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SUPREME COURT OF THE STATE OF WASHINGTON

In the matter of the )  
Personal Restraint of: )  
LOWELL DERAY FINSTAD, )  
Petitioner. )

No. 85198-1  
PERSONAL RESTRAINT PETITION

CLERK  
OCT 20 AM 8:00  
STATE OF WASHINGTON  
CLERK

A. Identity of Petitioner

1. Lowell Deray Finstad seeks relief from personal restraint imposed following his convictions in two Clark County cause numbers, each entered on November 14, 2007. Under Clark County Cause No. 06-02072-3, Finstad pleaded guilty to Delivery of a Controlled Substance, Methamphetamine, contrary to RCW 69.50.401 (1) (2)(b). He did not appeal that Judgment and Sentence. Under Clark County Cause No. 06-1-01137-6, Finstad pleaded guilty to Possession of a Controlled Substance with Intent to Deliver, Methamphetamine, contrary to RCW 69.50.401 (1), (2)(b), and to Possession of a Controlled Substance with Intent to Deliver, Cocaine, contrary to RCW 69.50.401 (1), (2)(a). He did not appeal that Judgment and Sentence. On each of the above convictions the Court imposed 40-month terms of incarceration.

2. The Court ordered the two 40-month terms imposed in Cause No. 06-1-01137-6 ran concurrently to each other, but consecutively to the single 40-month term imposed in Cause No. 06-1-02072-3.

B. Standard of Review

3. To obtain State judicial review of a decision through a personal restraint proceeding, Finstad is required to demonstrate both that he is being restrained and that the restraint is unlawful. RAP 16.4 (a); In re Dutcher, 114 Wn. App. 755, 758, 60 P.3d 635 (2002) (citing In re Cashaw, 123 Wn. 2d 138, 144, 866 P.2d 8 (1994)). Finstad may obtain relief by demonstrating either a constitutional violation or a violation of State law. RAP 16.4 (c) (2), (6); Cashaw, 123 Wn. 2d at 148.

C. Timeliness

4. RCW 10.73.090 (1) provides:

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.

Id. A personal restraint petition is a collateral attack on a judgment. RCW 10.73.090 (2). Finstad's Judgment and Sentences in Clark County Cause No. 06-1-02072-3 and 06-1-01137-6, became final when the trial court filed them on November 14, 2007. Accordingly, when Finstad filed the present petition, more than one year had elapsed and the Court cannot review his claims unless he shows that either (1) the time bar does not apply because his Judgment and Sentences are facially invalid or were not rendered by a court of competent jurisdiction; or (2) one or more of the six exceptions to the time bar enumerated in RCW 10.73.100 applies.

5. According to RCW 10.73.100:

The time limit specified in RCW 10.73.100 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(5) The sentence imposed was in excess of the court's jurisdiction.

Finstad claims this exception to the one-year time bar contained in RCW 10.73.090 applies to his instant petition.

D. Previous Petitions

6. This is Finstad's first collateral attack upon the Judgment and Sentence imposed in Clark County Cause No. 06-1-02072-3 and 06-1-01137-6. Finstad, however, has filed a personal restraint petition collaterally attacking his convictions under Clark County Cause No. 06-1-01073-6, (Unlawful Possession of Methamphetamine) and his pleas of guilty to intimidating a witness and to attempted first degree arson (Cause No. 07-1-00611-7 and 07-1-01996-1). See, In re Personal Restraint of Finstad, COA No. 40332-3-II (2010).

7. In that petition, Finstad sought relief from personal restraint, contending that the Department of Corrections had not granted all appropriate credits against one of his sentences. The Court, however, ruled the Department had not erred in calculating the beginning and end dates of Finstad's sentences and ordered Finstad's petition dismissed as frivolous under RAP 16.11 (b).

8. If an offender has had a previous or alternative avenue for obtaining State judicial review of the challenged decision, he has a "threshold" burden of establishing the appropriateness of collateral review. Cashaw, 123 Wn. 2d at 148-49. Upon meeting this threshold, the offender has the burden of proving

by a preponderance of the evidence that an alleged error caused him actual and substantial prejudice. In re Cook, 114 Wn. 2d 802, 813-14, 792 P.2d 506 (1990). Allegations unsupported by citation to authority, facts, or persuasive reasoning cannot sustain this burden of proof. Cook, 114 Wn. 2d at 813-14. The offender must present evidence that is more than speculation, conjecture, or inadmissible hearsay. In re Granquist, 138 Wn. 2d 388, 396, 978 P.2d 1083 (1999).

9. Here, Finstad does not believe he has the threshold burden of establishing the appropriateness of collateral review required by Cashaw, 123 Wn. 2d at 148-49, because he has not previously filed a post-conviction pleading challenging the Judgment and Sentences under attack in this petition. This instant petition is not successive within the meaning of RCW 10.73.140. Read together, RCW 10.73 is ambiguous, at best, in regards to whether the subsequent petition statute, RCW 10.73.140, operates as a bulwark against petitioners or alternative attacks upon the same Judgment and Sentences. Under this condition, the Rule of Lenity would require the Court to rule Finstad does not have this questionable burden and that his instant petition is not successive.

10. Nevertheless, even if RCW 10.73.140 were to apply to Finstad's instant petition, "By its specific terms, RCW 10.73.140 relates only to the Court of Appeal and does not apply to the Supreme Court." In re Personal Restraint of Greening, 141 Wn. 2d 558, 566, 933 P.2d 1019 (1997). As for RAP 16.4 (d), it provides, "No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown."

11. A successive petition seeks “similar relief” if it either renews claims already “previously heard and determined” on the merits or raises “new” issues in violation of the abuse of the writ doctrine. In re Personal Restraint of Jeffries, 114 Wn. 485, 488-92, 789 P.2d 731 (1990) (citing In re Personal Restraint of Haverty, 101 Wn. 2d 498, 503, 681 P.2d 835 (1984) (quoting Sanders v. United States, 373 U.S. f, 15, 17, 83 S. Ct. 1068, 10 L.Ed.2d 148 (1963))).

12. In his previous petition, Finstad agreed he was entitled to credits for the time he spent in jail between March 2, 2007, the date his sentence was imposed, and November 16, 2007, the date he was received by the Department, against his sentence under cause number 06-1-01073-6.

13. The Clark County Jail certified that Finstad had earned 203 jail credits and 30 days of early release credits on 06-1-01073-6 and had earned 461 jail credits and 69 days of early release credits on Finstad’s 2007 causes. The Judgment and Sentence for those offenses included the jail credits as certified by the jail.

14. Finstad was sentenced under 06-1-01073-6 on March 2, 2007. He remained in the Jail, pending resolution of cause numbers 06-1-01137-6 and 06-1-02072-3, the judgments currently under attack in this petition. The Department calculated Finstad’s sentence under 06-1-01073-6 and the 2007 causes as starting on November 16, 2007. In his personal restraint petition, Finstad argued that he was entitled to an additional 260 days of credit, and an additional 39 days in earl release credits, for the post-sentence time served in the Jail from March 2, 2007 to

November 16, 2007, time credited to the Judgment and Sentences imposed upon the underlying Judgment and Sentences under attack. However, the Court ruled, Finstad "... is entitled to credit only for time spent in jail 'solely' in regard to the offense for which the offender is being sentenced." Citing, RCW 9.94A.505 (6). Because the time Finstad spent in jail between March 2, 2007 and November 16, 2007 was not spent solely in regard to cause number 06-1-01073-6, and Finstad received credit for that time period on other cause numbers, the court dismissed Finstad's petition on procedural grounds as frivolous under RAP 16.11 (b). Thus, the Court should rule, Finstad's previous attempt at collateral attack was not sufficient to command judicial consideration and discussion in a personal restraint proceeding and was, therefore, not "previously heard and determined on the merits."

15. The Court should also find that Finstad's instant petition is not abusive of the writ.

16. Issues not "previously heard and determined" on their merits may be dismissed upon a showing that a petitioner is abusing the writ. Jeffries, 114 Wn.2d at 488. The Jeffries majority wrote:

Contrary to the suggestions... [in] Justice Brachtenbach's concurring/dissenting opinion, we are not creating "a per se rule" that the advancing of new issues in successive petitions constitutes an abuse of the [writ]. We hold only that, if the petitioner was represented by counsel throughout post-conviction proceedings, it is an abuse of the writ for him or her to raise, in a successive petition, a new issue that was "available but not relied upon in a prior petition."

114 Wn.2d at 492 (quoting Kuhmann v. Wilson, 477 U.S.436, 444, n.6, 106 S. Ct. 2616, 91 L.Ed.2d 364 (1986)). Accordingly, since Finstad was not "represented by

counsel throughout post-conviction proceedings,” Jeffries, Supra, 114 Wn.2d at 492, the Court need not suspect his failure to challenge the underlying Judgment and Sentences in his previous petition challenging other Judgment and Sentences was a tactical ploy. Accordingly, the Court should rule Finstad’s raising of his claim that the sentences imposed in Clark County Cause Numbers 06-1-01137-6 and 06-1-02072-3, were in excess of the trial court’s jurisdiction, on the premises set forth below, is not an abuse of the writ.

E. Statement of Relevant Facts

17. Finstad was convicted of Possession of a Controlled Substance with Intent to Deliver, Methamphetamine, contrary to RCW 69.50.401 (1), (2)(b), and Possession of a Controlled Substance with Intent to Deliver, Cocaine, contrary to RCW 69.50.401 (1), (2)(a), in Clark County Cause Number 06-1-01137-6. The Court imposed 40-month confinement terms for each conviction, ran concurrently to each other, but consecutively to cause number 06-1-02072-3.

18. Finstad was sentenced on the same date, at the same time, and by the same judge, in cause numbers 06-1-01137-6 and 06-1-02072-3. Finstad was convicted of Delivery of a Controlled Substance, Methamphetamine, contrary to RCW 69.50.401 (1), (2)(b) in Cause No. 06-1-02072-3. The Court also imposed a 40-month term of confinement on this conviction, but ordered it ran consecutively to Finstad convictions in No. 06-1-01137-6.

19. Both the Judgment and Sentences in Cause No. 06-1-01137-6 and 06-1-02072-3, list each other as “other current convictions listed under different

cause numbers used in calculating the offender score” for the current offense. See, Judgment and Sentence, No. 06-1-01137-6 and 06-1-02072-3, Attached.

20. According to RCW 9.94A.525 (1) “... convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed ‘other current offenses’ within the meaning of RCW 9.94A.589.”

21. RCW 9.94A.589 states:

(1) (a) 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 courts 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 his subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535.

Id. Under the SRA, a sentencing judge must impose concurrent sentences. There are two exceptions to this policy: (1) under subsection (b), a person convicted of two or more serious violent offenses arising from separate and distinct criminal conduct must be sentenced consecutively; and (2) under subsection (3), the sentencing judge may expressly order that the sentence be served consecutively to sentences “already” imposed in other jurisdictions. This comment was addressed by State v. Moore, 63 Wn. App. 466 (1991).

22. Unless the offenses fall under the exceptions listed in subsection (1) (b) or subsection (3) of RCW 9.94A.589, consecutive sentences imposed for

current offenses constitute exceptional sentences and must comply with the exceptional sentence provisions of the Sentencing Reform Act, RCW 9.94A.535.

23. The 1986 amendment to subsection (3) changed this subsection so sentences for all current offenses run concurrently with the sentences for all other current offenses from any other State or Federal court, unless the sentencing court expressly orders the sentences to be consecutive.

24. Effective April 15, 2005, and following the United States Supreme Court's decision in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004), the Washington State legislature adopted RCW 9.94A.537, a new statute setting out the procedure by which the State could seek and obtain imposition of an exceptional sentence. The first section of this statute provides as follows:

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the State may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

RCW 9.94A.537 (1).

25. Under the plain language of this section, before the court may impose an exceptional sentence the State must give notice of its intent to seek an exceptional sentence "prior to trial or entry of the guilty plea." In addition, the notice must state the "aggravating circumstances upon which the requested sentence will be based." The statute provides no exceptions to these requirements. In the case at base the State never did give notice to Finstad that it would seek an exceptional sentence "prior to trial or entry of the guilty plea."

Thus, the trial court acted without authority when it imposed an exceptional sentence upon Finstad in Cause Number 06-1-01137-6 and 06-1-02072-3.

26. In addition, the second section of RCW 9.94A.537 has another condition precedent to the trial court's authority to impose an exceptional sentence. This section states:

(2) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the courts beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

RCW 9.94A.531 (2). Under this subsection the facts the State claims support imposition of an exceptional sentence "shall" be proved to the jury beyond a reasonable doubt, the jury's decision on those facts "must be unanimous," and the court "must" submit the decision to the jury "by special interrogatory." In Statutory interpretation "words of command," such as "shall" or "must" are accorded their plain meaning and are "imperatives." State v. Krull, 125 Wn.2d 146, 881 P.2d 1040 (1994), Thus, in RCW 9.94A.537 these words set out conditions precedent to the creation of the court's authority to impose any sentence except as created by the legislature. State v. Thomas, 129 Wn.2d 736, 767, 921 P.2d 514 (1996); State v. Mulcare, 189 Wash. 625, 628, 66 P.2d 360 (1937).

27. In the case at bar the State did not give notice of its intent to seek an exceptional sentence prior trial or entry of the guilty plea, nor did Finstad stipulate to any aggravating factor since each of these requirements is a condition precedent to the trial court's authority to impose an exceptional sentence, the

absence of these conditions in the case at bar precluded the court from imposing an exceptional sentence. Thus, this Court should rule that the trial court erred, under the facts of this case, in ordering Finstad's sentences imposed on November 14, 2007, in Clark County Cause Numbers 06-1-01137-6 and 06-1-02072-3, to run consecutively to each other. Under RCW 9.94A.589 (1)(a), Finstad's sentences in these cause numbers, imposed by the same judge, on the same date, at the same sentencing hearing, should have ran concurrently. Because there is no evidence of notice to seek an exceptional sentence beyond a reasonable doubt and Finstad did not stipulate to such factor or authorize the judge to find these factors beyond a reasonable doubt, the Court erred in imposing Finstad's sentences in Number 06-1-01137-6 and 06-1-02072-3 consecutively.

It Should be So Ordered.

DATED this 17 day of October, 2010

Respectfully Submitted,  
BY THE PETITIONER:



LOWELL DERAAY FINSTAD

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Steilacoom, WA 98388

Prepared by:



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# **ATTACHMENT A**

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: [REDACTED] 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.

- 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:

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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/WRF	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):  
\_\_\_\_\_
- 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, 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 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.

CAUSE NUMBER of this case: 06-1-01137-6

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

Defendant's signature: [Signature]

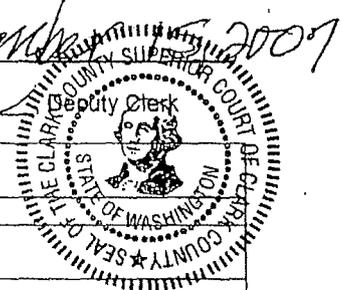
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: \_\_\_\_\_

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

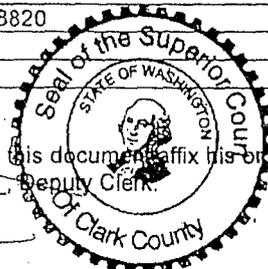
WITNESS my hand and seal of the said Superior Court affixed this date: November 5, 2007

Clerk of said County and State, by: [Signature]



**IDENTIFICATION OF DEFENDANT  
LOWELL DERAY FINSTAD**

Alias name, SSN, DOB:	
SID No. WA11959523 (If no SID take fingerprint card for State Patrol)	Date of Birth <u>[Redacted]</u> /1963
Race: W	Sex: M
Driver License No. <u>[Redacted]</u>	Driver License State: WA
FBI No. <u>[Redacted]</u>	Local ID No. (CFN): 068820
Other	Corrections No.



**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: [Signature]

Dated: 11-14-07

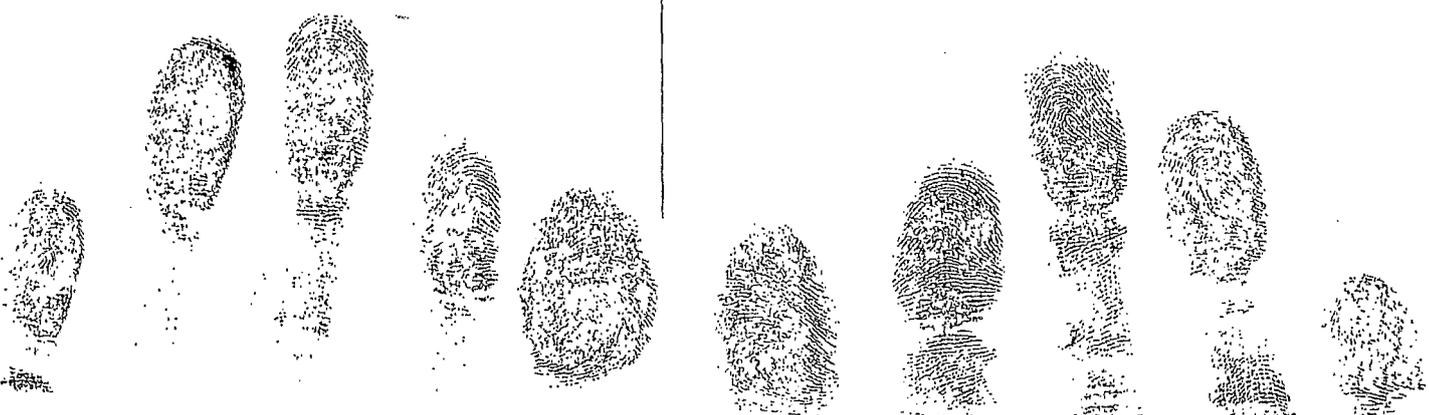
DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously

Left Thumb

Right Thumb

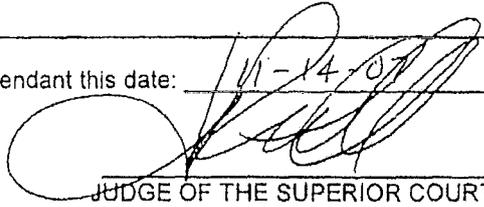
Right four fingers taken simultaneously



# **ATTACHMENT B**

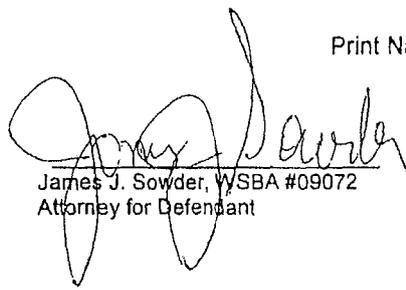
5.11 OTHER: \_\_\_\_\_

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 DERYK FINSTAD  
Defendant

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. 06-1-01137-6

APPENDIX 2.2

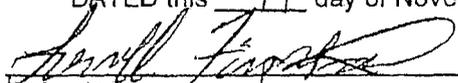
DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
POSSESSION WITH INTENT TO DELIVER-COCAINE	CLARK/WA 06-1-01073-6	6/7/2006	3/2/2007	1
POSSESSION OF CONTROLLED SUBSTANCE-METH	CLARK/WA 06-1-01073-6	6/7/2006	3/2/2007	Same Entry Cond.
INTIMIDATING A WITNESS	CLARK/WA 07-1-00611-7	11/29/2005	OTHER CURRENT OFFENSE	1
DELIVERY OF A CONTROLLED SUBSTANCE-METH	CLARK/WA 06-1-02072-3	10/25/06	OTHER CURRENT OFFENSE	1
ATTEMPTED ARSON 1	CLARK/WA 07-1-01996-1	2/1/2006 - 11/30/2006	OTHER CURRENT OFFENSE	1

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 14 day of November, 2007.

  
Defendant

  
James J. Sowder, WSBA#09072  
Attorney for Defendant

  
BERNARD F. VELJACIC, WSBA#28702  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK  
STATE OF WASHINGTON, Plaintiff,

NO. 06-1-01137-6

v.

LOWELL DERAY FINSTAD,  
Defendant.

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

SID: WA11959523  
DOB: ██████ 1963

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

**GREETING:**

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

COUNT	CRIME	RCW	DATE OF CRIME
01	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

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

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

COUNT	CRIME	TERM
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	40 Days <u>Months</u>

02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	
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These terms shall be served concurrently to each other unless specified herein: 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 defendant has credit for 0 days served.

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.

And these presents shall be authority for the same.

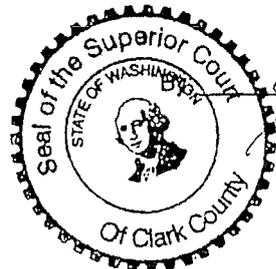
HEREIN FAIL NOT.

WITNESS, Honorable

*[Handwritten Signature]* John P. White

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 11-14-07

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court



*[Handwritten Signature]*  
Deputy

**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: ~~XXXX~~/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.\_\_\_\_\_.

- 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	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

\* (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/WRF	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 43.43.690
	\$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:  _____		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):  
\_\_\_\_\_
- 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.

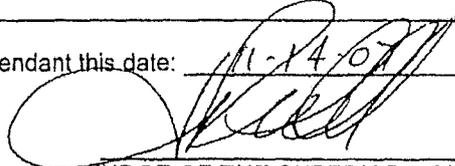
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

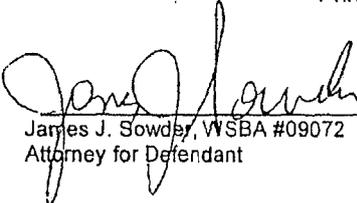
DONE in Open Court and in the presence of the defendant this date: \_\_\_\_\_

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

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

J.P. Wulle

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

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

  
\_\_\_\_\_  
LOWELL DERAY FINSTAD  
Defendant

1  
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3  
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
5 IN AND FOR THE COUNTY OF CLARK

6 STATE OF WASHINGTON,  
7 Plaintiff,  
8 v.  
9 LOWELL DERAY FINSTAD,  
10 Defendant

No. 06-1-02072-3

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

11 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of  
12 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the  
13 defendant has the following undisputed prior criminal convictions:

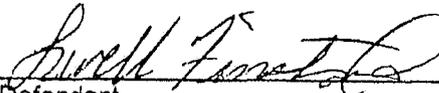
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS WITH INTENT TO DELIVER - METH	CLARK/WA 06-1-01073-6	11/17/2005	3/2/2007	Same Crim Conv.
PCS WITH INTENT TO DELIVER - COCAINE	CLARK/WA 06-1-01073-6	11/17/2005	3/2/2007	1
PCS WITH INTENT TO DELIVER - COCAINE	CLARK/WA 06-1-01137-6	6/7/2006	OTHER CURRENT OFFENSE	1
PCS WITH INTENT TO DELIVER - METH	CLARK/WA 06-1-01137-6	6/7/2006	OTHER CURRENT OFFENSE	Same Crim Conv.
INTIMIDATING A WITNESS	CLARK/WA 07-1-00611-7	11/29/2006	OTHER CURRENT OFFENSE	1
ATTEMPTED ARSON I	CLARK/WA 07-1-01996-1	2/1/2006 - 11/30/2006	OTHER CURRENT OFFENSE	1

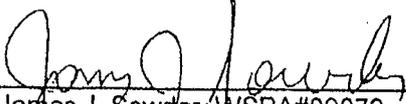
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DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

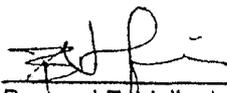
CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

1  The defendant committed a current offense while on community placement (adds one  
point to score). RCW 9.94A.525.

2 DATED this 14 day of November, 2007.

3  
4   
5 Defendant

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7 James J. Sowder, WSBA#09072  
8 Attorney for Defendant

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Bernard F. Veljacic, WSBA#28702  
Deputy Prosecuting Attorney

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK  
STATE OF WASHINGTON, Plaintiff,

NO. 06-1-02072-3

v.

LOWELL DERAY FINSTAD,  
Defendant.

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

SID: WA11959523  
DOB: [REDACTED] 1963

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

**GREETING:**

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

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

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

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

COUNT	CRIME	TERM
01	DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	40 Days/ <u>Months</u>

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

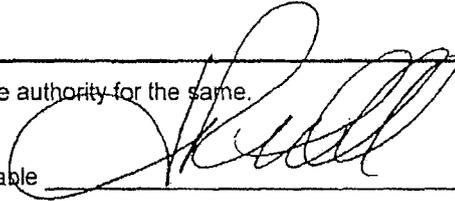
The defendant has credit for 0 days served.

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.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



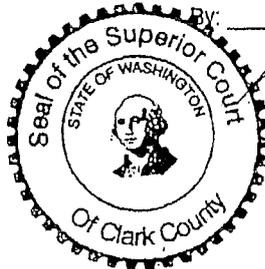
John P. Wulke

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 11-14-07

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court



Deputy



CAUSE NUMBER of this case: 06-1-02072-3

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

Defendant's signature: [Handwritten Signature]

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

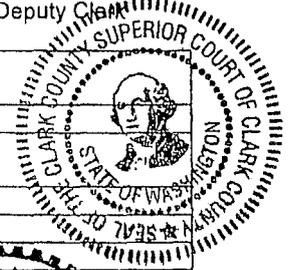
Interpreter signature/Print name: \_\_\_\_\_

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

WITNESS my hand and seal of the said Superior Court affixed this date: November 15, 2007

Clerk of said County and State, by: [Handwritten Signature] Deputy Clerk

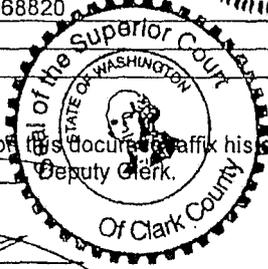
IDENTIFICATION OF DEFENDANT LOWELL DERAY FINSTAD	
Alias name, SSN, DOB:	
SID No. WA11959523 (If no SID take fingerprint card for State Patrol)	Date of Birth: [Redacted] 1963
Race: W	Sex: M
Driver License No. [Redacted]	Driver License State: WA
FBI No. [Redacted]	Local ID No. (CFN): 068820
Other	Corrections No.



**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: [Handwritten Signature]

Dated: 11-14-07

DEFENDANT'S SIGNATURE: [Handwritten Signature]

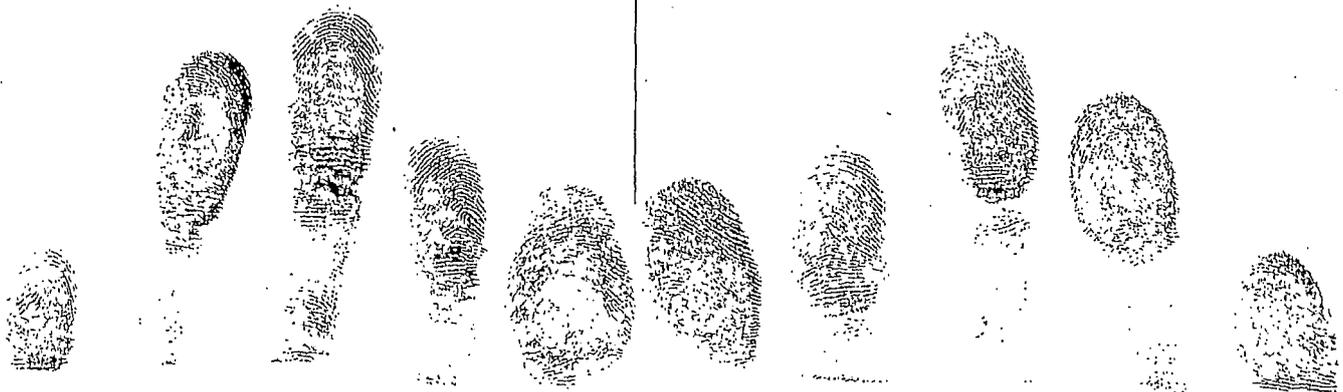


Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SOWDER

S2

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: 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.

Handwritten initials and signature: 76 C

# **ATTACHMENT C**

- 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	A or J Adult, Juv.	TYPE OF CRIME
No Known Felony Convictions					

**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/WRF	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. (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:  

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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:

- 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-WITHOLDING 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.

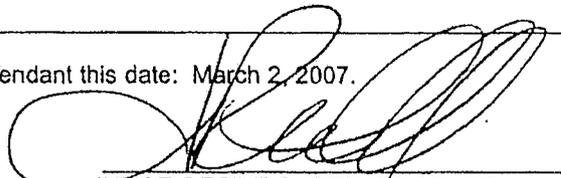
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

5.10 Persistent Offense Notice

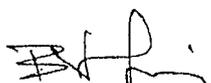
- The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community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

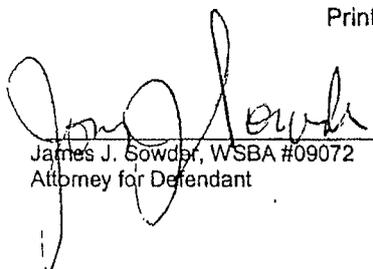
5.11 OTHER: \_\_\_\_\_

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. Wulke

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

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

  
\_\_\_\_\_  
LOWELL DERAY FINSTAD  
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK  
STATE OF WASHINGTON, Plaintiff,

NO. 06-1-01073-6

v.

LOWELL DERAY FINSTAD,  
Defendant.

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

SID: WA11959523  
DOB: [REDACTED] 1963

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

**GREETING:**

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

COUNT	CRIME	RCW	DATE OF CRIME
01	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

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

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

COUNT	CRIME	TERM
01	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE	40 months
02	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	6 months

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

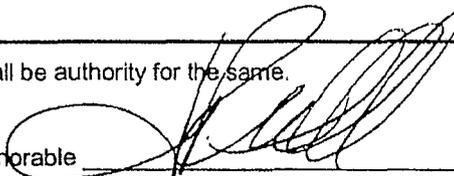
The defendant has credit for 703 days served.

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:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

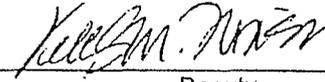
WITNESS, Honorable



John P. Wulle

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 3-2-07

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court

By:   
Deputy



CAUSE NUMBER of this case: 06-1-01073-6

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

Defendant's signature: [Handwritten Signature]

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

Interpreter signature/Print name: \_\_\_\_\_

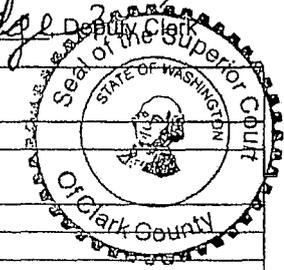
I, SHERRY W. PARKER, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date March 06, 2007

Clerk of said County and State, by: [Handwritten Signature] Deputy Clerk

**IDENTIFICATION OF DEFENDANT**  
**LOWELL DERAY FINSTAD**

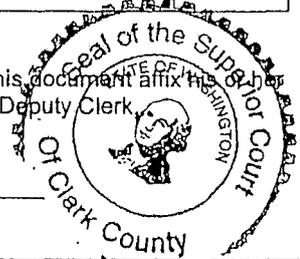
Alias name, SSN, DOB:	
SID No. WA11959523 (If no SID take fingerprint card for State Patrol)	Date of Birth <u>1963</u>
Race: W	Sex: M
Driver License No. <u>[Redacted]</u>	Driver License State: WA
FBI No. <u>[Redacted]</u>	Local ID No. (CFN):
	Corrections No.
Other	



**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his fingerprints and signature thereto. Clerk of the Court: [Handwritten Signature] Deputy Clerk

Dated: 3-2-07

DEFENDANT'S SIGNATURE: [Handwritten Signature]

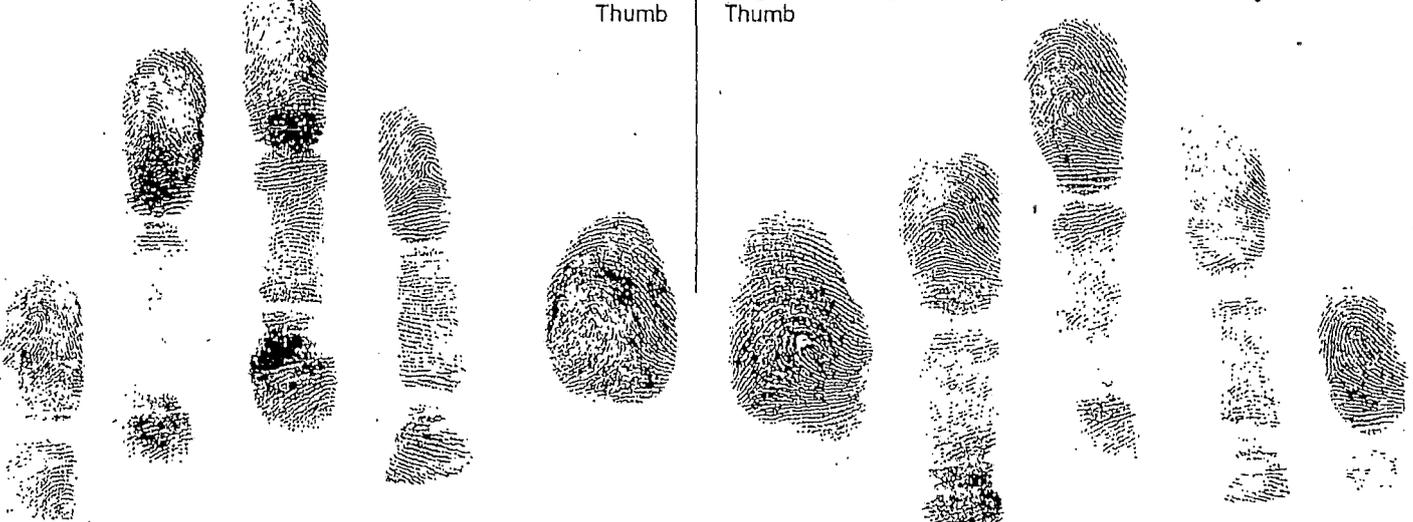


Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously





6. I did  did not \_\_\_\_\_ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: DIVISION TWO COURT OF APPEALS  
(Name of court or courts to which appeal took place)

7. My lawyer for my appeal was: ANNE KURSER  
(Name and address if known or write "none")

The decision of the appellate court was \_\_\_\_\_ was not \_\_\_\_\_ published. (If the answer is that it was published, and I have this information) the decision is published in \_\_\_\_\_  
\_\_\_\_\_

8. Since my conviction I have \_\_\_\_\_ have not  asked a court for some relief from my sentence other than I have already written above. (If the answer is, I have asked the court I asked was \_\_\_\_\_ . Relief was denied on \_\_\_\_\_  
(Name of court)

\_\_\_\_\_  
(Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was ANNE KURSER - Address  
(Name and address if known)

UNKNOWN

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: THE PETITIONER WENT TO TRIAL ON ORIGINAL CASE AND ENTERED A PLEA  
dealt on subsequent cases. All cases are  
Effected By The miscalculation error.

#### B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc.). I claim that I have \_\_\_\_\_ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

FIRST Ground  
(First, Second, etc.)

THE CLARK COUNTY JAIL AND THE DEPT. OF COLLECTIONS HAVE DENIED  
PETITIONER CREDITS FOR TIME SERVED AND IN SO DOING MISCALCULATED  
his Release dates. Violating his STATE AND FEDERAL CONSTITUTIONAL RIGHTS

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): THE ERRONEOUS CALCULATION OF CREDITS HAS AND WILL EXTEND MY TERMS OF CONFINEMENT.
2. The following facts are important when considering my case. (After each fact statement put the name of the person or person who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) SEE OPENING BRIEF, ATTACHED.
3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known.") SEE OPENING BRIEF.
4. The following statutes and constitutional provisions should be considered by the court. (If none are known, state, "None Known") SEE OPENING BRIEF
5. This petition is the best way I know to get the relief I want, and no other way will work as well because: I HAVE EXHAUSTED ALL ~~ADMITTED~~ REMEDIES AVAILABLE WITHIN DOC AND THE COUNTY.

C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do  do not  ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have \$ 0 in my prison or institution account.

3. I do  do not  ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.

4. I am  am not  employed. My salary or wages amount to \$428 a month. My employer is \_\_\_\_\_

(Name and address of employer)

5. During the past 12 months I did  did not  get any money from a business, profession or other form of self - employment. (If I did, it was \_\_\_\_\_). And the total income I received was \$0.  
(Type of self - employment)

6. During the past 12 months I:

Did  did not  receive any rent payments. If so, the total I received was \$\_\_\_\_\_.

Did  did not  receive any interest. If so, the total I received was \$\_\_\_\_\_.

Did  did not  receive any dividends. If so, the total I received was \$\_\_\_\_\_.

Did  did not  receive any other money. If so, the total I received was \$\_\_\_\_\_.

Did  did not  Have any cash except as said in question (2) of Statement of Finances. If so, the total of cash I have is \$\_\_\_\_\_.

Did  did not  Have any savings or checking account. If so, the total in all accounts is \$\_\_\_\_\_.

Did  Did not  Own stocks, bonds or notes, If so, their total value is \$\_\_\_\_\_.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family own.

Items

Value

None

8. I am \_\_\_ am not  married. If I am married, my wife or husband's name and address is:

\_\_\_\_\_  
\_\_\_\_\_

9. All of the persons who need me to support them are listed below:

Name & Address Relationship Age

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ NONE \_\_\_\_\_  
\_\_\_\_\_

10. All the bills I owe are listed here:

Name & Address of creditor Amount

\_\_\_\_\_  
\_\_\_\_\_ NONE \_\_\_\_\_  
\_\_\_\_\_

D. REQUEST FOR RELIEF:

I want this court to:

\_\_\_ Vacate my conviction and give me a new trial.

\_\_\_ Vacate my conviction and dismiss the criminal charges against me without a new trial.

Other: ORDER DOC AND CLARK COUNTY JAIL TO  
(Please specify)

COLLECT AND RECALCULATE PETITIONER'S TERMS OF CONFINEMENT  
AS DEEMED APPROPRIATE BY THIS COURT, AND NOT TO  
DO SO IS A VIOLATION OF THE STATE AND FEDERAL  
CONSTITUTIONS.

E. OATH OF PETITIONER

STATE OF WASHINGTON )

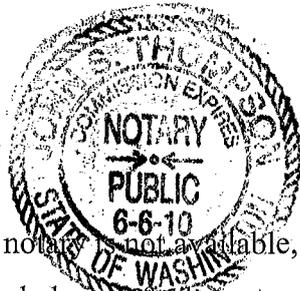
) ss. Lowell FINSTAD

)  
COUNTY OF Greys Harbor

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents and I believe the petition is true.

Lowell Finstad  
(Signature here)

SUBSCRIBED AND SWORN to before me this 11 day of FEBRUARY,  
2010.



John Johnson  
Notary Public in and for the State of Washington  
Residing at Shelton

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a notary: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

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

\_\_\_\_\_  
(Signature here)

IN THE STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION TWO

IN RE PRP OF:

NO.

40332-3-II

Lowell Finstad

OPENING BRIEF

Comes now, Lowell Finstad, appearing PRO-SE, with this opening brief, pursuant to RAP 16.

Statement of Facts

The petitioner is confined pursuant to criminal convictions out of Clark County Superior Court. After trial petitioner was sentenced to 40 months on 3-2-07, case# 06-1-01073-6 (Delivery of Controlled Substance Cocaine and Methamphetamine). Exhibit - A

After a plea agreement petitioner was sentenced to four additional terms of confinement. Two of which were run concurrent and two that were run consecutive. Case# 07-1-01996 (Attempted Arson I), case# 07-1-00611-7 (Intimidating a Witness), case# 06-1-01137-6 (Possession Controlled Substance With Intent to Deliver - Methamphetamine and Cocaine), case# 06-1-02072-3 (Delivery Controlled Substance - Methamphetamine). Exhibits B,C,D,E prospectively.

### Argument

On March 2, 2007, the petitioner received a 40 month sentence (case# 06-1-01073-6), and received pre-sentence credits for 203 days served, and 2 days of post-sentence credits, with 30 days good-time credits (Exhibit - A). There is no dispute that petitioner received the proper credits for pre-sentence time pursuant to RCW 9.94A.505(6). See: State v. Speaks, 119 Wn.2d 204, 207, 829 P.2d 1096 (1992). However, once a judgement is entered for confinement of more than one year, the Court has no power to delay execution of the sentence. State v. Hale, 94 Wn.App 46, 54, 971 P.2d 88, 93 (1999). Unless the Court grants release pending appeal pursuant to RCW 9.95.062. If the defendant is unable to make bail he is entitled all time served after sentence, RCW 9.95.062(3).

Here, the petitioner was confined approximately 260 days after entry of the above sentence for which he was not given credits by the Clark County Jail (Exhibit - A). During this period of time petitioner was not serving any other sentence, therefore he is entitled to this time, regardless of the subsequent sentences mentioned below. The current good-time on the above sentence is also in error. The petitioner clearly received only 30 days good-time credits (Exhibit - A), but this credit is not correct as it was based on the

time served and not the overall sentence. See: State v. Williams, 121 Wn.2nd 655, 659 (1993). The petitioner does not dispute the Clark County Jail policy of 15% earn early release credits as applied to the 203 days pre-sentence credits, but the correct credits on that portion should be (203 divide by 5.667) 35.82 days credit. Due to the fact that the petitioner spent approx. 260 days in the County after sentencing and was not given credits for that time his entire credits will have to be recalculated.

The petitioner submits that the 260 days should receive good-time at the rate afforded to every other DOC prisoner as he was technically a state prisoner for that portion of his time, notwithstanding the fact he was not in the physical control of DOC. See: In Re Personal Restraint of Simon Salinas, No. 23707-9-III (Wash.App. Div. 3, 12/15/2005). Which would entitle him one-third credit on that portion. Should this Court not agree, then the total credits should be as follows:

Case# 06-01073-6

1. Credits per Judgement and Sentence: 203 days
2. Days served prior to transfer: 260 days
3. Earn early credit based on Clark County's 15% policy: 82 days. (If the Court agrees under In re PRP of Salinas combined credit for good-time would be 166 days).

It appears that both the Clark County Jail and DOC have missed this oversight and have somehow come to the conclusion that petitioner is not entitled to the above credits. This confusion stems from petitioner's subsequent sentences entered on November 14, 2007 as part of a plea deal. As part of the plea, petitioner received two concurrent sentences, case# 07-1-01996-1 (Exhibit - B), and case# 07-1-00611-7 (Exhibit - C). The benefit petitioner received as part of the plea deal on these cases is the fact that not only would they run concurrent to the original case# 06-1-01073-6, but he would receive pre-sentence credits of 461 days. Also as part of the plea deal he would serve two consecutive, consecutive to each other, sentences, case# 06-1-01137-6 (Exhibit - D), and case# 06-1-02072-3 (Exhibit - E). The credits awarded by Clark County and DOC calculations are correct, with the exception that the County Jail good-time credit of 69 days is incorrect as it was based on time served and not the overall sentence. Therefore, the correct good-time on case# 07-1-01996-1, and case# 07-1-00611-7 should reflect a total of 82 days, not 69 days as expressed in Exhibits - B & C. Petitioner is not entitled nor does he seek any credits for the two consecutive sentences and he has not received any (Exhibits D & E).

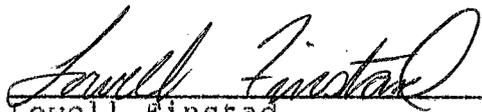
Failure to grant credits for time served or good-time results in unlawful restraint. See: In re Personal Restraint of Dutcher, 114 Wn.App 755, 758, 60 P.2d 635 (2002).

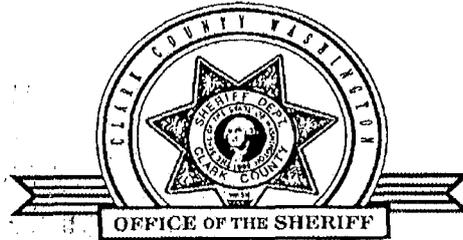
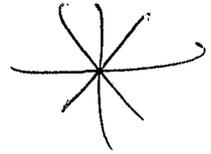
Conclusion

Petitioner asks this Court to grant his Personal Restraint Petition and order Clark County Jail and the DOC to recalculate petitioner's release dates as outlined above and/or deemed appropriate by this Court. Failure to do so would result in Constitutional violations of the State and Federal Constitutions.

The above is true and correct to the best of my knowledge; signed this 11 day of FEBRUARY, 2010.

Respectfully submitted,

  
\_\_\_\_\_  
Lowell Finstad  
DOC# 312497 / H1A99  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520



Representing  
**Garry E. Lucas**  
Sheriff

The following information is being supplied to the Washington State Department of Corrections for the purpose of documenting local time served and earned early release credits for individual listed below.

### JAIL AND GOOD TIME CERTIFICATION

NAME: FINSTAD, LOWELL DERAY  
LOCAL ID #: (CFN) 68820

CHARGE CASE NUMBER  
**DELIVERY CONTROLLED SUBSTANCE** **06-1-01073-6**  
**COCAINE**

**POSSESSION CONTROLLED SUBSTANCE** **06-1-01073-6**  
**METHAMPHETAMINE**

DATE (S) OF JAIL CONFINEMENT:  
10/25/06 TO 11/16/07  
07/11/06 TO 09/12/06  
06/08/06 TO 06/21/06

TIME SERVED CREDITS:

203 Credit per Judgment and Sentence  
2 Days served prior to transfer (PENDING LOCALS TILL 11/14/07)  
205 Total Time Served Eligible for Early Release Credit  
  
30 Early Release Credit Based on Clark County 15% Policy\*  
0 Credit Lost for Misconduct  
  
30 **Total Credit Authorized**

Clark County maintains a 15% Good Time Policy. Credit is based on "Total Imposed Sentence" consistent with State v. Williams 121 Wn.2nd 655 (1993).

Revised 8/2007

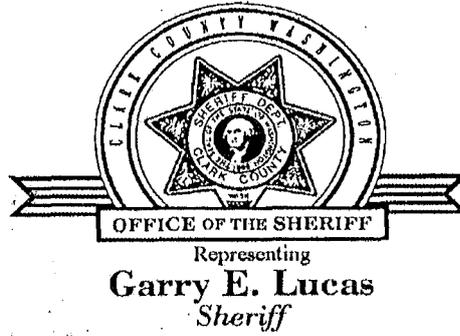
Clark County Sheriff's Office, Records Division

By: DRM/3917 Date: 11/15/2007

707 W. 13th St. P.O. Box 410 Vancouver, WA 98666

360-397-2211

*EXHIBIT-A*



The following information is being supplied to the Washington State Department of Corrections for the purpose of documenting local time served and earned early release credits for individual listed below.

## JAIL AND GOOD TIME CERTIFICATION

NAME: FINSTAD, LOWELL DERAY  
 LOCAL ID #: (CFN) 68820

<u>CHARGE</u>	<u>CASE NUMBER</u>
ATTEMPTED ARSON I	07-1-01996-1

DATE (S) OF JAIL CONFINEMENT:  
10/25/06 TO 11/16/07

06/08/06 TO 06/21/06  
 TIME SERVED CREDITS:

<b>461</b>	Credit per Judgment and Sentence
<b>2</b>	Days served prior to transfer
<b>463</b>	Total Time Served Eligible for Early Release Credit
<b>69</b>	Early Release Credit Based on Clark County 15% Policy*
<b>0</b>	Credit Lost for Misconduct
<b>69</b>	<b>Total Credit Authorized</b>

Clark County maintains a 15% Good Time Policy. Credit is based on "Total Imposed Sentence" consistent with State v. Williams 121 Wn.2nd 655 (1993).

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: DRM/3917 Date: 11/15/2007

707 W. 13th St. P.O. Box 410 Vancouver, WA 98666

360-397-2211

*Exhibit B*



The following information is being supplied to the Washington State Department of Corrections for the purpose of documenting local time served and earned early release credits for individual listed below.

## JAIL AND GOOD TIME CERTIFICATION

NAME: **FINSTAD, LOWELL DERAY**

LOCAL ID #: (CFN) **68820**

<u>CHARGE</u>	<u>CASE NUMBER</u>
<b>INTIMIDATING A WITNESS</b>	<b>07-1-00611-7</b>

DATE (S) OF JAIL CONFINEMENT:

**10/25/06 TO 11/16/07**

06/08/06 TO 06/21/06

TIME SERVED CREDITS:

<b>461</b>	Credit per Judgment and Sentence
<b>2</b>	Days served prior to transfer
<b>463</b>	Total Time Served Eligible for Early Release Credit

<b>69</b>	Early Release Credit Based on Clark County 15% Policy*
<b>0</b>	Credit Lost for Misconduct

**69 Total Credit Authorized**

Clark County maintains a 15% Good Time Policy. Credit is based on "Total Imposed Sentence" consistent with State v. Williams 121 Wn.2d 655 (1993).

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: **DRM/3917**

Date:

**11/15/2007**

707 W. 13th St. P.O. Box 410 Vancouver, WA 98666

360-397-2211

**EXHIBIT-C**



Representing  
**Garry E. Lucas**  
Sheriff

The following information is being supplied to the Washington State Department of Corrections for the purpose of documenting local time served and earned early release credits for individual listed below.

## JAIL AND GOOD TIME CERTIFICATION

NAME: **FINSTAD, LOWELL DERAY**

LOCAL ID #: (CFN) **68820**

<u>CHARGE</u>	<u>CASE NUMBER</u>
<b>POSSESSION CONTROLLED SUBSTANCE W/INTENT TO DELIVER-METHAMPHETAMINE</b>	<b>06-1-01137-5</b>
<b>POSSESSION CONTROLLED SUBSTANCE W/INTENT TO DELIVER-COCAINE</b>	<b>06-1-01137-6</b>

DATE (S) OF JAIL CONFINEMENT:

**10/25/06 TO 11/16/07**

**07/11/06 TO 09/12/06**

**06/08/06 TO 06/21/06**

TIME SERVED CREDITS:

<b>0</b>	Credit per Judgment and Sentence
<b>2</b>	Days served prior to transfer
<b>2</b>	Total Time Served Eligible for Early Release Credit
<b>0</b>	Early Release Credit Based on Clark County 15% Policy*
<b>0</b>	Credit Lost for Misconduct
<b>0</b>	<b>Total Credit Authorized</b>

Clark County maintains a 15% Good Time Policy. Credit is based on "Total Imposed Sentence" consistent with State v. Williams 121 Wn.2d 655 (1993).

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: **DRM/3917**

Date:

**11/15/2007**

707 W. 13th St. P.O. Box 410 Vancouver, WA 98666

360-397-2211

*EXHIBIT-D*

2/11/10

PAGE 1



Representing  
**Garry E. Lucas**  
Sheriff

The following information is being supplied to the Washington State Department of Corrections for the purpose of documenting local time served and earned early release credits for individual listed below.

## JAIL AND GOOD TIME CERTIFICATION

NAME: **FINSTAD, LOWELL DERAY**  
LOCAL ID #: (CFN) **68820**

CHARGE CASE NUMBER  
**DELIVERY CONTROLLED SUBSTANCE** **06-1-02072-3**  
**METHAMPHETAMINE**

DATE (S) OF JAIL CONFINEMENT:  
**10/25/06 TO 11/16/07**

TIME SERVED CREDITS:

<u>0</u>	Credit per Judgment and Sentence
<u>2</u>	Days served prior to transfer
<u>2</u>	Total Time Served Eligible for Early Release Credit
<u>0</u>	Early Release Credit Based on Clark County 15% Policy*
<u>0</u>	Credit Lost for Misconduct
<u>0</u>	<b>Total Credit Authorized</b>

Clark County maintains a 15% Good Time Policy. Credit is based on "Total Imposed Sentence" consistent with State v. Williams 121 Wn.2nd 655 (1993).

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: **DRM/3917** Date: **11/15/2007**

707 W. 13th St. P.O. Box 410 Vancouver, WA 98666

360-397-2211

**EXHIBIT - E**

timeanddate.com [Register](#) | [Log in](#) | [Customize](#)

Search:

Home | World Clock | Time Zones | Calendar | Astronomy | Tools | Other

[Countdown to Any Date](#) | [Date Duration](#) | [New Year Countdown](#) | [Date Calculator](#) | [Dialing Codes](#) | [Distance Calculator](#)

Current location: [Home page](#) > [Tools](#) >

## Duration calculation results

From and including: **Friday, March 2, 2007**  
 To, but not including : **Friday, November 16, 2007**

It is **259** days from the start date to the end date, but not including the end date

Or 8 months, 14 days excluding the end date

### Alternative time units

259 days can be converted to one of these units:

- 22,377,600 seconds
- 372,960 minutes
- 6216 hours
- 37 weeks

### Make a new calculation

- [Modify the current calculation](#)
- [New calculation between two other dates](#)
- [New calculation, with both date and time included](#)

### Help and example use

Advertising

- [How to use the Date Duration Calculator](#)
- [How to use the Time Duration Calculator](#)
- [Some typical uses for the date calculators](#)

### Date Calculators

- [Duration Between Two Dates](#) – Calculates number of days
- [Time and date duration](#) – Calculate between exact times (not just dates)
- [Date calculator](#) – add or subtract days, months, years
- [Birthday calculator](#) – Find when you are 1 billion seconds old

### Related links

- [Date/calendar related services](#) – overview
- [Calendar Generator](#) – Create a calendar for any year
- [The World Clock](#) – Current time all over the world
- [Countdown to any date](#)

[Feedback](#) [Short URL](#) [Bookmark & share](#)

APPENDIX 1

# **APPENDIX 1**


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[Countdown to Any Date](#) | [Date Duration](#) | [New Year Countdown](#) | [Date Calculator](#) | [Dialing Codes](#) | [Distance Calculator](#)

Current location: [Home page](#) > [Tools](#) >

## Duration calculation results

From and including: **Wednesday, October 25, 2006**  
 To, but not including : **Friday, November 16, 2007**

It is **387** days from the start date to the end date, but not including the end date

Or 1 year, 22 days excluding the end date

### Alternative time units

387 days can be converted to one of these units:

- 33,436,800 seconds
- 557,280 minutes
- 9288 hours
- 55 weeks (rounded down)

### Make a new calculation

- [Modify the current calculation](#)
- [New calculation between two other dates](#)
- [New calculation, with both date and time included](#)

### Help and example use

Advertising

- [How to use the Date Duration Calculator](#)
- [How to use the Time Duration Calculator](#)
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### Date Calculators

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- [Calendar Generator](#) – Create a calendar for any year
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- [Countdown to any date](#)

Feedback    [Short URL](#)    [Bookmark & share](#)    

APPENDIX 2

# **APPENDIX 2**

6/16/10

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

In re the  
 Personal Restraint Petition of  
  
 LOWELL DERAY FINSTAD,  
  
 Petitioner.

No. 40332-3-II

ORDER CALLING FOR  
ADDITIONAL RESPONSE

COURT OF APPEALS  
 DIVISION II  
 10 JUN 16 AM 9:17  
 STATE OF WASHINGTON  
 BY [Signature]  
 DEPT. OF CORRECTIONS

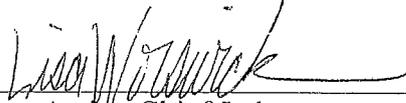
Lowell Finstad seeks relief from personal restraint imposed as a result of his conviction for unlawful possession of cocaine with intent to deliver and unlawful possession of methamphetamine (cause 06-1-01073-6) and his pleas of guilty to intimidating a witness and to attempted first degree arson (causes 07-1-00611-7 and 07-1-01996-1). The Clark County Jail certified that he had earned 203 jail credits and 30 days of early release credits on 06-1-01073-6 and had earned 461 jail credits and 69 days of early release credits on the 2007 causes. The judgments and sentences for those offenses included the jail credits as certified by the Jail.

Finstad was sentenced under 06-1-01073-6 on March 2, 2007. He remained in the Jail, pending resolution of other matters, and was transferred to the Department of Corrections on November 16, 2007. The Department calculated his sentence under 06-1-01073-6 and the 2007 causes as starting on November 16, 2007. Finstad argues that he is entitled to an additional 260 days of credit, and an additional 39 days in early release credits, for the post-sentence time served in the Jail from March 2, 2007, to November 16, 2007. The Department's response is unclear as to why Finstad was not entitled to

credit for his post-sentence confinement in the Jail against his sentence under 06-1-01073-6 and clarification is needed. Accordingly, it is

ORDERED that the Department shall file an additional response within 60 days addressing the issue of crediting the post-sentence time Finstad served in the Jail against his sentence under 06-1-01073-6.

DATED this 16<sup>th</sup> day of June, 2010.

  
Acting Chief Judge

cc: Lowell D. Finstad  
Donna H. Mullen  
Michael C. Kinnie

8/16/10

NO. 40332-3-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

LOWELL DERAY FINSTAD,

Petitioner.

SUPPLEMENTAL  
RESPONSE OF THE  
DEPARTMENT OF  
CORRECTIONS

In accordance with this Court's order of June 16, 2010, Respondent, the Department of Corrections (DOC or the Department), provides the following argument, incorporating by reference the exhibits, facts, and argument presented in the Response brief.

**I. INTRODUCTION**

In his personal restraint petition, Mr. Finstad argued that the Department failed to properly credit his sentence in Cause No. 06-1-01073-6. Mr. Finstad was sentenced under this cause number on March 2, 2007, but remained in the county jail based on other charges (2007 causes and other causes) until November 16, 2007. Mr. Finstad argues that he is entitled to an additional 260 days of jail credit for the post-sentence time served in the jail from March 2, 2007 to November 16, 2007. However, Mr. Finstad is not entitled to credit for the period March 2, 2007 to November 16, 2007 to Cause No. 06-1-01073-6, because he was held in the county jail based on the other causes and received credit

for the period March 2, 2007 to November 16, 2007 to his 2007 causes. Crediting Mr. Finstad's Cause No. 06-1-01073-6 for the period March 2, 2007 to November 16, 2007 would result in double credit for this period of time.

## II. ARGUMENT

### **This Court Should Determine That Mr. Finstad Is Not Entitled To Additional Credit To His Cause Number 06-1-01073-6**

Mr. Finstad argues that he is entitled to credit to his 2006 sentence in Cause No. 06-1-01073-6 for the period after he was sentenced on March 2, 2007 until he was transferred to the Department on November 16, 2007. In his reply brief, Mr. Finstad argued that under RCW 9.95.062(3), a statute providing that if an offender is unable to make bail on appeal, he is entitled to all time served after sentence. But RCW Chapter 9.95 deals with indeterminate offenders, not offenders sentenced under the SRA, therefore, the statute is inapplicable to Mr. Finstad. Moreover, the reason Mr. Finstad remained in the county jail was that he was under charges in two 2007 causes and other causes. The statute simply is inapplicable to Mr. Finstad's claim.

In his reply brief, Mr. Finstad also argued that he is entitled to the post-sentence time, because the post-sentence credits on the original cause (06-1-01073-6) "is a primary part of the subsequent plea agreement" and

“incorporated [the 260 days spent post-sentencing] into the plea agreement.” Reply Brief at 2 and 3. He argued that he believed that under his plea agreement he would “do no additional time on the sentence entered on March 2, 2007.” However, nothing in the plea agreement says anything about the amount of time to be credited post-sentence to his 2006 conviction. The plea agreement basically agreed to 40 months on each of three causes, 06-1-01073-6, 06-1-01137-6 and 06-1-02072-3. *See* Exhibit 1, Attachment E, Appendix to Judgment and Sentence, Clark County Prosecuting Attorney’s Offer of Settlement at 2 (Recommendation as to Confinement). Included in the Offer of Settlement was a paragraph regarding terms applicable to all recommendations. It states as follows: “This offer includes credit for time served solely in custody solely on this case, up to the date of sentencing.” *Id.* (Terms Applicable to all Recommendations). Thus, absolutely nothing in the offer of settlement said anything about credit to Mr. Finstad’s 06-1-01073-6 cause for post-sentence jail time spent on his other causes.

Mr. Finstad argues that without post-sentence credit to his 06-1-01073-6 cause, he is receiving a 120 month + 260 day sentence. But Mr. Finstad ignores the fact that in terms of jail confinement, credit can be given to a sentence, only for the period “served before sentencing if that confinement is solely in regard to the offense for which the offender is

being sentenced.” RCW 9.94A.505(6). That statute applies to both his 06-1-01073-6 cause and his 2007 causes. In essence, Mr. Finstad is requesting double credits. He was credited to his 2007 cause for the time period in jail from March 2, 2007 to November 16, 2007. He now wants credit for that time period also to his 06-1-01083-6 cause.

The sentencing court specifically ordered 203 days of jail time for Cause No. 06-1-01073-6. Exhibit 1, Attachment C at 6. The jail certification also indicated 203 days of jail time. Exhibit 1, Attachment F. The Department properly followed the Judgment and Sentence and jail certification crediting Mr. Finstad’s sentence in Cause No. 06-1-01073-6 with 203 days of jail time plus 2 days served prior to transfer for a total of 205 jail day. The Department is entitled to rely on the jail certification it receives from the county jail, so long as the certification is not based on a manifest error of law. *In re Williams*, 121 Wn.2d 655, 664-66, 853 P.2d 444 (1993).

The difficulty presented with regard to Mr. Finstad’s claim that he is entitled to credit for the period of time after sentencing on March 2, 2007, is that Mr. Finstad was not held in jail based on that cause number. If Mr. Finstad had no other open charges, he would have been released to the Department. But Mr. Finstad did have remaining open charges. It was

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on those charges, that Mr. Finstad was held in jail between March 2, 2007 and November 16, 2007.

With regard to the 2007 charges, Mr. Finstad was not entitled to credit for the period of time he was given credit in cause number 06-1-01073-6. Thus, for the 2007 charges, Mr. Finstad was only actually entitled to credit for the period March 2, 2007 to November 16, 2007, a period of 259 days. Appendix 1. But instead the trial court ordered credit of 461 days. Exhibit 1, Attachment D at 6; Exhibit 1, Attachment E at 6. It is unclear why the court ordered this amount of time, because the jail certification indicated that on the 2007 causes, Mr. Finstad was held from October 25, 2006 to November 16, 2007, a period of 387 days. Appendix 2.

Washington statutes do permit the Department to correct the amount of jail time if the judgment and sentence is erroneous. Washington Laws of 2010, Chapter 224, § 7 (1) (b) amended RCW 9.94A.729 as follows:

The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence.

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However, here the jail certifications did not indicate the actual amount of confinement time, rather the jail certifications followed the Judgment and Sentence. Exhibit 1, Attachments F and G. As a result, the DOC was required to follow the Judgment and Sentence and jail certifications which indicated the jail time based on the Judgment and Sentence. The DOC properly followed the Judgment and Sentence, crediting the 2007 sentences as required by the Judgment and Sentence with the 461 days plus 2 days served prior to transfer, or 463 days as indicated in the jail certification. See Exhibit 1, Attachment G.

Mr. Finstad's request that he be given post-sentence credit for the period of time from March 2, 2007 to November 16, 2007, was jail time already credited to the 2007 sentences. To credit that time period to his 06-1-01073-6 cause, would result in double credit for that jail time.

If the sentencing court intended Mr. Finstad to receive credit for this period to his sentence in 06-1-01073-6, it should have stated so in the 2007 Judgment and Sentences. The Department properly followed the Judgment and Sentences and the jail certifications it received for Cause No. 06-1-01073-6 and for the 2007 causes, Cause No. 07-1-00611-7 and Cause No. 07-1-01996-1.

If this Court believes that a factual issue of whether Mr. Finstad is entitled to post-sentence credit for the period of March 2, 2007 to

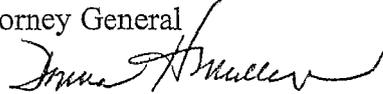
November 16, 2007 exists, then this Court should remand the issue to the Clark County Superior Court for clarification of its intent.

### III. CONCLUSION

For the above stated reasons, Mr. Finstad is not entitled to double jail credit for the period March 2, 2007 to November 16, 2007. If this Court determines that Mr. Finstad's claim may be entitled to credit for the period March 2, 2007 to November 16, 2007, this Court should remand the issue to the sentencing court for clarification of its intent.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of August, 2010.

ROBERT M. MCKENNA  
Attorney General



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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing SUPPLEMENTAL RESPONSE OF THE DEPARTMENT OF CORRECTIONS on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

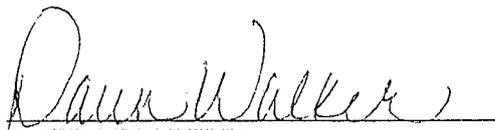
TO:

LOWELL DERAY FINSTAD, DOC #312497  
STAFFORD CREEK CORRECTION CENTERS  
191 CONSTANTINE WAY  
ABERDEEN WA 98520

MICHAEL C. KINNIE  
CLARK COUNTY PROSECUTING ATTORNEY  
P.O. BOX 5000  
VANCOUVER, WA 98666-5000

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 12<sup>th</sup> day of August, 2010 at Olympia, WA.

  
DAWN WALKER  
Legal Assistant

9/17/10

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

**DIVISION II**

In re the  
Personal Restraint Petition of  
  
LOWELL DERAY FINSTAD,  
  
Petitioner.

No. 40332-3-II

ORDER DISMISSING PETITION

RECEIVED  
BY  
STATE  
CLERK  
JULY 17 2010  
9:17 AM  
COURT OF APPEALS  
DIVISION II  
SEATTLE, WA

Lowell Finstad seeks relief from personal restraint, contending that the Department of Corrections has not granted all appropriate credits against one of his sentences. On March 2, 2007, the trial court sentenced Finstad to 40 months of confinement under cause number 06-1-01073-6. But he was not transferred to the Department until November 16, 2007. On November 14, 2007, the trial court sentenced Finstad to 40 months of confinement each under five cause numbers, 07-1-00611-7, 07-1-01996-1, 06-1-01137-6, and 06-1-02072-3. The court ran the sentences under cause numbers 07-1-00611-7 and 07-1-01996-1 concurrent with the sentence under 06-1-01073-6. It ran the sentences under cause numbers 06-1-01137-6 and 06-1-02072-3 consecutive to each other and consecutive to the sentence under cause number 06-1-01073-6.

The Department started running Finstad's sentence cause number 06-1-01073-6 on November 16, 2007, when it received him. The trial court had granted Finstad with 203 days of pre-sentence jail time under that cause number. The Department deducted those credits, and 30 days of jail good time credit, from his sentence.

Finstad now argues that he is entitled to credits for the time he spend in the jail between March 2, 2007, the date his sentence was imposed, and November 16, 2007, the date he was received by the Department, against his sentence under cause number 06-1-01073-6. However, he is entitled to credit only for time spent in jail "solely in regard to the offense for which the offender is being sentenced." RCW 9.94A.505(6). The time spent in jail between March 2, 2007, and November 16, 2007, was not spent solely in regard to cause number 06-1-01073-6. It was also spent in regard to the other cause numbers, for which he was sentenced in November. Finstad received jail credits for that period against cause numbers 07-1-00611-7 and 07-1-01996-1. The Department has not erred in calculating the beginning and ending dates of Finstad's sentences.

Finstad has not shown that he is entitled to relief from restraint. Accordingly, it is ORDERED that Finstad's petition is dismissed as frivolous under RAP 16.11(b).

DATED this 16<sup>n</sup> day of September, 2010.

\_\_\_\_\_  
Acting Chief Judge

cc: Lowell D. Finstad  
Donna H. Mullen  
Michael C. Kinnie  
Department of Corrections