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SUPREME COURT
STATE OF WASHINGTON
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NO. 86018-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

LOWELL FINSTAD, Petitioner

SUPPLEMENTAL BRIEF OF RESPONDENT

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ORIGINAL

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A. ISSUE PRESENTED

- I. Whether the Petitioner should be resentenced to concurrent sentences when he stipulated to consecutive sentences pursuant to a global plea agreement, but the trial court failed to enter findings of fact and conclusions of law in support of an exceptional sentence?

B. STATEMENT OF THE CASE

On November 9, 2007, the Petitioner (hereafter, “the defendant”) pled guilty to four separate cause numbers, pursuant to a global plea agreement. The cases to which the defendant pled guilty were: Clark County cause numbers 06-1-01137-6, 06-1-02072-3, 07-1-00611-7, and 07-1-01996-1. In cause number 06-1-01137-6, the defendant was originally charged with one count of Possession of a Controlled Substance with Intent to Deliver – Methamphetamine and one count of Possession of a Controlled Substance with Intent to Deliver – Cocaine, which included three firearm enhancements and one school zone enhancement for each count. Both counts were classified as “most serious offenses.” In cause number 06-1-02072-3, the defendant was originally charged with one count of Delivery of a Controlled Substance – Methamphetamine, which included a school bus zone enhancement. In cause number 07-1-00611-7, the defendant was charged with one count of Intimidating a Witness. In cause number 07-1-01996-1, the defendant

was charged with one count of Attempted Arson in the First Degree. *See* Appendix A.

The State's global plea agreement stated "[i]n accepting this offer, the defendant is agreeing to stipulate to its terms." *See* Appendix B, at p. 1. The global plea agreement expired on November 7, 2007. *See* Appendix B, at p. 1. As part of its global plea agreement, the State agreed to dismiss all sentencing enhancements on cause numbers 06-1-01137-6 and 06-1-02072-3, which also had the effect of removing the "most serious offense" classification. In addition, on cause number 06-1-01137-6, the State agreed to score both counts as the same criminal conduct. Cause number 07-1-01996-1 stemmed from an investigation in which the defendant attempted to cause fire to a dwelling belonging to Vancouver Police Detective Brian Acee. As part of its global plea agreement, the State agreed to charge this incident as one count of Attempted Arson in the First Degree and it agreed to not file a law enforcement victim aggravator (for which the defendant could have received up to a lifetime sentence). The State agreed to recommend a total sentence of 80 months confinement. This sentence included a 40 month sentence on each count, with the sentences on cause numbers 06-1-01137-6 and 06-1-02072-3 running consecutive to each other and with the sentences on cause

numbers 07-1-00611-7 and 07-1-01996-1 running concurrent to each other and concurrent to 06-1-01137-6 and 06-1-02072-3.¹

When the defendant pled guilty on November 7, 2007, he acknowledged the State's recommendation in his Statements on Plea of Guilty and he attached the global plea agreement to each of his Statements on Plea of Guilty. Also, the defendant stated that each of his pleas was made freely and voluntarily. *See* Appendix C, at p. 8, sec. 8. Pursuant to the parties' agreement, the State filed amended informations at the time of the change of plea hearing that reflected the parties' plea agreement. *See* Appendix D.

The defendant was sentenced on November 14, 2007. The trial court sentenced the defendant in accordance with the parties stipulated plea agreement. The trial court did not enter findings of fact or conclusions of law that it was imposing an exceptional sentence, when it sentenced the defendant to consecutive sentences on cause numbers 06-1-01137-6 and 06-1-02072-3; however, the judgment and sentences

¹ Under "Recommendation as to Confinement," the offer stated:

120 Months in Total Confinement. This 120 months would include the 40 months on 06-1-01073-6, which was sentenced previously this year, 40 months on 06-1-01137-6, 40 months on 06-1-02072-3, **each consecutive to each other.** Additionally, the defendant would be sentenced to 40 months on 07-1-00611-7 (Witness Intimidation), concurrent to all other causes, along with 40 months on 07-1-01996-1 (Attempted Arson 1), concurrent to all other causes. *See Appendix B*, at p. 2 (emphasis added).

clearly stated that these sentences would be served consecutively. For example, the judgment and sentence on cause number 06-1-01137-6 stated

All counts shall be served concurrently...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.²

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. 071-01996-1 – Attempt Arson 1.

- See Appendix E, at p. 6, sec. 4.5.

The defendant did not appeal his judgment and sentences, he did not move to withdraw his guilty pleas, and he did not move for relief from judgment. Rather, he filed a Personal Restraint Petition in December of 2010, three years after his judgments were final. In his petition, the defendant argued that he was sentenced to an “illegal sentence” when the trial court imposed consecutive sentences on cause numbers 06-1-02072-3 and 06-1-01137-6. The defendant did not seek to

² The defendant also agreed that his sentence would run consecutive to a 40 month sentence that was imposed on March 3, 2007, on cause number 06-1-01073-6 (in which the defendant had been found guilty following trial for one count of PCS with Intent to Deliver - Cocaine and one count of PCS - Methamphetamine)

withdraw his pleas. Instead, as a remedy, the defendant asked to be resentenced to concurrent sentences on cause numbers 06-1-02072-3 and 06-1-01137-6.

Without addressing whether the defendant was time-barred from filing his petition under RCW 10.73.090, the Court of Appeals, Division II, dismissed the defendant's petition. The Court found that the defendant was not entitled to be resentenced because his sentences were part of a global plea agreement and he was not seeking to withdraw any of his pleas.

The defendant subsequently filed a Motion for Discretionary Review, which was granted by this Court. For the reasons set forth below, the State did not oppose this Court granting the defendant's motion for discretionary review. However, for the reasons set forth below, this Court should find that the Court of Appeals properly dismissed the defendant's petition.

C. ARGUMENT

- I. The State did not oppose discretionary review because the judgment and sentence was facially invalid when the trial court failed to enter findings and conclusions in support of an exceptional sentence.

RCW 10.73.090 provides that a collateral attack on a judgment and sentence must be filed within one year of a judgment becoming final. An exception applies, however, if the judgment and sentence is not “valid on its face.” RCW 10.73.090(1). A judgment and sentence is invalid on its face when it evidences the invalidity “without further elaboration.” *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000).

RCW 9.94A.589(1) states that the sentences imposed for “other current offenses” must be served concurrently, unless the court complies with the requirements of RCW 9.94A.535. RCW 9.94A.535 states that the trial court may impose an exceptional sentence, by running the sentences for “other current offenses” consecutively, so long as the court finds “substantial and compelling reasons justif[y] an exceptional sentence.” The court must “set forth the reasons for its decision in written finding of fact and conclusions of law.” RCW 9.94A.535.

Here, the defendant was sentenced on cause numbers 06-1-02072-3, 06-1-01137-6, 07-1-00611-7, and 07-1-01996-1 on the same date. Also, each offense was used in order to calculate the defendant’s offender

score. Consequently, the sentences were presumed to run concurrently and it was necessary for the trial court to enter written findings and conclusions in support of an exceptional sentence in order to impose the parties' plea agreement to consecutive sentences on cause numbers 06-1-02072-3 and 06-1-01137-6. Because the trial court failed to enter written findings or conclusions, the defendant's judgment and sentences were facially invalid.

To the extent that the Court of Appeals did not address whether the defendant's judgment and sentences were facially invalid, the court erred. However, 10.73 is a procedural bar; it is not a substantive bar. *See In re Pers. Restraint of Coates*, 173 Wn.2d 123, 145, 267 P.3d 324 (2011), Madsen, C.J. (concurring) (stating, because RCW 10.73.090 is a procedural bar, it does not govern whether a defendant is entitled to relief). Consequently, the fact that the defendant was entitled to review, because his judgment and sentences were facially invalid, does not also mean that he is entitled to relief.

II. However, while the defendant was entitled to review, the Court of Appeals correctly found that the defendant was not entitled to the relief that he sought in his personal restraint petition.

- a. *The defendant was not entitled to be resentenced to concurrent sentences because his sentences were part of a “package deal.”*

The Court of Appeals found that the Court’s holding in *State v. Ermels* controlled in the defendant’s case. Order Dismissing Petition, No. 41877-1-II, *citing Ermels*, 156 Wn.2d 528, 540-41, 31 P.3d 299 (2006). In *Ermels*, the defendant entered into a plea agreement with the State, in which he stipulated to an exceptional sentence based on the vulnerability of the victim, in exchange for a plea to a reduced charge. *Ermels*, 156 Wn.2d at 533. On appeal, the defendant did not seek to withdraw his plea; rather, he sought to be resentenced to a standard-range sentence, in light of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). The Washington Supreme Court found that *Blakely* did not prohibit the State from seeking an exceptional sentence and it did not prohibit the defendant from stipulating to an exceptional sentence. *Id.*, at 537, *citing Blakely*, 542 U.S. at 310 (finding, ““nothing prevents a defendant from waiving his *Apprendi* rights”).

In addition, the Court in *Ermels* found that the trial court was statutorily authorized to impose an exceptional sentence, pursuant to RCW 9.94A.535. *Id.*, at 535. Also, the Court found that the defendant

stipulated to an exceptional sentence pursuant to a plea bargain, which constituted a “package deal.” *Id.*, at 541. Because the plea bargain was a “package deal,” the defendant could not challenge his sentence without challenging the underlying plea. *Id.* When the defendant was not challenging his underlying plea, the Court held that he was not entitled to be resentenced. *Id.*

Here, the defendant has never disputed that he stipulated to consecutive sentences (which is an exceptional sentence) on cause numbers 06-1-02072-3 and 06-1-01137-6. *See* Petitioner’s Motion for Discretionary Review (“Motion”), at p. 2; Petitioner’s Reply Brief at Court of Appeals, at p. 1, 2, 9. In addition, the defendant has never disputed that he stipulated to consecutive sentences as part of a global plea agreement. *Id.* Also, the defendant has never alleged that his plea was not knowing, voluntary, or intelligent. The record corroborates that the defendant stipulated to an exceptional sentence as part of a global plea agreement and the record corroborates that the defendant’s plea was knowing, voluntary, and intelligent.³ The parties were statutorily

³ The plea agreement stated, in exchange for dismissing all sentencing enhancements on cause numbers 06-1-02072-3 and 06-1-01137-6 and in exchange for allowing the defendant to plead guilty to one count of attempted arson on cause number 07-1-01996-1, with a concurrent sentence, the sentences on cause numbers 06-1-02072-3 and 06-1-01137-6 would run consecutively. The plea agreement also stated the defendant must stipulate to all of its terms. The defendant attached the plea agreement to each of his statements on plea of guilty. The defendant agreed his pleas were knowing and

authorized to agree to consecutive sentences, under RCW 9.94A.421.⁴ In addition, the trial court was statutorily authorized to impose consecutive sentences, under RCW 9.94A.589(1)(a) and RCW 9.94A.535.

Furthermore, the defendant's total sentence (80 months confinement) was lawful because it did not exceed the statutory maximum for Possession of a Controlled Substance with Intent to Deliver, which is 120 months confinement. RCW 69.50.401; RCW 9A.20.021(b).

For each of these reasons, the Court of Appeals did not err when it concluded that *Ermels* controlled in the defendant's case.⁵ According to *Ermels*, because the defendant was not challenging the validity of his underlying plea, he was not entitled to be resentenced to concurrent sentences. Therefore, the Court of Appeals acted appropriately when it dismissed the defendant's petition on this basis.

voluntary. The defendant pled guilty on the date the plea agreement expired. The State filed amended informations in accordance with the plea agreement. Also, the trial court sentenced the defendant in accordance with the plea agreement.

⁴ RCW 9.94A.421, 421(3) states: "[t]he prosecutor and the attorney for the defendant... may engage in discussions with a view toward reaching an agreement that... the prosecutor will... (3) [r]ecommend a particular sentence outside of the sentence range."

⁵ The State does not dispute that *Ermels* is distinguishable because the trial court in that case entered findings and conclusions in support of an exceptional sentence. However, because the defendant stipulated to a lawful exceptional sentence, the absence of findings and conclusions does not affect whether the sentence was lawful; rather, it affects the remedy to which he is entitled. See *Breedlove, infra*.

The defendant claims that *Ermels* should not control in his case for three reasons: (1) he did not stipulate to facts in support of an exceptional sentence; (2) he did not waive his right to appeal an exceptional sentence; and (3) he did not agree to an exceptional sentence. *See* Motion, at p. 7. Each of the defendant's claims is without merit.

First, the defendant was not required to stipulate to additional facts in order for the court to impose an exceptional sentence. RCW 9.94A.535(2)(a) states that the trial court may impose an exceptional sentence when “[t]he defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range...” Under the plain language of the statute, there is no requirement that the defendant also stipulate to additional facts in support of an exceptional sentence. In addition, in *Breedlove* this Court found that “a stipulation to an exceptional sentence is enough, in and of itself, to constitute a substantial and compelling reason to justify an exceptional sentence...” *Ermels*, at 536, *citing In re Pers. Restraint of Breedlove*, 138 Wn.2d 298, 300, 979 P.2d 417 (1999). Lastly, whereas in *Ermels*, it might have been necessary for the defendant to stipulate to additional facts when he was agreeing that the “vulnerable victim” aggravator applied in his case, it is unnecessary for a defendant to stipulate to additional facts when he is simply agreeing to an exceptional sentence in order to take advantage

of the State's plea bargain. The defendant's stipulation to the plea bargain is sufficient.

Next, the Court in *Ermels* did not find that the defendant must expressly waive his right to appeal an exceptional sentence, in order for the defendant to be bound by his plea bargain on appeal. Rather, the Court's holding was predicated upon its findings that the defendant stipulated to an exceptional sentence as part of a plea bargain and the exceptional sentence was lawful.

Lastly, the Court's holding in *Ermels* should not be so strained as to find that a defendant must stipulate to what is "titled" an exceptional sentence, in order to be bound by his plea bargain on appeal. Such a finding would elevate form over substance to an illogical degree. What is essential is that the defendant understands the consequences of the sentence to which he is stipulating. Here, the defendant clearly understood that he must agree to consecutive sentences on cause numbers 06-1-02072-3 and 06-1-01137-6, in order to take advantage of the plea bargain. Although the defendant did not stipulate to an exceptional sentence *in name*, he stipulated to an exceptional sentence *in fact*.

For each of these reasons, the Court of Appeals' reliance on *Ermels* was appropriate and the court properly dismissed the defendant's petition.

- b. *In addition, the defendant waived his right to appellate review of his sentence.*

In *Ermels*, the court also found that the defendant waived his right to appellate review of the trial court's imposition of an exceptional sentence. The defendant waived his right to appellate review because his exceptional sentence was lawful and because the defendant stipulated to it as part of a plea bargain. *Ermels*, at 538, 539.

Here, the defendant also stipulated to a lawful exceptional sentence in order to take advantage of the State's plea bargain. Therefore, pursuant to the court's holding in *Ermels*, this Court should find that the Court of Appeals' dismissal of the defendant's petition was also appropriate because the defendant waived the right to challenge the imposition of an exceptional sentence.

Even if this Court finds that *Ermels* does not control in this case, it should still find that the defendant waived the right to challenge his sentence under the invited error doctrine. Under the invited error doctrine, a party may not set up an error at the trial court, or assent to it, and then complain about the error on review. *See State v. Studd*, 137 Wn.2d 533,

546, 973 P.2d 1049 (1999); *Breedlove*, at 307. Here, the defendant set up the error for which he now seeks relief when he stipulated to consecutive sentences in order to take advantage of the plea bargain. Consequently, he cannot complain about this “error” on review.

- c. *The remedy that was available for the defendants in State v. Goodwin and State v. Wilson is not available here because the defendant's sentence was lawful.*

In *Goodwin*, the Court found that a defendant never waives his right to challenge a “legally erroneous” sentence. 146 Wn.2d 861, 874, 50 P.3d 618 (2002). A legally erroneous sentence is a sentence that is not statutorily authorized. *Goodwin*, 146 Wn.2d at 869. When a defendant’s sentence includes a “legal error,” he is entitled to be resentenced in order to correct the error because the trial court had no statutory authority to impose the sentence in the first place. *Id.* In *Goodwin* and in *Wilson*, the Court found that the defendant’s sentences were legally erroneous when they were based upon miscalculated offender scores; consequently, the defendants were entitled to be resentenced in order to cure the legal errors. *Id.*, at 873; *Wilson*, 170 Wn.2d 682, 689, 244 P.3d 950 (2010).

In contrast to a sentence that is based upon a miscalculated offender score, the Court in *Goodwin* stated that an exceptional sentence does not constitute a legal error because it is statutorily authorized. *See*

Goodwin, at 871, citing *Breedlove*, at 305 (finding exceptional sentences are provided for by statute). Consequently, a defendant waives his right to challenge the imposition of an exceptional sentence when he stipulates to the exceptional sentence in order to take advantage of a plea bargain. See *Id.*, at 874.

Furthermore, the absence of findings of fact and conclusions of law in support of an exceptional sentence does not render the sentence unlawful. See *Breedlove*, at 311, 315. In *Breedlove*, the defendant entered into a plea bargain with the State, wherein he stipulated that his current offenses would be served consecutively, in exchange for a plea to reduced charges. *Id.*, at 301-02. The trial court failed to enter findings and conclusions in support of an exceptional sentence. *Id.*, at 302. On review, the Court never stated that the trial court's failure to enter findings and conclusions in support of an exceptional sentence rendered the defendant's sentence unlawful. Rather, the Court found that the defendant's sentence was statutorily authorized and that he stipulated to it pursuant to a valid plea agreement. *Id.*, at 308, 312. Consequently, the limited remedy to which the defendant was entitled was remand to the trial court for entry of findings of fact and conclusions of law in support of an exceptional sentence. *Id.*, at 313.

The courts have repeatedly addressed challenges to the imposition of an exceptional sentence, when the defendant stipulates to the exceptional sentence. The courts have never found that a stipulated exceptional sentence is not statutorily authorized. *See State v. Dillon*, 142 Wn. App. 269, 174 P.3d 1201 (2007), *review denied* by 164 Wn.2d 1012, 195 P.3d 87 (2008); *State v. Poston*, 138 Wn. App. 898, 158 P.3d 1286 (2008), *review denied* by 163 Wn.2d 1016, 180 P.3d 1291 (2008); *State v. Cooper*, 63 Wn. App. 8, 816 P.2d 734 (1991).

Here, the defendant did not stipulate to a legally erroneous sentence. Further, there is no legal error in the defendant's sentence that needs to be cured. Therefore, *Goodwin* and *Wilson* are inapplicable in the defendant's case and he is not entitled to be resentenced to concurrent sentences. Rather, the limited remedy to which the defendant is entitled is remand to the trial court for entry of findings of fact and conclusions of law in support of an exceptional sentence.

- d. *The defendant cannot demonstrate a fundamental defect which inherently results in a complete miscarriage of justice.*

A personal restraint petition is an extraordinary remedy that is designed to address fundamental legal defects that lead to restraints on an individual's freedom. *See In re Hagler*, 97 Wn.2d 818, 825-26, 650 P.2d

1103 (1982). A facially invalid judgment and sentence is not a constitutional error. *Goodwin*, 866-67. Therefore, the complaining party must show the “error constitutes a fundamental defect which inherently results in a complete miscarriage of justice,” in order to be entitled to relief. *In re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

“[T]here is no miscarriage of justice where the sentence imposed is the precise sentence requested by the defendant.” *Breedlove*, at 311. Consequently, a defendant is not entitled to relief from personal restraint when he stipulates to a lawful exceptional sentence pursuant to a plea agreement. *Id.*

Here, the defendant cannot demonstrate a complete miscarriage of justice because his sentence was lawful and it was the precise sentence he requested. The defendant substantially benefitted from his plea bargain. Now that the defendant has received the benefits of the bargain, it would be a windfall for him, and fundamentally unfair, to allow the defendant to be resentenced to concurrent sentences on cause numbers 06-1-02072-3 and 06-1-01137-6. In addition, this Court has recognized the contractual nature of plea bargains. *Breedlove*, at 307, citing *State v. Hilyard*, 63 Wn. App. 413, 819 P.2d 809 (1991). Having entered into a valid contract, the defendant should not be permitted to pick-and-choose which terms he would like to keep in place and which terms he would like to remove.

For these reasons, this Court should find that the defendant's failure to demonstrate a complete miscarriage of justice constitutes another valid reason for his petition to have been dismissed by the Court of Appeals.

D. CONCLUSION

This Court should find that the Court of Appeals did not err when it dismissed the defendant's personal restraint petition. The defendant's judgment and sentences on Clark County cause numbers 06-1-01137-6, 06-1-02072-3, 07-1-00611-7, and 07-1-01996-1 should be affirmed. However, because it was necessary for the trial court to enter findings of fact and conclusions of law in support of an exceptional sentence, this Court should remand the above-entitled cases to the trial court for the limited purpose of entry of findings of fact and conclusions of law in support of an exceptional sentence.

DATED this 4 day of June, 2012.

Respectfully submitted:

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APPENDIX A

FILED

JUN 16 2006

JoAnne McBride, Clerk, Clark Co.

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

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

INFORMATION

No. 06-1-01137-6
(VPD 06-11045)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE - 69.50.401(1),(2)(b)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about June 7, 2006, did knowingly and unlawfully possess, with intent to deliver a controlled substance, to wit: Methamphetamine; contrary to Revised Code of Washington 69.50.401(1), (2)(b).

And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a 9 mm Berretta pistol.[FIREARM]

And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a .38 caliber Smith & Wesson Revolver.[FIREARM]

And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a .22 caliber pistol.[FIREARM]

And further, that this crime was a felony in the commission of which a motor vehicle was used, invoking the provisions of RCW 46.20.285. [MV]

And further, that the defendant did commit the foregoing offense within 1,000 feet of the perimeter of the school grounds, pursuant to RCW 69.50.435(1)(c) and RCW 9.94A.533(6). [SCHOOL ZON]

The crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(28), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

4

1 **COUNT 02 - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER -**
2 **COCAINE - 69.50.401(1),(2)(a)**

3 That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about
4 June 7, 2006, did knowingly and unlawfully possess, with intent to deliver a controlled
5 substance, to wit: Cocaine; contrary to Revised Code of Washington 69.50.401(1), (2)(a).

6 And further, that the defendant did commit the foregoing offense while armed with a firearm as
7 that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a 9 mm
8 Berretta pistol.[FIREARM]

9 And further, that the defendant did commit the foregoing offense while armed with a firearm as
10 that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a .38
11 caliber Smith & Wesson Revolver.[FIREARM]

12 And further, that the defendant did commit the foregoing offense while armed with a firearm as
13 that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a .22
14 caliber pistol.[FIREARM]

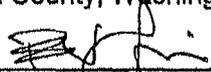
15 And further, that this crime was a felony in the commission of which a motor vehicle was used,
16 invoking the provisions of RCW 46.20.285. [MV]

17 And further, that the defendant did commit the foregoing offense within 1,000 feet of the
18 perimeter of the school grounds, pursuant to RCW 69.50.435(1)(c) and RCW 9.94A.533(6).
19 [SCHOOL ZON]

20 The crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
21 (RCW 9.94A.030(28), RCW 9.94A..505(2)(a)(v) and RCW 9.94A.570).

22 ARTHUR D. CURTIS
23 Prosecuting Attorney In and for
24 Clark County, Washington

25 Date: June 16, 2006

26 BY: 
27 Bernard F. Veljacic, WSBA #28702
28 Deputy Prosecuting Attorney

29 DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 175	EYES: BLU	HAIR: BLN
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
H - 14409 NE 91ST ST, VANCOUVER WA 98682			
VPD FUND 1015			

FILED

OCT 30 2006

JoAnne McBride, Clerk, Clark Co.

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

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

INFORMATION

No. 06-1-02072-3
(VPD 06-21151)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

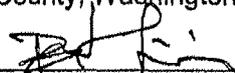
COUNT 01 - DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.401(1),(2)(b)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about October 25, 2006, did knowingly deliver a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.401(1), (2)(b).

And further, that the defendant did commit the foregoing offense within 1,000 feet of a school bus route stop, in violation of RCW 69.50.435(1)(b) and RCW 9.94A.533(6). [SCHOOL BUS]

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: October 30, 2006

BY: 
Bernard F. Veljacic, WSBA #28702
Deputy Prosecuting Attorney

DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 175	EYES: BLU	HAIR: BRO
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
H - 8206 NE 88TH ST, VANCOUVER WA			
VPD FUND 1015			

INFORMATION - 1
KD

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

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FILED

APR 06 2007

Sherry W. Parker, Clark, Clark Co.

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

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

INFORMATION

No. 07-1-00611-7
(CCSO 05-17811)

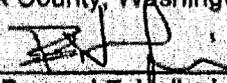
COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - INTIMIDATING A WITNESS - 9A.72.110(2), (3)(c)(iv)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about November 29, 2005 did direct a threat to R.K., a former witness, because the defendant knew or believed R.K. may have provided information related to a criminal investigation.. Such conduct is contrary to Revised Code of Washington 9A.72.110(2),(3)(c)(iv).

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: April 6, 2007

BY: 
Bernard F. Veljacic, WSBA #28702
Deputy Prosecuting Attorney

DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 185	EYES: BLU	HAIR: BRO
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
HOME - 8209 NE 88TH STREET, VANCOUVER WA 98662			

INFORMATION - 1
kaw

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER, WASHINGTON 98668-5000
(360) 397-2261

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NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

LOWELL DERAY FINSTAD

Defendant.

INFORMATION

No. 07-1-01996-1
(VPD 06-21246)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to-wit:

**COUNT 01 - ATTEMPTED ARSON IN THE FIRST DEGREE - 9A.48.020(1)(b)
/9A.28.020(3)(a)**

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, between February 1, 2006 and November 30, 2006, with intent to commit the crime of Arson in the First Degree, did an act which was a substantial step toward the commission of that crime, to-wit: did knowingly and maliciously attempt to cause fire to a dwelling belonging to Det. Bryan Acee, contrary to Revised Code of Washington 9A.28.020(1), (3)(c) and Revised Code of Washington 9A.48.020(1)(b).

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: November 9, 2007

BY: _____
Anthony F. Gollk, WSBA #25172
Deputy Prosecuting Attorney

DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 175	EYES: BLU	HAIR: BRO
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
H - 8209 NE 88TH STREET, VANCOUVER WA			

APPENDIX B

STATE OF WASHINGTON V. LOWELL DERAY FINSTAD

CAUSE NOS 06-1-01137-8; 06-1-02072-3; 07-1-00611-7

CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT

TO: DEFENSE ATTORNEY MAGGIE SMITH EVANSEN

The defendant is charged with the following:

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

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

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

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

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

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

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

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

RECOMMENDATION AS TO CONFINEMENT

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

TERMS APPLICABLE TO ALL RECOMMENDATIONS

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

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

Other legal financial obligations include:

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

Emergency Response Fee of _____
Extradition Costs of _____
Other of _____ for _____

SUPERVISION

Community Custody for 18-36months.

MANDATORY SENTENCE REQUIREMENTS

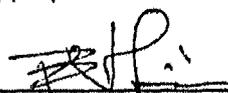
- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic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

OTHER CONDITIONS OF SUPERVISION

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

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

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



Bernard F. Veljacic
Deputy Prosecuting Attorney, WSBA #28702

11-9-07

Date

APPENDIX C

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FILED

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

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

No. 06-1-01139-6
STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(STDFG)

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

a plea of guilty;

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

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

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

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	4	20-60 months	Ø	20-60	12 months	10 years \$2,000
2	4	20-60 months	Ø		12 months	10 years 2001

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

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

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

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

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

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

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

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

<u>Offense Type</u>	<u>Community Custody Range</u>
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

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

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

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

- 5 1. ~ 40 months consecutive to
6 2. 06-1-1073-6 AND 06-1-2072-3
7 3. CONCURRENT WITH 07-1-0117 AND
8 4. 07-1-1996-A.
9 5. ~~- total 120 LIFE TIME NO CONTACT RESTRICTIONS~~
10 6. DISMISS APPEAL 06-1-1073-6.
11 7. SEE ATTACHED PLEA OFFER BY STATE.
12 8. Payment of \$200 court costs, \$500 crime victim compensation fund fee, \$700 court
13 appointed attorney fees, \$100 DNA fee, \$100 lab fee, \$1000 Drug Fund Contribution,
14 \$500 fine and restitution, if any, to be determined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver
9 methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including
10 its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of
11 \$3,000 will be assessed. RCW 69.50.40(2)(b).

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

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

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

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

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

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

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

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

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

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

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

18 7. I plead guilty to Count 1, AND CANT TF

19 I have received a copy of that Information.

20 8. I make this plea freely and voluntarily.

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

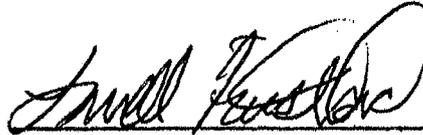
23 10. No person has made promises of any kind to cause me to enter this plea except as set forth
24 in this statement.

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

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

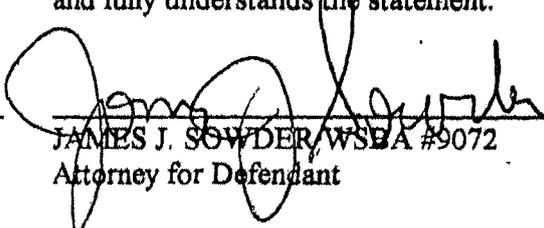
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12. My lawyer explained to me and we have fully discussed all of the above paragraphs and the "Offender Registration" attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty". I have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


DEFENDANT

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


WSBA# 28702
Deputy Prosecuting Attorney


JAMES J. SOWDER, WSBA #9072
Attorney for Defendant

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check one):

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

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

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

8 DATED this 9 day of November, 2007.



JUDGE JOHN P. WULLE

APPENDIX D

2

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FILED

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

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

SECOND AMENDED INFORMATION

No. 06-1-01137-6
(VPD 06-11045)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE - 69.50.401(1),(2)(b)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about June 7, 2006, did knowingly and unlawfully possess, with intent to deliver a controlled substance, to wit: Methamphetamine; contrary to Revised Code of Washington 69.50.401(1), (2)(b).

And further, that this crime was a felony in the commission of which a motor vehicle was used, invoking the provisions of RCW 46.20.285. [MV]

COUNT 02 - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - COCAINE - 69.50.401(1),(2)(a)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about June 7, 2006, did knowingly and unlawfully possess, with intent to deliver a controlled substance, to wit: Cocaine; contrary to Revised Code of Washington 69.50.401(1), (2)(a).

And further, that this crime was a felony in the commission of which a motor vehicle was used, invoking the provisions of RCW 46.20.285. [MV]

~~**COUNT 03 - POSSESSION OF A STOLEN FIREARM - 9A.56.310**~~

~~That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about June 7, 2006, did knowingly possess, carry, deliver, sell, or was in control of a stolen firearm, to wit: 9 mm Beretta Pistol, Serial No. BER089477Z, knowing that this property had been stolen and did withhold or appropriate this property to the use of a person other than the true owner or~~

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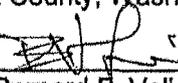
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1 person entitled thereto, to-wit: David Prow; contrary to Revised Code of Washington
2 9A.56.310(1).

3 ARTHUR D. CURTIS
4 Prosecuting Attorney in and for
5 Clark County, Washington

6 Date: November 9, 2007

7 BY: 
8 Bernard F. Velljact, WSBA #28702
9 Deputy Prosecuting Attorney

DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 175	EYES: BLU	HAIR: BLN
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
H - 14409 NE 91ST ST, VANCOUVER WA 98682			
VPD FUND 1015			

FILED

NOV 09 2007

Sherry W. Parker, Clerk, Clark Co.

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

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

AMENDED INFORMATION

No. 06-1-02072-3
(VPD 06-21151)

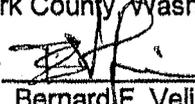
COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.401(1),(2)(b)

That he, LOWELL DERAY FINSTAD, in the County of Clark, State of Washington, on or about October 25, 2006, did knowingly deliver a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.401(1), (2)(b).

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: November 9, 2007

BY: 
Bernard F. Veljacic, WSBA #28702
Deputy Prosecuting Attorney

DEFENDANT: LOWELL DERAY FINSTAD			
RACE: W	SEX: M	DOB: 7/23/1963	
DOL: FINSTLD377M3 WA		SID: WA11959523	
HGT: 602	WGT: 175	EYES: BLU	HAIR: BRO
WA DOC:		FBI: 752921JA2	
LAST KNOWN ADDRESS(ES):			
H - 8206 NE 88TH ST, VANCOUVER WA			
VPD FUND 1015			

APPENDIX E

18

SOWDER

S2

FILED

NOV 14 2007

Sherry W. Parker, Clerk, Clark Co.

Q-5F

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

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

No. 06-1-01137-6
FELONY JUDGMENT AND SENTENCE
(FJS) *07-9-07446-4*
PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY
Clerk's action required;
 Paragraph 4.5 (SDOSA), 4.2,
 5.3, 5.8 and 5.8

I. HEARING

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

II. FINDINGS

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

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

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

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.

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SM

- A special verdict/finding that the offense was **predatory** was returned on Count(s) _____. RCW 9.94A._____.
- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) _____ RCW 9.94A._____.
- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) _____ RCW 9.94A.____, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) _____ RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) _____ RCW 9.94A.602, .533.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____ RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): Clark County Case No. 06-1-02072-3 – Delivery of a Controlled Substance – Methamphetamine; Clark County Case No. 06-1-01073-6 – PCS with Intent to Deliver – Cocaine and PCS-Methamphetamine; Clark County Case No. 07-1-00611-7 – Intimidating a Witness; and Clark County Case No. 07-1-01996-1 – Attempt Arson 1.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

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

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: _____
- The State has moved to dismiss count(s) _____.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	4	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS \$25,000
02	4	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS \$25,000

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

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

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

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

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

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

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

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

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

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

2.7 If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Counts _____.

The defendant is found NOT GUILTY of Counts _____.

3.3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

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

CDF/LDI/FCD/ NTF/SAD/SDI	\$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, Identocard, 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.

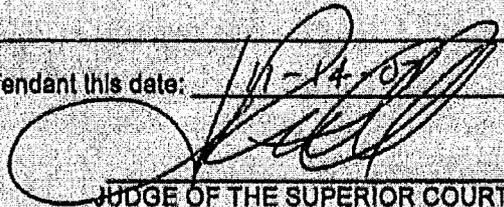
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

5.11 OTHER: _____

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

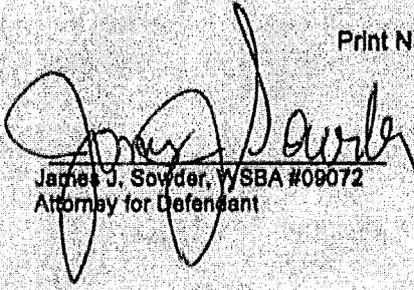


JUDGE OF THE SUPERIOR COURT

Print Name: John P. Wille



Bernard F. Valjalo, WSBA #28702
Deputy Prosecuting Attorney



James J. Sowder, WSBA #09072
Attorney for Defendant



LOWELL DERY FINSTAD
Defendant

OFFICE RECEPTIONIST, CLERK

To: Casey, Jennifer
Subject: RE: 86018-1 In re Finstad

RECEIVED 6-4-12

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

From: Casey, Jennifer [<mailto:Jennifer.Casey@clark.wa.gov>]
Sent: Monday, June 04, 2012 3:06 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: kochd@nwattorney.net; SweigertJ@nwattorney.net
Subject: 86018-1 In re Finstad

Dear Clerk:

Attached please find the State's *Supplemental Brief of Respondent* in the above matter. Please accept this document for e-filing. A copy of the brief is being served on Petitioner's counsel via copy of this email message.

If you have any questions or need anything further to complete this request, please contact me.

Sincerely,

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

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