority to sentence the defendant pursuant to an erroneous offender score. *Wilson*, 170 Wn.2d at 689. The remedy in both cases was to grant the defendants' personal restraint petitions and to remand their cases for resentencing with the correct offender scores. *Wilson*, at 689; *Goodwin*, at 877-78

In contrast, a sentence is not fatally defective, and relief is not warranted, when an offender is sentenced pursuant to the court's statutory authority. For example, in *Fleming*, the Court found an untimely restitution order was not a fundamental defect that warranted relief. *In re Fleming*, 129 Wn.2d 529, 534, 919 P.2d 66 (1996). Relief was not warranted in *Fleming* because the sentencing court had the authority to

order restitution at the time of sentencing, but it delayed in doing so at the defendant's request. *Id.*

Similarly, in *Breedlove*, the Court found the imposition of an exceptional sentence was not a fundamental defect, warranting relief, because the sentencing court possessed the statutory authority to order an exceptional sentence. *Goodwin*, at 871 (citing *In re Breedlove*, 138 Wn.2d 298, 305, 979 P.2d 417 (1999)). In *Breedlove*, pursuant to a plea agreement, the State agreed to allow the defendant to plead guilty to reduced charges in exchange for the sentences on each count being served consecutively. *Breedlove*, 138 Wn.2d at 301-02. At sentencing, the parties advised the court the defendant was pleading to the statutory maximum on each current offense and that each offense would be served consecutively. The sentencing court ordered this sentence; however, it did not make findings that it was ordering an exceptional sentence. *Breedlove*, at 302. In a subsequent Personal Restraint Petition, the defendant did not challenge the validity of his plea and he did not seek to withdraw his plea. Further, the defendant did not allege he did not understand the terms or consequences of his plea. *Breedlove*, at 304. Rather, the defendant claimed he should be resentenced to concurrent sentences because an exceptional sentence based solely on the stipulation of the parties was not statutorily authorized. *Id.*

On review, the Court found the defendant was not sentenced beyond the statutory maximum for each offense. *Id.*, at 304-05. Further, it found the sentencing court had statutory authority to order an exceptional sentence. *Id.*, at 308. In addition, the Court found the Sentencing Reform Act specifically authorized plea agreements which recommend sentences outside the standard range. *Id.*, at 309 (citing former RCW 9.94A.080(3)). Also, the Court found the defendant's stipulation to consecutive sentences was intelligent, voluntary, and was made with the understanding of its consequences. *Id.*, at 312.

The Court agreed with the defendant that, pursuant to statute, the sentencing court needed to enter findings that substantial and compelling reasons justified the exceptional sentence. *Id.*, at 305. However, the Court disagreed with the defendant's assertion that the sentencing court's failure to do so mandated resentencing to concurrent sentences. *Id.*, at 311, 313. The Court found, under the circumstances of the case, the defendant was not entitled to the relief he requested because there had been no miscarriage of justice when the sentence imposed was "precisely the sentence requested by the defendant". *Id.*, at 311. Consequently, the Court dismissed the defendant's Personal Restraint Petition and remanded his case to the sentencing court for the entry of findings of fact and conclusions of law supporting the exceptional sentence. *Id.*, at 313. The

Court in *Breedlove* went on to hold that a sentencing court's finding that the parties' had agreed to an exceptional sentence could justify the court's finding that an exceptional sentence was warranted. The Court stated:

[w]e hold that where, as here, a trial court has approved a plea agreement as being consistent with the interests of justice and in conformance with this state's prosecuting standards, the trial court may additionally approve the plea agreement's stipulation to an exceptional sentence above or below the standard range if the trial court finds that the sentence is consistent with the purposes of the SRA.

- *Id.*, at 310.

C. The defendant's cases should be remanded to the sentencing court for entry of findings in support of an exceptional sentence.

The Court's holding in *Breedlove* is still cited as good law.

*Goodwin*, at 871; *State v. Ermels*, 156 Wn.2d 528, 533, 131 P.3d 299 (2006). Further, the sentencing court did not lose its ability to impose exceptional sentences, when the parties stipulate to an exceptional sentence, in light of *Blakely v. Washington. Ermels*, 156 Wn.2d at 537 (citing *Blakely*, 542 U.S. 296, 310, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)). The Court in *Blakely* stated:

...nothing prevents a defendant from waiving his *Apprendi* rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding. If appropriate waivers are procured, States may continue to offer judicial factfinding as a matter of course to all defendants who plead guilty.

- *Ermels*, at 537 (quoting *Blakely*, 542 U.S. at 310).

Plea agreements to exceptional sentences are ratified under RCW

9.94A.421. RCW 9.94A.421(3) provides:

[t]he prosecutor and the attorney for the defendant...may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

...

(3) Recommend a particular sentence outside of the sentence range...

- RCW 9.94A.421(3).

Further, the sentencing court is statutorily authorized to order exceptional sentences, without a finding of fact by the jury, pursuant to

RCW 9.94A.535. RCW 9.94A.535(2) provides:

[t]he trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

- RCW 9.94A.535(2).

In the present case, the defendant's consecutive sentences did not result in a sentence that exceeded the statutory maximum for any of the offenses to which he pled. The defendant was sentenced to total 80 months total confinement. Each of the crimes to which the defendant pled were either Class A or Class B felonies. RCW 69.50.401, RCW 9A.72.110, RCW 9A.48.020. RCW 9A.20.021 provides the maximum statutory sentence for a Class A felony is life imprisonment and the maximum statutory sentence for a Class B felony is 10 years imprisonment. RCW 9A.20.021(a), (b).

Further, there is no evidence that the defendant did not knowingly, intelligently, and voluntarily enter into a plea agreement for consecutive sentences. In the State's global offer of settlement, the State made it clear it was offering to dismiss school-zone enhancements and leave unfilled aggravators (based on the victim's status in the Attempted Arson in the First Degree charge) in exchange for a sentence in which the confinement

for two of the defendant's four felony cases would be run consecutively. Further, in its global offer, the State expressly said the defendant must stipulate to the terms of the offer in order to accept it. (APPENDIX E). The defendant acknowledged the global agreement in each of his four Statements on Plea of Guilty when he attached the State's global offer to each Statement on Plea of Guilty, and when he instructed the court in his Statements on Plea of Guilty to refer to the attached global agreement. (APPENDIX A, B, C, D). More importantly, the defendant has made it clear, in his Petition and in his Motion, that he is not challenging the validity of the plea agreement.

There should be no doubt that the defendant and the State agreed to an exceptional sentence in his case. Further, there can be no miscarriage of justice when the sentence imposed was precisely the sentence requested by the defendant. Consequently, the appropriate remedy is to deny the defendant's Personal Restraint Petition and to remand the defendant's cases to the sentencing court for entry of findings and conclusions in support of an exceptional sentence.<sup>4</sup>

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<sup>4</sup> Division II denied the defendant's Petition based on the Court's holding in *Ermels*. The facts in *Ermels* are similar to the facts in our case because the parties in *Ermels* also agreed to an exceptional sentence as part of a plea agreement. However, *Ermels* is distinguishable from our case because the sentencing court in *Ermels* entered findings in support of an exceptional sentence. The facts in *Breedlove* are most similar to the facts in our case; therefore, the Court's holding in *Breedlove* should control here.

VI. CONCLUSION

The State does not oppose this Court granting the defendant's motion for discretionary review. The State asks this court, however, to deny the defendant's Personal Restraint Petition. The Court's holdings in *Goodwin* and *Wilson* do not control here, because the defendant's exceptional sentence was authorized by statute. The States asks the Court to remand the defendant's cases to the sentencing court for entry of findings and conclusions in support of an exceptional sentence.

DATED this 15 day of September, 2011.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

ABT  
ABIGAIL E. BARTLETT, WSBA#36937  
Deputy Prosecuting Attorney

## OFFICE RECEPTIONIST, CLERK

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**To:** Casey, Jennifer  
**Subject:** RE: 86018-1, State v. Finstad - Answer to Motion for Discretionary Review

Rec. 9-15-11. Please send all the appendix together in the mail. They exceed the page limit that you are able to send via email. Please have a cover page with the appendix so we will be able to match it up with the Answer to motion for discretionary review that was filed via email. Thank you

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Casey, Jennifer [<mailto:Jennifer.Casey@clark.wa.gov>]  
**Sent:** Thursday, September 15, 2011 3:18 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** 86018-1, State v. Finstad - Answer to Motion for Discretionary Review

Dear Clerk,

Attached please find the State's Motion for Discretionary Review and Appendices A-G. Because of the size of the files, I will send the remaining appendices (H-O) and our Declaration of Mailing in a separate email. Please accept these documents for e-filing.

Sincerely,

Jennie Casey  
Clark County Prosecutor's Office  
Appeals/Public Disclosure  
360-397-2261 ext. 4476  
Fax: 360-759-6749

This e-mail and related attachments and any response may be subject to public disclosure under state law.

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SUPREME COURT  
STATE OF WASHINGTON  
Sep 15, 2011, 3:22 pm  
BY RONALD R. CARPENTER  
CLERK

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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LOWELL DERAY FINSTAD,  
Petitioner.

No. 86018-1

Clark Co. No. 06-1-01137-6; 06-1-02072-3; 07-1-00611-7; 07-1-01996-1

DECLARATION OF  
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

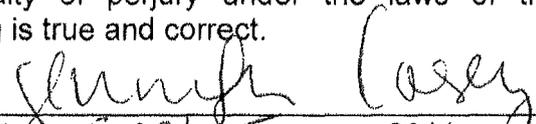
COUNTY OF CLARK ) : ss

On Sept 15, 2011, I e-filed with the Clerk of the Supreme Court, and also deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: Ronald Carpenter, Clerk Supreme Court Via e-filing	Lowell D. Finstad, DOC# 312497 Larch Corrections Center 15314 NE Dole Valley Rd. Yacolt, WA 98675-9531
--	---

DOCUMENTS: Answer to Motion for Descretionary Review

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

  
Date: Sept 15, 2011.  
Place: Vancouver, Washington.

## OFFICE RECEPTIONIST, CLERK

---

**To:** Casey, Jennifer  
**Subject:** RE: 86018-1, State v. Finstad - answer to motion for discretionary Review 2nd email

Rec. 9-15-11 the declaration. Please mail the appendix. Thank you

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Casey, Jennifer [<mailto:Jennifer.Casey@clark.wa.gov>]  
**Sent:** Thursday, September 15, 2011 3:20 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** 86018-1, State v. Finstad - answer to motion for discretionary Review 2nd email

Dear Clerk,

Per my previous email, attached please find Appendices H-O to the State's Answer to Motion for Discretionary Review and our Declaration of Mailing in the above matter. Please accept these documents for e-filing.

Sincerely,

Jennie Casey  
Clark County Prosecutor's Office  
Appeals/Public Disclosure  
360-397-2261 ext. 4476  
Fax: 360-759-6749

This e-mail and related attachments and any response may be subject to public disclosure under state law.

NO. 86018-1

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FROM THE COURT OF APPEALS, DIVISION II – NO. 41877-1-II  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-01137-6, 06-  
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ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

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Appendices

## APPENDIX A

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Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,

v.

LOWELL DERAY FINSTAD,  
Defendant.

No. 06-1-01139-6

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(STTDFG)

1. My true name is Lowell Deray Finstad
2. My age is 21 and my date of birth is 01/11/86
3. I went through the 11 th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
  - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer is James J. Sowder.
  - (b) I am charged with:  
 The elements are: In Clark County, Washington on or about Jan 7 2006 Lowell Finstad did knowingly and unlawfully possess retrograde with intent to deliver
5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
  - (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;
  - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
  - (c) The right at trial to hear and question the witnesses who testify against me;
  - (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
  - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter

10

1 a plea of guilty;

2 (f) The right to appeal a determination of guilty after a trial.

3 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND  
4 THAT:

5 (a) Each crime I am charged with carries a maximum sentence, a fine, and a STANDARD  
6 SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	4	20-60 months	Ø	20-60	12 months	10 years \$20,000
2	4	20-60 months	Ø		12 months	10 years 20,000

7  
8  
9  
10  
11  
12 \* (F) firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (See RCW 46.61.520), (JP) juvenile present (SM) Sexual motivation, RCW 9.94A.533(8).

13 (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether  
14 in this state, in federal court, or elsewhere.

15 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's  
16 statement is correct and complete. If I have attached my own statement, I assert that it is correct  
17 and complete. If I am convicted of any additional crimes between now and the time I am  
18 sentenced, I am obligated to tell the sentencing judge about those convictions.

19 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal  
20 history is discovered, both the standard sentence range and the prosecuting attorney's  
21 recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I  
22 cannot change my mind if additional criminal history is discovered even though the standard  
23 sentencing range and the prosecuting attorney's recommendation increase, and even though a  
24 mandatory sentence of life imprisonment without the possibility of parole is required by law.

25 (e) In addition to sentencing me to confinement for the standard range, the judge will order  
26 me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury  
27 to any person or damage to or loss of property, the judge will order me to make restitution,  
unless extraordinary circumstances exist which would make restitution inappropriate. The  
amount of restitution may be up to double my gain or double the victim's loss. The judge may

1 also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

2 (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the  
3 judge may order me to serve up to one year of community supervision if the total period of confinement  
4 ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault  
5 of a child in the second degree, or any crime against a person in which a specific finding was made that  
6 I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year  
7 of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent  
8 offense, the judge will order me to serve at least two years of community placement. The actual period  
9 of community placement, community custody, or community supervision may be as long as my earned  
10 early release period. During the period of community placement, community custody, or community  
11 supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions  
12 and requirements placed upon me.

13 For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement,  
14 under certain circumstances the judge may order me to serve up to one year of community custody if the  
15 total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls  
16 into one of the offense types listed in the following chart, the court will sentence me to community  
17 custody for the community custody range established for that offense type unless the judge finds  
18 substantial and compelling reasons not to do so. If the period of earned release awarded per RCW  
19 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted  
20 of falls into more than one category of offense types listed in the following chart, then the community  
21 custody range will be based on the offense type that dictates the longest term of community custody.

<u>Offense Type</u>	<u>Community Custody Range</u>
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.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

22 During the period of community custody, I will be under the supervision of the  
23 Department of Corrections, and I will have **restrictions and requirements placed upon me.**  
24 My failure to comply with these conditions will render me ineligible for general assistance, RCW  
25 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more  
26  
27

1 restrictive confinement status or other sanctions.

2 I do not waive any right I may have to appear before a court to contest community  
3 custody violations.

4 (g) The prosecuting attorney will make the following recommendation to the judge:

- 5 1. ~ 40 months consecutive to  
6 2. 06-1-1073-6 AND 06-1-2072-3  
7 3. CONCURRENT WITH 07-1-6117 AND  
8 4. 07-1-1996-A.  
9 5. ~~TOTAL 120~~ LIFE TIME NO CONTACT RESTRICTIONS  
10 6. ~ DISMISS PLEA 06-1-1073-6.  
11 7. SEE ATTACHED PLEA OFFER BY STATE  
12 8. Payment of \$200 court costs, \$500 crime victim compensation fund fee, \$700 court  
13 appointed attorney fees, \$100 DNA fee, \$100 lab fee, \$1000 Drug Fund Contribution,  
14 \$500 fine and restitution, if any, to be determined.

15 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge  
16 must impose a sentence within the standard range unless there is a finding of substantial and  
17 compelling reasons not to do so. I understand the following regarding **exceptional sentences**:

18 (i) The judge may impose an exceptional sentence below the standard range if the judge  
19 finds mitigating circumstances supporting an exceptional sentence.

20 (ii) The judge may impose an exceptional sentence above the standard range if I am  
21 being sentenced for more than one crime and I have an offender score of more than nine

22 (iii) The judge may also impose an exceptional sentence above the standard range if the  
23 State and I stipulate that justice is best served by imposition of an exceptional sentence  
24 and the judge agrees that an exceptional sentence is consistent with and in furtherance  
25 of the interests of justice and the purposes of the Sentencing Reform Act.

26 (iv) The judge may also impose an exceptional sentence above the standard range if the  
27 State has given notice that it will seek an exceptional sentence, the notice states  
aggravating circumstances upon which the requested sentence will be based, and facts  
supporting an exceptional sentence are proven beyond a reasonable doubt to a  
unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by  
anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can  
appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as

1 a crime under state law is grounds for deportation, exclusion from admission to the United  
2 States, or denial of naturalization pursuant to the laws of the United States.

3 (j) I understand that I may not possess, own, or have under my control any firearm unless  
4 my right to do so is restored by a court of record and that I must immediately surrender any  
5 concealed pistol license. RCW 9.41.040.

6 (k) I understand that I will be ineligible to vote until that right is restored in a manner  
7 provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const.  
8 Art. VI, § 3, RCW 29A.04.079, 29A.08.520.

9 (l) Public assistance will be suspended during any period of imprisonment.

10 (m) I understand that I will be required to have a biological sample collected for purposes  
11 of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be  
12 required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will  
13 cause me undue hardship.

14 NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING  
15 PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE  
16 DEFENDANT AND THE JUDGE.

17 (n) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if  
18 I have at least two prior convictions for most serious offenses, whether in this state, in federal  
19 court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life  
20 imprisonment without the possibility of parole.

21 (o) The judge may sentence me as a first-time offender instead of giving a sentence within  
22 the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as  
23 90 days' confinement, and up to two years community supervision if the crime was committed  
24 prior to July 1, 2000, or up to two years of community custody if the crime was committed on  
25 or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the  
26 judge could require me to undergo treatment, to devote time to a specific occupation, and to  
27 pursue a prescribed course of study or occupational training.

(p) If this crime involves a kidnapping offense involving a minor, I will be required to  
register where I reside, study or work. The specific registration requirements are set forth in  
the "Offender Registration" Attachment.

(q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence  
assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court  
may order me to participate in a domestic violence perpetrator program approved under RCW  
26.50.150.

1 (r) If this crime involves **prostitution, or a drug offense associated with hypodermic**  
2 **needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS)  
3 virus.

4 (s) The judge may sentence me under the **special drug offender sentencing alternative**  
5 (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be  
6 examined by a licensed or certified treatment provider before deciding to impose a DOSA  
7 sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based  
8 alternative or a residential chemical dependency treatment-based alternative. If the judge  
9 imposes the **prison-based alternative**, the sentence will consist of a period of total confinement  
10 in a state facility for one-half of the midpoint of the standard range, or 12 months whichever  
11 is greater. During confinement, I will be required to undergo a comprehensive substance abuse  
12 assessment and to participate in treatment.

The judge will also impose a term of community custody of at least one-half of the midpoint of  
the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the  
sentence will consist of a term of community custody equal to one-half of the midpoint of the  
standard sentence range or two years, whichever is greater, and I will have to enter and remain  
in a certified residential chemical dependency treatment program for a period of *three to six*  
*months*, as set by the court. As part of this sentencing alternative, the court is required to  
schedule a progress hearing during the period of residential chemical dependency treatment and  
a treatment termination hearing scheduled three months before the expiration of the term of  
community custody. At either hearing, based upon reports by my treatment provider and the  
department of corrections on my compliance with treatment and monitoring requirements and  
recommendations regarding termination from treatment, the judge may modify the conditions  
of my community custody or order me to serve a term of total confinement equal to one-half  
of the midpoint of the standard sentence range, followed by a term of community custody under  
RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit  
me from using alcohol or controlled substances, require me to submit to urinalysis or other  
testing to monitor that status, require me to devote time to a specific employment or training,  
stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require  
other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e).  
The judge, on his or her own initiative, may order me to appear in court at any time during the  
period of community custody to evaluate my progress in treatment or to determine if any  
violations of the conditions of the sentence have occurred. If the court finds that I have violated

1 the conditions of the sentence or that I have failed to make satisfactory progress in treatment,  
2 the court may modify the terms of my community custody or order me to serve a term of total  
3 confinement within the standard range.

4 (t) If I am subject to community custody and the judge finds that I have a **chemical**  
5 **dependency** that has contributed to the offense, the judge may order me to participate in  
6 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the  
7 circumstances of the crime for which I am pleading guilty.

8 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver  
9 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including  
10 its salts, isomers, and salts of isomers, a mandatory **methamphetamine clean-up fine** of  
11 \$3,000 will be assessed. RCW 69.50.401(2)(b).

12 (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal  
13 food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21  
14 U.S.C. § 862a.

15 (w) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be  
16 suspended or revoked.

17 (x) If this crime involves the offense of vehicular homicide while under the influence of  
18 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January  
19 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular  
20 homicide for each prior offense as defined in RCW 46.61.5055(8).

21 (y) The crime of \_\_\_\_\_ has a **mandatory minimum**  
22 sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction  
23 of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence  
24 of life imprisonment without the possibility of parole described in paragraph 6[n].

25 (z) I am being sentenced for **two or more serious violent offenses** arising from separate  
26 and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run  
27 consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(aa) I understand that the offense(s) I am pleading guilty to include a Violation of the  
Uniform Controlled Substances Act in a **protected zone enhancement** or manufacture of  
methamphetamine when a juvenile was present in or upon the premises of manufacture  
enhancement. I understand these enhancements are mandatory and that they must run  
consecutively to all other sentencing provisions.

(bb) I understand that the offense(s) I am pleading guilty to include a **deadly weapon,**  
**firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation

1 enhancements are mandatory, they must be served in total confinement, and they must run  
2 consecutively to any other sentence and to any other deadly weapon, firearm, or sexual  
3 motivation enhancements.

4 (cc) I understand that the offenses I am pleading guilty to include both a conviction under  
5 RCW 9.41.040 for **unlawful possession of a firearm in the first or second degree and one**  
6 **or more convictions for the felony crimes of theft of a firearm or possession of a stolen**  
7 **firearm**. The sentences imposed for these crimes shall be served consecutively to each other.  
8 A consecutive sentence will also be imposed for each firearm unlawfully possessed.

9 (dd) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining  
10 assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six  
11 months if this is my first conviction and for at least 12 months if this is my second or subsequent  
12 conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

13 (ee) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my  
14 term of total confinement must be more than twelve months and less than thirty-six months, I  
15 can not currently be either pending prosecution or serving a sentence for violation of the  
16 uniform controlled substance act and I can not have a current or prior conviction for a sex or  
17 violent offense.

18 7. **I plead guilty to Count 1, AND Count 1A**

19 I have received a copy of that Information.

20 8. **I make this plea freely and voluntarily.**

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

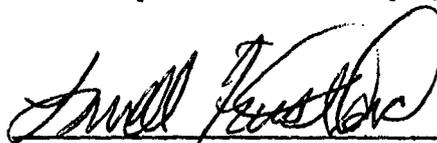
23 10. **No person has made promises** of any kind to cause me to enter this plea except as set forth  
24 in this statement.

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

27  
JUNE 9 2006  
IN CLARK COUNTY, WASHINGTON, ON OR ABOUT 7 LOW EL  
FIRST AND BELIEVE THE STATE CAN PROVE  
BEYOND A REASONABLE DOUBT THAT  
ON TWO SEPARATE INCIDENTS I  
POSSESSED RETAMPHE WITH  
INTENT TO DELIVER

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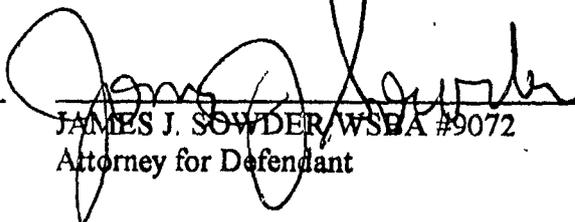
12. My lawyer explained to me and we have fully discussed all of the above paragraphs and the "Offender Registration" attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty". I have no further questions to ask the judge.

  
DEFENDANT

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



WSBA# 28702  
Deputy Prosecuting Attorney



JAMES J. SOWDER/WSBA #9072  
Attorney for Defendant

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 (check one):

(a) The defendant had previously read the entire statement above and the defendant understood it in full; or

- 1 [ ](b) The defendant's lawyer had previously read to him or her the entire statement above and that  
2 the defendant understood it in full; or  
3 [ ](c) An interpreter had previously read to the defendant the entire statement above and the  
4 defendant understood it in full. The interpreter's declaration is attached.

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

8 DATED this 9 day of November, 2007.



JUDGE JOHN P. WULLE

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

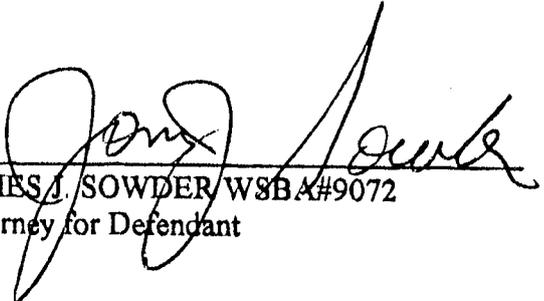
STATE OF WASHINGTON, ) No.  
Plaintiff, )  
v. ) DEFENDANT'S STATEMENT OF  
LOWELL DERAY FINSTAD, ) CRIMINAL HISTORY  
Defendant. )

Defendant, LOWELL DERAY FINSTAD, by and through his attorney, JAMES J. SOWDER, submits the following criminal history as undisputed:

- 1. CLARK CO SUB DCS

Total Points: 1

DATED this 9 day of November, 2007.

  
JAMES J. SOWDER WSBA#9072  
Attorney for Defendant

**STATE OF WASHINGTON V. LOWELL DERAY FINSTAD**

**CAUSE NOS 06-1-01137-6; 06-1-02072-3; 07-1-00611-7**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	24 months (school zone)**	44-84 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	24 months (school zone)**	44-84 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	24 months (school bus)**	44-84 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months

Please note: the continuation of the appeal on 06-1-01073-6 makes real the possibility of an increase in the offender score to add an additional point. Under State Supreme Court caselaw, pcs with intent and pcs are separate criminal conduct. Any resolution would necessitate dismissing the appeal, as the addition of another point by the State will result in resentencing of all cases at a later date with the accompanying increased ranges. Simply put: it will un-do what we work to resolve today. Similarly, the state will not resolve the case for 120 months, only to find that 40 will be removed via operation of the Court of Appeals. To accept this offer, the defendant must dismiss his pending appeal on 06-1-01073-6. \*\*Addition of school bus stop zone enhancement doubles the statutory maximum of the charged crime per RCW 69.50.435.

**Please note:** The unfiled case would include a law enforcement victim aggravator should the state be forced to proceed on that case.

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying criminal history which the defendant must acknowledge as accurate, true and complete. It may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: 11/9/07. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	—	20-60 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	—	20-60 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	—	20-60 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE (07-1-01996-1)</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months

- In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:
- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.
- The State will refer this case for Drug Court screening.

#### RECOMMENDATION AS TO CONFINEMENT

120 Months in Total Confinement. This 120 months would include the 40 months on 06-1-01073-6, which was sentenced previously this year, 40 months on 06-1-01137-6, 40 months on 06-1-02072-3, each consecutive to each other. Additionally, the defendant would be sentenced to 40 months on 07-1-00611-7 (Witness intimidation), concurrent to all other causes, along with 40 months on 07-1-01996-1 (Attempted Arson I), concurrent to all other causes.

#### TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of \$700.00 restitution of \_\_\_\_\_ or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

*Other legal financial obligations include:*

Drug Fund of \$1,000.00  
Warrant Fees of \_\_\_\_\_  
Lab Fee of \$100.00  
DV Penalty Assessment \_\_\_\_\_

Emergency Response Fee of \_\_\_\_\_  
Extradition Costs of \_\_\_\_\_  
Other of \_\_\_\_\_ for \_\_\_\_\_

**SUPERVISION**

Community Custody for 18-36months.

**MANDATORY SENTENCE REQUIREMENTS**

- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

**OTHER CONDITIONS OF SUPERVISION**

*(This list is non-exclusive – the State is free to recommend other usual conditions )*

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for:  substance abuse;  mental health;  anger control;  other \_\_\_\_\_
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with Brian Acee or his wife for life.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime.
- Forfeiture of the following property: \_\_\_\_\_
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER \_\_\_\_\_

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

  
\_\_\_\_\_  
Bernard F. Veljacic  
Deputy Prosecuting Attorney, WSBA #28702

11-9-07  
\_\_\_\_\_  
Date

## **APPENDIX B**

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**FILED**

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.

No. 06-1-2002-3  
STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(STDFG)

- 1. My true name is
- 2. My age is and my date of birth is
- 3. I went through the 11 th grade.
- 4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the **right to representation** by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer is James J. Sowder.

(b) I am charged with:

The elements are: In Clark County, Washington on or about October 25 2006 Lowell Finstad did knowingly deliver a controlled substance, METHAMPHETAMINE

- 5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (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;
- (b) The right to **remain silent** before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to **hear and question the witnesses** who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am **presumed innocent** until the charge is proven beyond a reasonable doubt or I enter

1 a plea of guilty;

2 (f) The right to appeal a determination of guilty after a trial.

3 6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:**

4 (a) Each crime I am charged with carries a maximum sentence, a fine, and a **STANDARD SENTENCE RANGE** as follows:

5

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
	4	20-60 MONTHS	Ø	20-60 MONTHS	12 months	10 YEARS <del>\$2,000</del> \$2,900

6  
7  
8  
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11  
12 \* (F) firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (See RCW 46.61.520), (JP) juvenile present.  
(SM) Sexual motivation, RCW 9.94A.533(8).

13 (b) The standard sentence range is based on the crime charged and my **criminal history**.  
14 Criminal history includes **prior convictions and juvenile** adjudications or convictions, whether  
15 in this state, in federal court, or elsewhere.

16 (c) The prosecuting attorney's statement of my **criminal history is attached** to this  
17 agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's  
18 statement is correct and complete. If I have attached my own statement, I assert that it is correct  
19 and complete. If I am convicted of any additional crimes between now and the time I am  
20 sentenced, I am **obligated to tell** the sentencing judge about those convictions.

21 (d) If I am convicted of any **new crimes before sentencing**, or if any additional criminal  
22 history is discovered, both the standard sentence range and the prosecuting attorney's  
23 recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I  
24 cannot change my mind if additional criminal history is discovered even though the standard  
25 sentencing range and the prosecuting attorney's recommendation increase, and even though a  
26 mandatory sentence of life imprisonment without the possibility of parole is required by law.

27 (e) In addition to sentencing me to confinement for the standard range, the judge will order  
me to pay **\$500.00 as a victim's compensation** fund assessment. If this crime resulted in injury  
to any person or damage to or loss of property, the judge will order me to make restitution,  
unless extraordinary circumstances exist which would make restitution inappropriate. The  
amount of restitution may be up to double my gain or double the victim's loss. The judge may

1 also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

2 (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the  
3 judge may order me to serve up to one year of community supervision if the total period of confinement  
4 ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault  
5 of a child in the second degree, or any crime against a person in which a specific finding was made that  
6 I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year  
7 of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent  
8 offense, the judge will order me to serve at least two years of community placement. The actual period  
9 of community placement, community custody, or community supervision may be as long as my earned  
10 early release period. During the period of community placement, community custody, or community  
11 supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions  
12 and requirements placed upon me.

13 For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement,  
14 under certain circumstances the judge may order me to serve up to one year of community custody if the  
15 total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls  
16 into one of the offense types listed in the following chart, the court will sentence me to community  
17 custody for the community custody range established for that offense type unless the judge finds  
18 substantial and compelling reasons not to do so. If the period of earned release awarded per RCW  
19 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted  
20 of falls into more than one category of offense types listed in the following chart, then the community  
21 custody range will be based on the offense type that dictates the longest term of community custody.

<u>Offense Type</u>	<u>Community Custody Range</u>
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.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

22 During the period of community custody, I will be under the supervision of the  
23 Department of Corrections, and I will have **restrictions and requirements placed upon me.**  
24 My failure to comply with these conditions will render me ineligible for general assistance, RCW  
25 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more  
26  
27

1 restrictive confinement status or other sanctions.

2 I do not waive any right I may have to appear before a court to contest community  
3 custody violations.

4 (g) The prosecuting attorney will make the following recommendation to the judge:

- 5 1. 40 MONTHS CONFINEMENT TO 06-1-010136  
6 2. AND 06-1-1137-6 CONCURRENT WITH  
7 3. 07-1-00611-7 AND 07-1-1996-1  
8 4. - NO DV HARMONY  
9 5. - LIFE TERM AS PERVIOUS APPEAL  
10 6. SEE ATTACHED OFFER  
11 7. See Attached plea offer.  
12 8. Payment of \$200 court costs, \$500 crime victim compensation fund fee, \$700 court  
13 appointed attorney fees, \$100 DNA fee, \$100 lab fee, \$1000 Drug Fund Contribution,  
14 \$500 fine and restitution, if any, to be determined.

15 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge  
16 must impose a sentence within the standard range unless there is a finding of substantial and  
17 compelling reasons not to do so. I understand the following regarding **exceptional sentences**:

18 (i) The judge may impose an exceptional sentence below the standard range if the judge  
19 finds mitigating circumstances supporting an exceptional sentence.

20 (ii) The judge may impose an exceptional sentence above the standard range if I am  
21 being sentenced for more than one crime and I have an offender score of more than nine

22 (iii) The judge may also impose an exceptional sentence above the standard range if the  
23 State and I stipulate that justice is best served by imposition of an exceptional sentence  
24 and the judge agrees that an exceptional sentence is consistent with and in furtherance  
25 of the interests of justice and the purposes of the Sentencing Reform Act.

26 (iv) The judge may also impose an exceptional sentence above the standard range if the  
27 State has given notice that it will seek an exceptional sentence, the notice states  
aggravating circumstances upon which the requested sentence will be based, and facts  
supporting an exceptional sentence are proven beyond a reasonable doubt to a  
unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by  
anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can  
appeal the sentence.

(i) **If I am not a citizen of the United States, a plea of guilty to an offense punishable as**

1 a crime under state law is grounds for deportation, exclusion from admission to the United  
2 States, or denial of naturalization pursuant to the laws of the United States.

3 (j) I understand that I may not possess, own, or have under my control any firearm unless  
4 my right to do so is restored by a court of record and that I must immediately surrender any  
5 concealed pistol license. RCW 9.41.040.

6 (k) I understand that I will be ineligible to vote until that right is restored in a manner  
7 provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const.  
8 Art. VI, § 3, RCW 29A.04.079, 29A.08.520.

9 (l) Public assistance will be suspended during any period of imprisonment.

10 (m) I understand that I will be required to have a biological sample collected for purposes  
11 of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be  
12 required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will  
13 cause me undue hardship.

14 NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING  
15 PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE  
16 DEFENDANT AND THE JUDGE.

17 (n) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if  
18 I have at least two prior convictions for most serious offenses, whether in this state, in federal  
19 court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life  
20 imprisonment without the possibility of parole.

21 (o) The judge may sentence me as a first-time offender instead of giving a sentence within  
22 the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as  
23 90 days' confinement, and up to two years community supervision if the crime was committed  
24 prior to July 1, 2000, or up to two years of community custody if the crime was committed on  
25 or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the  
26 judge could require me to undergo treatment, to devote time to a specific occupation, and to  
27 pursue a prescribed course of study or occupational training.

(p) If this crime involves a kidnapping offense involving a minor, I will be required to  
register where I reside, study or work. The specific registration requirements are set forth in  
the "Offender Registration" Attachment

(q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence  
assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court  
may order me to participate in a domestic violence perpetrator program approved under RCW  
26.50.150.

1 (r) If this crime involves **prostitution, or a drug offense associated with hypodermic**  
2 **needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS)  
3 virus.

4 (s) The judge may sentence me under the **special drug offender sentencing alternative**  
5 **(DOSA)** if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be  
6 examined by a licensed or certified treatment provider before deciding to impose a DOSA  
7 sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based  
8 alternative or a residential chemical dependency treatment-based alternative. If the judge  
9 imposes the **prison-based alternative**, the sentence will consist of a period of total confinement  
10 in a state facility for one-half of the midpoint of the standard range, or 12 months whichever  
11 is greater. During confinement, I will be required to undergo a comprehensive substance abuse  
12 assessment and to participate in treatment.

The judge will also impose a term of community custody of at least one-half of the midpoint of  
the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the  
sentence will consist of a term of community custody equal to one-half of the midpoint of the  
standard sentence range or two years, whichever is greater, and I will have to enter and remain  
in a certified residential chemical dependency treatment program for a period of *three to six*  
*months*, as set by the court. As part of this sentencing alternative, the court is required to  
schedule a progress hearing during the period of residential chemical dependency treatment and  
a treatment termination hearing scheduled three months before the expiration of the term of  
community custody. At either hearing, based upon reports by my treatment provider and the  
department of corrections on my compliance with treatment and monitoring requirements and  
recommendations regarding termination from treatment, the judge may modify the conditions  
of my community custody or order me to serve a term of total confinement equal to one-half  
of the midpoint of the standard sentence range, followed by a term of community custody under  
RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit  
me from using alcohol or controlled substances, require me to submit to urinalysis or other  
testing to monitor that status, require me to devote time to a specific employment or training,  
stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require  
other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e).  
The judge, on his or her own initiative, may order me to appear in court at any time during the  
period of community custody to evaluate my progress in treatment or to determine if any  
violations of the conditions of the sentence have occurred. If the court finds that I have violated

1 the conditions of the sentence or that I have failed to make satisfactory progress in treatment,  
2 the court may modify the terms of my community custody or order me to serve a term of total  
3 confinement within the standard range.

4 (t) If I am subject to community custody and the judge finds that I have a **chemical**  
5 **dependency** that has contributed to the offense, the judge may order me to participate in  
6 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the  
7 circumstances of the crime for which I am pleading guilty.

8 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver  
9 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including  
10 its salts, isomers, and salts of isomers, a mandatory **methamphetamine clean-up fine** of  
11 \$3,000 will be assessed. RCW 69.50.401(2)(b).

12 (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal  
13 food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21  
14 U.S.C. § 862a.

15 (w) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be  
16 suspended or revoked.

17 (x) If this crime involves the offense of vehicular homicide while under the influence of  
18 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January  
19 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular  
20 homicide for each prior offense as defined in RCW 46.61.5055(8).

21 (y) The crime of \_\_\_\_\_ has a **mandatory minimum**  
22 sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction  
23 of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence  
24 of life imprisonment without the possibility of parole described in paragraph 6[n].

25 (z) I am being sentenced for **two or more serious violent offenses** arising from separate  
26 and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run  
27 consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(aa) I understand that the offense(s) I am pleading guilty to include a Violation of the  
Uniform Controlled Substances Act in a **protected zone enhancement** or manufacture of  
methamphetamine when a juvenile was present in or upon the premises of manufacture  
enhancement. I understand these enhancements are mandatory and that they must run  
consecutively to all other sentencing provisions.

(bb) I understand that the offense(s) I am pleading guilty to include a **deadly weapon,**  
**firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation

1 enhancements are mandatory, they must be served in total confinement, and they must run  
2 consecutively to any other sentence and to any other deadly weapon, firearm, or sexual  
3 motivation enhancements.

4 (cc) I understand that the offenses I am pleading guilty to include both a conviction under  
5 RCW 9A.04.040 for **unlawful possession of a firearm in the first or second degree and one**  
6 **or more convictions for the felony crimes of theft of a firearm or possession of a stolen**  
7 **firearm**. The sentences imposed for these crimes shall be served consecutively to each other.  
8 A consecutive sentence will also be imposed for each firearm unlawfully possessed.

9 (dd) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining  
10 assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six  
11 months if this is my first conviction and for at least 12 months if this is my second or subsequent  
12 conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

13 (ee) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my  
14 term of total confinement must be more than twelve months and less than thirty-six months, I  
15 can not currently be either pending prosecution or serving a sentence for violation of the  
16 uniform controlled substance act and I can not have a current or prior conviction for a sex or  
17 violent offense.

18 7. **I plead guilty to Count 1, DCS Meth**  
19 I have received a copy of that Information.

20 8. **I make this plea freely and voluntarily.**

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

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

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

27 **IN CLARK COUNTY, WASHINGTON, ON OR ABOUT Oct 25 2006**  
**I Lowell Finstan BELIEVE THE STATE**  
**CAN PROVE BEYOND A REASONABLE DOUBT I KNOWINGLY DELIVERED**  
**METHAMPHETAMINE, A CONTROLLED**  
**SUBSTANCE**

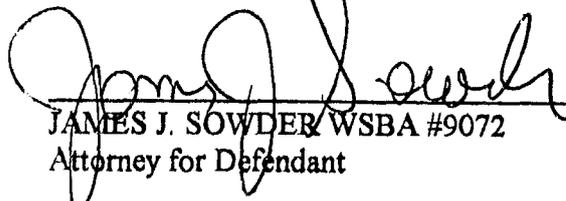
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12. My lawyer explained to me and we have fully discussed all of the above paragraphs and the "Offender Registration" attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty". I have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

  
DEFENDANT

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

  
WSBA# 28702  
Deputy Prosecuting Attorney

  
JAMES J. SOWDER WSBA #9072  
Attorney for Defendant

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 (check one):

(a) The defendant had previously read the entire statement above and that the defendant understood it in full; or

- 1 [ ] (b) The defendant's lawyer had previously read to him or her the entire statement above and that  
2 the defendant understood it in full; or  
3 [ ] (c) An interpreter had previously read to the defendant the entire statement above and the  
4 defendant understood it in full. The interpreter's declaration is attached.

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

8 DATED this 9 day of November, 2007.

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11 JUDGE JOHN P. WULLE  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, ) No.  
Plaintiff, )  
v. ) DEFENDANT'S STATEMENT OF  
LOWELL DERAY FINSTAD, ) CRIMINAL HISTORY  
Defendant. )

Defendant, LOWELL DERAY FINSTAD, by and through his attorney, JAMES J. SOWDER,  
submits the following criminal history as undisputed:

1. CLARK CO 06-1-1073-6

Total Points: \_\_\_\_\_

DATED this \_\_\_\_\_ day of November, 2007.

JAMES J. SOWDER WSBA#9072  
Attorney for Defendant

**STATE OF WASHINGTON V. LOWELL DERAY FINSTAD**

**CAUSE NOS 06-1-01137-6; 06-1-02072-3; 07-1-00611-7**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	24 months (school zone)**	44-84 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	24 months (school zone)**	44-84 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	24 months (school bus)**	44-84 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months
<p>Please note: the continuation of the appeal on 06-1-01073-6 makes real the possibility of an increase in the offender score to add an additional point. Under State Supreme Court caselaw, pcs with intent and pcs are separate criminal conduct. Any resolution would necessitate dismissing the appeal, as the addition of another point by the State will result in resentencing of all cases at a later date with the accompanying increased ranges. Simply put: it will un-do what we work to resolve today. Similarly, the state will not resolve the case for 120 months, only to find that 40 will be removed via operation of the Court of Appeals. To accept this offer, the defendant must dismiss his pending appeal on 06-1-01073-6.</p> <p>**Addition of school bus stop zone enhancement doubles the statutory maximum of the charged crime per RCW 69.50.435.</p> <p>Please note: The unfiled case would include a law enforcement victim aggravator should the state be forced to proceed on that case.</p>					

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying criminal history which the defendant must acknowledge as accurate, true and complete. It may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: 11/9/07. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	—	20-60 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	—	20-60 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	—	20-60 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE (07-1-01996-1)</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months

In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:

- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.  
 The State will refer this case for Drug Court screening.

#### RECOMMENDATION AS TO CONFINEMENT

120 Months in Total Confinement. This 120 months would include the 40 months on 06-1-01073-6, which was sentenced previously this year, 40 months on 06-1-01137-6, 40 months on 06-1-02072-3, each consecutive to each other. Additionally, the defendant would be sentenced to 40 months on 07-1-00611-7 (Witness intimidation), concurrent to all other causes, along with 40 months on 07-1-01996-1 (Attempted Arson I), concurrent to all other causes.

#### TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of \$700.00 restitution of \_\_\_\_\_ or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

*Other legal financial obligations include:*

Drug Fund of \$1,000.00  
Warrant Fees of \_\_\_\_\_  
Lab Fee of \$100.00  
DV Penalty Assessment \_\_\_\_\_

Emergency Response Fee of \_\_\_\_\_  
Extradition Costs of \_\_\_\_\_  
Other of \_\_\_\_\_ for \_\_\_\_\_

**SUPERVISION**

Community Custody for 18-36months.

**MANDATORY SENTENCE REQUIREMENTS**

- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

**OTHER CONDITIONS OF SUPERVISION**

*(This list is non-exclusive – the State is free to recommend other usual conditions )*

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for:  substance abuse;  mental health;  anger control;  other \_\_\_\_\_
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with Brian Acee or his wife for life.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime.
- Forfeiture of the following property: \_\_\_\_\_
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER \_\_\_\_\_

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

  
 \_\_\_\_\_  
 Bernard F. Veljacic  
 Deputy Prosecuting Attorney, WSBA #28702

11-9-07  
 \_\_\_\_\_  
 Date

## APPENDIX C

14

FILED

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,

v.

LOWELL DERAY FINSTAD,  
Defendant.

No. 07-1-611-7

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(STTDFG)

1. My true name is LOWELL DERAY FINSTAD

2. My age is / and my date of birth is

3. I went through the 4<sup>th</sup> grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer is James J. Sowder.

(b) I am charged with:

The elements are: In Clark County, Washington on or about November 28 2005 Lowell Finstad did direct a threat to a person using because he believed he had provided information on a criminal investigation

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

(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;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter

1 a plea of guilty;

2 (f) The right to appeal a determination of guilty after a trial.

3 6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND**  
4 **THAT:**

5 (a) Each crime I am charged with carries a maximum sentence, a fine, and a **STANDARD SENTENCE RANGE** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	4	31-41 months	Ø	31-41 months		10 years \$20,000

6 \* (F) firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (See RCW 46.61.520), (JP) juvenile present  
7 (SM) Sexual motivation, RCW 9.94A.533(8).

8 (b) The standard sentence range is based on the crime charged and my **criminal history**.  
9 Criminal history includes **prior convictions** and **juvenile adjudications** or convictions, whether  
10 in this state, in federal court, or elsewhere.

11 (c) The prosecuting attorney's statement of my **criminal history** is attached to this  
12 agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's  
13 statement is correct and complete. If I have attached my own statement, I assert that it is correct  
14 and complete. If I am convicted of any additional crimes between now and the time I am  
15 sentenced, I am **obligated to tell** the sentencing judge about those convictions.

16 (d) If I am convicted of any **new crimes before sentencing**, or if any additional criminal  
17 history is discovered, both the standard sentence range and the prosecuting attorney's  
18 recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I  
19 cannot change my mind if additional criminal history is discovered even though the standard  
20 sentencing range and the prosecuting attorney's recommendation increase, and even though a  
21 mandatory sentence of life imprisonment without the possibility of parole is required by law.

22 (e) In addition to sentencing me to confinement for the standard range, the judge will order  
23 me to pay **\$500.00 as a victim's compensation** fund assessment. If this crime resulted in injury  
24 to any person or damage to or loss of property, the judge will order me to make restitution,  
25 unless extraordinary circumstances exist which would make restitution inappropriate. The  
26 amount of restitution may be up to double my gain or double the victim's loss. The judge may  
27

1 also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

2 (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the  
3 judge may order me to serve up to one year of community supervision if the total period of confinement  
4 ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault  
5 of a child in the second degree, or any crime against a person in which a specific finding was made that  
6 I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year  
7 of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent  
8 offense, the judge will order me to serve at least two years of community placement. The actual period  
9 of community placement, community custody, or community supervision may be as long as my earned  
10 early release period. During the period of community placement, community custody, or community  
11 supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions  
12 and requirements placed upon me.

13 For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement,  
14 under certain circumstances the judge may order me to serve up to one year of community custody if the  
15 total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls  
16 into one of the offense types listed in the following chart, the court will sentence me to community  
17 custody for the community custody range established for that offense type unless the judge finds  
18 substantial and compelling reasons not to do so. If the period of earned release awarded per RCW  
19 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted  
20 of falls into more than one category of offense types listed in the following chart, then the community  
21 custody range will be based on the offense type that dictates the longest term of community custody.

22 **Offense Type**

23 **Community Custody Range**

24 Serious Violent Offenses

24 24 to 48 months or up to the period of earned  
25 release, whichever is longer.

26 Violent Offenses

26 18 to 36 months or up to the period of earned  
27 release, whichever is longer.

28 Crimes Against Persons as defined by RCW  
29 9.94A.411(2)

28 9 to 18 months or up to the period of earned release,  
29 whichever is longer.

30 Offenses under Chapter 69.50 or 69.52  
31 RCW (Not sentenced under RCW  
32 9.94A.660)

30 9 to 12 months or up to the period of earned release,  
31 whichever is longer.

32 During the period of community custody, I will be under the supervision of the  
33 Department of Corrections, and I will have **restrictions and requirements placed upon me.**  
34 My failure to comply with these conditions will render me ineligible for general assistance, RCW  
35 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more

1 restrictive confinement status or other sanctions.

2 I do not waive any right I may have to appear before a court to contest community  
3 custody violations.

4 (g) The prosecuting attorney will make the following recommendation to the judge:

- 5 1. 40 months concurrent with  
6 06-1-137-6, 06-1-2012-3,  
7 07-1-00611-1 AND 07-1-196-1  
8 AND 06-1-1013-6  
9 - DISMISS APPEAL in 06-1-1013-6  
10 - SEE ATTACHED RECOMMENDATION

11 8. Payment of \$200 court costs, \$500 crime victim compensation fund fee, \$700 court  
12 appointed attorney fees, \$100 DNA fee, \$100 lab fee, \$1000 Drug Fund Contribution,  
13 \$500 fine and restitution, if any, to be determined.

14 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge  
15 must impose a sentence within the standard range unless there is a finding of substantial and  
16 compelling reasons not to do so. I understand the following regarding exceptional sentences:

17 (i) The judge may impose an exceptional sentence below the standard range if the judge  
18 finds mitigating circumstances supporting an exceptional sentence.

19 (ii) The judge may impose an exceptional sentence above the standard range if I am  
20 being sentenced for more than one crime and I have an offender score of more than nine

21 (iii) The judge may also impose an exceptional sentence above the standard range if the  
22 State and I stipulate that justice is best served by imposition of an exceptional sentence  
23 and the judge agrees that an exceptional sentence is consistent with and in furtherance  
24 of the interests of justice and the purposes of the Sentencing Reform Act.

25 (iv) The judge may also impose an exceptional sentence above the standard range if the  
26 State has given notice that it will seek an exceptional sentence, the notice states  
27 aggravating circumstances upon which the requested sentence will be based, and facts  
supporting an exceptional sentence are proven beyond a reasonable doubt to a  
unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by  
anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can  
appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as

1 a crime under state law is grounds for deportation, exclusion from admission to the United  
2 States, or denial of naturalization pursuant to the laws of the United States.

3 (j) I understand that **I may not possess**, own, or have under my control any firearm unless  
4 my right to do so is restored by a court of record and that I must immediately surrender any  
5 concealed pistol license. RCW 9.41.040.

6 (k) I understand that I will be **ineligible to vote** until that right is restored in a manner  
7 provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const.  
8 Art. VI, § 3, RCW 29A.04.079, 29A.08.520.

9 (l) Public assistance will be suspended during any period of imprisonment.

10 (m) I understand that I will be required to have a biological sample collected for purposes  
11 of **DNA identification analysis**. For offenses committed on or after July 1, 2002, I will be  
12 required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will  
13 cause me undue hardship.

14 **NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING**  
15 **PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE**  
16 **DEFENDANT AND THE JUDGE.**

17 (n) This offense is a **most serious offense** or strike as defined by RCW 9.94A.030, and if  
18 I have at least two prior convictions for most serious offenses, whether in this state, in federal  
19 court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life  
20 imprisonment without the possibility of parole.

21 (o) The judge may sentence me as a **first-time offender** instead of giving a sentence within  
22 the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as  
23 90 days' confinement, and up to two years community supervision if the crime was committed  
24 prior to July 1, 2000, or up to two years of community custody if the crime was committed on  
25 or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the  
26 judge could require me to undergo treatment, to devote time to a specific occupation, and to  
27 pursue a prescribed course of study or occupational training.

(p) If this crime involves a **kidnapping offense** involving a minor, I will be required to  
register where I reside, study or work. The specific registration requirements are set forth in  
the "Offender Registration" Attachment.

(q) If this is a **crime of domestic violence**, I may be ordered to pay a domestic violence  
assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court  
may order me to participate in a domestic violence perpetrator program approved under RCW  
26.50.150.

1 (r) If this crime involves prostitution, or a drug offense associated with hypodermic  
2 needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS)  
3 virus.

4 (s) The judge may sentence me under the special drug offender sentencing alternative  
5 (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be  
6 examined by a licensed or certified treatment provider before deciding to impose a DOSA  
7 sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based  
8 alternative or a residential chemical dependency treatment-based alternative. If the judge  
9 imposes the prison-based alternative, the sentence will consist of a period of total confinement  
10 in a state facility for one-half of the midpoint of the standard range, or 12 months whichever  
11 is greater. During confinement, I will be required to undergo a comprehensive substance abuse  
12 assessment and to participate in treatment.

The judge will also impose a term of community custody of at least one-half of the midpoint of  
13 the standard range.

14 If the judge imposes the residential chemical dependency treatment-based alternative, the  
15 sentence will consist of a term of community custody equal to one-half of the midpoint of the  
16 standard sentence range or two years, whichever is greater, and I will have to enter and remain  
17 in a certified residential chemical dependency treatment program for a period of *three to six*  
18 *months*, as set by the court. As part of this sentencing alternative, the court is required to  
19 schedule a progress hearing during the period of residential chemical dependency treatment and  
20 a treatment termination hearing scheduled three months before the expiration of the term of  
21 community custody. At either hearing, based upon reports by my treatment provider and the  
22 department of corrections on my compliance with treatment and monitoring requirements and  
23 recommendations regarding termination from treatment, the judge may modify the conditions  
24 of my community custody or order me to serve a term of total confinement equal to one-half  
25 of the midpoint of the standard sentence range, followed by a term of community custody under  
26 RCW 9.94A.715.

27 During the term of community custody for either sentencing alternative, the judge could prohibit  
me from using alcohol or controlled substances, require me to submit to urinalysis or other  
testing to monitor that status, require me to devote time to a specific employment or training,  
stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require  
other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e).  
The judge, on his or her own initiative, may order me to appear in court at any time during the  
period of community custody to evaluate my progress in treatment or to determine if any  
violations of the conditions of the sentence have occurred. If the court finds that I have violated

1 the conditions of the sentence or that I have failed to make satisfactory progress in treatment,  
2 the court may modify the terms of my community custody or order me to serve a term of total  
3 confinement within the standard range.

4 (t) If I am subject to community custody and the judge finds that I have a **chemical**  
5 **dependency** that has contributed to the offense, the judge may order me to participate in  
6 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the  
7 circumstances of the crime for which I am pleading guilty.

8 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver  
9 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including  
10 its salts, isomers, and salts of isomers, a mandatory **methamphetamine clean-up fine of**  
11 **\$3,000** will be assessed. RCW 69.50.401(2)(b).

12 (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal  
13 food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21  
14 U.S.C. § 862a.

15 (w) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be  
16 suspended or revoked.

17 (x) If this crime involves the offense of vehicular homicide while under the influence of  
18 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January  
19 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular  
20 homicide for each prior offense as defined in RCW 46.61.5055(8).

21 (y) The crime of \_\_\_\_\_ has a **mandatory minimum**  
22 sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction  
23 of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence  
24 of life imprisonment without the possibility of parole described in paragraph 6[n].

25 (z) I am being sentenced for **two or more serious violent offenses** arising from separate  
26 and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run  
27 consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(aa) I understand that the offense(s) I am pleading guilty to include a Violation of the  
Uniform Controlled Substances Act in a **protected zone enhancement** or manufacture of  
methamphetamine when a juvenile was present in or upon the premises of manufacture  
enhancement. I understand these enhancements are mandatory and that they must run  
consecutively to all other sentencing provisions.

(bb) I understand that the offense(s) I am pleading guilty to include a **deadly weapon,**  
**firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation

enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

(cc) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(dd) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(ee) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense.

7. I plead guilty to Count 1, *WITNESS INTERDICTOR*

I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

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

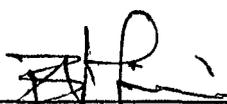
*NOV 29 2005*  
IN CLARK COUNTY, WASHINGTON, ON OR ABOUT *LOWELL*  
*FINSTAN* ~~AND~~ BELIEVE THE STATE CAN  
PROVE BEYOND A REASONABLE DOUBT  
THAT I DID DIRECT A TESTIMONY TO  
A FORMER WITNESS *RE*, BECAUSE HE  
HAD INFORMATION RELATED TO A CRIMINAL  
*INVESTIGATION*

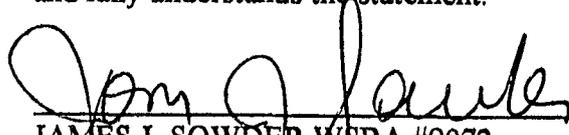
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12. My lawyer explained to me and we have fully discussed all of the above paragraphs and the "Offender Registration" attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty". I have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

  
DEFENDANT

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

  
WSBA# 28707  
Deputy Prosecuting Attorney

  
JAMES J. SOWDER WSBA #9072  
Attorney for Defendant

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 (check one):

(a) The defendant had previously read the entire statement above and that the defendant understood it in full; or

- 1 [ ] (b) The defendant's lawyer had previously read to him or her the entire statement above and that  
2 the defendant understood it in full; or  
3 [ ] (c) An interpreter had previously read to the defendant the entire statement above and the  
4 defendant understood it in full. The interpreter's declaration is attached.

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

8 DATED this 9 day of November, 2007.



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11 JUDGE JOHN P. WULFE  
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON, ) No.  
Plaintiff, )  
v. ) DEFENDANT'S STATEMENT OF  
LOWELL DERAY FINSTAD, ) CRIMINAL HISTORY  
Defendant. )

Defendant, LOWELL DERAY FINSTAD, by and through his attorney, JAMES J. SOWDER, submits the following criminal history as undisputed:

1.

**Total Points:** \_\_\_\_\_

DATED this \_\_\_\_\_ day of November, 2007.

\_\_\_\_\_  
JAMES J. SOWDER WSBA#9072  
Attorney for Defendant

**STATE OF WASHINGTON V. LOWELL DERAY FINSTAD**

**CAUSE NOS 06-1-01137-6; 06-1-02072-3; 07-1-00611-7**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

**TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN**

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	24 months (school zone)**	44-84 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	24 months (school zone)**	44-84 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	24 months (school bus)**	44-84 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	---	31-41 months
<b>UNFILED CAUSE</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	---	30.75-40.50 months
<p>Please note: the continuation of the appeal on 06-1-01073-6 makes real the possibility of an increase in the offender score to add an additional point. Under State Supreme Court caselaw, pcs with intent and pcs are separate criminal conduct. Any resolution would necessitate dismissing the appeal, as the addition of another point by the State will result in resentencing of all cases at a later date with the accompanying increased ranges. Simply put: it will un-do what we work to resolve today. Similarly, the state will not resolve the case for 120 months, only to find that 40 will be removed via operation of the Court of Appeals. To accept this offer, the defendant must dismiss his pending appeal on 06-1-01073-6.</p> <p>**Addition of school bus stop zone enhancement doubles the statutory maximum of the charged crime per RCW 69.50.435.</p> <p><b>Please note:</b> The unfiled case would include a law enforcement victim aggravator should the state be forced to proceed on that case.</p>					

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying criminal history which the defendant must acknowledge as accurate, true and complete. It may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: 11/9/07. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	—	20-60 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	—	20-60 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	—	20-60 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE (07-1-01996-1)</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months

- In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:
- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.
- The State will refer this case for Drug Court screening.

#### RECOMMENDATION AS TO CONFINEMENT

**120 Months in Total Confinement.** This 120 months would include the 40 months on 06-1-01073-6, which was sentenced previously this year, 40 months on 06-1-01137-6, 40 months on 06-1-02072-3, each consecutive to each other. Additionally, the defendant would be sentenced to 40 months on 07-1-00611-7 (Witness intimidation), concurrent to all other causes, along with 40 months on 07-1-01996-1 (Attempted Arson I), concurrent to all other causes.

#### TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of \$700.00 restitution of \_\_\_\_\_ or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

*Other legal financial obligations include:*

Drug Fund of \$1,000.00  
Warrant Fees of \_\_\_\_\_  
Lab Fee of \$100.00  
DV Penalty Assessment \_\_\_\_\_

Emergency Response Fee of \_\_\_\_\_  
Extradition Costs of \_\_\_\_\_  
Other of \_\_\_\_\_ for \_\_\_\_\_

**SUPERVISION**

Community Custody for 18-36months.

**MANDATORY SENTENCE REQUIREMENTS**

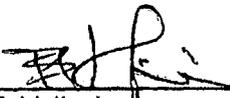
- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

**OTHER CONDITIONS OF SUPERVISION**

*(This list is non-exclusive – the State is free to recommend other usual conditions )*

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for:  substance abuse;  mental health;  anger control;  other \_\_\_\_\_
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with Brian Acee or his wife for life.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime.
- Forfeiture of the following property: \_\_\_\_\_
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER \_\_\_\_\_

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

  
\_\_\_\_\_  
Bernard F. Veljacic  
Deputy Prosecuting Attorney, WSBA #28702

11/9/07  
\_\_\_\_\_  
Date

## APPENDIX D

15

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**FILED**

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.

No. 07-1-01996-4  
STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(STTDFG)

1. My true name is LOWELL DERAY FINSTAD.
2. My age is 44 and my date of birth is 7-23-1963.
3. I went through the 11 th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
  - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer is James J. Sowder.
  - (b) I am charged with: Attempted Arson in the First Degree.  
The elements are: In Clark County, Washington on or about FEB 1 2006 AM NOV. 30, 2006, Lowell Deray Finstad, did take a substantial step to causing a fire explosion which would have damaged a dwelling. Knowingly and maliciously attempt to cause a fire in a dwelling belonging to Dist. Acc't.
5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
  - (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;
  - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
  - (c) The right at trial to hear and question the witnesses who testify against me;
  - (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
  - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

3

(f) The right to appeal a determination of guilty after a trial.

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

(a) Each crime I am charged with carries a maximum sentence, a fine, and a **STANDARD SENTENCE RANGE** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	4	<del>23.25-30.75 mo</del> 30.75 - 40.50 months	0	23.25-30.75 mo.	18 - 36 months	<del>LIFE</del> \$50,000

\* (F) firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (See RCW 46.61.520), (JP) juvenile present (SM) Sexual motivation, RCW 9.94A.533(8).

(b) The standard sentence range is based on the crime charged and my **criminal history**. Criminal history includes **prior convictions** and **juvenile adjudications** or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my **criminal history is attached** to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am **obligated to tell** the sentencing judge about those convictions.

(d) If I am convicted of any **new crimes before sentencing**, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, and even though a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay **\$500.00 as a victim's compensation fund assessment**. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which would make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.

(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the

1 judge may order me to serve up to one year of community supervision if the total period of confinement  
2 ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault  
3 of a child in the second degree, or any crime against a person in which a specific finding was made that  
4 I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year  
5 of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent  
6 offense, the judge will order me to serve at least two years of community placement. The actual period  
7 of community placement, community custody, or community supervision may be as long as my earned  
8 early release period. During the period of community placement, community custody, or community  
9 supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions  
10 and requirements placed upon me.

11 For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement,  
12 under certain circumstances the judge may order me to serve up to one year of community custody if the  
13 total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls  
14 into one of the offense types listed in the following chart, the court will sentence me to community  
15 custody for the community custody range established for that offense type unless the judge finds  
16 substantial and compelling reasons not to do so. If the period of earned release awarded per RCW  
17 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted  
18 of falls into more than one category of offense types listed in the following chart, then the community  
19 custody range will be based on the offense type that dictates the longest term of community custody.

20 Offense Type

20 Community Custody Range

21 Serious Violent Offenses

21 24 to 48 months or up to the period of earned  
22 release, whichever is longer.

23 Violent Offenses

23 18 to 36 months or up to the period of earned  
24 release, whichever is longer.

25 Crimes Against Persons as defined by RCW  
26 9.94A.411(2)

25 9 to 18 months or up to the period of earned release,  
26 whichever is longer.

27 Offenses under Chapter 69.50 or 69.52  
RCW (Not sentenced under RCW  
9.94A.660)

27 9 to 12 months or up to the period of earned release,  
whichever is longer.

28 During the period of community custody, I will be under the supervision of the  
29 Department of Corrections, and I will have **restrictions and requirements placed upon me.**  
30 My failure to comply with these conditions will render me ineligible for general assistance, RCW  
31 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more  
32 restrictive confinement status or other sanctions.

33 I do not waive any right I may have to appear before a court to contest community  
34 custody violations.

1 (g) The prosecuting attorney will make the following recommendation to the judge:

2 1. A stipulated <sup>40</sup> month sentence <sup>concurrent</sup> consecutive with Clark County Cause No. 06-1-01073-  
3 5, 06-1-1131-6, 06-1-2012-3, 07-1-0111

4 2. ~~Concurrent with Dispositions of 06-1-01137-6, 06-1-025072-3 and 07-1-00611-7.~~

5 3. ~~No more than a total of 120 months including consecutive time with 06-1-01073-6.~~

6 4. No contact with VPD Officer Bryan Acee or his family for the rest of defendant's life.

7 5. See Attached Plea Offer

8 6. \_\_\_\_\_

9 8. Payment of \$200 court costs, \$500 crime victim compensation fund fee, \$700 court  
10 appointed attorney fees, \$100 DNA fee, \$100 lab fee, \$1000 Drug Fund Contribution,  
11 \$500 fine and restitution, if any, to be determined.

12 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge  
13 must impose a sentence within the standard range unless there is a finding of substantial and  
14 compelling reasons not to do so. I understand the following regarding exceptional sentences:

15 (i) The judge may impose an exceptional sentence below the standard range if the judge  
16 finds mitigating circumstances supporting an exceptional sentence.

17 (ii) The judge may impose an exceptional sentence above the standard range if I am  
18 being sentenced for more than one crime and I have an offender score of more than nine

19 (iii) The judge may also impose an exceptional sentence above the standard range if the  
20 State and I stipulate that justice is best served by imposition of an exceptional sentence  
21 and the judge agrees that an exceptional sentence is consistent with and in furtherance  
22 of the interests of justice and the purposes of the Sentencing Reform Act.

23 (iv) The judge may also impose an exceptional sentence above the standard range if the  
24 State has given notice that it will seek an exceptional sentence, the notice states  
25 aggravating circumstances upon which the requested sentence will be based, and facts  
26 supporting an exceptional sentence are proven beyond a reasonable doubt to a  
27 unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by  
anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can  
appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as  
a crime under state law is grounds for deportation, exclusion from admission to the United  
States, or denial of naturalization pursuant to the laws of the United States.

1 (j) I understand that I may not possess, own, or have under my control any firearm unless  
2 my right to do so is restored by a court of record and that I must immediately surrender any  
3 concealed pistol license. RCW 9.41.040.

4 (k) I understand that I will be ineligible to vote until that right is restored in a manner  
5 provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const.  
6 Art. VI, § 3, RCW 29A.04.079, 29A.08.520.

7 (l) Public assistance will be suspended during any period of imprisonment.

8 (m) I understand that I will be required to have a biological sample collected for purposes  
9 of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be  
10 required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will  
11 cause me undue hardship.

12 NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING  
13 PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE  
14 DEFENDANT AND THE JUDGE.

15 (n) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if  
16 I have at least two prior convictions for most serious offenses, whether in this state, in federal  
17 court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life  
18 imprisonment without the possibility of parole.

19 (o) The judge may sentence me as a first-time offender instead of giving a sentence within  
20 the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as  
21 90 days' confinement, and up to two years community supervision if the crime was committed  
22 prior to July 1, 2000, or up to two years of community custody if the crime was committed on  
23 or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the  
24 judge could require me to undergo treatment, to devote time to a specific occupation, and to  
25 pursue a prescribed course of study or occupational training.

26 (p) If this crime involves a kidnapping offense involving a minor, I will be required to  
27 register where I reside, study or work. The specific registration requirements are set forth in  
the "Offender Registration" Attachment.

(q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence  
assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court  
may order me to participate in a domestic violence perpetrator program approved under RCW  
26.50.150.

(r) If this crime involves prostitution, or a drug offense associated with hypodermic  
needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS)

1 virus.

2 (s) The judge may sentence me under the **special drug offender sentencing alternative**  
3 (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be  
4 examined by a licensed or certified treatment provider before deciding to impose a DOSA  
5 sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based  
6 alternative or a residential chemical dependency treatment-based alternative. If the judge  
7 imposes the **prison-based alternative**, the sentence will consist of a period of total confinement  
8 in a state facility for one-half of the midpoint of the standard range, or 12 months whichever  
9 is greater. During confinement, I will be required to undergo a comprehensive substance abuse  
10 assessment and to participate in treatment.

11 The judge will also impose a term of community custody of at least one-half of the midpoint of  
12 the standard range.

13 If the judge imposes the **residential chemical dependency treatment-based alternative**, the  
14 sentence will consist of a term of community custody equal to one-half of the midpoint of the  
15 standard sentence range or two years, whichever is greater, and I will have to enter and remain  
16 in a certified residential chemical dependency treatment program for a period of *three to six*  
17 *months*, as set by the court. As part of this sentencing alternative, the court is required to  
18 schedule a progress hearing during the period of residential chemical dependency treatment and  
19 a treatment termination hearing scheduled *three* months before the expiration of the term of  
20 community custody. At either hearing, based upon reports by my treatment provider and the  
21 department of corrections on my compliance with treatment and monitoring requirements and  
22 recommendations regarding termination from treatment, the judge may modify the conditions  
23 of my community custody or order me to serve a term of total confinement equal to one-half  
24 of the midpoint of the standard sentence range, followed by a term of community custody under  
25 RCW 9.94A.715.

26 During the term of community custody for either sentencing alternative, the judge could prohibit  
27 me from using alcohol or controlled substances, require me to submit to urinalysis or other  
testing to monitor that status, require me to devote time to a specific employment or training,  
stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require  
other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e).  
The judge, on his or her own initiative, may order me to appear in court at any time during the  
period of community custody to evaluate my progress in treatment or to determine if any  
violations of the conditions of the sentence have occurred. If the court finds that I have violated  
the conditions of the sentence or that I have failed to make satisfactory progress in treatment,

1 the court may modify the terms of my community custody or order me to serve a term of total  
2 confinement within the standard range.

3 (t) If I am subject to community custody and the judge finds that I have a **chemical**  
4 **dependency** that has contributed to the offense, the judge may order me to participate in  
5 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the  
6 circumstances of the crime for which I am pleading guilty.

7 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver  
8 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including  
9 its salts, isomers, and salts of isomers, a mandatory **methamphetamine clean-up fine** of  
10 \$3,000 will be assessed. RCW 69.50.401(2)(b).

11 (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal  
12 food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21  
13 U.S.C. § 862a.

14 (w) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be  
15 suspended or revoked.

16 (x) If this crime involves the offense of vehicular homicide while under the influence of  
17 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January  
18 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular  
19 homicide for each prior offense as defined in RCW 46.61.5055(8).

20 (y) The crime of \_\_\_\_\_ has a **mandatory minimum**  
21 sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction  
22 of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence  
23 of life imprisonment without the possibility of parole described in paragraph 6[n].

24 (z) I am being sentenced for **two or more serious violent offenses** arising from separate  
25 and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run  
26 consecutively unless the judge finds substantial and compelling reasons to do otherwise.

27 (aa) I understand that the offense(s) I am pleading guilty to include a Violation of the  
Uniform Controlled Substances Act in a **protected zone enhancement** or manufacture of  
methamphetamine when a juvenile was present in or upon the premises of manufacture  
enhancement. I understand these enhancements are mandatory and that they must run  
consecutively to all other sentencing provisions.

(bb) I understand that the offense(s) I am pleading guilty to include a **deadly weapon,**  
**firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation  
enhancements are mandatory, they must be served in total confinement, and they must run

consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

(cc) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9A.04.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(dd) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(ee) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense.

7. I plead guilty to Count 1, Attempted Arson in the First Degree. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

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

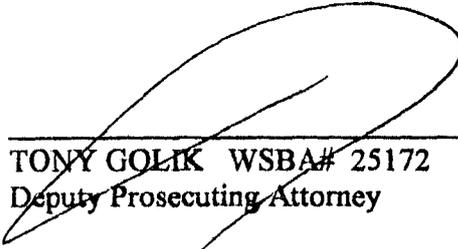
~~I BELIEVE THE STATE CAN PROVE BEYOND A REASONABLE DOUBT THAT~~  
IN CLARK COUNTY, WASHINGTON ON OR ABOUT FEBRUARY 17<sup>th</sup> 2006 <sup>Nov. 30</sup>  
LOWELL DERAY FINSTAD, DID ATTEMPT TO COMMIT THE CRIME OF ARSON IN  
THE FIRST DEGREE BY ~~HAVING TO HAVE ATTEMPTED TO COMMIT THIS SPECIFIC~~  
CRIME OF ARSON IN THE FIRST DEGREE AND DID AN ACT WHICH WAS A  
SUBSTANTIAL STEP TOWARDS THE COMMISSION OF THE CRIME OF ARSON IN THE  
FIRST DEGREE BY ~~CAUSING A FIRE OR EXPLOSION WHICH WOULD HAVE~~  
~~DAMAGED A DWELLING.~~ I AM AWARE THE STATE HAS EVIDENCE THROUGH  
KNOWINGLY AND MALICIOUSLY ATTEMPT TO CAUSE A FIRE TO A  
DETACHED DWELLING BELONGING TO DEY. BRYAN ACCIA'

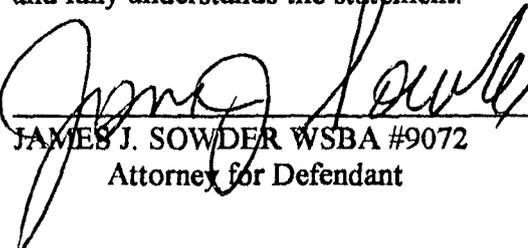
1 WITNESSES THAT WOULD SAY I ATTEMPTED TO HIRE THE WITNESS TO BURN  
2 DOWN A DWELLING. I BELIEVE THE STATE CAN PROVE THAT I COMMITTED THE  
3 CRIME OF ATTEMPTED ARSON IN THE FIRST DEGREE. I WISH TO TAKE THE  
4 BENEFIT OF THE PLEA BARGAIN TO RESOLVE PENDING CAUSE NUMBERS 06-1-  
5 01137-6, 06-1-02072-3 AND 07-1-00611-7. I AM AGREEING TO A STIPULATED  
6 EXCEPTIONAL SENTENCE OF 80 MONTHS ON THIS CASE TO RUN CONCURRENT  
7 WITH THE ABOVE REFERENCED THREE CAUSE NUMBERS BUT CONSECUTIVE TO  
8 CAUSE NUMBER 06-1-01073-6. TAKE ALL FOUR CAUSE NUMBERS IN  
9 CONSIDERATION THE STATE IS RECOMMENDING A MAXIMUM OF 120 MONTHS.  
10 (40 MONTHS ALREADY RECEIVED ON 06-1-01073-6) PLUS 80 MONTHS ON THE  
11 REMAINING CAUSE NUMBERS. ALL SENTENCES ARE TO RUN CONCURRENT WITH  
12 THE EXCEPTION OF A CONSECUTIVE SENTENCE TO 06-1-01073-6. I REALIZE I AM  
13 GIVING UP MY RIGHT TO CONTEST THE COURTS FAILURE TO GRANT MY MOTION  
14 TO SUPPRESS IN 06-1-01137-6 AND ANY FURTHER MOTIONS TO SUPPRESS I MAY  
15 HAVE HAD IN THE SUBSEQUENT CAUSE NUMBERS.

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

  
DEFENDANT

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

  
TONY GOLIK WSBA# 25172  
Deputy Prosecuting Attorney

  
JAMES J. SOWDER WSBA #9072  
Attorney for Defendant

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 (check one):

(a) The defendant had previously read the entire statement above and that the defendant understood it in full; or

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- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and the defendant understood it in full. The interpreter's declaration is attached.

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 November, 2007.



---

JUDGE JOHN P. WULLE

**ARSON, FIRST DEGREE**

(RCW 9A.48.020)

**CLASS A FELONY**

**VIOLENT**

*(If sexual motivation finding, use form on page III-19)*

**I. OFFENDER SCORING (RCW 9.94A.525(8))**

**ADULT HISTORY:**

Enter number of serious violent and violent felony convictions..... \_\_\_\_\_ x 2 = \_\_\_\_\_

Enter number of nonviolent felony convictions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions..... \_\_\_\_\_ x 2 = \_\_\_\_\_

Enter number of nonviolent felony dispositions..... \_\_\_\_\_ x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)**

Enter number of other serious violent and violent felony convictions ..... \_\_\_\_\_ x 2 = \_\_\_\_\_

Enter number of nonviolent felony convictions..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**STATUS:** Was the offender on community custody on the date the current offense was committed? (If yes), + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
(Round down to the nearest whole number)

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**II. SENTENCE RANGE**

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VIII)	21 - 27 months	28 - 34 months	31 - 41 months	38 - 48 months	41 - 54 months	46 - 61 months	67 - 89 months	77 - 102 months	87 - 118 months	108 - 144 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 18 to 36 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
  - o Statutory maximum sentence is 120 months (ten years) (RCW 9A.20.021).

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

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

STATE OF WASHINGTON, ) No.  
Plaintiff, )  
v. ) DEFENDANT'S STATEMENT OF  
LOWELL DERAY FINSTAD, ) CRIMINAL HISTORY  
Defendant. )

Defendant, LOWELL DERAY FINSTAD, by and through his attorney, JAMES J. SOWDER, submits the following criminal history as undisputed:

- 1. PCS w/Intent (Cocaine) Clark County, WA 06-1-01073-6 1 point
- 2. PCS w/Intent (Methamphetamine) Clark County, WA 06-1-01073-6 1 point

Total Points: 2

DATED this 9 day of November, 2007.

  
JAMES J. SOWDER WSBA#9072  
Attorney for Defendant

**STATE OF WASHINGTON V. LOWELL DERAY FINSTAD**

**CAUSE NOS 06-1-01137-6; 06-1-02072-3; 07-1-00611-7**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
<b>06-1-01137-6</b>					
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	4*	20-60 months	24 months (school zone)**	44-84 months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	4*	20-60 months	24 months (school zone)**	44-84 months
*Counts 1 and 2 are same criminal conduct per RCW 9.94A.589.					
<b>06-1-02072-3</b>					
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	24 months (school bus)**	44-84 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months
<p>Please note: the continuation of the appeal on 06-1-01073-6 makes real the possibility of an increase in the offender score to add an additional point. Under State Supreme Court caselaw, pcs with intent and pcs are separate criminal conduct. Any resolution would necessitate dismissing the appeal, as the addition of another point by the State will result in resentencing of all cases at a later date with the accompanying increased ranges. Simply put: it will un-do what we work to resolve today. Similarly, the state will not resolve the case for 120 months, only to find that 40 will be removed via operation of the Court of Appeals. To accept this offer, the defendant must dismiss his pending appeal on 06-1-01073-6.</p> <p>**Addition of school bus stop zone enhancement doubles the statutory maximum of the charged crime per RCW 69.50.435.</p> <p>Please note: The unfiled case would include a law enforcement victim aggravator should the state be forced to proceed on that case.</p>					

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying criminal history which the defendant must acknowledge as accurate, true and complete. It may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: 11/9/07. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
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01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	4	20-60 months	—	20-60 months
<b>07-1-00611-7</b>					
01	WITNESS INTIMIDATION	4	31-41 months	—	31-41 months
<b>UNFILED CAUSE (07-1-01996-1)</b>					
01	ATTEMPTED ARSON IN THE FIRST DEGREE	4	30.75-40.50 months	—	30.75-40.50 months

In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:

- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.  
 The State will refer this case for Drug Court screening.

#### RECOMMENDATION AS TO CONFINEMENT

120 Months in Total Confinement. This 120 months would include the 40 months on 06-1-01073-6, which was sentenced previously this year, 40 months on 06-1-01137-6, 40 months on 06-1-02072-3, each consecutive to each other. Additionally, the defendant would be sentenced to 40 months on 07-1-00611-7 (Witness intimidation), concurrent to all other causes, along with 40 months on 07-1-01996-1 (Attempted Arson I), concurrent to all other causes.

#### TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of \$700.00 restitution of \_\_\_\_\_ or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

*Other legal financial obligations include:*

Drug Fund of \$1,000.00

Warrant Fees of \_\_\_\_\_

Lab Fee of \$100.00

DV Penalty Assessment \_\_\_\_\_

Emergency Response Fee of \_\_\_\_\_

Extradition Costs of \_\_\_\_\_

Other of \_\_\_\_\_ for \_\_\_\_\_

**SUPERVISION**

Community Custody for 18-36months.

**MANDATORY SENTENCE REQUIREMENTS**

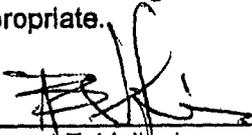
- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

**OTHER CONDITIONS OF SUPERVISION**

*(This list is non-exclusive – the State is free to recommend other usual conditions )*

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for:  substance abuse;  mental health;  anger control;  other \_\_\_\_\_
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with Brian Acee or his wife for life.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime.
- Forfeiture of the following property: \_\_\_\_\_
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER \_\_\_\_\_

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

  
\_\_\_\_\_  
Bernard F. Veljacic  
Deputy Prosecuting Attorney, WSBA #28702

11/9/07  
\_\_\_\_\_  
Date

**APPENDIX E**

**STATE OF WASHINGTON V. LOWELL DERAY FINSTAD**

**CAUSE NOS 06-1-01137-6; 06-1-02072-3; 07-1-00611-7**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN

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Emergency Response Fee of \_\_\_\_\_

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Other of \_\_\_\_\_ for \_\_\_\_\_

**SUPERVISION**

Community Custody for 18-36months.

**MANDATORY SENTENCE REQUIREMENTS**

- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

**OTHER CONDITIONS OF SUPERVISION**

*(This list is non-exclusive – the State is free to recommend other usual conditions )*

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 \_\_\_\_\_  
 Bernard F. Velljic  
 Deputy Prosecuting Attorney, WSBA #28702

11/9/07  
 \_\_\_\_\_  
 Date

## APPENDIX F

**FILED**

MAR 02 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.  
SID: WA11959523  
DOB: 7/23/1963

No. 06-1-01073-6

**FELONY JUDGMENT AND SENTENCE  
(FJS)**

**PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY**

Clerk's action required;

Paragraph 4.5 (SDOSA),  4.15.2,  
 5.3,  5.6 and  5.8

**I. HEARING**

07 9 01363 5

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 February 23, 2007  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	69.50.401(1),(2)(a)	11/17/2005
02	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	11/17/2005

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

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.

- A special verdict/finding that the offense was **predatory** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.\_\_\_\_.
- A special verdict/finding that the victim was **under 15 years of age** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.
- A special verdict/finding that the victim was **developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, .533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a **juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- 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	Age of Adult, Juv.	TYPE OF CRIME
No Known Felony Convictions					

- 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) \_\_\_\_\_.

**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	1	II - D	12 MONTHS to 20 MONTHS	24 months (School bus)	<del>36</del> MONTHS to 44 MONTHS	10 YEARS \$25000
02	1	I - D	0 DAYS to 6 MONTHS	_____	0 DAYS to 6 MONTHS	5 YEARS \$10,000

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

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

2.7 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 \_\_\_\_\_.
- 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:

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F	RCW 10.01.160 and 36.18.040
	\$250.00	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$700.00 \$ _____	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/ NTF/SAD/SDI	\$1,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$100.00	Crime lab fee - <input type="checkbox"/> Suspended due to indigency		RCW 43.43.690

	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)	RCW 43.43.7541
RTN/RJN	\$ _____	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 \_\_\_\_\_
- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
- Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.
- RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- 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 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190
- 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.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.

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

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (DOC):

40 months on Count 01

6 months on Count 02

Actual number of months of total confinement ordered is: 40 months  
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present 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.** RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count	minimum term	maximum term
01		
02		

(c) Credit for 203 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  **COMMUNITY PLACEMENT** is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

**COMMUNITY CUSTODY** for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

**COMMUNITY CUSTODY** is ordered on Counts 1, 2 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. 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.]

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

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

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

The defendant shall be on community placement/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 placement/community custody and any other conditions stated in this Judgment and Sentence.

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 \_\_\_\_\_
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW 9.94A.030(8))).

- The defendant shall participate in the following crime-related treatment or counseling services:
- 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 or as authorized by his/her community corrections officer for treatment purposes. 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, 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  parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- 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 unsupervised 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. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community

corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "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, at his or her own expense, 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, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
  - Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2). or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
  - If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
  - Defendant shall sign necessary release of information documents as required by the Department of Corrections.
  - For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
  - Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:
- 
- 

4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

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

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

4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

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**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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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

**Cross off if not applicable:**

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

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

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

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** 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 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.

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** 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. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a 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 an 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.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a name Change:** 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 five days of the entry of the order. RCW 9A.44.130(7).

- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court

Is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

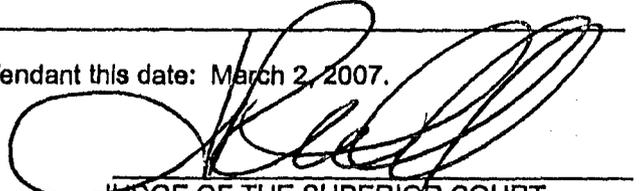
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

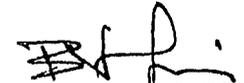
- The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) \_\_\_\_\_ 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.

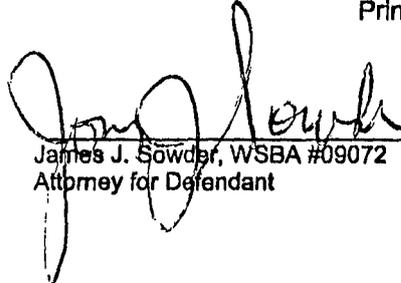
5.11 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: March 2, 2007.

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

Print Name: John P. Wulfe

  
\_\_\_\_\_  
Bernard F. Veljacic, WSBA #28702  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
James J. Sowder, WSBA #09072  
Attorney for Defendant

  
\_\_\_\_\_  
LOWELL BERAY FINSTAD  
Defendant

**APPENDIX G**

5

FILED

NOV 24 2008

Sherry W. Parker, Clerk, Clark Co.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

LOWELL D. FINSTAD,

Appellant.

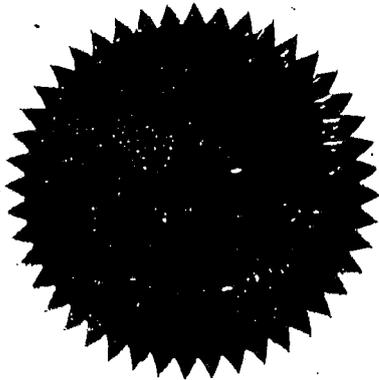
No. 36014-4-II

MANDATE

Clark County Cause No.  
06-1-01073-6

The State of Washington to: The Superior Court of the State of Washington  
in and for Clark County

This is to certify that the Court of Appeals of the State of Washington, Division II, entered a Ruling Affirming Judgment in the above entitled case on July 7, 2008. This ruling became the final decision terminating review of this court on October 28, 2008. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the determination of that court.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 19th day of November, 2008.

*Sherry W. Parker*

Clerk of the Court of Appeals,  
State of Washington, Div. II

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20

**APPENDIX H**

108

SOWDER

S2

Q-5F

**FILED**

**NOV 14 2007**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.  
SID: WA11959523  
DOB: 7/23/1963

No. 06-1-01137-6

**FELONY JUDGMENT AND SENTENCE**  
(FJS) *07-9-07446-4*  
**PRISON - COMMUNITY**  
**PLACEMENT/COMMUNITY CUSTODY**

Clerk's action required;  
 Paragraph 4.5 (SDOSA),  4.2,  
 5.3,  5.6 and  5.8

**I. HEARING**

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

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on November 14, 2007,  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	69.50.401(1),(2)(b)	6/7/2006
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	69.50.401(1),(2)(a)	6/7/2006

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

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.

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- A special verdict/finding that the offense was **predatory** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.\_\_\_\_.
- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_.
- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) \_\_\_\_\_. RCW 9.94A.602, .533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- 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): Clark County Case No. 06-1-02072-3 – Delivery of a Controlled Substance – Methamphetamine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine; Clark County Case No. 07-1-00611-7 – Intimidating a Witness; and Clark County Case No. 07-1-01996-1 – Attempt Arson 1.

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
See attached criminal history					

- 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) \_\_\_\_\_.

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	4	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS \$25,000
02	4	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS \$25,000

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

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

\_\_\_\_\_

2.7 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 \_\_\_\_\_.

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:

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F	RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$ _____ \$ _____	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021

CDF/LDI/FCD/ NTF/SAD/SDI	\$2,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$100.00	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency	RCW 43.43.690
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)	RCW 43.43.7541
RTN/RJN	\$ _____	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 \_\_\_\_\_
- Restitution ordered above shall be joint and several with the co-defendants listed in the information or identified below: \_\_\_\_\_
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
- Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_, RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- 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 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190
- 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.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.

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

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (DOC):

40 days/~~months~~ on Count 01

40 days/~~months~~ on Count 02

Actual number of months of total confinement ordered is: 40 months  
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: To run consecutive with Clark County Case No. 06-1-02072-3 - Delivery of a Controlled Substance - Methamphetamine and Clark County Case No. 06-1-01073-6 - PCS with Intent to Deliver - Cocaine and PCS-Methamphetamine.

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: To run concurrent with Clark County Case No. 07-1-00611-7 - Intimidating a Witness; and Clark County Case No. 07-1-01996-1 - Attempt Arson 1.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_  
\_\_\_\_\_

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

Count	minimum term	maximum term
01		
02		

(c) Credit for 0 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  **COMMUNITY PLACEMENT** is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

**COMMUNITY CUSTODY** for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

**COMMUNITY CUSTODY** is ordered on Counts 1, 2 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. 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.]

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

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

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

The defendant shall be on community placement/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 placement/community custody and any other conditions stated in this Judgment and Sentence. 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 \_\_\_\_\_
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8))).
- The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- 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 or as authorized by his/her community corrections officer for treatment purposes. 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, 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  parenting program as established by the community corrections officer and/or the treatment facility.

- Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- 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):  

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- 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 unsupervised 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. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "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, at his or her own expense, 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, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals; provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2), or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
- If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.

- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

\_\_\_\_\_

\_\_\_\_\_

4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.
- 4.11 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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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

Cross off if not applicable:

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

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

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

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** 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 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.

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** 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. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2008) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to

attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a 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 an 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.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a name Change:** 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 five days of the entry of the order. RCW 9A.44.130(7).

5.8  The court finds that Counts 1 and 2 are felonies in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

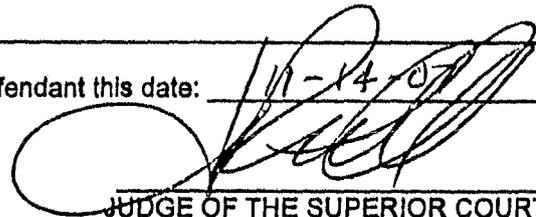
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

- The crime(s) in count(s) \_\_\_\_\_ 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(s) \_\_\_\_\_ 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.

5.11 OTHER: \_\_\_\_\_

DONE In Open Court and in the presence of the defendant this date: 11-14-07

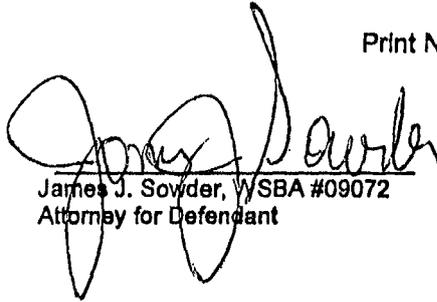


JUDGE OF THE SUPERIOR COURT

Print Name: John P. Wille



Bernard F. Veljacic, WSBA #28702  
Deputy Prosecuting Attorney



James J. Sowder, WSBA #09072  
Attorney for Defendant



LOWELL DERRY FINSTAD  
Defendant

## APPENDIX I

10-5F

**FILED**

NOV 14 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.  
SID: WA11959523  
DOB: 7/23/1963

No. 06-1-02072-3

FELONY JUDGMENT AND SENTENCE  
(FJS) 07-9-07447-2  
PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY

Clerk's action required;  
 Paragraph 4.5 (SDOSA),  4.2,  
 5.3,  5.6 and  5.8

**I. HEARING**

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

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on November 14, 2007,  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.401(1),(2)(b)	10/25/2006

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under RCW 9.94A.712.
- A special verdict/finding that the offense was predatory was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.
- A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.

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- A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 533.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, .533.
- A special verdict/finding for Violation of the Uniform Controlled Substances Act (VUCSA) was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are Domestic Violence offense(s) as that term is defined in RCW 10.99.020:
- 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): Clark County Case No. 06-1-01137-6 – PCS with Intent to Deliver – Methamphetamine and PCS with Intent to Deliver – Cocaine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine; Clark County Case No. 07-1-00611-7 – Intimidating a Witness; and Clark County Case No. 07-1-01996-1 – Attempt Arson.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	Age of Adult, Juv.	TYPE OF CRIME
See attached criminal history					

- 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) \_\_\_\_\_.

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	4	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS \$25,000

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

Additional current offense sentencing data is attached in Appendix 2.3.

2.4  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).*

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

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

2.7 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 \_\_\_\_\_.

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:

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F	RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$700.00	Fees for court appointed attorney  Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/ NTF/SAD/SDI	\$2,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$100.00	Crime lab fee - <input type="checkbox"/> Suspended due to indigency		RCW 43.43.890
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)		RCW 43.43.7541
RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To:  _____		RCW 38.52.430
		(List Law Enforcement Agency)		

	\$ _____	Other Costs for: _____	RCW 9.94A.760
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- 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 \_\_\_\_\_
- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
 

Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_ RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- 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 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190

- 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.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

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

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

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (DOC):

40 days/months on Count 01

Actual number of months of total confinement ordered is: 40 months  
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: To run consecutive with Clark County Case No. 06-1-01137-6 – PCS with Intent to Deliver – Methamphetamine and PCS with Intent to Deliver – Cocaine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine.

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: To run concurrent with Clark County Case No. 07-1-00611-7 – Intimidating a Witness; and Clark County Case No. 07-1-01996-1 – Attempt Arson.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

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

Count	minimum term	maximum term
01		

(c) Credit for 0 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  COMMUNITY PLACEMENT is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

COMMUNITY CUSTODY for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered on Counts 1 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second

degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. 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.]

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

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

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

The defendant shall be on community placement/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 placement/community custody and any other conditions stated in this Judgment and Sentence. 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 \_\_\_\_\_
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8)).
- The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_
- 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 or as authorized by his/her community corrections officer for treatment purposes. 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, 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  parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- 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):  

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- 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 unsupervised 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. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "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, at his or her own expense, 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, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
  - Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals; provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2), or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
  - If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
  - Defendant shall sign necessary release of information documents as required by the Department of Corrections.
  - For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
  - Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:
- 
- 

4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

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- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

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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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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

Cross off if not applicable:

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

- 1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
- 2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.
- 3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** 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 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.

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** 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. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a 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 an 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.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a name Change:** 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 five days of the entry of the order. RCW 9A.44.130(7).

- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

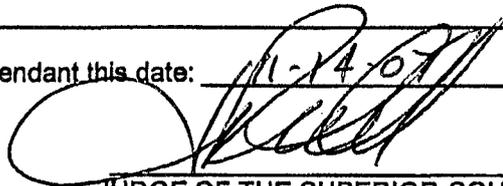
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

- The crime(s) in count(s) \_\_\_\_\_ 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(s) \_\_\_\_\_ 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.

5.11 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: \_\_\_\_\_

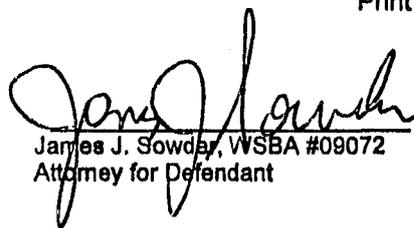


JUDGE OF THE SUPERIOR COURT

Print Name: J. L. P. Walle



Bernard F. Veljacic, WSBA #28702  
Deputy Prosecuting Attorney



James J. Sowder, WSBA #09072  
Attorney for Defendant



LOWELL DERAY FINSTAD  
Defendant

## APPENDIX J

**FILED**

**NOV 14 2007**

Sherry W. Parker, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

STATE OF WASHINGTON, Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.  
SID: WA11959523  
DOB: 7/23/1983

No. 07-1-00611-7

**FELONY JUDGMENT AND SENTENCE  
(FJS) 07-9-07448-1  
PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY**

Clerk's action required;  
 Paragraph 4.5 (SDOSA),  4.2,  
 5.3,  5.6 and  5.8

**I. HEARING**

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

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on November 14, 2007, by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	INTIMIDATING A WITNESS	9A.72.110(2)	11/29/2005

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.
- A special verdict/finding that the offense was **predatory** was returned on Count(s) \_\_\_\_\_, RCW 9.94A.\_\_\_\_.
- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_.

2

- A special verdict/finding that the victim was **developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, .533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- 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): Clark County Case No. 06-1-01137-6 – PCS with Intent to Deliver – Methamphetamine and PCS with Intent to Deliver – Cocaine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine; Clark County Case No. 06-1-02072-3 – Delivery of a Controlled Substance – Methamphetamine; and Clark County Case No. 07-1-01998-1 – Attempt Arson I.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	Age of Adult, Juv.	TYPE OF CRIME
See attached criminal history					

- 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) \_\_\_\_\_.

**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	4	VI	31 MONTHS to 41 MONTHS		31 MONTHS to 41 MONTHS	10 YEARS \$20,000

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

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey, 530 U.S. 468, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).*

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

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

2.7 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 \_\_\_\_\_.

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:

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F	RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$ 1,000.00	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/ NTF/SAD/SDI	\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency		RCW 43.43.690
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)		RCW 43.43.7541

RTN/RJN	\$ _____	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 \_\_\_\_\_
- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
- Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_, RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- 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 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190
- 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.

Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with RUSS M KARLING including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

- A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.
- The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.4 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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 (DOC):

40 days/months on Count 01

Actual number of months of total confinement ordered is: 40 months  
 (Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

- The confinement time on Count(s) \_\_\_\_\_ contain a mandatory minimum term of \_\_\_\_\_.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present 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: To run concurrent with Clark County Case No. 06-1-01137-6 – PCS with Intent to Deliver – Methamphetamine and PCS with Intent to Deliver – Cocaine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine; Clark County Case No. 06-1-02072-3 – Delivery of a Controlled Substance – Methamphetamine; and Clark County Case No. 07-1-01996-1 – Attempt Arson I.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

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

Count	minimum term	maximum term
01		

(c) Credit for 461 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  **COMMUNITY PLACEMENT** is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

**COMMUNITY CUSTODY** for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

**COMMUNITY CUSTODY** is ordered on Counts 1 for a range from 9 to 12 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. 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.]

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

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

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

The defendant shall be on community placement/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 placement/community custody and any other conditions stated in this Judgment and Sentence.

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 \_\_\_\_\_
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8)).

- The defendant shall participate in the following crime-related treatment or counseling services:
- 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 or as authorized by his/her community corrections officer for treatment purposes. 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, 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  parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- 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 unsupervised 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. Defendant shall not change sex offender

treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "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, at his or her own expense, 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, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals; provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2). or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
- If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:  

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4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

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- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

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**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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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

**Cross off if not applicable:**

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

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

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

school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** 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 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.

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** 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. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a 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 an 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.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a name Change:** 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 five days of the entry of the order. RCW 9A.44.130(7).

5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive

with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

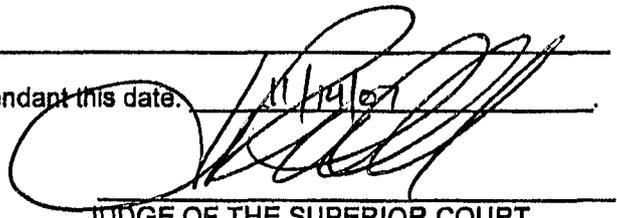
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

- The crime(s) in count(s) \_\_\_\_\_ 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(s) \_\_\_\_\_ 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.

5.11 OTHER: \_\_\_\_\_

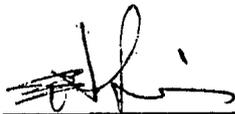
DONE in Open Court and in the presence of the defendant this date.

  
\_\_\_\_\_

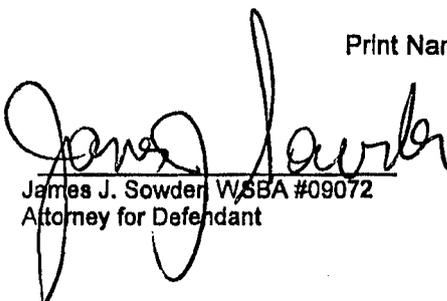
JUDGE OF THE SUPERIOR COURT

Print Name: \_\_\_\_\_





Bernard F. Veljacic, WSBA #28702  
Deputy Prosecuting Attorney



James J. Sowden, WSBA #09072  
Attorney for Defendant



LOWELL DERAY FINSTAD  
Defendant

**APPENDIX K**

20  
c

SOWDER

S1

2-5P

**FILED**

**NOV 14 2007**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
v.  
LOWELL DERAY FINSTAD,  
Defendant.  
SID: WA11959523  
DOB: 7/23/1963

No. 07-1-01996-1

**FELONY JUDGMENT AND SENTENCE**  
(FJS) 07-1-07436-7  
**PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY**

**Clerk's action required;**  
 Paragraph 4.5 (SDOSA),  4.2,  
 5.3,  5.8 and  5.8

**I. HEARING**

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

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on November 14, 2007  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ATTEMPTED ARSON IN THE FIRST DEGREE	9A.48.020(1)(b)	2/1/2006 to 11/30/2006

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.
- A special verdict/finding that the offense was **predatory** was returned on Count(s) \_\_\_\_\_, RCW 9.94A.\_\_\_\_.

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- A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.
- A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 533.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, .533.
- A special verdict/finding for Violation of the Uniform Controlled Substances Act (VUCSA) was returned on Count(s) \_\_\_\_\_ RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are Domestic Violence offense(s) as that term is defined in RCW 10.99.020:
- 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): TO RUN CONCURRENT WITH #06-1-01137-6, POSSESSION CONTROLLED SUBSTANCE WITH INTENT-METH, PCS WITH INTENT-COCAINE; #06-1-02072-3 DCS-METH; #07-1-0611-7 INTIMIDATING A WITNESS

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
See attached criminal history					

- 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) \_\_\_\_\_.

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	4	VII-75%	27 MONTHS to 36 MONTHS		27 MONTHS to 36 MONTHS	LIFE \$50,000

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

- Additional current offense sentencing data is attached in Appendix 2.3.
- 2.4  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) \_\_\_\_\_.

The defendant and the State stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the Sentencing Reform Act.

Aggravating factors were:  stipulated to by the defendant,  admitted by the defendant in the Guilty Plea,  found by the court after the defendant waived jury trial,  found by jury by special Interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).*

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

- 2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753.

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

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

- 2.7 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 \_\_\_\_\_.

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:

RTN/RJN	\$ <u>0</u>	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment	RCW 7.68.035
	\$ _____	DV Penalty Assessment	RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
	\$ 200.00	Criminal filing fee	FRC RCW 9.94A.505
	\$ _____	Witness costs	WFR RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F RCW 10.01.160 and 36.18.040
	\$ _____	Jury Demand Fee \$ 250.00	JFR RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT RCW 9.94A.505
	\$ _____	Other Costs _____	RCW 9.94A.760
PUB	\$ 1,500.00	Fees for court appointed attorney  Trial per dlem if applicable	RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine	RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$ _____	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency	RCW 43.43.690
	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)	RCW 43.43.7541

RTN/RJN	\$ _____	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 \_\_\_\_\_
- Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: \_\_\_\_\_
- The Department of Corrections/Superior Court Clerk Collections Unit shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:
- Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.
- RCW 9.94A.760.
- The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.
- 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 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. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190
- 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.
- Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with BRYAN ACEE 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). *(parties agree to that term.)* <sup>700 His wife or His children</sup>

- A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.
- The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (DOC):

36 days/months on Count 01

Actual number of months of total confinement ordered is: 36 Months  
(Add mandatory firearm and deadly weapons and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

- The confinement time on Count(s) \_\_\_\_\_ contain a mandatory minimum term of \_\_\_\_\_.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with a juvenile present 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: TO RUN CONCURRENT WITH #06-1-01137-8, POSSESSION CONTROLLED SUBSTANCE WITH INTENT-METH, PCS WITH INTENT-COCAINE; #06-1-02072-3 DCS-METH; #07-1-0611-7 INTIMIDATING A WITNESS

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

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

Count	minimum term	maximum term
01		

- (c) Credit for 461 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6  COMMUNITY PLACEMENT is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

- COMMUNITY CUSTODY for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

**COMMUNITY CUSTODY** is ordered on Counts I for a range from 18 to 36 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. 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.]

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

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

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

The defendant shall be on community placement/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 placement/community custody and any other conditions stated in this Judgment and Sentence. 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 Brian Acee or His wife or children
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school if the offense was committed on or after July 24, 2005. (RCW 9.94A.030(8)).
- The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

- 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 or as authorized by his/her community corrections officer for treatment purposes. 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, 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  parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a domestic violence perpetrator program as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- 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 unsupervised 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. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "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, at his or her own expense, 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, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2), or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
- If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:  

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4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limit to the defendant while under the supervision of the County Jail or Department of Corrections:

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- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.
- 4.11 Other:  

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**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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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

Cross off if not applicable:

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

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

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

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed 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 signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed 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 send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon Moving to Another State:** 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 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.

**5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** 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. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have 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. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. 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. You may be required to provide a 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 an 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.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. Application for a name Change:** 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 five days of the entry of the order. RCW 9A.44.130(7).

- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court

is further directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

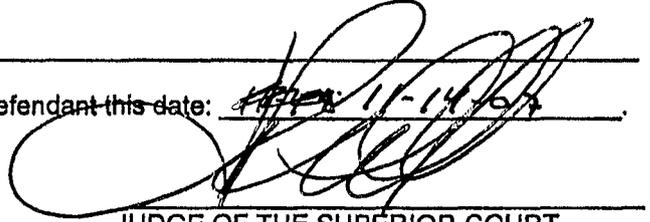
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

- The crime(s) in count(s) 01 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(s) \_\_\_\_\_ 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.

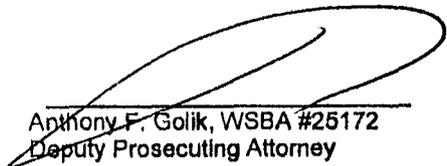
5.11 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 11-14-07

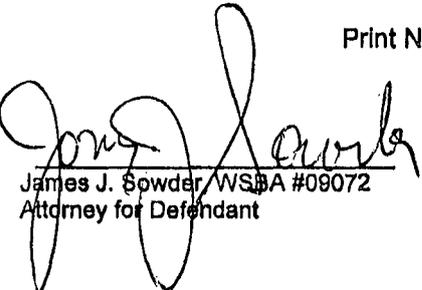


JUDGE OF THE SUPERIOR COURT

Print Name: John P. Walle



Anthony F. Golik, WSBA #25172  
Deputy Prosecuting Attorney



James J. Sowder, WSBA #09072  
Attorney for Defendant



LOWELL DERAY FINSTAD  
Defendant

**APPENDIX L**

Supreme Court Case No. 85198-1

IN THE WASHINGTON STATE SUPREME COURT

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IN RE THE PERSONAL RESTRAINT PETITION OF:

Lowell Deray Finstad

Petitioner Pro Se

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REPLY BRIEF OF FINSTAD

---

Lowell Deray Finstad  
D.O.C.# 312497/H1A03U  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

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1. IDENTITY OF PETITIONER

Lowell Finstad, Petitioner Pro Se files this reply under Supreme Court Case Number 85198-1 in response to the State, wherein he requests an order correcting the erroneous consecutive sentence entered under Cause Numbers 06-1-01137-6 and 06-1-02072-3 following his negotiated plea agreement under the following cause numbers: 06-1-01137-6, 06-1-02072-3, 07-1-00611-7, and 07-1-1996-1.

This request stems from Mr. Finstad's understanding that, as all the above cause numbers were adjudicated pursuant to one plea agreement, sentenced on the same day and by the same court, R.C.W. 9.94A.589(1)(a) mandates concurrent sentencing; short of the imposition of a valid exceptional sentence imposed under the strict guidelines articulated under R.C.W. 9.94A.535, something that was not done in this case.

2. RELEVANT FACTS

On November 9, 2007 Mr. Finstad plead guilty to Possession of a Controlled Substance, with Intent to Deliver Methamphetamine; and, Possession of a Controlled Substance, with Intent to Deliver Cocaine, under Cause Number 06-1-01137-6, (Appendix - A); Delivery of a Controlled Substance, Methamphetamine, under Cause Number 06-1-02072-3 (Appendix - B); Witness Intimidation, under Cause Number 07-1-00611-7 (Appendix - C); and, Attempted Arson in the First Degree, under Cause Number 07-1-01996-1, (Appendix - D). [It should be noted

that the State claims within its response at page 1, that the matter filed under 07-1-01996-1 was left unfiled as a result of Mr. Finstad's plea. This however, is a mis-statement of fact, as this matter was adjudicated and sentenced along with cause numbers 06-1-01137-6; 06-1-02072-3; and, 07-1-00611-7.] (See Also Appendix - D & H)

Also included within this global plea agreement, was an agreement that the time Mr. Finstad previously received following a jury trial under cause number 06-1-01073-6 (Appendix - I) would run consecutive to cause numbers 06-1-01137-6 and 06-1-02072-3 (See Appendixes A & B) . [There is no error assigned to this portion of the consecutive sentence.]

On November 14, 2007 Mr. Finstad was sentenced under the following cause numbers wherein he received the following sentence, under each respective cause number. Under Cause Number 06-1-01137-6, Mr. Finstad received a forty month term of imprisonment on each count of conviction to run concurrent with each other, but consecutive with the counts of conviction under Cause Number(s) 06-1-02072-3 and 06-1-01073-6, (Appendix - E). Under Cause Number 06-1-02072-3 Mr. Finstad was sentenced to a term of imprisonment of forty months, which was ordered to run concurrent with 07-1-00611-7 and 07-1-01996-1, but consecutive with 06-1-01137-6 and 06-1-01073-6, (Appendix - F). Under Cause Number 07-1-00611-7 Mr. Finstad was sentenced to a term of imprisonment of forty months, to run concurrent with

all incorporated cause numbers, including cause number 06-1-01073-6, (Appendix - G). Under Cause Number 07-1-01996-1, Mr. Finstad was sentenced to a term of imprisonment of thirty-six months, also ordered to run concurrent with all incorporated cause numbers, including cause number 06-1-01073-6, (Appendix - H).

Also as explained above, as a result of Mr. Finstad's plea to the above cause numbers, the Court ordered the term of confinement under cause number 06-1-01073-6 to run consecutive with cause numbers 06-1-00137-6 and 06-1-02072-3, cases which under RCW 9.94A.589 (1)(a) should have been concurrent to each other, but consecutive with 06-1-01073-6.

To make absolutely clear, please take notice that Mr. Finstad only assigns error to the consecutive sentences imposed under cause number(s) 06-1-01137-6 and 06-1-02072-3 as applied solely between each other, as the Judgment and Sentences along with the respective Plea Agreements show clear evidence of the violation therein.

### 3. ARGUMENT

While it was proper for the Court to order Cause Numbers 06-1-01137-6 and 06-1-02072-3 to run consecutive with Cause Number 06-1-01073-6; it was improper to run 06-1-01137-6 and 06-1-02072-3 consecutive with each other. The imposition of consecutive terms of confinement under Cause Numbers 06-1-01137-6

and 06-1-02072-3, would only be proper under the SRA pursuant to the Exceptional Sentence provisions of RCW 9.94A.535.

See R.C.W. 9.94A.589 which states in relevant part:

"Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the Court enters a finding that some or all of the current offenses encompass the same criminal conduct than those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. ..."  
(Emphasis Added)

Subsection (b) applies only to serious violent offenses; and, subsection (c) applies to convictions of Unlawful Possession of a Firearm in the First or Second Degree and for the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm. See RCW 9.94A.539 (1)(b) & (c). Neither of these subsections apply to Mr. Finstad's case; thus, section (1) (a) controls.

The State's argument in opposition to Mr. Finstad's petition is three-fold. First they argue that this was a stipulated plea negotiated, accepted, and ratified by all the parties involved. The State then goes on to argue that the Courts imposition of an exceptional sentence was proper because the defendant stipulated to the plea bargain recommendations; finally concluding that Mr. Finstad can not challenge the unlawfully imposed exceptional sentence without challenging the entire plea agreement as a whole.

These arguments fail, as a proper exceptional sentence was not imposed, or stipulated to; nor can Mr. Finstad lawfully agree to an unlawful sentence. Mr. Finstad will argue the State's second claim first, as it leads into the first claim, then follow up with the proper remedy, and the timeliness issue.

It is undisputed that nothing prevents a defendant from waiving his Apprendi rights. When a defendant pleads guilty, the state is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to the judicial findings, in support thereof. See Apprendi, 530 U.S. at 488, 120 S.Ct. 2348; Duncan v. Louisiana, 391 U.S. 145, 158, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

Thus, if appropriate waivers are procured, states may continue to offer judicial fact finding as a matter of course to all defendants who plead guilty. That however did not happen in this case. Notice that no where within the State's response was it able to identify one fact Mr. Finstad stipulated to in support of an exceptional sentence. Furthermore, notice that the State was not even able to point this Court's attention anywhere within any of the relevant Judgment and Sentences or Plea Agreements which would support its contention that an exceptional sentence in general was stipulated too during the plea negotiations.

Rather, the State simply points to the unlawful consecutive sentences imposed under Cause Number 06-1-01137-6 and

06-1-02072-3 as proof of its unsupported claim. Appendixes A through H attached hereto, however, clearly show that Mr. Finstad did not stipulate to any facts in support of an exceptional sentence, nor to the imposition of an exceptional sentence in general.

As already stated, as part of a plea agreement, a defendant may stipulate to an exceptional sentence above the standard range if the court finds that the sentence is consistent with the purposes of the SRA. State v. Breedlove, 138 Wn.2d 298, 310, 979 P.2d 417 (1999). However, the trial court still must enter findings and conclusions in support of the deviation, and is not excused from doing so on the basis of a stipulation. *Id.*

Thus, in the absence of a proper stipulation to facts in support of an exceptional sentence, sentences imposed under RCW 9.94A.589 (1)(a) for two or more current offenses "shall be served concurrently." See R.C.W. 9.94A.589(1)(a).

In this case, Mr. Finstad did not stipulate to any facts in support of an exceptional sentence. Thus, the trial court erred in imposing consecutive sentences under cause numbers 06-1-01137-6 and 06-1-02072-3. As such those sentences should have been ordered to run concurrent with each other as well as concurrent with cause numbers 07-1-00611-7 and 07-1-01996-1, all of which then would be consecutive with 06-1-01073-6.

In addition to the above, the States theory that this Court

should find no error because this was a stipulated plea negotiated, accepted, and ratified by all the parties involved; carries no weight.

This Court has repeatedly held that 'an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law. In re Pers. Restraint of Hinton, 152 Wn.2d 853, 861, 100 P.3d 801 (2004). See also Goodwin, 146 Wn.2d at 870, ("A plea bargaining agreement cannot exceed the statutory authority given to the courts." (quoting In re Pers. Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980)); Thompson, 141 Wn.2d at 723 ("[t]he actual sentence imposed pursuant to a plea bargain must be statutorily authorized ... .", (quoting In re Pers. Restraint of Moore, 116 Wn.2d 30, 38, 803 P.2d 300 (1991))). A defendant simply 'cannot empower a sentencing court to exceed its statutory authorization.' State v. Eilts, 94 Wn.2d 489, 495-96, 617 P.2d 993 (1980).

Thus, the fact that Mr. Finstad agreed to a particular sentence does not cure the facial defect in the judgment and sentence where the sentencing court acted outside its authority, by arbitrarily imposing a sentence only allowed under the provisions of RCW 9.94A.535, without a proper stipulation to the facts in support thereof by Mr. Finstad as required under the SRA and prevailing Court Jurisprudence.

Finally the State's conclusion that Mr. Finstad may not argue to correct just the erroneous portion of his Judgment

and Sentence is misplaced under prevailing Supreme Court precedent. This Court has made clear that 'the imposition of an unauthorized sentence does not require vacation of the entire Judgment and Sentence or the granting of a new trial. The error is grounds for reversing only the erroneous portion of the sentence imposed. Eilts, 94 Wn.2d at 496. See also Goodwin, 146 Wn.2d at 877, ('Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the Judgment and Sentence that was correct and valid when imposed.)

In this matter, the only error is that the trial court ordered the sentences imposed under cause numbers 06-1-01137-6 and 06-1-02072-3 to run consecutive with each other. Under R.C.W. 9.94A.589 (1)(a), these cause numbers must be concurrent to each other as well as to cause numbers 07-1-00611-7 and 07-1-01996-1, unless a proper exceptional sentence is imposed with facts stipulated in support thereof. Thus, the only sentence that is statutorily authorized under the SRA, and the unique facts of this case, to run consecutive with anything is cause number 06-1-01073-6 as this matter was adjudicated separately from cause numbers 06-1-01137-6; 06-1-02072-3; 07-1-00611-7; and 07-1-01996-1, respectively.

Furthermore, the errors pointed out within Mr. Finstad's Petition appear on the face of the Judgment and Sentences imposed under cause numbers 06-1-01137-6 and 06-1-02072-3; thus, the

one year time bar usually applied to post conviction applications for relief does not apply.

A judgment and sentence is invalid on its face if it exceeds the duration allowed by statute and the alleged defect is evident on the face of the document without further elaboration. See In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); In re Pers. of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002); Thompson, 141 Wn.2d at 718-19.

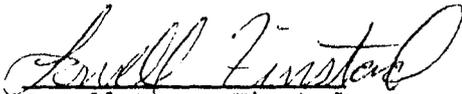
Both factors are present here. As such the language in R.C.W. 10.73.090 clearly excludes this matter from the traditional one year bar within one must ordinarily seek post conviction relief. See R.C.W. 10.73.090, which states:

No petition or motion for collateral attack on a Judgment and Sentence in a criminal case may be filed more than one year after the Judgment becomes final if the Judgment and Sentence is valid on its face and was rendered by a court of competent jurisdiction.

#### 4. CONCLUSION

Based upon the foregoing, this Court should find that it was an impermissible error for the Trial Court to order cause numbers 06-1-01137-6 and 06-1-02072-3 to run consecutive with each other; and, therefore enter a Nunc Pro Tunc Judgment correcting this manifest injustice, by ordering the sentences imposed under cause numbers 06-1-01137-6 and 06-1-02072-3 to run concurrent with each other.

Respectfully Submitted on this 18 day of January, 2011.



Lowell Deray Finstad  
D.O.C.# 312497/H1A03U  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

## APPENDIX M



# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

In re the Personal Restraint Petition of  
 LOWELL DERAY FINSTAD,  
 Petitioner.

No. 41877-1-II

ORDER DISMISSING PETITION

FILED  
 COURT OF APPEALS  
 DIVISION II  
 11 APR 21 PM 1:56  
 STATE OF WASHINGTON  
 BY \_\_\_\_\_  
 DEPUTY

Lowell Finstad seeks relief from personal restraint imposed as a result of his 2007 guilty pleas to unlawful possession of methamphetamine with intent to deliver and to unlawful possession of cocaine with intent to deliver under cause number 06-1-01137-6. The trial court imposed 40-month sentences for those convictions, concurrent with each other. But it made them consecutive to a 40-month sentence it imposed for his plea of guilty to delivery of methamphetamine under cause number 06-1-02072-3. He argues that because the sentences were imposed in the same sentencing proceeding, the consecutive sentence was an exceptional sentence in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). And he argues that his judgment and sentence is exempt from the one-year time bar contained in RCW 10.73.090(1) because the exceptional sentence is facially invalid and is beyond the jurisdiction of the trial court.

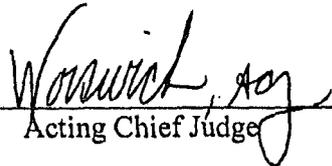
But the remedy he seeks, resentencing him to concurrent rather than consecutive sentences, is not available to him under the circumstances. His sentences were part of an

agreement to resolve four filed cases and one unfiled case against him. That agreement included the State's dismissal of school zone enhancements that could have added 48 months of flat time to his sentence. In a "package deal" such as Finstad agreed to, he cannot challenge the validity of his consecutive sentence without challenging the validity of the entire plea. *State v. Ermels*, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006). Finstad does not challenge the validity of the entire plea and so cannot seek resentencing on the consecutive sentence.

Finstad does not show that he is entitled to the relief that he seeks. Accordingly, is hereby

ORDERED that Finstad's petition is dismissed as frivolous under RAP 16.11(b).

DATED this 21~~st~~ day of April, 2011.

  
\_\_\_\_\_  
Acting Chief Judge

cc: Lowell D. Finstad  
Michael C. Kinnie  
Clark County Clerk  
County Cause No. 06-1-01137-6

**APPENDIX N**

RECEIVED

MAY 23 2011

Prosecutor's Office

Supreme Court Case No. \_\_\_\_\_

IN THE SUPREME COURT OF WASHINGTON STATE

Lowell Finstad,  
Petitioner Pro Se

v.

State of Washington,  
Respondent.

MOTION FOR DISCRETIONARY REVIEW OF COURT  
OF APPEALS ORDER DISMISSING PETITION UNDER  
COA NO. 41877-1-II

Lowell Finstad, Petitioner Pro Se  
Lock Correction Center  
15314 NE Dale Valley Rd  
Yacolt WA 98675  
EHU 6 15 L # 312497

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C. ISSUES PRESENTED FOR REVIEW .....Page 1  
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E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED .....Page 3  
F. CONCLUSION .....Page 8

Appendixes

Appendix -*A*! : Court of Appeals Decision Dismissing Petition Under Cause No. 41877-1-II

Appendix -*A* : Plea Agreement Cause No. 06-1-01137-6

Appendix -*B* : Plea Agreement Cause No. 06-1-02072-3

Appendix -*C* : Plea Agreement Cause No. 07-1-00611-7

Appendix -*D* : Plea Agreement Cause No. 07-1-01996-1

Appendix -*E* : J & S Cause No. 06-1-01137-6

Appendix -*F* : J & S Cause No. 06-1-02072-3

Appendix -*G* : J & S Cause No. 07-1-00611-7

Appendix -*H* : J & S Cause No. 07-1-01996-1

Appendix -*I* : J & S Cause No. 06-1-01073-6

Table Of Authorities

State v. Eitls, 94 Wn.2d 489, 617 P.2d 993 (1980) .....Page 4, 7

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Other Authorities

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RCW 9.94A.535 .....Page 5

RAP 13.4 (b) .....Page 3

A. IDENTITY OF PETITIONER

Lowell Finstad, Petitioner Pro Se asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

Mr. Finstad seeks review of the Court of Appeals decision entitled 'Order Dismissing Petition' entered on April 21, 2011 by the Honorable Acting Chief Judge Worswick. A copy of the decision is attached hereto as Appendix - A.

C. ISSUES PRESENTED FOR REVIEW

1. Under the SRA and prevailing Washington State Jurisprudence is it permissible for a Defendant to agree to an unlawful sentence?
2. Did the Court of Appeals err in holding that Mr. Finstad cannot challenge the validity of his consecutive sentence without challenging the validity of the entire plea?

D. STATEMENT OF THE CASE

On November 9, 2007 Mr. Finstad plead guilty to Possession of a Controlled Substance, with intent to Deliver Cocaine, under Cause Number 06-1-01137-6, Appendix A; Delivery of a Controlled Substance, Methamphetamine, under Cause Number 06-1-02072-3 Appendix B; Witness Intimidation, under Cause Number 07-1-00117 Appendix C; and Attempted Arson in the First Degree, under Cause Number 07-1-01996-1, Appendix D. [It should be noted that the State claimed in its response at page 1 to Mr. Finstad's Initial Petition that the Arson Charge under 07-1-01996-1 was left uncharged as a result of this global plea agreement. The Court of Appeals

seemingly agreed. See Order Dismissing Petition at the end of page 1 and the top of page two, where the Acting Chief Judge stated, "His sentences were part of an agreement to resolve four filed cases and one unfiled case against him." This however is not the case as the Arson Charge was adjudicated and sentenced along with cause numbers 06-1-01137-6; 06-1-02072-3; and, 07-1-00611-7.] See Appendixes E and I.

Also included within this global plea agreement, was an agreement that the time Mr. Finstad previously received following his jury trial under cause number 06-1-01073-6 Appendix I would run consecutive to cause numbers 06-1-01137-6 and 06-1-02072-3 See Appendixes A and B. [There is no error assigned to this portion of the consecutive sentence.]

On November 14, 2007 Mr. Finstad was sentenced under the following cause numbers wherein he received the following sentence, under each respective cause number. Under Cause Number 06-1-01137-6, Mr. Finstad received a forty month term of imprisonment on each count of conviction to run concurrent with each other and 07-1-00611-7 and 07-1-01996-1, but consecutive with the counts of conviction under Cause Number(s) 06-1-02072-3 and 06-1-01073-6, Appendix E. Under Cause Number 06-1-02072-3 Mr. Finstad was sentenced to a term of imprisonment of forty months, which was ordered to run concurrent with 07-1-00611-7 and 07-1-01996-1, but consecutive with 06-1-011376 and 06-1-01073-6, Appendix F. Under Cause Number 07-1-006117 Mr. Finstad was sentenced to a term of imprisonment of forty months, to run concurrent with all incorporated cause numbers, including cause

number 06-1-01073-6, Appendix G. Under Cause Number 07-1-01996-1, Mr. Finstand was sentenced to a term of imprisonment of thirty-six months, also ordered to run concurrent with all incorporated cause numbers, including cause number 06-1-01073-6 Appendix I.

Also as explained above, as a result of Mr. Finstad's plea to the above cause numbers, the Court ordered the term of confinement under cause number 06-1-01073-6 to run consecutive with Cause Numbers 06-1-00137-6 and 06-1-02072-3, cases which under RCW 9.94A.589(1)(a) should have been concurrent to each other, but consecutive with 06-1-01073-6.

For clarification purposes, please take notice once again that Mr. Finstad is only assigning error to the consecutive sentences imposed under cause number(s) 06-1-01137-6 and 06-1-02072-3 as applied solely between each other, as the Judgment and Sentences along with the respective plea agreements show clear and unequivocal evidence of the violation therein.

#### E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

##### Standard of Review

RAP 13.4 (b) provides the following criteria for the Supreme Court's acceptance of a petition for Discretionary Review. That criteria is as follows:

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."

Argument

This Court has repeatedly held that 'an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law. In re Pers. Restraint of Hinton, 152 Wn.2d 853, 861, 100 P.3d 801 (2004). See also Goodwin, 146 Wn.2d at 870, where this Court held, "A plea bargaining agreement cannot exceed the statutory authority given to the Courts." (Quoting In re Pers. Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980)); Thompson, 141 Wn.2d at 723, holding; "The actual sentence imposed pursuant to a plea bargain must be statutorily authorized..." (Quoting In re Pers. Restraint of Moore, 116 Wn.2d 30, 38, 803 P.2d 300 (1991)).

A defendant simply 'cannot empower a sentencing court to exceed its statutory authorization.' State v. Eilts, 94 Wn.2d 489, 495-96, 617 P.2d 993 (1980). The fact that a defendant agreed to a particular sentence does not cure a facial defect in the judgment and sentence where the sentencing court acted outside its authority.

As shown above in this case Mr. Finstad entered into a multi case plea agreement under cause numbers 06-1-01137-6; 06-1-02072-3; 07-1-00611-7; 07-1-01996-1. Cause Number 06-1-01137-6 contained two counts of conviction which were ordered to run concurrent with each other and Cause Numbers 07-1-00611-7 and 07-1-01996-1, but consecutive to both cause numbers 06-1-01073-6 and 06-1-02072-3. While it was proper to run Cause Number 06-1-01137-6 consecutive with Cause Number 06-1-01073-6 as 06-1-01073-6 was sentenced on a separate day; it was improper under the SRA to run 06-1-01137-6 consecutive with 06-1-02072-3 as both those cause numbers were

plead to and sentenced on the same day.

In addition, Cause Number 06-1-02072-3, which only contained one count of conviction was ordered to run concurrent to cause numbers 071-00611-7 and 07-1-01996-1, but consecutive to cause numbers 06-1-01073-6 and 06-1-02072-3. Again, while it was proper to run Cause Number 06-1-02072-3 consecutive with Cause Number 06-1-01073-6 as 06-1-01073-6 was sentenced on a separate day; it was improper under the SRA to run 06-1-02072-3 consecutive with 06-1-01137-6 as both those cause numbers were plead to and sentenced on the same day.

RCW 9.94A.589--(1)(a) provides in pertinent part; "Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, that if the Court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under RCW 9.94A.535. ..."

It is thus clear under the unambiguous provisions contained within RCW 9.94A.589 the Sentencing Court in this case was required to run Cause Numbers 06-1-01137-6; 06-1-02072-3; 07-1-00611-7; and 07-1-01996-1 concurrent with each other. The only Cause Number the Court was allowed to run consecutive with anything was 06-1-01073-6 as that case was adjudicated and sentenced at a separate

time than the four cases sentenced on November 14, 2007.

A Judgment and Sentence is invalid on its face if it exceeds the duration allowed by statute and the alleged defect is evident on the face of the document without further elaboration. See In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002); Thompson, 141 Wn.2d at 718-19. Whether the Sentencing Court has exceeded its statutory authority under the Sentencing Reform Act of 1981, Chapter 9.94A RCW (SRA), is an issue of law. State v. Murray, 118 Wn.App. 518, 521, 77 P.3d 1188 (2003).

The errors contained within Mr. Finstad's Judgment and Sentences are plain on the face of the documents. Moreover, the Court of Appeals does not dispute that an error exists, rather they held, citing State v. Ermels, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006) that "In a package deal such as Mr. Finstad agreed to, he cannot challenge the validity of his consecutive sentence without challenging the validity of the entire plea."

In that regard, it is important to note that Mr. Finstad's case is remarkably different than Mr. Ermels case. In State v. Ermels, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006) the following facts are at issue:

"Joshua James Ermele pleaded guilty to manslaughter in the second degree after he stomped on the head of an unconscious victim and the man later died. As part of his plea agreement, Ermels stipulated to facts supporting an exceptional sentence based on victim vulnerability, and he stipulated that there was a legal basis for an exceptional sentence. He also specifically waived his right to appeal the basis for and propriety of an exceptional sentence. Ermels nevertheless argued to the Court of Appeals, after Blakely v. Washington was decided, that he had not knowingly, intelligently, and

voluntarily waived his right to appeal or his right to have a jury find the facts necessary to support his exceptional sentence."

This Court concluded as follows:

"...Ermels cannot obtain the remedy he seeks. Ermels stipulated to the facts supporting his exceptional sentence and that there was a legal basis for an exceptional sentence. Because those elements were indivisible from the rest of his plea agreement, he cannot challenge the exceptional sentence without challenging the entire plea."

None of the facts relevant to this Court's decision in State v. Ermels are present in Mr. Finstad's case. Mr. Finstad did not stipulate to any facts in support of an exceptional sentence. Mr. Finstad did not waive his right to appeal the imposition of an exceptional sentence. Nor did Mr. Finstad agree to an exceptional sentence. Moreover, the sentence imposed in Mr. Finstad's case, unlike that imposed in Ermels' case, is an unlawful sentence.

Thus, the Court of Appeals reliance on State v. Ermels, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006) is misplaced.

This Court has been clear that 'the imposition of an unauthorized sentence does not require the vacation of the entire Judgment or granting a new trial. The error is grounds for reversing only the erroneous portion of the sentence imposed. Eilts, 94 Wn.2d at 496. See also Goodwin, 146 Wn.2d at 877, where this Court held, "Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the Judgment and Sentence that was correct and valid when imposed."

While it is true that nothing prevents a defendant from waiving his Apprendi rights, that did not happen in this case. Thus the

Court of Appeals reliance on State v. Ernels, is misplaced and is in conflict with several of this Courts decisions and decisions of the Court of Appeals in cases factually similar to the issues present in Mr. Finstad's case.

In conclusion, it cannot be disputed that the sentence imposed in this case regarding cause numbers 06-1-01137-6 and 06-1-02072-3, where these two cases were ordered consecutive to each other without the imposition of an exceptional sentence was error. Moreover, the proper remedy in this case is correction of the error and not vacation of the entire plea agreement.

F. CONCLUSION

Mr. Finstad respectfully requests that this Court enter an order granting review of the Court of Appeals dismissal of his Personal Restraint Petition as its order is in conflict with several decisions of the Washington State Supreme Court as well as the Court of Appeals and contains questions significant to both the Constitutions of this State and the United States of America.

Respectfully Submitted on this 17 day of MAY, 2011.

Bruce Finstad  
Bruce Finstad, Petitioner Pro Se  
D.O.C.# 3124971 EHU 6-15-2  
Lacah Correction Center  
15314 NE Dale Valley RD  
Yacolt W.A 98675

Appendix - A - 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of  
*Lowell DeRay Finstad*  
Petitioner.

No. 41877-1-II

ORDER DISMISSING PETITION

FILED  
COURT OF APPEALS  
DIVISION II  
11 APR 21 PM 1:56  
STATE OF WASHINGTON  
BY  
LENNY

*Finstad* seeks relief from personal restraint imposed as a result of his 2007 guilty pleas to unlawful possession of methamphetamine with intent to deliver and to unlawful possession of cocaine with intent to deliver under cause number 06-1-01137-6. The trial court imposed 40-month sentences for those convictions, concurrent with each other. But it made them consecutive to a 40-month sentence it imposed for his plea of guilty to delivery of methamphetamine under cause number 06-1-02072-3. He argues that because the sentences were imposed in the same sentencing proceeding, the consecutive sentence was an exceptional sentence in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). And he argues that his judgment and sentence is exempt from the one-year time bar contained in RCW 10.73.090(1) because the exceptional sentence is facially invalid and is beyond the jurisdiction of the trial court.

But the remedy he seeks, resentencing him to concurrent rather than consecutive sentences, is not available to him under the circumstances. His sentences were part of an

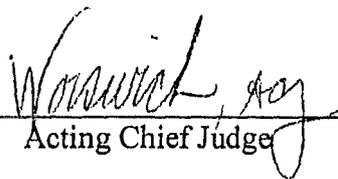
*ADD. ADV. 1-A*

agreement to resolve four filed cases and one unfiled case against him. That agreement included the State's dismissal of school zone enhancements that could have added 48 months of flat time to his sentence. In a "package deal" such as *Finstad* agreed to, he cannot challenge the validity of his consecutive sentence without challenging the validity of the entire plea. *State v. Ermels*, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006). *Finstad* does not challenge the validity of the entire plea and so cannot seek resentencing on the consecutive sentence.

*Finstad* Does not show that he is entitled to the relief that he seeks. Accordingly, is hereby

ORDERED that *Finstad*. petition is dismissed as frivolous under RAP 16.11(b).

DATED this 21<sup>st</sup> day of April, 2011.

  
\_\_\_\_\_  
Acting Chief Judge

cc: *Lowell D Finstad*  
Michael C. Kinnie  
Clark County Clerk  
County Cause No. 06-1-01137-6

RECEIVED

MAY 23 2011

Prosecutor's Office

IN THE WASHINGTON STATE SUPREME COURT

Lowell Finstad, )  
 Petitioner Pro Se, )  
 )  
 v. )  
 )  
 WASHINGTON STATE, )  
 Respondent. )

COA No. 41877-1-II  
 S.C. No. \_\_\_\_\_  
 CERTIFICATE OF SERVICE

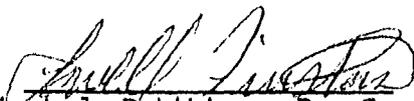
CERTIFICATE OF SERVICE

I, Lowell Finstad, hereby certify that I caused a true and correct copy of the attached 'Motion For Discretionary Review' to be served upon all parties listed herein below, in the manner herein indicated:

- |   |   |
|---|---|
| (X) Washington State Supreme Court<br>Supreme Court Clerk, C J Merritt<br>415 12th Ave S.W.; P.O. BOX 40929<br>Olympia, WA 98504-0929     | (X) First Class Mail<br>Postage Prepaid<br>( ) Personal Service<br>( ) Other: _____ |
| (X) Court Of Appeals, Division Two<br>950 Broadway, Ste 300 MS TB-06<br>Tacoma, WA 98402-4454   | (X) First Class Mail<br>Postage Prepaid<br>( ) Personal Service<br>( ) Other: _____ |
| (X) <u>Honorable Arthur D Curtis</u><br><u>Clark County Prosecutors Office</u><br><u>P.O. Box 5000</u><br><u>Vancouver W.A 98666-5000</u> | (X) First Class Mail<br>Postage Prepaid<br>( ) Personal Service<br>( ) Other: _____ |

I, Lowell Finstand, hereby certify that the above statements are true and correct to the best of my knowledge and belief.

Respectfully Submitted on this 24th day of April, 2011.

  
 Lowell Finstad, Petitioner Pro Se  
 D.O.C.# 324971 EHU G 15 L  
Larch Correction Center  
15314 Mt Dale Valley RD  
YACOLT WA 98679

**APPENDIX O**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED  
SUPREME COURT  
11 AUG 19 AM 9:06  
BY RONALD H. DRAPER  
CLERK

In the Matter of the Personal Restraint of:

LOWELL DERAY FINSTAD,  
Petitioner.

NO. 86018-1  
RULING

Lowell Finstad pleaded guilty in 2007 to unlawful possession of methamphetamine with intent to deliver and unlawful possession of cocaine with intent to deliver under Clark County Superior Court cause number 06-01137-6. He also pleaded guilty to delivery of methamphetamine under cause number 06-1-02072-3. The trial court entered judgment and sentence in both cases on the same day in the same proceeding. The court imposed concurrent standard range sentences of 40 months in the first case and a standard range sentence of 40 months on the second case. In accordance with the terms of the plea agreement the court ran the sentences in the two cases consecutive to each other, resulting in a total sentence of 80 months. There were no findings or stipulations allowing the imposition of an exceptional sentence. Mr. Finstad did not appeal either judgment and sentence.

In December 2010 Mr. Finstad filed a personal restraint petition directly in this court, challenging his sentence. The petition was transferred to Division Two of

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the Court of Appeals, where the acting chief judge dismissed it. Mr. Finstad now seeks this court's discretionary review. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Finstad's petition is time barred unless he demonstrates that the judgment and sentence is facially invalid or was entered without competent jurisdiction, or he raises only grounds for relief exempt from the one-year limit on collateral attack. *See* RCW 10.73.090(1), .100; *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 781, 203 P.3d 375 (2009). Mr. Finstad claims his judgments are facially invalid because together they impose an unlawful exceptional sentence in light of RCW 9.94A.589(1)(a) and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). He seeks resentencing and imposition of concurrent sentences.

When a trial court on the same date imposes sentences on multiple current offenses, it generally must impose concurrent sentences unless it runs the sentences consecutively as a form of exceptional sentence. RCW 9.94A.589(1)(a); RCW 9.94A.535. Any fact, other than a prior conviction, that increases the penalty for a crime beyond the statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). The statutory maximum for purposes of this requirement is the maximum sentence the judge may impose based solely on facts reflected in the jury verdict or admitted by the defendant. *Blakely*, 542 U.S. at 303. Here, Mr. Finstad's offender score was only four, and the record contains no stipulated facts supporting aggravating sentencing factors. In fact the judgments seemingly do not acknowledge that an exceptional sentence was imposed. But in essence it appears the trial court imposed an exceptional sentence based solely on the plea agreement. Mr. Finstad's facial invalidity argument therefore has potential merit.

The acting chief judge impliedly acknowledged the facial invalidity of the judgments but concluded that Mr. Finstad is not entitled to resentencing because the consecutive sentences were part of a "package deal," citing *State v. Ermels*, 156 Wn.2d 528, 540, 131 P.3d 299 (2006). Whether *Ermels* applies here may be debatable. In *Ermels*, the petitioner claimed his plea was involuntary in light of *Blakely*, but he stipulated to facts supporting an aggravated sentence and agreed that there was a legal basis for his exceptional sentence. *Id.* at 540. The court further held that resentencing was not a proper remedy because the plea agreement was a package deal, thus requiring the petitioner to withdraw his entire plea. *Id.* at 540-41.

In contrast to *Ermels*, the record in this case contains no stipulations to a factual or legal basis for an exceptional sentence. And Mr. Finstad does not claim that his plea was involuntary, only that his sentence is unlawful. This court has granted sentencing relief to personal restraint petitioners challenging legally erroneous sentences imposed in accordance with plea agreements. See *In re Pers. Restraint of Wilson*, 170 Wn.2d 682, 688-91, 224 P.3d 950 (2010); *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002).

The State has not responded to Mr. Finstad's motion for discretionary review. Because an answer may assist me in deciding this matter, the State is directed to file one, including in it a discussion of *Wilson*, *Goodwin*, and other relevant authorities. The answer is to be filed in by September 15, 2011. Mr. Finstad may file a reply not later than October 13, 2011.

  
DEPUTY COMMISSIONER

August 19, 2011