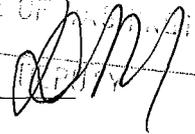


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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NO. 40962-3-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

ADRIAN CONTRERAS-REBOLLAR, Appellant

Appeal from the Superior Court of Pierce County
The Honorable RONALD E. CULPEPPER, DEPARTMENT NO. 17
Pierce County Superior Court Cause No. 06-1-01643-4

BRIEF OF APPELLANT

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	<u>2. The trial court committed reversible error when by failing to put before the jury the question of whether Mr. Contreras-Rebollar was on community custody when he committed the offense for which he was convicted.</u>	
	<u>3. The trial court erred when calculating Mr. Contreras-Rebollar's offender score because he was not on community custody at the time of the instant offenses. The trial court's unnumbered findings of fact and conclusions of law were erroneous as noted in assignment of error no. 1.</u>	
	<u>4. The State failed to prove beyond a reasonable doubt that Mr. Contreras-Rebollar was on community custody at the time of the instant offense.</u>	
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A. ASSIGNMENTS OF ERROR:

1. The trial court erred when it entered its findings of fact and conclusions of law (which are unnumbered).

2. The trial court committed reversible error by denying Mr. Contreras-Rebollar his constitutional right to be represented by new private counsel at sentencing .

3. The trial court committed reversible error when by failing to put before the jury the question of whether Mr. Contreras-Rebollar was on community custody when he committed the offense for which he was convicted.

4. The trial court erred when calculating Mr. Contreras-Rebollar's offender score.

5. The State failed to prove beyond a reasonable doubt that Mr. Contreras-Rebollar was on community custody at the time of the instant offense.

6. Attorney Berneberg failed to provide effective assistance of counsel by failing to calculate whether Mr. Contreras-Rebollar was on the community custody at the time of the offense.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR:

1. A criminal defendant is entitled to have a jury verdict on matters that are not apparent from the face of the judgment and sentence.

However, when the trial court determines criminal history, the trial court must make findings of fact that support the conclusions of law.

2. A criminal defendant has the right to counsel that is free from conflict. Where the trial court orders the defendant to be represented by an attorney whom the defendant previously has alleged was constitutionally ineffective, the trial court denies the defendant effective assistance of counsel.

3. The trial court has the duty to advise a criminal defendant that he is entitled to trial by jury on facts that are not discernible from the faces of the judgment and sentence. The trial court commits reversible error when it fails to fulfill this duty and thereby the defendant of a fundamental constitutional right.

4. The trial court has the duty to demand and consider objective evidence when it makes a factual determination. The trial court may not base its decision on speculation and conjecture.

5. The State has a duty to prove beyond a reasonable doubt factors that affect criminal defendant's offender score, criminal history allegation and standard ranges.

6. A criminal defendant is entitled to constitutionally effective representation. When counsel appears at a hearing at which he is unprepared and fails to function as counsel for the defendant, the attorney

provides constitutionally deficient action that is prejudicial to the defendant.

C. STATEMENT OF THE CASE.

Mr. Contreras-Rebollar was charged with two counts of first degree assault and one count of unlawful possession in Pierce County Superior Court cause 06-1-01643-4. CP 1-2, 3-4. After his convictions, M. Contreras-Rebollar appealed his case to the Court of Appeals – Division II. The court affirmed his convictions in Court of Appeals – Division Two no. 35972-II, This court however remanded the matter to Pierce County Superior Court for re-sentencing. Appendix A (copy of the court of appeals decision)

At trial, Mr. Contreras-Rebollar was represented by attorneys Jay Berneberg and James Schoenberger. CP ____ (supple mental clerks paper –notice of association – See Appendix A-1).

The matter was tried to a jury and Mr. Contreras-Rebollar was convicted as charged. CP ____ (supplemental -LINX printout of case See Appendix A-1). Mr. Contreras-Rebollar appealed his conviction. On appeal he argued, inter alia, that his trial counsel Jay Berneberg and James Schoenberger had been constitutionally ineffective. This court affirmed his convictions but remanded the matter to superior court for a hearing to determine whether Mr. Contreras-Rebollar was on community custody at

the tie of commission of the instant offense. The court of appeals opinion was filed on February 24, 2009. Appendix A – copy of court of appeals decision.

After the issuance of the mandate on April 22, 2010, the trial court convened a hearing to comply with the mandate. That hearing was scheduled for June 25, 2010, more than two months after the issuance of the mandate. CP __ (Supplemental LINX printout – See Appendix A-1).

At the hearing, Mr. Contreras-Rebollar wanted to fire Ms. Berneberg. The basis of the motion was that he had argued on appeal that Mr. Berneberg was constitutionally ineffective. Mr. RP 3,7-8. The trial court denied that motion. RP 9. The matter proceeded to hearing and the court failed to place before a jury the issue of whether Mr. Contreras-Rebollar was on community custody at the time of the commission of the instant offense. *Passim*. Instead the trial court determined that Mr. Contreras-Rebollar indeed was on community custody by using arbitrary and haphazard calculations that resulted in the erroneous finding that Mr. Contreras-Rebollar was on the community custody at the relevant time. RP 11, 16—17.

On July 2, 2010, the trial court entered findings of fact and conclusions of law, which are unnumbered. CP81-84. Mr. Contreras-Rebollar assigns error to the following:

1. The trial court erred when it found that the community custody on the 2004 conviction started on April 15, 2006, where the court in that case was required to give Mr. Contreras credit for 91 days served. Further, although 60 days of that time resulted from a firearm enhancement, the trial court did not determine whether the jail awarded good time on the remaining three months.

2. The trial court erred when it held that Mr. Contreras-Rebollar's community custody ended on April 15, 2006.

3. The trial court erred when it held that Mr. Contreras-Rebollar's conviction for possession of a firearm in the second degree required continuing the termination date of the community custody to July 15, 2006. The judgment and sentence for that crime noted that Mr. Contreras-Rebollar was entitled to credit for 40 days served. Further, the trial court failed to determine whether the jail awarded good time to him. With the award of good time, Mr. Contreras-Rebollar's sentence could well have been less.

4. The court erred when it used the date of the instant offense as opposed to the date of conviction to calculate the termination date of the community custody.

5. The trial court erred when it held that Mr. Contreras-Rebollar was no community custody at the time of the instant offense.

6. The trial court erred when it held that Mr. Contreras-Rebollar's offender score was 4.5. This is so because the trial court included 1 point for the based on the erroneous conclusion that he was on community custody at the time of the instant offenses.

7. The trial court erred when it denied Mr. Contreras-Rebollar his right to a jury trial on the issue whether he was on community custody at the time of the commission of the instant offense.

8. The trial court denied Mr. Contreras-Rebollar his constitutional right to counsel when by denying his retention of private counsel and instead forcing him to proceed with trial counsel. Mr. Contreras-Rebollar had alleged that his trial counsel was constitutionally ineffective on appeal. Thus there was an inherent conflict between Mr. Contreras-Rebollar and his attorney.

9. Mr. Contreras-Rebollar was denied his constitutional right to counsel where counsel was yet again ineffective in his representation of Mr. Contreras-Rebollar.

B. STATEMENT OF THE CASE.

On April 13, 2006, Mr. Contreras-Rebollar was charged in Pierce County Superior Court with two counts of first degree assault with firearm enhancements as well as one count of unlawful possession of a firearm. Supp. CP ____ (LINX summary). A jury convicted him as charged. *Id*

At trial, attorneys Jay Berneberg and James Schoenberger represented Mr. Contreras-Rebollar. Supp. CP __ (Notice of Association).

Mr. Contreras-Rebollar appealed the matter to this court. Mr. Contreras-Rebollar argued on appeal that his trial counsel was constitutionally ineffective. This court rejected that argument. The court affirmed his convictions but remanded the matter to the trial court for resentencing so that the State could produce evidence of his prior convictions and community custody status. Appendix A – copy of the court of appeals opinion.

The Court of Appeals filed its opinion on 2/24/09. The mandate issued on 4/19/10.

On 6/24/10, Mr. Contreras-Rebollar appeared before the court for scheduling the resentencing. The court set the sentencing date for 6/25/10. The matter then was continued until 6/28/10.

On 6/28/10 the parties appeared before the court RP 3. Mr. Contreras-Rebollar fired Mr. Berneberg, his defendant counsel. Mr. Contreras-Rebollar wanted attorney Michael Underwood to represent for the sentencing. RP 3-4.

The prosecutor objected to Mr. Contreras-Rebollar's request for new counsel stating, in pertinent part, " The only issue is whether the defendant has the prior convictions mentioned in the J and S

and whether he was on community custody at the time of the offense.” The prosecutor called the defendant’s request for new counsel “. . . a waste of money.” The prosecutor also averred that there was no new issue, “It’s just a pure issue of proving the defendant’s prior convictions.” RP 4.

The court asked Mr. Underwood “how long it will take you to get up to speed?” RP 4. Mr. Underwood wanted to continue the matter until 8/6/10. RP 5. Mr. Underwood informed the court that there were issues regarding the proof of the aggravator of community custody and the defendant’s offender score. RP 4-5.

The court denied the defendant’s motion to substitute counsel, stating: that it was unwilling to grant a continuance beyond a week or so. RP 7, 9. The court failed to recognize that the State had not scheduled the resentencing until more than two months had passed. The court also badgered Mr. Underwood when it asked: “What’s the issue that takes a month? I’m missing it. If there’s a case on community custody, look at the case. That should take an hour.” RP 5.

When the Mr. Contreras-Rebollar addressed the court regarding his motion for new trial, he noted that he had argued on his earlier appeal that his attorneys Mr. Berneberg and Mr. Schoenberger had been ineffective. Mr. Contreras-Rebollar contended that this would present a conflict. RP 8. When Mr. Contreras-Rebollar informed the court that he had no attorney

because he had fired Mr. Berneberg, the trial court stated, “I’m not allowing you to fire Mr. Berneberg. He’ll be representing you at this hearing. This is late notice.” RP 9.

The prosecutor then provided the court with the judgment and sentences from Mr. Contreras-Rebollar’s prior convictions, noting that the community custody issue began with the 2004 conviction. Appendix B.

To prove that Mr. Contreras-Rebollar had been on community custody on the relevant date the prosecutor noted that Mr. Contreras-Rebollar had been sentenced on July 15, 2004, with 12 months of community custody “after his sentence runs.” RP 10.

The court failed to consider that after serving the 6 month enhancement on the 2004 third degree assault conviction, the defendant could have earned good time on the remaining three months. *Passim*. The court decided that community supervision would have started on January 15, 2005. RP 10.

The court next considered Mr. Contreras-Rebollar’s 2005 conviction unlawful possession of a firearm in the second degree. The defendant was sentenced to three months in the Pierce County Jail. Neither the court nor the State considered that the jail may well have awarded good time to Mr. Contreras-Rebollar., thereby crediting Mr. Contreras with additional community supervision time. *Passim*.

The State provided the Judgment and Sentence and noted that the disagreement concerned whether Mr. Contreras-Rebollar was on community custody at the time of commission of the crimes. RP 10.

The court found that community supervision would have ended on April 15, 2006 “plus or minus a few days.” RP 11. The instant offense was committed on April 12, 200, thereby making the “plus or minus a few days” significant. RP 11.

Although Mr. Contreras-Rebollar had/has absolutely no burden of proof to establish that he was on community custody he offers the following information to establish that the trial court erred:

CALCULATION OF COMMUNITY CUSTODY (SEE APPENDIX C¹)

2004 CONVICTION FOR THIRD DEGREE ASSAULT

Rather than produce evidence that Mr. Contreras-Rebollar was on community custody at the time of the instant offenses, the State offered baseless speculation to support its position. The trial court adopted the same flawed reasoning. Defense counsel erroneously acquiesced in their speculation. Neither the State nor the trial court proved that Mr. Contreras-Rebollar was on community custody at the relevant time.

On July 15, 2004, Mr. Contreras-Rebollar was sentenced for the crime of third degree assault to 9 months in the Pierce County Jail.

¹ Appendix C is appellant’s calculation of his community custody time, also showing the conclusion of that time.

He received credit for 91 days served. He likely received good time during his jail sentence. Assuming for the sake of argument that Mr. Contreras-Rebollar earned no good time while he was in jail but did receive credit for time served, his 9 month jail sentence started on April 15, 2004. With no good time factored in, Mr. Contreras-Rebollar's served his 8 months of his jail sentence in 2005. By January 15, 2005, he would have completely served his jail sentence. *On January 15, 2005, Mr. Contreras began 12 months of community custody.*

*2005 CONVICTION FOR UNLAWFUL POSSESSION
OF A FIREARM IN THE SECOND DEGREE*

On July 20, 2005, Mr. Contreras-Rebollar was taken unto custody and ultimately pleaded guilty to unlawful possession of a firearm in the second degree.

Between January 15, 2005 and July 20, 2005, Mr. Contreras-Rebollar completed 6 months of community custody.

On August 29, 2005, Mr. Contreras-Rebollar was sentenced to 3 months in the Pierce County Jail with credit for 40 days served. Even assuming no good time, Mr. Contreras-Rebollar would have completed his jail sentence on September 27, 2005.

He was not sentenced to any community custody on the 2005 conviction.

Thus he resumed community custody on September 28, 2005.

Because he already served 7.5 months of community custody (*assuming no good time for any of his jail time*), he would have served 94 more days (or 3 months, 4 days) of community custody in 2005. By December 31, 2005, Mr. Contreras-Rebollar would have served more than 10.5 months of community custody.

On April 12, 2006, Mr. Contreras was arrested and placed into custody for the crimes of first degree assault (2 counts) and unlawful possession of a firearm in the first degree. RP 11. The trial court erroneously concluded that Mr. Contreras-Rebollar's community custody lasted until April 15 "plus or minus a few days." RP 11.

CALCULATION OF OFFENDER SCORE FOR 2006

CONVICTIONS

Because the trial court erroneously found that Mr. Contreras-Rebollar had been on community custody when he was taken into custody on the 2006 offenses, the trial court erred when it added 1 point to the standard ranges of the counts of assault in the first degree in this case.

The additional points resulted in additional time for the each offense (which ran consecutively as a matter of law).

The trial court thus erred when it calculated Mr. Contreras-Rebollar's Offender Score and Point Calculation. CP 81-84. The trial court affirmed its prior flawed judgment and sentence.

The trial court subsequently entered Findings of Fact and Conclusions of Law. P81-84. Mr. Contreras-Rebollar's objections are noted above.

Mr. Contreras-Rebollar thereafter timely filed this appeal. CP 86.

D. LAW AND ARGUMENT:

1. The trial court committed reversible error by denying Mr. Contreras-Rebollar his constitutional right to be represented by new private counsel at sentencing.

A criminal defendant has a right to the assistance of counsel at every "critical stage" of a criminal proceeding, including sentencing. U.S. Const. amend. VI; Wash. Const. art. I, sec. 22; *State v. Robinson*, 153 Wn.3d 689, 694, 107 P.3rd 90 (2005); CrR 3.1(b)(2).

A defendant generally has a Sixth Amendment right to hire the attorney of his choice. See *Wheat v. United States*, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). When the right to counsel of choice is improperly denied, the defendant is automatically entitled to a new trial; he need not show that he was harmed in any specific way by proceeding

with a different lawyer. United States v. Gonzales-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L.Ed. 3d 409 (2006).

At trial court's erroneous deprivation of defendant's Sixth Amendment right to choice of counsel entitled him to reversal of his conviction, as error qualified as a "structural error" not subject to review for harmlessness. U.S. v. Gonzalez-Lopez, 548 U.S. 140 (2006) . Harell, 80 Wn. App. at 805; see State v. Watt, 160 Wn.2d 626, 632-33, 160 P.3d 640 (2007); State v. Hughes, 154 Wn.2d 118, 142-43, 110 P.3d 192 (2005), *abrogated on other grounds by* Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006); see also In re Det. of Kistenmacher, 163 Wn.2d 166, 185-86, 178 P.3d 949 (2008) (*Sanders*, concurring and dissenting).

There is a Sixth Amendment qualified right of choice of counsel that applies only to persons who can afford to retain counsel. See Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989) ("Petitioner does not, nor could it defensibly do so, assert that impecunious defendants have a Sixth Amendment right to choose their counsel. The Amendment guarantees defendants in criminal cases the right to adequate representation, but those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts.");

United States v. Rewald, 889 F.2d 836, 856 (9th Cir.1989) (recognizing that the right to choice of counsel is limited to defendants who can retain counsel); *United States v. Ray*, 731 F.2d 1361, 1365 (9th Cir.1984) ("This court has recognized that individuals who can afford to retain counsel have a qualified right to obtain counsel of their choice.") (emphasis added); see also *United States v. Graham*, 91 F.3d 213, 221 (D.C.Cir.1996) (" 'One of the express limitations upon the right to choose one's own attorney is that the criminal defendant be 'financially able' to retain counsel of his choice.' ") (quoting *United States v. Friedman*, 849 F.2d 1488, 1490 (D.C.Cir.1988)); *United States v. Mendoza-Salgado*, 964 F.2d 993, 1014 n. 12 (10th Cir.1992) ("A defendant's right to secure counsel of choice is cognizable only to the extent defendant can retain counsel with private funds.").

At a critical stage of a proceeding, a trial court does not have discretion to "relieve present counsel and require a non-waiving defendant to proceed without counsel." *State v. Bandura*, 85 Wn. App. 87, 97, 931 P.2d 174 (1997). Again, sentencing and presentencing plea withdrawal hearings are critical stages of the criminal proceeding and the defendant has the constitutional right to be assisted by counsel at these stages. *State v. Rupe*, 108 Wn.2d 734, 741, 743 P.2d 210 (1987); *State v. Harell*, 80 Wn. App. At 804, 911 P.2d 1034 (1996).

The appellate courts presume that a defendant was denied his constitutional right to counsel when counsel is “either totally absent, or prevented from assisting the accused during a critical stage of the [criminal] proceeding.” *United States v. Cronin*, 466 U.S. 648, 659 n. 25, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). The appellate courts will presume this error is prejudicial and will not conduct a harmless error analysis when the trial court denies the defendant a right to counsel and they will assume prejudice because the error is structural in nature

When determining whether to grant a defendant’s motion for new counsel, the court must consider, *inter alia*, whether the defendant had legitimate cause for dissatisfaction with counsel, even though it fell short of likely incompetent representation and whether the denial of the motion would result in identifiable prejudice to the defendant’s case of a material or substantial nature.

In the instant case, the trial court erred when it denied the defendant’s right to retain new counsel for the sentencing hearing.

In this case, Mr. Contreras-Rebollar was forced to proceed to resentencing while represented by an attorney whom he had argued on appeal was constitutionally ineffective. Mr. Contreras-Rebollar made this argument to the court and explained the basis for it. This representation

constituted a conflict under Rules of Professional Conduct (RPC) 1.7; 1.9. Appendix D.

The trial court denied Mr. Contreras-Rebollar's motion to fire Mr. Bernberg and hire Mr. Underwood based not on constitutional requirements but instead of grounds of expediency. The trial court cavalierly pronounced that there no substantial issues to be established at sentencing except for the issue whether the defendant was on community custody at the time of the commission of the charged offense. The defendant previously had been ordered to 12 months of community custody. The prosecutor and the trial court sloppily made crude and factually insufficient conclusions that the defendant indeed had been on community custody at that time. Trial counsel for Mr. Contreras-Rebollar acquiesced in those conclusions clearly without having researched this issue and being able to make cogent arguments in Mr. Contreras-Rebollar's favor. Such arguments existed. Indeed Mr. Contreras-Rebollar was not on community custody at the relevant time. Trial counsel failed to calculate the proper times and thus failed to hold the state to its burden of proof.

The trial court committed reversible error when it denied Mr. Contreras-Rebollar his right to counsel and forced him to proceed with

Mr. Berneberg. Mr. Contreras-Rebollar's right to conflict free representation was denied.

2. The trial court committed reversible error when by failing to put before the jury the question of whether Mr. Contreras-Rebollar was on community custody when he committed the offense for which he was convicted.

After the United States Supreme Court decided *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)., criminal defendants secured the right to jury trial on sentencing enhancements. In *Blakely*, the jury found facts that supported, under state law, a "standard range" sentence of 49 to 53 months. Sitting without a jury, the trial judge found an additional fact ("deliberate cruelty") that supported, again under state law, an "exceptional" sentence of not more than 120 months. Based in part on the additional fact that he alone had found, the trial judge then imposed an "exceptional" sentence of 90 months. On appeal, Blakely argued that the 90-month sentence violated his Sixth Amendment right to jury trial because the additional fact was essential to support the sentence but had not been found by the jury.

The United States Supreme Court agreed, stating two propositions pertinent here: (1) "'Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury' "; and (2) for purposes of the

Sixth Amendment, the "prescribed statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." If the Court had substituted the second proposition into the first, it would have stated: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond [the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant] must be submitted to a jury." In sum then, the Court held that an accused has a Sixth Amendment right to have the jury find each fact needed to support his or her sentence, ³⁸ except, at least for now, the fact of a prior conviction. *e.g.*, State v. Hochhalter, 131 Wn.App. 506, 128 P.3d 104 (2006).

Where the trial court denied Mr. Contreras-Rebollar his constitutional right to jury trial to determine whether he was on community custody at the relevant time, the trial simultaneously denied him the requirement of proof beyond a reasonable doubt.

The trial court, through sloppy and erroneous "miscalculation" used a lesser standard to resolve that question. The trial court made a finding that given a few days "more or less" Mr. Contreras-Rebollar was on community custody when the instant offense was committed.

A jury would have been required to find beyond a reasonable doubt that the State had proved that Mr. Contreras-Rebollar was on community custody at the relevant time. The jury would not have been permitted to render a verdict on the “more or less” standard.

Where the issue of the timing of community custody could not be determined from the fact of the judgment and sentence, the trial court erred when it failed to convene a jury to determine this issue.

Not only did the trial court fail to convene a jury, the trial court also failed to advise Mr. Contreras-Rebollar that he had this right to a jury. The trial court thus failed to obtain any waiver of the right to jury trial from Mr. Contreras-Rebollar.

In summary, the court and the prosecutor denied Mr. Contreras-Rebollar, his constitutional right to have a jury determine whether he was on community custody/supervision at the relevant time. Where the issue of community custody was resolved without the quantum of evidence that would be required for a jury verdict, the trial court denied Mr. Contreras-Rebollar his right to trial by jury.

3. The trial court erred when calculating Mr. Contreras-Rebollar's offender score because he was not on community custody at the time of the instant offenses. The trial court's unnumbered findings of fact and conclusions of law were erroneous as noted in assignment of error no. 1.

The appellate court reviews findings to determining whether they are supported by substantial evidence, and, if so, whether the findings support the conclusions of law and judgment. *City of Tacoma v. State*, 117 W.2d 348, 361, 816 P.2d 7 (1991) (citing *Morgan v. Prudential Ins. Co. of Am.*, 86 Wn.2d 432, 437, 545 P.2d 1193 (1976)) The appellate court reviews issues of law de novo. *State v. Ford*, 125 Wn.2d 919, 923, 891 P.2d 712 (1995)

In this case, however, and for the reasons set forth above, Mr. Contreras-Rebollar asserts that he was entitled to a jury trial on the issues of community custody. However, assuming *arguendo*, that the trial court could make this determination without convening a jury, the trial court still lacked evidence beyond a reasonable doubt that Mr. Contreras-Rebollar was on community custody on April 12, 2006. First, Mr. C-R reminds this court that this standard of review applies to all of his arguments regarding the trial court's erroneous findings of fact which were insufficient to support its conclusions of law.⁶

Regarding the calculation of the defendant's term of community custody, the trial court's *unnumbered* findings of fact stated: "The court calculates the commencement of the defendant's community custody as April 15, 2005 with a termination date of April 15, 2006; . . . The period of community custody ordered under the assault in the third degree case

tolled for the time period of the three month sentence imposed in the lawful possession of a firearm case and this the adjusted termination date for the ordered community custody term was pushed to July 15, 2006;” Based on these findings of fact, the court entered *unnumbered* conclusions of law that the Mr. Contreras-Rebollar’s offender score included a point for the status of community custody on the date of commission of the final offenses.

For the reasons set forth herein, the trial court’s findings of fact were unsupported by the evidence and therefore the findings of fact did not support the conclusions of law regarding calculation of Mr. Contreras-Rebollar’s offender score.

The trial court failed to factor in essential information when calculating Mr. Contreras-Rebollar’s community custody status. This is so because the trial court violated Mr. Contreras-Rebollar’s fundamental right to be given credit for all time served, good time for that sentence, and proper calculation of his community supervision time. In this case, the trial court failed to fulfill its statutory obligation to ensure that the State properly established the components of a defendant’s sentence, the trial court’s findings of fact and conclusions of law regarding prior convictions, credit for time served and good time in the county jail, and also the whether Mr. Contreras-Rebollar was on community service at the time of

the commission of the instant offense. As a result, the trial court erred in holding that Mr. Contreras-Rebollar was on community

Mr. Contreras thus was erroneously resentenced and is entitled to relief from this court. This court must remand this matter for another resentencing.

The Sentencing Reform Act of 1981 (SRA), effective July 1984, changed Washington sentencing law to provide for sentences based upon a sentencing grid as well as an offender's prior convictions. The SRA provides for calculation of the offender score based upon date of conviction, class of felony and/or classification of felony (serious violent, violent, .etc.). Further, the SRA provides certain "tolling" periods for, *inter alia*, community custody interrupted by a new conviction.

Under the SRA, the fact finder must deduct certain information from the calculation of community custody. RCW 9.94A.625 (2000) regarding community custody should apply here. The pertinent portion of that provision states:

(2) Any term of community custody, community placement, or community supervision shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been

placed.

(3) Any period of community custody, community placement, or community supervision shall be tolled during any period of time the offender is in confinement for any reason.

The provision defining “community custody” also provides that certain time must be factored into any calculation of the term of community custody. Those factors are that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities *by the department*. RCW 9.94A.030(5) (emphasis added).

In addition, RCW 9.94A.728, entitled “Earned release time” recognizes that criminal defendants earn “good time” while in custody.

Further, this section acknowledges that county jails may award “good time” according to a county’s formula. Thus, for example, when an individual is transferred from a county jail to the department (DOC), the administrator of the county jail shall certify to the department “the amount of time spent at the facility *and the amount of earned early release time.*”

In addition, the period of good-time earned in county jails must be part of the equation used to calculate the period of community custody.

The Washington Supreme Court has interpreted this provision to "give . . . both county jails and the state correctional system[] plenary authority over good-time awards for offenders under their jurisdiction." *In re Pers. Restraint of Williams*, 121 Wn.2d 655, 661, 853 P.2d 444 (1993). The court emphasized that "[u]nder our reading of the statute, the county jail retains complete control over the good-time credits granted to offenders within its jurisdiction." *Williams*, 121 Wn.2d at 665.

The *Williams* court interpreted this sentence of the statute to mean that DOC must accept the county jail's calculation of good time unless it is based on an apparent or manifest error of law. *Williams*, 121 Wn.2d at 664. Interpreting the statute as a method of avoiding DOC oversight of county jails, the court also held that DOC is not required to review or approve good-time policies of county jails nor review the certification's accuracy. *Williams*, 121 Wn.2d at 666. Even when the certification is invalid, the remedy is not for DOC to correct the error, but it is to remand to the county jail for recertification. *Williams*, 121 Wn.2d at 668 (Durham, J. concurring). *Williams*'s basic rationale is state penal institutions and county jails have separate authority for granting earned early release time.

In this case, the trial court and the prosecutor miscalculated Mr. Contreras-Rebollar's community custody time by failing to factor in all of the credit for time served prior to sentencing, the amount of good-time

certified by the county jail, and any earned release time. Given these omissions, the trial court's determination that Mr. Contreras-Rebollar was on community custody at the relevant time was *not* established beyond a reasonable doubt.

In this case, the trial court erred when it calculated Mr. Contreras-Rebollar's offender score because it failed to consider the statutory requirements essential to the calculation of the term of community custody:

* on August 29, 2005, Mr. Contreras-Rebollar pleaded guilty to and was sentenced for the crime of unlawful possession of a firearm in the second degree; Mr. Contreras-Rebollar was arrested on July 22, 2005 and pleaded guilty on August 29, 2005; he received credit for good time of 40 days against the 3 month (120) day sentence imposed by the court.

* from the August 28, 2005 until September 19, 2005 (assuming the customary 1/3 good time awarded by the Pierce County Jail, community supervision was tolled during that time. Community supervision would have recommenced on September 19, 2005.

* on February 1, 2007, Mr. Contreras-Rebollar was convicted by jury of the offenses which are the subject of this case. The date of the offense was April 12, 2006

* even assuming that Mr. Contreras-Rebollar was in custody after April 12, 2006, Mr. Contreras-Rebollar would have been able to complete approximately seven months of community supervision during the interval between September 19, 2005 and April 12, 2006.

* Thus Mr. Contreras-Rebollar easily would have completed 12 months of community supervision prior to the conviction for the 2006 offense. (See Appendix C)

Thus Mr. Contreras-Rebollar easily would have completed 12 months of community supervision prior to the conviction for the 2006 offense.

Without any documentation, the trial court concluded that Mr. Contreras-Rebollar “was still on community custody at the time of the offense. Because the trial court’s factual findings were not supported by the evidence, the trial court’s conclusions of law were not accurate.

4. The State failed to prove beyond a reasonable doubt that Mr. Contreras-Rebollar was on community custody at the time of the instant offense.

The State has the burden to produce evidence “beyond a reasonable doubt.” U.S. Const , Fifth Amendment, Due Process Clause; Wash. Const sec., art.; RCW 9A.04.100. In this case, the State de facto offered no competent evidence to prove that Mr Contreras-Rebollar was on community custody at the relevant time.. Rather the trial court’s “off the cuff” calculations were adopted and endorsed by the prosecutor. However, these calculations were simply wrong.

The State could not prove beyond a reasonable doubt that Mr. Contreras-Rebollar was on community custody at the time of commission of the instant offense. In fact, the State made no real effort to do this. Rather, the State sat back and let the trial court do its job. The trial court

did its calculation and used a “more or less”, “within a couple of days” standard.

Of course, this evidence is not proof beyond a reasonable doubt. The State did not consider relevant factors such as “good time” awards in the Pierce County Jail, etc. The State’s failure to do resulted in a failure of proof that altered Mr. Contreras-Rebollar’s standard ranges. As a result he was sentenced to more time

5. Attorney Berneberg failed to provide effective assistance of counsel by failing to hold the State to its burden of proof where the relevant issue was not readily apparent from the calculate whether Mr. Contreras-Rebollar was on the community custody at the time of the offense.

Effective assistant of counsel is guaranteed under the federal and state constitutions. See U.S. CONST., amend, VI; WASH. CONST., art. I, sec. 22. This right was comprehensively discussed in *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

In *Strickland*, the U.S. Supreme Court observed that the right to counsel is crucial to a fair trial because “access to counsel’s skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution. 466 U.S. at 685 (citations omitted). Any claim of ineffective assistance must be judged against this benchmark: “whether counsel’s conduct so undermined the proper functioning of the

adversarial process that the trial cannot be relied upon as having produced a just result.” 466 U.S. at 686.

To prove ineffective assistance of counsel, an appellant must show that (1) trial counsel’s performance was deficient; and (2) the deficient performance prejudiced him. *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 420-21, 114 P.3d 607 (2005). Counsel’s performance is deficient when it falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1998). Put another way, the defendant must show that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. 466 U.S. at 687. The prejudice requirement is satisfied by a showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Id.* In other words, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 694. Reasonable probability is defined as “a probability sufficient to undermine confidence in the outcome.” *Id.*

The American Bar Association has described the role of defense counsel:

The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate with courage, devotion, and to the utmost of his or her learning and ability and according to the law.

ABA Standard 4-1.1(b).

Although the reviewing court indulges a strong presumption that counsel's representation falls within the wide range of proper professional assistance, the defendant may overcome that presumption by showing that trial counsel had no legitimate strategic or tactical rationale for his conduct. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991); *State v. McFarland*, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995). To establish prejudice, the defendant must show that but for counsel's deficient performance, the result likely would have been different. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

In this case, trial counsel failed to provide effective assistance. Trial counsel should have and did not independently calculate whether Mr. Contreras-Rebollar was on community custody at the time of commission of the instant offense. Rather, trial counsel believed that he had been fired and thus clearly had not prepared for the hearing. RP 3, 7-8, 9.

Trial counsel's lack of preparation resulted in the trial court erroneous endorsement of the State's "evidence" and the court's findings of fact on the resentencing.

Trial counsel's deficient performance thus resulted in resentencing based on an erroneously inflated offender.

E. CONCLUSION:

Mr. Contreras-Rebollar respectfully urges this court to conclude that the trial court miscalculated his offender score at the resentencing. He also asks this court to find that he was entitled to a jury trial on the issue of community custody. Because trial counsel at resentencing was ineffective, Mr. Contreras-Rebollar also asks this court to order the trial court to grant him motion for new counsel.

For the reasons set forth herein, this matter must be remanded to the trial court for the second resentencing.

RESPECTFULLY SUBMITTED this 15th day of April, 2011.

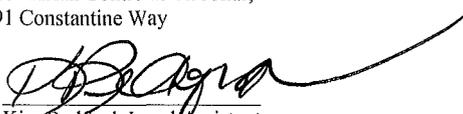


BARBARA COREY, WSBA#11778
Attorney for Appellant Contreras-Rebollar

CERTIFICATE OF SERVICE:

I declare under penalty of perjury under the laws Of the State of Washington that the following is a true and correct: That on this date, I delivered via ABC- Legal Messenger/U.S. Mail-postage pre-paid, a copy of this Document to: Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Ave So, Room 946 Tacoma, Washington 98402 and to Adrian Contreras-Rebollar, DOC#819639, Stafford Creek, 191 Constantine Way Aberdeen, WA 98520

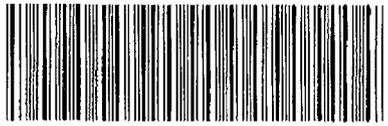
4-15-11
Date



Kim Redford, Legal Assistant

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STATE OF WASHINGTON
BY 
COURT OF APPEALS
DIVISION II

APPENDIX A



06-1-01643-4 34171213 MNDCA 04-22-10

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
 Respondent,
 v.
 ADRIAN CONTRERAS-REBOLLAR,
 Appellant.

No. 35962-6-II

MANDATE

Pierce County Cause No.
06-1-01643-4

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 22 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Court Action Required

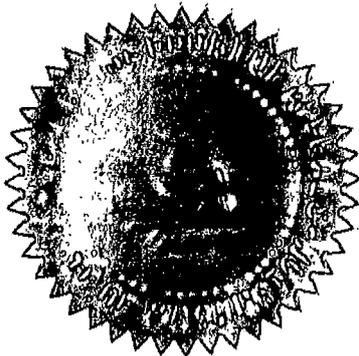
The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on February 24, 2009 became the decision terminating review of this court of the above entitled case on March 29, 2010. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

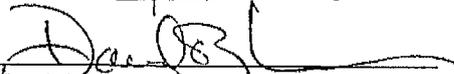
- Judgment Creditor; State of Washington, Pierce Co.; \$6.40
- Judgment Creditor; Appellate Indigent Defense Fund; \$7,531.52
- Judgment Debtor; Adrian Contreras-Rebollar; \$7,537.92

Page 2
Mandate 35962-6-II

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 14th day of April, 2010.


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

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Indeterminate Sentence Review Board
P. O. Box 40907
Olympia, WA 98502

WSP Identification & Criminal History Section
ATTN: Quality Control Unit
PO Box 42633
Olympia, WA 98504-2633

Hon. Ronald Culpepper
Pierce Co Superior Court Judge
930 Tacoma Ave South
Tacoma, WA 98402

FILED
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STATE OF WASHINGTON
BY [Signature]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ADRIAN CONTRERAS-REBOLLAR,

Appellant.

No. 35962-6-II

UNPUBLISHED OPINION

PENoyer, A.C.J. — A jury convicted Adrian Contreras-Rebollar¹ of two counts of first degree assault and returned special verdicts finding that he was armed with a firearm during the commission of those crimes. Contreras now appeals, arguing that (1) the trial court erred by denying his motion for a mistrial; (2) the State did not produce sufficient evidence to prove beyond a reasonable doubt that he was not acting in self defense; and (3) the trial court erred by sentencing him based on a criminal history and offender score the State did not prove. Contreras also argues in a statement of additional grounds for review that he was denied effective assistance of counsel. We affirm Contreras’s convictions, but remand for resentencing.

¹ The record indicates that the appellant’s full name is “Adrian Contreras-Rebollar.” However, we refer to him as “Contreras” throughout this opinion and mean no disrespect in doing so.

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FACTS

On the afternoon of April 11, 2006, Contreras, Nicholas Solis, Regina Hernandez, and Ahria Kelly were at a friend's house in Tacoma where they drank alcohol and smoked methamphetamine. Contreras, Solis, Hernandez, and Kelly disagree as to some of what followed that evening.

Around five or six o'clock in the evening, Contreras, Solis, Hernandez, and Kelly left their friend's house and went to a place described as "Wolfie's alley," so Solis could pick up a vehicle. Report of Proceedings (RP) (Jan. 23, 2007) at 254. Contreras and Hernandez left Wolfie's alley to go drive around; Solis and Kelly followed in the car that Solis had just retrieved. Hernandez alleged that Contreras flagged Solis to stop, got out of his vehicle, and argued with Solis about a "sack of dope" and a Palm Pilot. RP (Jan. 23, 2007) at 259. According to Hernandez, Contreras returned to his vehicle, said, "[T]his mother fucker is getting on my nerves; I'm going to do him in[.]" and retrieved a gun from the backseat of the car. RP (Jan. 23, 2007) at 261. After going back to Wolfie's alley,² Contreras and Hernandez subsequently drove to Yessica Rosas's house.

After arriving at Rosas's house, Rosas and Hernandez were talking in Rosas's bedroom when Contreras went outside to his car. Contreras returned wearing dark clothes and sunglasses, carrying a gun. Rosas testified that Contreras appeared nervous and looked like he was wearing a disguise. Rosas's father, Jose Rosas, heard people talking and he asked Hernandez and

² Hernandez claimed that, during their second visit to Wolfie's alley, Solis, while wearing a bandana over his face, pointed a gun at Contreras who responded by firing shots in Solis's direction. Kelly, however, testified that he did not see Solis wearing a bandana over his face or see Contreras and Solis pull guns on each other.

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Contreras to leave. Jose testified that he watched Hernandez and Contreras drive away before returning to bed.

Contreras sat in the driver's seat and Hernandez sat in the front passenger seat when they left Rosas's house. Hernandez testified that she was looking at CDs when she heard Contreras say, "[T]here those mother fuckers are." RP (Jan. 23, 2007) at 289. The two were only a short distance from Rosas's house when Contreras started shooting at the oncoming vehicle. After Contreras finished shooting, Hernandez heard him say, "I just dumped on those fools." RP (Jan. 23, 2007) at 290. Hernandez testified that Contreras did not appear afraid; instead, he appeared brave, calm, and cool. Further, Hernandez testified that she had her head down looking at CDs and did not see Solis's vehicle approach; she looked up after Contreras started shooting and saw only the taillights of Solis's vehicle. Contreras, however, relayed a different story at trial. Contreras claimed that he saw Solis's vehicle speed up and the headlights turn off. He also claimed to see Solis wearing a bandana³ and raise the barrel of a gun. Based on this information, Contreras believed that Solis was preparing to commit a drive-by shooting. Contreras testified that he feared for his life, reached for his gun, ducked, and fired towards Solis's vehicle.

Solis was driving with Kelly in the passenger seat when Contreras shot at them. Kelly testified that he yelled "[d]uck" when he saw the flash of a gun firing from the driver's window of a parked vehicle with no headlights. RP (Jan. 24, 2007) at 501. Solis did not see Contreras's vehicle and only remembered seeing gunfire sparks at the time of the shooting. One bullet struck Kelly in the shoulder and at least one bullet struck Solis. As a result of the shooting, Solis is paralyzed from the chest down.

³ Hernandez testified that Surenos tie bandanas over their faces when they are preparing to commit a drive-by shooting or assault.

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Shortly after the shooting, Kim Say-Ye was returning home when she saw a vehicle parked on the grass in front of her neighbor's house. The vehicle caught her attention because she saw shattered glass and because both the windshield wipers and headlights were on. She thought the driver was drunk and was about to call the police when Officer Timothy Caber showed up.

Caber, who had received the dispatch call for the shooting around 1:00 A.M., briefly spoke to Say-Ye when he arrived at the scene. Caber found the vehicle still running and stopped against landscaping railroad ties on the lawn. He also observed that the windshield wipers and headlights were on. Caber found Solis inside, slumped over; a rifle lay wedged between the driver and passenger seats with the barrel pointing toward the dash.

Edward Robinson, a firearm examiner at the Washington State Patrol Crime Laboratory, determined that the gun was a black powder rifle. Robinson received the rifle without a ram rod and without any wadding, projectiles, and gun powder inside the rifle's chamber or otherwise in a container associated with the rifle. Solis testified that he traded dope for the rifle on the day of the shooting and that he thought the rifle was inoperable.

On April 12, 2006, the police arrested Contreras at a Motel 6. The State charged him with two counts of first degree assault, with firearm enhancements, and one count of second degree unlawful possession of a firearm. On November 30, 2006, defense counsel Jay Berneburg filed a notice of association in this case. Contreras hired Berneburg to supplement appointed counsel James Schoenberger at trial. At trial, Berneburg gave the opening statement and cross examined three witnesses. He also assisted Schoenberger with preparations outside of trial. On January 17, 2007, Contreras pleaded guilty to second degree unlawful possession of a firearm.

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On January 17, 2007, trial began. Both parties focused on credibility throughout the trial, as many of the witnesses were habitual methamphetamine users who admitted to having a poor memory.⁴ On January 23, 2007, Hernandez testified that she did not see the headlights on Solis's vehicle. When the prosecution questioned her, Hernandez acknowledged that her testimony conflicted with a statement she made to police officers shortly after the shooting. However, she claimed that Berneburg had told her the headlights were off. On direct, Hernandez denied that Berneburg told her to say the headlights were off, but on cross examination she claimed he had. On January 25, 2007, Contreras argued that Hernandez's testimony shattered his counsel's credibility and moved for a mistrial. The trial court denied the motion, but agreed to add Berneburg to Contreras's witness list for the sole purpose of rebutting Hernandez's allegation. Now a witness, the trial court excluded Berneburg from the courtroom. On February 1, 2007, the jury found Contreras guilty on both counts of first degree assault and found that he was armed with a firearm during the commission of both crimes.

On February 16, 2007, the trial court held a sentencing hearing during which the State alleged that Contreras had two prior adult felony convictions and one prior juvenile felony conviction. The State also alleged that Contreras was on community custody at the time of the offenses. The trial court sentenced Contreras to a total of 380 months' confinement. Contreras refused to sign any documents at his sentencing, including the stipulation on prior record and offender score and the judgment and sentence. Contreras appeals.

⁴ For example, Hernandez testified that she often hallucinates and hears things when she is "on a come-down" from taking drugs. RP (Jan. 23, 2007) at 241.

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ANALYSIS

I. MOTION FOR MISTRIAL

Contreras first argues that the trial court abused its discretion by denying his motion for a mistrial. He claims that he did not receive a fair trial because Hernandez's testimony challenged Berneburg's credibility and because the trial court removed Berneburg from the proceedings. We disagree.

We review the trial court's denial of a motion for a mistrial for abuse of discretion. *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989). "An appellate court finds abuse only 'when no reasonable judge would have reached the same conclusion.'" *Hopson*, 113 Wn.2d at 284 (quoting *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 667, 771 P.2d 711 (1989)). Trial courts should grant a mistrial "only when the defendant has been so prejudiced that nothing short of a new trial can insure that [the] defendant will be tried fairly." *State v. Gilchrist*, 91 Wn.2d 603, 612, 590 P.2d 809 (1979). The trial judge is best situated to assess the prejudice of a statement. *State v. Lewis*, 130 Wn.2d 700, 707, 927 P.2d 235 (1996). When an irregularity occurs at trial, we review the irregularity to determine whether it may have influenced the jury. *State v. Weber*, 99 Wn.2d 158, 165, 659 P.2d 1102 (1983). To determine the effect of the trial irregularity, we examine (1) the seriousness of the irregularity; (2) whether the irregularity was cumulative of other evidence properly admitted; and (3) whether the trial court could cure the irregularity by an instruction to disregard the remark. *Hopson*, 113 Wn.2d at 284; *Weber*, 99 Wn.2d at 165-66.

In determining whether a mistrial is appropriate, *State v. Greiff*, 141 Wn.2d 910, 10 P.3d 390 (2000), is instructive. In that case, Greiff argued that the trial court erred by denying his motion for a mistrial. *Greiff*, 141 Wn.2d at 918. At trial, the State failed to inform Greiff about the expected change in the testimony of an officer who had previously testified at Greiff's first

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trial that ended in a hung jury. *Greiff*, 141 Wn.2d at 916-18. As a result of not realizing that the officer may testify differently, Greiff's opening argument at the second trial was inconsistent with the officer's subsequent testimony. *Greiff*, 141 Wn.2d at 918. The officer testified that his prior testimony was inconsistent because he had made a mistake at the first trial. *Greiff*, 141 Wn.2d at 922. The trial judge denied Greiff's motion for a mistrial, but admitted a transcript of the officer's testimony from the first trial, which "the jury [was permitted to] consider . . . in its entirety in order to judge [the officer's] credibility." *Greiff*, 141 Wn.2d at 918. Division Three of this court affirmed Greiff's conviction, holding that the trial court did not abuse its discretion by denying his motion for a mistrial. *Greiff*, 141 Wn.2d at 918.

On appeal to the Washington Supreme Court, Greiff argued that the omission violated CrR 4.7(a)(1)(i),⁵ which denied him due process and effective assistance of counsel. *Greiff*, 141 Wn.2d at 918-19. Greiff contended that his counsel's credibility was "undoubtedly damaged" because his attorney promised in opening to elicit certain testimony from the officer and then failed to deliver on that promise. *Greiff*, 141 Wn.2d at 921. The Supreme Court applied the *Hopson*⁶ criteria and concluded that there was not a "substantial likelihood" that the State's violation of CrR 4.7 affected the trial outcome because the inconsistency between the attorney's

⁵ CrR 4.7(a)(1)(i) states, in part, that:

[T]he prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing: (i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses[.]

The rule is not at issue in this case.

⁶ 113 Wn.2d at 284.

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opening statement and the witness's testimony was not significantly prejudicial. *Greiff*, 141 Wn.2d at 921. The court reasoned that the record supported the trial court's conclusion that the jury would find that the reason the officer did not testify the way *Greiff* said he would was because the officer had made a mistake in his earlier statements. *Greiff*, 141 Wn.2d at 922.

Here, Berneburg said in his opening statement that Solis's vehicle's headlights were off, but Hernandez testified on cross that Berneburg told her to say that Solis's vehicle's headlights were off. As in *Greiff*, where the defendant argued that inconsistent testimony damaged his attorney's credibility, Contreras argues that Hernandez's allegations made the jury question Berneburg's credibility. However, in denying Contreras's motion for a mistrial, the trial court found that the issue was Hernandez's credibility, not Berneburg's. "The material issue, it seems to me, is Ms. Hernandez and her credibility and what she saw . . . I don't think anybody is accusing Mr. Berneburg . . . [of] committing a felony." RP (Jan. 25, 2007) at 682. Notably, the record supports the trial court's finding: on direct, Hernandez testified that Berneburg *did not* tell her to testify that Solis's headlights were off, whereas on cross, she testified that Berneburg *told* her to testify that Solis's headlights were off.⁷ Contreras cannot show that there

⁷ On direct:

Prosecutor: When did he visit you?

Hernandez: The day before yesterday.

Prosecutor: He didn't tell you to say [that the Solis's vehicle headlights were off], did he?

Hernandez: No.

RP (Jan. 23, 2007) at 299-300.

On cross:

Defense: And we didn't tell you the headlights were off, did we? We said were the headlights on or off; isn't that right?

Hernandez: Mr. Berneburg told me that the lights were off and to say that when I got to court.

RP (Jan. 23, 2007) at 305.

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is a substantial likelihood that Hernandez's testimony prejudiced him to such an extent that nothing short of a new trial could ensure fairness. The *Greiff* court also held that even if the defendant suffered some prejudice, the trial court took appropriate curative steps. In particular, the trial court admitted the officer's testimony from Greiff's first trial and instructed the jury to consider that testimony in judging the officer's credibility. This had the effect of showing how his inconsistent testimony was the result of his eleventh-hour epiphany, not defense counsel's deceiving tactics. *Greiff*, 141 Wn.2d at 922. In this case, even if Hernandez's testimony slightly prejudiced Contreras, the trial court took appropriate curative steps by permitting Berneburg to testify to rebut Hernandez's allegation and by limiting Berneburg's testimony with the following instruction:

Before the testimony of Mr. Berneburg is allowed, the Court advises you that you may consider the testimony regarding Mr. Berneburg's contact with Regina Hernandez only for the purpose of assessing her credibility. You must not consider the testimony for any other purpose.

RP (Jan. 25, 2007) at 812-13. Berneburg's testimony served to rebut Hernandez's allegation and the instruction limited the scope of his testimony to the purpose of assessing Hernandez's credibility. Juries are presumed to follow the trial court's instructions. *State v. Ingle*, 64 Wn.2d 491, 499, 392 P.2d 442 (1964). Thus, the trial court's curative steps cured any prejudice Hernandez's testimony may have created, further supporting our conclusion that Contreras received a fair trial.

Contreras also argues that the trial court denied his right to effective assistance of counsel in excluding Berneburg from the courtroom. The constitutional right to counsel promises a defendant an attorney who can provide "reasonably effective assistance." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We give exceptional

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deference to counsel's decisions and such decisions cannot serve as a basis for an ineffective assistance of counsel claim if counsel's decisions are a legitimate trial strategy or tactic. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). Here, Schoenberger represented Contreras at all times during the trial, and the trial court only excluded Berneburg when the defense requested that the trial court add him to the witness list. The defense sought Berneburg as a witness to rebut Hernandez's testimony, which was a legitimate trial strategy and this strategic action did not deny Contreras his right to effective assistance of counsel.

II. SUFFICIENCY OF THE EVIDENCE

Contreras next argues that the State did not present sufficient evidence to disprove Contreras's claim that he was acting in self defense. We disagree.

We review a challenge to the sufficiency of the evidence to determine whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). When the sufficiency of evidence is challenged in a criminal case, we draw all reasonable inferences from the evidence in the State's favor and interpret them most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 907, 567 P.2d 1136 (1977). Because credibility determinations are for the trier of fact and are not subject to review, *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990), we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). We consider circumstantial and direct evidence to be equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

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Taking the evidence in the light most favorable to the State, a jury could reasonably find that Contreras did not believe that he was about to be injured. First, the jury heard testimony from Rosas that Contreras appeared nervous at her house and that he looked like he was wearing a disguise. Second, Hernandez testified that she heard Contreras say “[t]here those mother fuckers are” before the shooting and “I just dumped on those fools” after the shooting. RP (Jan. 23, 2007) at 289-290. Hernandez also testified that Contreras did not appear afraid at the time of the shooting; rather, he appeared brave, calm, and cool. Third, both Say-Ye and Caber testified that Solis’s vehicle’s headlights were on. Finally, Solis testified that he traded dope for the rifle and that he thought it was inoperable. In fact, the Washington State Patrol Crime Lab received the rifle without a ram rod and without any wadding, projectiles, and gun powder inside the rifle’s chamber or otherwise in a container associated with the rifle. Based on this evidence, the jury had sufficient evidence to reasonably find that Contreras did not act in self defense.

III. SENTENCING

Contreras finally argues that we should reverse his sentence and remand his case for resentencing. We agree and remand this case for resentencing so that the State can produce evidence of Contreras’s prior convictions and community custody status.

Fundamental principles of due process require “that in imposing sentence, the facts relied upon by the trial court must have some basis in the record.” *State v. Ford*, 137 Wn.2d 472, 482, 973 P.2d 452 (1999) (quoting *State v. Bresolin*, 13 Wn. App. 386, 396, 534 P.2d 1394 (1975)). Although the State bears the burden of proving the existence of prior convictions by a preponderance of the evidence, *State v. Bergstrom*, 162 Wn.2d 87, 93, 169 P.3d 816 (2007), the trial court also has a statutory obligation to ensure that the State properly establishes the

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defendant's criminal history. RCW 9.94A.500(1).⁸ A certified copy of the prior judgment and sentence is the best evidence to establish a defendant's prior conviction. *Bergstrom*, 162 Wn.2d at 93. When the State alleges the existence of prior convictions and the defendant fails to "specifically object" before the trial court imposes the sentence, the State lacks notice of any apparent defects and the appellate court must remand the case for resentencing. *Bergstrom*, 162 Wn.2d at 93 (quoting *State v. Lopez*, 147 Wn.2d 515, 520, 55 P.3d 609 (2002)). In this situation, the State may introduce new evidence at resentencing. *Bergstrom*, 162 Wn.2d at 93.

Here, Contreras did not "specifically object" to the State's allegations of his prior convictions and community custody status. Instead, he merely declined to sign both the stipulation on prior record and offender score and the judgment and sentence. Because defense counsel signed these documents, the State's allegations went unchallenged. Although the State did not provide evidence at sentencing to support its allegations, it did not have adequate notice of any alleged defect until this appeal, and we remand the case for resentencing.

IV. STATEMENT OF ADDITIONAL GROUNDS

In a statement of additional grounds for review (SAG), Contreras also argues that he received ineffective assistance of counsel because defense counsel (1) failed to propose a

⁸ RCW 9.94A.500, provides in relevant part:

(1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record.

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“defense of another” instruction; (2) proposed assault instructions in which the phrase “great bodily harm” was defined but also proposed act on appearance instructions in which the phrase “great personal injury” was not defined; and (3) proposed a “no duty to retreat” instruction.

Every defendant has the right to effective assistance of counsel at trial. U.S. CONST. amend. VI; WASH. CONST. art. I, §. 22. To prevail on a claim of ineffective assistance of counsel, the defendant must show that (1) counsel’s performance was deficient, i.e., it fell below an objective standard of reasonableness; and (2) the deficient performance was prejudicial, i.e., there is a reasonable probability that the outcome would have been different but for the deficient representation. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (citing *Strickland*, 466 U.S. at 687). Failure to establish either prong is fatal to the claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697. We give exceptional deference to counsel’s professional decisions and such decisions cannot serve as a basis for an ineffective assistance of counsel claim if counsel’s decisions are a legitimate trial strategy or tactic. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

Contreras first argues that his counsel was ineffective because he failed to propose a “defense of another” instruction. SAG at 12. He maintains that a defendant is entitled to have the trial court instruct the jury on his case theory when the evidence supports that theory, *State v. Williams*, 132 Wn.2d 248, 259, 937 P.2d 1052 (1997), and effective assistance of counsel includes a request of pertinent instructions supported by the evidence. *State v. Kruger*, 116 Wn. App. 685, 688, 67 P.3d 1147 (2003) (citing *State v. Finley*, 97 Wn. App. 129, 134, 982 P.2d 681 (1999)). However, Contreras fails to distinguish the procedural posture of this case from the line of cases he cites to support his argument. The longstanding rule that a defendant is entitled to have the trial court instruct the jury on his case theory when evidence supports that theory arises

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primarily in cases in which the trial court refused the defendant's proposed instructions. *See, e.g., State v. Griffith*, 91 Wn.2d 572, 589 P.2d 799 (1979) (trial court refused defendant's proposed instruction on the issue of self defense and the Supreme Court held that defendant was entitled to have his case theory submitted to the jury); *Langan v. Valicopters, Inc.*, 88 Wn.2d 855, 567 P.2d 218 (1977) (trial court instructed the jury on wanton misconduct and the Supreme Court held each party is entitled to have their case theory presented). In this case, defense counsel's decision not to propose a "defense of another" instruction to the jury could have been a tactical decision to focus Contreras's self defense case theory. For example, Contreras argues in his SAG that he was defending Hernandez; however, she was a witness for the State who testified that Contreras did not appear afraid during the shooting and that he said "I just dumped on those fools" after the shooting. RP (Jan. 23, 2007) at 290. In light of her adverse testimony, defense counsel's decision not to propose this instruction was likely a tactical decision to focus on Contreras's stronger self defense theory.

Contreras next contends that his counsel was deficient because he proposed assault instructions in which the phrase "great bodily harm"⁹ was defined but also proposed act on

⁹ In instruction 8, the trial court defined "great bodily harm" as follows:

Great bodily harm means bodily injury that creates a probability of death, or which causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

Clerk's Papers (CP) at 91.

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appearance instructions¹⁰ in which the phrase “great personal injury”¹¹ was not defined. Contreras improperly relies on *State v. Rodriguez*, 121 Wn. App. 180, 87 P.3d 1201 (2004), to support his contention. In *Rodriguez*, Division Three of this court held that the trial court erred by giving assault instructions in which “great bodily harm” was a definitional element while also giving self defense instructions in which “great bodily harm” was the threshold of harm the defendant must have reasonably feared to act on appearances in self defense. *Rodriguez*, 121 Wn. App. at 186. The court held that the definition of “great bodily harm,” when read into the act on appearance instruction, decreased the State’s burden to disprove self defense. The court reasoned that with “great bodily harm” defined as “bodily injury that creates a probability of death,” the act on appearance instruction may have required the jury to find that the defendant reasonably feared a higher threshold of harm than necessary, i.e., great bodily harm. See *Rodriguez*, 121 Wn. App. at 186.

¹⁰ In instruction 19, the trial court provided:

A person is entitled to act on appearances in defending himself if that person believes in good faith and on reasonable grounds that he is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

CP at 102.

¹¹ In determining whether a homicide was justifiable, the phrase “great personal injury” means “an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering if it were inflicted upon either the slayer or another person.” 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 2.04.01, at 30-31 (3d ed. 2008) (WPIC).

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In this case, the trial court properly gave instructions that used “great bodily harm” for assault and “great personal injury” for self defense. *See accord State v. Walden*, 131 Wn.2d 469, 475 n. 3, 932 P.2d 1237 (1997) (finding that “great bodily harm” is an element of first degree assault and is distinctly defined in that context and therefore should not be used simultaneously in instructions on self defense). Defense counsel’s failure to propose a definition for “great personal injury” was not prejudicial. Even if the jury had received a definition for “great personal injury,” the trial outcome would not have been materially affected. Because Contreras claimed he feared for his life in an alleged drive-by shooting, the harm he claimed to have feared would clearly have satisfied both the standards of “great bodily harm” and “great personal injury.” *See e.g., State v. Freeburg*, 105 Wn. App 492, 505, 20 P.3d 984 (2001) (holding that using “great bodily harm” language did not prejudice the outcome of the case because defendant feared the threat of a gunshot at close range). Had the jury believed Contreras’s theory, it would have also believed that he faced a threat of “great bodily harm.” Thus, Contreras was not prejudiced by his defense counsel’s failure to propose a definition for “great personal injury.” The defense failed because the jury did not believe Contreras.

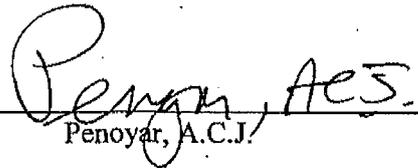
Finally, Contreras argues that his counsel was ineffective because he proposed a “no duty to retreat” instruction when there was “no evidence that the defendant could have avoided the use of force through a timely retreat.” SAG at 23-24. Contreras, however, fundamentally misunderstands the purpose of the “no duty to retreat” instruction as imposing an affirmative duty to retreat. The “no duty to retreat” instruction, based on WPIC 16.08, provides:

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by use of lawful force. The law does not impose a duty to retreat.

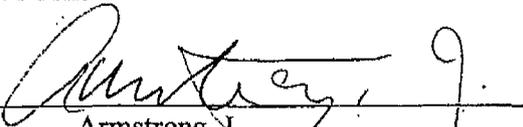
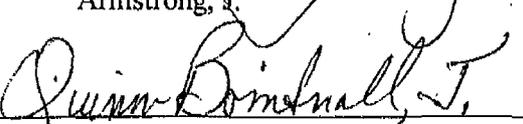
35962-6-II

CP at 103; Instr. 20. Defense counsel properly proposed a “no duty to retreat” instruction because there was evidence that Contreras was in a place where he had a right to be and evidence that he may have had reasonable grounds to believe that he was being attacked. The “no duty to retreat” instruction was proper given the facts of the case and defense counsel did not perform deficiently by proposing the instruction. We affirm Contreras’s conviction, but remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


Penoyar, A.C.J.

We concur:


Armstrong, J.

Quinn-Brintnall, J.

APPENDIX A - 1

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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 IN AND FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Respondent,

9 and

10 ADRIAN CONTRERAS-REBOLLAR,

11 Appellant.

CAUSE NO. 06-1-01643-4
Court of Appeals Case No. 40962-3-II

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CLERK'S PAPERS

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13 TO THE CLERK OF THE COURT:

14 Please prepare and transmit to the Court of Appeals, Division II, the following clerk's papers.

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N/A	A screen print out from LINX, above cause number, showing all filings made and all Proceedings.
11/30/06	Notice of Association

20 DATED this 15th day of April, 2011.

21
22 /s/Barbara Corey, WSB #11778

23 Attorney for Appellant

24 902 South 10th Street

25 Tacoma, WA 98405

(253) 779-0844

26 Certificate of Service:

27 I declare under penalty of perjury under the laws of the State
28 Of Washington that the following is true and correct: That on this
29 date, I delivered via ABC-LMI a copy of the Supplemental Designation
30 of Clerk's Papers to the Appellate Unit, Pierce County Prosecutor's Office
31 Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Room 946,
32 Tacoma, WA 98402-2171

4/15/2011

/s/Kim Redford, Legal Assistant

32 SUPPLEMENTAL DESIGNATION
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6 IN AND FOR PIERCE COUNTY

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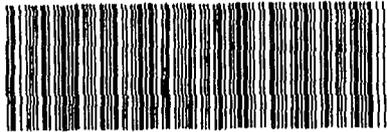
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32 SUPPLEMENTAL DESIGNATION
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 ADRIAN CONTRERAS-REBOLLAR,)
)
 Defendant.)
 _____)

NO. 06-1-01643-4

NOTICE OF ASSOCIATION

TO: THE CLERK OF THE ABOVE-ENTITLED COURT;
AND TO: THE PROSECUTING ATTORNEY
AND TO: JAMES SCHOENBERGER

COMES NOW JAY BERNEBURG of BERNEBURG WICKENS ARMIJO, P.S.,
and gives notice that Mr. Berneburg is associating with James Schoenberger for the above-
named Defendant.

DATED this 30 day of November 2006.

Jay Berneburg, WSBA 27165
Attorney for Defendant

NOTICE OF ASSOCIATION

Law Offices of
BERNEBURG WICKENS ARMIJO, P.S.
602 S. Yakima
Tacoma, WA 98405
(253) 572-1500; Fax (253) 572-2884



Defendant: **ADRIAN CONTRERAS REBOLLAR**
 Access: Public
 Jurisdiction: SUPERIOR CT - PIERCE CTY
 Initial Arrest Date: 04/12/2006
 Initial Bail Amount: \$500,000.00

Attorneys

Type	Name	Firm	Role
Pros	GREGORY L GREER	Prosecuting Attorney	LEAD COUNSEL

Charges

Count	Type	Description	RCW	Disposition	Sentence Date
1	Original	ASSAULT IN THE FIRST DEGREE	, <u>9A.36.011(1)</u> <u>(a)</u>		
	Final	ASSAULT IN THE FIRST DEGREE	, <u>9A.36.011(1)</u> <u>(a)</u>	GLTY AS CHGD/JURY	02/16/2007
<hr/>					
2	Original	ASSAULT IN THE FIRST DEGREE	, <u>9A.36.011(1)</u> <u>(a)</u>		
	Final	ASSAULT IN THE FIRST DEGREE	, <u>9A.36.011(1)</u> <u>(a)</u>	GLTY AS CHGD/JURY	02/16/2007
<hr/>					
3	Original	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE	, <u>9.41.040(2)</u> <u>(a)(i)</u>		
	Final	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE	, <u>9.41.040(2)</u> <u>(a)(i)</u>	PLED GLTY AS CHGD	02/16/2007

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04/13/2006	<u>ORDER SETTING TRIAL DATE</u>	Public	1	
04/13/2006	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2	
04/13/2006	<u>INFORMATION</u>	Public	2	
04/13/2006	<u>AFFIDAVIT/DETERMINATION FOR PROBABLE CAUSE</u>	Public	2	
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07/11/2006	<u>ORDER SETTING TRIAL DATE</u>	Public	1
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07/24/2006	<u>RETURN ON SUBPOENA, ANTUSH</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, ANTUSH</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, DEVAULT</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, DEVAULT</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
07/24/2006	<u>RETURN ON SUBPOENA, WERNER</u>	Public	1

07/24/2006	<u>WITNESS LIST</u>	Public	2
07/25/2006	<u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
07/25/2006	<u>RETURN ON SUBPOENA, KARL</u>	Public	1
07/26/2006	<u>RETURN ON SUBPOENA, CREEK</u>	Public	1
07/26/2006	<u>RETURN ON SUBPOENA -9</u>	Public	9
07/26/2006	<u>AFFIDAVIT/DECLARATION OF SERVICE</u>	Public	2
07/27/2006	<u>RETURN ON SUBPOENA, MILLER</u>	Public	1
07/27/2006	<u>RETURN ON SUBPOENA -ROSAS</u>	Public	1
07/31/2006	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
07/31/2006	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
07/31/2006	<u>RETURN ON SUBPOENA, PHAN</u>	Public	1
08/01/2006	<u>RETURN ON SUBPOENA, WADE</u>	Public	1
08/01/2006	<u>RETURN ON SUBPOENA, WADE</u>	Public	1
08/02/2006	<u>RETURN ON SUBPOENA, BRATCHER</u>	Public	1
08/07/2006	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
08/07/2006	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
08/07/2006	<u>RETURN ON SUBPOENA, MILLER</u>	Public	1
08/07/2006	<u>RETURN ON SUBPOENA, MILLER</u>	Public	1
08/15/2006	<u>OMNIBUS ORDER</u>	Public	2
08/22/2006	<u>RETURN ON SUBPOENA -KELLEY</u>	Public	1
08/23/2006	<u>RETURN ON SUBPOENA - SISOVAN</u>	Public	1
09/20/2006	<u>RECEIPT OF DISCOVERY</u>	Public	1
09/21/2006	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
09/22/2006	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1
09/22/2006	<u>RETURN ON SUBPOENA, PHAN</u>	Public	1
09/22/2006	<u>RETURN ON SUBPOENA, VOLD</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, KARL</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, CABER</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, KIM</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, SALLDIVAR-ROLLER</u>	Public	1
09/25/2006	<u>RETURN ON SUBPOENA, WADE</u>	Public	1
09/25/2006	<u>STATE'S LIST OF WITNESSES</u>	Public	2
09/26/2006	<u>RETURN ON SUBPOENA, CAMPBELL</u>	Public	1
09/26/2006	<u>RETURN ON SUBPOENA MORGAN</u>	Public	1
09/29/2006	<u>RETURN ON SUBPOENA -CREEK</u>	Public	4
09/29/2006	<u>RETURN ON SUBPOENA 6</u>	Public	6
10/02/2006	<u>RETURN ON SUBPOENA, BRATCHER</u>	Public	1
10/02/2006	<u>RETURN ON SUBPOENA, DEVAULT</u>	Public	1
10/02/2006	<u>RETURN ON SUBPOENA, WERNER</u>	Public	1
10/02/2006	<u>RETURN ON SUBPOENA SISOVAN</u>	Public	1
10/02/2006	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
10/03/2006	<u>RETURN ON SUBPOENA, SALLDIVAR-ROLLER</u>	Public	1
10/03/2006	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1

10/03/2006	e <u>RETURN ON SUBPOENA, WADE</u>	Public	1
10/03/2006	e <u>RETURN ON SUBPOENA, DEPOISTER</u>	Public	1
10/04/2006	e <u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
10/04/2006	e <u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
10/04/2006	e <u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
10/04/2006	e <u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
10/04/2006	i <u>WITNESS LIST</u>	Public	2
10/05/2006	e <u>RETURN ON SUBPOENA, CABER</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, KIM</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, KARL</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, CAMPBELL</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, WERNER</u>	Public	1
10/05/2006	e <u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
10/06/2006	e <u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
10/06/2006	e <u>RETURN ON SUBPOENA, PHAN</u>	Public	1
10/09/2006	e <u>RETURN ON SUBPOENA, MILLER</u>	Public	1
10/09/2006	i <u>RETURN ON SUBPOENA -11</u>	Public	11
10/09/2006	i <u>RETURN ON SUBPOENA KELLEY</u>	Public	1
10/11/2006	i <u>RETURN ON SUBPOENA SOLIS</u>	Public	1
10/16/2006	i <u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, DEPOISTER</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, CAMPBELL</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, WADE</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, VOLD</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, KARL</u>	Public	1
10/17/2006	e <u>RETURN ON SUBPOENA, SMITH</u>	Public	1
10/18/2006	e <u>RETURN ON SUBPOENA, CABER</u>	Public	1
10/18/2006	e <u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
10/18/2006	e <u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
10/18/2006	e <u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
10/19/2006	e <u>RETURN ON SUBPOENA, KIM</u>	Public	1
10/19/2006	i <u>RECEIPT OF DISCOVERY</u>	Public	1
10/19/2006	i <u>STATE'S LIST OF WITNESSES</u>	Public	2
10/20/2006	e <u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
10/20/2006	i <u>RETURN ON SUBPOENA 14</u>	Public	14
10/23/2006	e <u>RETURN ON SUBPOENA, MILLER</u>	Public	1
10/23/2006	i <u>AFFIDAVIT/DECLARATION OF SERVICE RUIZ</u>	Public	2
10/24/2006	e <u>RETURN ON SUBPOENA, WERNER</u>	Public	1
10/24/2006	i <u>ORDER FOR HEARING</u>	Public	1
10/24/2006	i <u>AFFIDAVIT/DECLARATION OF SERVICE JOHN DOE</u>	Public	2
10/25/2006	e <u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
10/25/2006	e <u>RETURN ON SUBPOENA, BRATCHER</u>	Public	1
10/26/2006	e <u>RETURN ON SUBPOENA, ANTUSH</u>	Public	1
10/27/2006	e <u>RETURN ON SUBPOENA, PHAN</u>	Public	1
10/30/2006	e <u>RETURN ON SUBPOENA, SALDIVAR-ROLLER</u>	Public	1
10/30/2006	i <u>MOTION TO COMPEL</u>	Public	10
10/31/2006	i <u>RECEIPT OF DISCOVERY</u>	Public	1
11/13/2006	e <u>RETURN ON SUBPOENA, CROUCH</u>	Public	1

11/13/2006	<u>FILED</u>	<u>AFFIDAVIT/DECLARATION OF SERVICE DANIELSON</u>	Public	1
11/14/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
11/14/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
11/15/2006	<u>FILED</u>	<u>AFFIDAVIT/DECLARATION OF SERVICE GRANT</u>	Public	2
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, KIM</u>	Public	1
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, WERNER</u>	Public	1
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, CABER</u>	Public	1
11/17/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, SALDIVAR-ROLLER</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, BRATCHER</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, VOLD</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, WADE</u>	Public	1
11/20/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1
11/20/2006	<u>FILED</u>	<u>STATE'S LIST OF WITNESSES</u>	Public	2
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, PHAN</u>	Public	1
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, DEPOISTER</u>	Public	1
11/21/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA 5</u>	Public	5
11/27/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, CAMPBELL</u>	Public	1
11/28/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA -8</u>	Public	8
11/30/2006	<u>FILED</u>	<u>NOTICE OF ASSOCIATION OF COUNSEL</u>	Public	1
12/04/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, ANTUSH</u>	Public	1
12/04/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, MILLER</u>	Public	1
12/04/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
12/05/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
12/06/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
12/07/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
12/07/2006	<u>FILED</u>	<u>AFFIDAVIT OF PREJUDICE</u>	Public	1
12/07/2006	<u>FILED</u>	<u>ASSIGNED TO</u>	Public	1
12/07/2006	<u>FILED</u>	<u>AFFIDAVIT OF PREJUDICE</u>	Public	1
12/07/2006	<u>FILED</u>	<u>ASSIGNED TO</u>	Public	1
12/11/2006	<u>FILED</u>	<u>ORDER DIRECTING ISSUANCE OF BENCH WARRANT</u>	Public	1
12/11/2006	<u>FILED</u>	<u>ORDER DIRECTING ISSUANCE OF BENCH WARRANT</u>	Public	1
12/11/2006	<u>FILED</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
12/11/2006	<u>FILED</u>	<u>ASSIGNED TO</u>	Public	1
12/11/2006	<u>FILED</u>	<u>DEFENDANT'S LIST OF WITNESSES</u>	Public	1
12/11/2006	<u>FILED</u>	<u>ASSIGNED TO</u>	Public	1
12/12/2006	<u>FILED</u>	<u>ORDER DIRECTING ISSUANCE OF BENCH WARRANT</u>	Public	1
12/12/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, KIM</u>	Public	1
12/12/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
12/12/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, CABER</u>	Public	1
12/12/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1
12/13/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
12/13/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
12/13/2006	<u>FILED</u>	<u>RETURN ON SUBPOENA, CAMPBELL</u>	Public	1

12/13/2006	<u>e</u>	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
12/13/2006	<u>e</u>	<u>RETURN ON SUBPOENA, WERNER</u>	Public	1
12/13/2006	<u>e</u>	<u>RETURN ON SUBPOENA, WADE</u>	Public	1
12/13/2006	<u>e</u>	<u>STATE'S LIST OF WITNESSES</u>	Public	2
12/14/2006	<u>e</u>	<u>RETURN ON SUBPOENA, MILLER</u>	Public	1
12/14/2006	<u>e</u>	<u>RETURN ON SUBPOENA, KARL</u>	Public	1
12/14/2006	<u>e</u>	<u>ORDER FOR HEARING</u>	Public	1
12/14/2006	<u>e</u>	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2
12/15/2006	<u>e</u>	<u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
12/15/2006	<u>e</u>	<u>RETURN ON SUBPOENA, PHAN</u>	Public	1
12/15/2006	<u>e</u>	<u>RETURN ON SUBPOENA -2</u>	Public	2
12/18/2006	<u>e</u>	<u>RETURN ON SUBPOENA, ANTUSH</u>	Public	1
12/18/2006	<u>e</u>	<u>NOTICE OF APPOINTMENT</u>	Public	1
12/18/2006	<u>e</u>	<u>RETURN ON SUBPOENA, SALDIVAR-ROLLER</u>	Public	1
12/18/2006	<u>e</u>	<u>ORDER FOR HEARING</u>	Public	1
12/19/2006	<u>e</u>	<u>RETURN ON SUBPOENA, VOLD</u>	Public	1
12/19/2006	<u>e</u>	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1
12/20/2006	<u>e</u>	<u>RETURN ON SUBPOENA, DEPOISTER</u>	Public	1
12/20/2006	<u>e</u>	<u>RETURN ON SUBPOENA, BRATCHER</u>	Public	1
12/21/2006	<u>e</u>	<u>RETURN ON SUBPOENA 7</u>	Public	7
12/21/2006	<u>e</u>	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2
12/21/2006	<u>e</u>	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2
12/22/2006	<u>e</u>	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
12/22/2006	<u>e</u>	<u>RETURN ON SUBPOENA 4</u>	Public	4
12/22/2006	<u>e</u>	<u>ORDER FOR HEARING</u>	Public	1
12/22/2006	<u>e</u>	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2
12/26/2006	<u>e</u>	<u>SHERIFF'S RETURN ON BW **MATERIAL WITNESS**</u>	Public	1
12/27/2006	<u>e</u>	<u>ORDER FOR HEARING</u>	Public	1
12/28/2006	<u>e</u>	<u>RETURN ON SUBPOENA</u>	Public	1
12/28/2006	<u>e</u>	<u>BAIL BOND</u>	Public	2
12/28/2006	<u>e</u>	<u>BAIL BOND</u>	Public	2
01/02/2007	<u>e</u>	<u>SHERIFF'S RETURN ON BW -MATERIAL WITNESS ROSAS</u>	Public	1
01/02/2007	<u>e</u>	<u>SHERIFF'S RETURN ON BW MATERIAL WITNESS ROSAS</u>	Public	1
01/03/2007	<u>e</u>	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1
01/03/2007	<u>e</u>	<u>CLERK'S MINUTE ENTRY</u>	Public	2
01/03/2007	<u>e</u>	<u>ORDER FOR HEARING</u>	Public	1
01/04/2007	<u>e</u>	<u>RETURN ON SUBPOENA, SALDIVAR-ROLLER</u>	Public	1
01/04/2007	<u>e</u>	<u>RETURN ON SUBPOENA, SHAKE</u>	Public	1
01/04/2007	<u>e</u>	<u>RETURN ON SUBPOENA, GRAHAM</u>	Public	1
01/04/2007	<u>e</u>	<u>RETURN ON SUBPOENA, SMITH</u>	Public	1
01/04/2007	<u>e</u>	<u>RETURN ON SUBPOENA, WERNER</u>	Public	1
01/05/2007	<u>e</u>	<u>RETURN ON SUBPOENA, PHAN</u>	Public	1
01/05/2007	<u>e</u>	<u>STATE'S LIST OF WITNESSES</u>	Public	2
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, CABER</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, ROBISON</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, BAMBICO</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, STRAIN</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, VANDORMOLEN</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, KIM</u>	Public	1
01/08/2007	<u>e</u>	<u>RETURN ON SUBPOENA, CROUCH</u>	Public	1

01/08/2007	e RETURN ON SUBPOENA, KARL	Public	1
01/08/2007	RETURN ON SUBPOENA 4	Public	4
01/09/2007	e RETURN ON SUBPOENA, CAMPBELL	Public	1
01/09/2007	e RETURN ON SUBPOENA, WADE	Public	1
01/09/2007	RETURN ON SUBPOENA 4	Public	4
01/09/2007	ORDER ACCELERATING TRIAL	Public	1
01/09/2007	NOTICE OF ASSOCIATION OF COUNSEL	Public	1
01/10/2007	e RETURN ON SUBPOENA, MILLER	Public	1
01/12/2007	CLERK'S MINUTE ENTRY	Public	2
01/12/2007	NOTE MATERIAL WITNESS AHRIA KELLEY BOOKINGS	Public	2
01/17/2007	SUBPOENA DUCES TECUM -4	Public	4
01/17/2007	e RETURN ON SUBPOENA, SMITH	Public	1
01/17/2007	e RETURN ON SUBPOENA, CAMPBELL	Public	1
01/17/2007	e RETURN ON SUBPOENA, BRATCHER	Public	1
01/17/2007	ORDER OF TRANSFER FROM INSTITUTION TO JAIL	Public	2
01/17/2007	ORDER FOR HEARING	Public	1
01/17/2007	STATEMENT OF DEFENDANT ON PLEA OF GUILTY	Public	4
01/17/2007	ASSIGNED TO	Public	1
01/17/2007	PLAINTIFF'S PROPOSED INSTRUCTIONS	Public	28
01/17/2007	ORDER ALLOWING JURY TO SEPARATE	Public	1
01/17/2007	STIPULATION AND ORDER FOR RETURN OF EXHIBITS AND/OR UNOPENED DEPOSITI	Public	1
01/18/2007	e RETURN ON SUBPOENA, DEVAULT	Public	1
01/18/2007	e RETURN ON SUBPOENA, MILLER	Public	1
01/18/2007	DEFENDANT'S LIST OF WITNESSES	Public	1
01/18/2007	PEREMPTORY CHALLENGE SHEET	Public	1
01/18/2007	JURY PANEL	Public	1
01/18/2007	ASSIGNED TO	Public	1
01/19/2007	MOTION TO GRANT IMMUNITY	Public	1
01/19/2007	ORDER GRANTING IMMUNITY	Public	3
01/22/2007	RECEIPT OF DISCOVERY	Public	1
01/24/2007	INSTRUCTIONS (1)	Public	2
01/24/2007	ORDER ESTABLISHING CONDITIONS OF RELEASE	Public	2
01/25/2007	MOTION TO DISQUALIFY & FOR A MISTRIAL	Public	26
01/25/2007	DEFENDANT'S LIST OF WITNESSES	Public	2
01/26/2007	AFFIDAVIT/DECLARATION IN SUPPORT	Public	4
01/26/2007	PROPOSED TESTIMONY OF BENITO CERVANTES	Public	2
01/29/2007	PLAINTIFF'S PROPOSED INSTRUCTIONS	Public	5
01/29/2007	WITNESS RECORD	Public	2
01/29/2007	INSTRUCTIONS	Public	2
01/30/2007	EXHIBITS RECEIVED IN VAULT	Public	8
01/30/2007	JURY NOTE	Public	1
01/30/2007	JURY NOTE	Public	1
01/30/2007	JURY PANEL SELECTION LIST	Public	3
02/01/2007	CLERK'S MINUTE ENTRY	Public	26
02/01/2007	ORDER FOR HEARING	Public	1
02/01/2007	INSTRUCTIONS (2)	Public	3
02/01/2007	INSTRUCTIONS (1)	Public	2
02/01/2007	TRANSCRIPT OF REGINA HERNANDEZ, PARTIAL	Public	3
02/01/2007	COURT'S INSTRUCTIONS TO JURY	Public	27
02/01/2007	VERDICT FORM A, GUILTY CNT I	Public	1

02/01/2007	<u>VERDICT FORM A-1 UNSIGNED</u>	Public	1
02/01/2007	<u>VERDICT FORM B, GUILTY CNT II</u>	Public	1
02/01/2007	<u>VERDICT FORM B-1 UNSIGNED</u>	Public	1
02/01/2007	<u>SPECIAL VERDICT FORM YES FIREARM CNT I</u>	Public	1
02/01/2007	<u>SPECIAL VERDICT FORM YES FIREARM CNT II</u>	Public	1
02/16/2007	<u>STIPULATION TO PRIOR RECORD</u>	Public	2
02/16/2007	<u>JUDGMENT & SENTENCE & WARRANT OF COMMITMENT DOC</u>	Public	13
02/16/2007	<u>NOTICE/ADVICE OF COLLATERAL ATTACK</u>	Public	2
02/16/2007	<u>ORDER FOR BIOLOGICAL SAMPLE</u>	Public	2
02/16/2007	<u>NOTICE OF APPEAL TO COURT OF APPEALS</u>	Public	1
02/16/2007	<u>MOTION AND AFFIDAVIT OF INDIGENCY</u>	Public	4
02/16/2007	<u>ORDER OF INDIGENCY</u>	Public	3
02/21/2007	<u>COST BILL</u>	Public	6
02/22/2007	<u>TRANSMITTAL LETTER COPY FILED</u>	Public	1
03/05/2007	<u>NOTICE OF APPOINTMENT OF APPELLATE COUNSEL</u>	Public	1
03/08/2007	<u>PERFECTION NOTICE FROM COURT OF APPEALS</u>	Public	2
03/13/2007	<u>ORDER FOR HEARING</u>	Public	1
04/03/2007	<u>DESIGNATION OF CLERK'S PAPERS</u>	Public	2
04/05/2007	<u>CLERK'S PAPERS PREPARED</u>	Public	4
04/05/2007	<u>CLERK'S PAPERS SENT</u>	Public	1
04/06/2007	<u>COST BILL *AMENDED*</u>	Public	2
05/09/2007	<u>ORDER FOR HEARING</u>	Public	1
05/11/2007	<u>ORDER OF TRANSFER FROM INSTITUTION TO JAIL</u>	Public	2
06/06/2007	<u>RESTITUTION INFORMATION</u>	Confidential	15
06/06/2007	<u>ORDER SETTING RESTITUTION</u>	Public	2
08/07/2007	VERBATIM REPORT TRANS TO DIV II *05-10-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *07-20-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *09-21-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *10-02-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *10-16-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *11-14-06*	Public	
08/07/2007	VERBATIM REPORT TRANS TO DIV II *12-11-06*	Public	
08/07/2007	<u>TRANSMITTAL LETTER VRP COPY FILED</u>	Public	1
08/07/2007	<u>NOTICE OF FILING A VERBATIM REPORT</u>	Public	1
08/10/2007	VERBATIM REPORT TRANS TO DIV II *01-03-07*	Public	
08/13/2007	<u>TRANSMITTAL LETTER VRP COPY FILED</u>	Public	1
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-17-07*VOL1	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-18-07*VOL2	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-22-07*VOL3	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-23-07*VOL4	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-24-07*VOL5	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-25-07*VOL6	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-29-07*VOL7	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *01-30-07*VOL8	Public	
09/05/2007	VERBATIM REPORT TRANS TO DIV II *02-16-07*	Public	
09/05/2007	<u>TRANSMITTAL LETTER VRP COPY FILED</u>	Public	1
11/28/2007	<u>ORDER OF INDIGENCY *AMENDED*</u>	Public	1
11/28/2007	<u>MOTION AND AFFIDAVIT OF INDIGENCY *AMENDED*</u>	Public	2
11/30/2007	<u>AFFIDAVIT OF INDIGENCY *AMENDED*</u>	Public	2
12/03/2007	<u>TRANSMITTAL LETTER COPY FILED</u>	Public	1

12/03/2007	e TRANSMITTAL LETTER COPY FILED	Public	1
02/06/2008	VERBATIM REPORT TRANS TO DIV II *01-18-07*	Public	
02/06/2008	e TRANSMITTAL LETTER VRP COPY FILED	Public	1
04/17/2008	e CLERK'S MINUTE ENTRY	Public	2
04/21/2008	e CLERK'S MINUTE ENTRY	Public	2
12/16/2008	e ORDER FOR HEARING	Public	1
12/23/2008	e RESTITUTION INFORMATION	Confidential	14
12/24/2008	e ORDER OF TRANSFER FROM INSTITUTION TO JAIL	Public	2
01/20/2009	e RESTITUTION INFORMATION	Confidential	4
01/23/2009	e ORDER SETTING RESTITUTION	Public	5
02/26/2009	e CLERK'S MINUTE ENTRY	Public	2
06/04/2009	e ORDER FOR HEARING	Public	1
06/10/2009	e ORDER OF TRANSFER FROM INSTITUTION TO JAIL	Public	2
07/28/2009	e ORDER FOR HEARING	Public	1
07/28/2009	e ORDER SETTING RESTITUTION AMENDED	Public	2
12/10/2009	e MOTION FOR TELEPHONIC HEARING	Public	12
12/16/2009	e NOTICE OF HEARING TELEPHONIC	Public	15
01/04/2010	e COPIES OF EMAILS	Public	3
04/19/2010	e MANDATE	Public	2
04/22/2010	e MANDATE - COURT ACTION REQUIRED	Public	19
05/12/2010	e ORDER FOR HEARING	Public	1
05/12/2010	e NOTICE OF HEARING	Public	2
05/17/2010	e ORDER OF TRANSFER FROM INSTITUTION TO JAIL	Public	3
05/26/2010	e RECEIPT OF DISCOVERY	Public	1
06/04/2010	e ORDER FOR HEARING	Public	1
06/04/2010	e ORDER ESTABLISHING CONDITIONS OF RELEASE	Public	2
06/25/2010	e ORDER FOR HEARING	Public	1
06/25/2010	e CLERK'S MINUTE ENTRY	Public	2
06/29/2010	e EXHIBITS RECEIVED	Public	1
06/29/2010	e ORDER FOR HEARING	Public	1
06/29/2010	e CLERK'S MINUTE ENTRY	Public	2
07/02/2010	e FINDINGS, OF FACT AND CONCLUSIONS OF LAW	Public	4
07/08/2010	e NOTICE OF WITHDRAWAL OF ATTORNEY	Public	1
07/14/2010	e NOTICE OF APPEARANCE ON APPEAL	Public	1
07/14/2010	e NOTICE OF APPEAL	Public	5
07/15/2010	e TRANSMITTAL LETTER COPY FILED	Public	1
07/21/2010	e LETTER FROM COURT OF APPEALS	Public	1
08/04/2010	e PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
08/05/2010	e ORDER OF INDIGENCY *PARTIAL*	Public	2
08/05/2010	e TRANSMITTAL LETTER COPY FILED	Public	1
09/16/2010	e LETTER FROM COURT OF APPEALS	Public	1
09/23/2010	e DESIGNATION OF CLERK'S PAPERS	Public	2
10/05/2010	e CLERK'S PAPERS PREPARED	Public	3
10/05/2010	e INDIGENCY BILLING VOUCHER	Public	1
10/05/2010	e CLERK'S PAPERS SENT	Public	1
11/30/2010	e NOTICE OF FILING A VERBATIM REPORT	Public	1
11/30/2010	VERBATIM REPORT TRANS TO DIV II *06-29-10*	Restricted	
12/01/2010	e TRANSMITTAL LETTER VRP COPY FILED	Public	1
01/13/2011	VERBATIM REPORT TRANS TO DIV II *7/28/09*	Restricted	
01/13/2011	e TRANSMITTAL LETTER VRP COPY FILED	Public	1

**Proceedings**

Date	Judge	Dept Type	Outcome
04/13/2006 01:30 PM	CRIMINAL DIVISION 1	CD1 ARRAIGNMENT	ARRAIGNED
04/27/2006 08:30 AM	CRIMINAL DIVISION 1	CD1 PRE-TRIAL CONFERENCE	HELD
05/10/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ CONTINUANCE/OH HEARING	HELD
05/25/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
06/27/2006 08:30 AM	CRIMINAL DIVISION 1	CD1 OMNIBUS HEARING	CONTINUED
07/06/2006 08:30 AM	CRIMINAL DIVISION 1	CD1 OMNIBUS HEARING	CONTINUED
07/13/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ OMNIBUS HEARING	CONTINUED
07/13/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ MOTION-WITHDRAWAL/SUBSTITUTION	HELD
07/20/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ OMNIBUS HEARING	CONTINUED
07/20/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ RETURN WITH ATTY	HELD
07/20/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ CONTINUANCE	HELD
08/15/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
08/15/2006 08:30 AM	CRIMINAL DIVISION 1	CD1 OMNIBUS HEARING	HELD
09/21/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
10/02/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
10/16/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
10/31/2006 01:30 PM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ MOTION-DISCOVERY	CANCELLED
11/13/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
11/14/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
12/04/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED/ NO COURTOOMS
12/05/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED/ NO COURTOOMS
12/06/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED/ NO COURTOOMS
12/07/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED/ NO COURTOOMS
12/11/2006 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
12/14/2006 01:30 PM	CRIMINAL DIVISION 1	CD1 BAIL HEARING-MATERIAL WITNESS	HELD
12/19/2006 01:30 PM	CRIMINAL DIVISION 1	CD1 BAIL HEARING-MATERIAL WITNESS	HELD
12/21/2006 01:30 PM	CRIMINAL DIVISION 1	CD1 BAIL HEARING-MATERIAL WITNESS	HELD
12/22/2006 01:30 PM	CRIMINAL DIVISION 1	CD1 BAIL HEARING-MATERIAL WITNESS	HELD
01/03/2007 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED
01/03/2007 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ BAIL HEARING-MATERIAL WITNESS	HELD
01/12/2007 01:30 PM	JOHN R. HICKMAN	22 BAIL HEARING-MATERIAL WITNESS	HELD
01/16/2007 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CONTINUED/ NO COURTOOMS

01/17/2007 08:30 AM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ JURY TRIAL	CANCELLED
01/17/2007 08:30 AM	RONALD E. CULPEPPER	17 JURY TRIAL	HELD
01/22/2007 01:30 PM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ BAIL HEARING-MATERIAL WITNESS	CANCELLED
02/02/2007 01:30 PM	RONALD E. CULPEPPER	17 SENTENCING DATE	CONTINUED
02/16/2007 01:30 PM	RONALD E. CULPEPPER	17 SENTENCING DATE	HELD
05/09/2007 09:00 AM	CRIMINAL DIVISION 1	CD1 RESTITUTION HEARING	CONTINUED
06/06/2007 09:00 AM	RONALD E. CULPEPPER	17 RESTITUTION HEARING	HELD
11/28/2007 09:00 AM	RONALD E. CULPEPPER	17 EXPARTE ACTION WITH ORDER HELD	HELD
01/23/2009 01:30 PM	RONALD E. CULPEPPER	17 RESTITUTION HEARING	HELD
07/24/2009 01:30 PM	RONALD E. CULPEPPER	17 RESTITUTION HEARING	CONTINUED
07/27/2009 01:30 PM	RONALD E. CULPEPPER	17 RESTITUTION HEARING	CONTINUED
07/28/2009 01:30 PM	CRIMINAL DIVISION-PRESIDING JUDGE	CDPJ RESTITUTION HEARING	HELD
06/04/2010 09:00 AM	CRIMINAL DIVISION 2	CD2 HEARING	HELD
06/25/2010 01:30 PM	RONALD E. CULPEPPER	17 SENTENCING DATE	CONTINUED
06/29/2010 09:00 AM	RONALD E. CULPEPPER	17 RESENTENCING	HELD
07/02/2010 01:30 PM	RONALD E. CULPEPPER	17 PRESENTATION OF ORDER	HELD

Incidents

Incident Number	Law Enforcement Agency	Offense Date
061020028	TACOMA POLICE DEPARTMENT	04/12/2006

Superior Court Co-Defendants

Cause Number	Defendant

Judgments

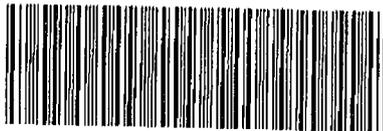
Cause #	Status	Signed	Effective	Filed
<u>07-9-02173-7</u>	OPEN as of 02/16/2007	RONALD E. CULPEPPER on 02/16/2007	02/16/2007	02/16/2007

-
- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
 - Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and Truancy.
 - The names provided in this calendar cannot be associated with any particular individuals without individual case research.
 - Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.

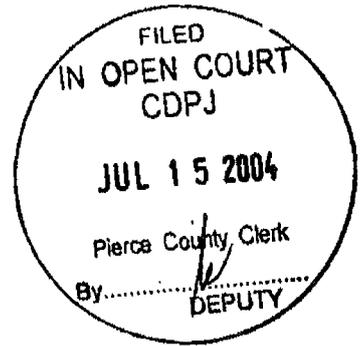
Created: Friday April 15, 2011 12:06PM

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APPENDIX B



04-1-01908-9 21362868 JDSVCJ 07-15-04



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 04-1-01908-9

vs.

ADRIAN CONTRERAS,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

JUL 15 2004

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

- 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

04-1-01908-9

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 7/15/04

By direction of the Honorable

[Handwritten Signature]
JUDGE
KEVIN STOCK
[Handwritten Signature]
By: DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUL 15 2004

Jq1
Chris Hutton
Deputy

FILED
IN OPEN COURT
CDPJ
JUL 15 2004
Pierce County Clerk
By: DEPUTY

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

_____ day of _____, _____.

KEVIN STOCK, Clerk

By: _____ Deputy

kls



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-01908-9

vs.

JUDGMENT AND SENTENCE (JS)

ADRIAN CONTRERAS

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

JUL 15 2004

SID: 20977722
DOB: 03/11/1985

I. HEARING

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

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 7/15/04 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE THIRD DEGREE (E32)	9A.36.031(1)(a) 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530		04/15/04	041060722

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

as charged in the Amended Information

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I. RCW 9.94A.602, .510.

04-9-08412-2

04-1-01908-9

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	Unl Poss Imit CSWID	03/11/03	Pierce Co.	02/05/03	Juv	NV

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	0	III	1-3 mos.	6 mos DWSE	7-9 mos.	5 yrs.

2.4 **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW, Chapter 379, Section 22, Laws of 2003.

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

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

III. JUDGMENT

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

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

04-1-01908-9

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ 3.02 Restitution to: Mega Foods at 7911 S. Husmer ST
 Restitution to: Tacoma, WA
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 100.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 110.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 813.02 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per doc per month commencing upon return RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] defendant waives any right to be present at any restitution hearing (defendant's initials): _____

~~RESTITUTION.~~ Order Attached As set above

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

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

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

Office of Prosecuting Attorney
 946 County-City Building
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

04-1-01908-9

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

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

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

No direct / indirect contact w/ victim / victim business
Forfeit weapon now in property room.

4.11 BOND IS HEREBY EXONERATED

4.12 JAIL ONE YEAR OR LESS. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

<u>3</u> days/months on Count	<u>I</u>	_____ days/months on Count	_____
_____ days/months on Count	_____	_____ days/months on Count	_____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>6</u> months on Count No	<u>I</u>	_____ months on Count No	_____
_____ months on Count No	_____	_____ months on Count No	_____
_____ months on Count No	_____	_____ months on Count No	_____

Sentence enhancements in Counts I shall run
[] concurrent [X] consecutive to each other.

Sentence enhancements in Counts I shall be served
[X] flat time [] subject to earned good time credit 9 months

Actual number of months of total confinement ordered is: _____

[X] CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

04-1-01908-9

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] the sentence herein shall run consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

[] PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

- [] Work Crew RCW 9.94A.135
- [] Home Detention RCW 9.94A.180, .190
- [] Work Release RCW 9.94A.180
- [] BTC Facility

[] CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.380(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[] ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

[] Alternatives to total confinement were not used because of: _____

- [] criminal history
- [] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

91 days

4.13 COMMUNITY [] SUPERVISION ~~of~~ CUSTODY. RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in [] community supervision (Offense Pre 7/1/00) or ~~X~~ community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- [] remain in prescribed geographic boundaries specified by the community corrections officer
- [] notify the community corrections officer of any change in defendant's address or employment
- [] Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

Other conditions: _____

04-1-01908-9

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589. The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here:

4.14 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections:

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 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 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.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 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, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

5.7 OTHER:

04-1-01908-9

DONE in Open Court and in the presence of the defendant this date: 7/15/04

JUDGE
Print name

S. Smith-Arnus

Deputy Prosecuting Attorney

Attorney for Defendant

Print name:

Print name:

WSB #

32184

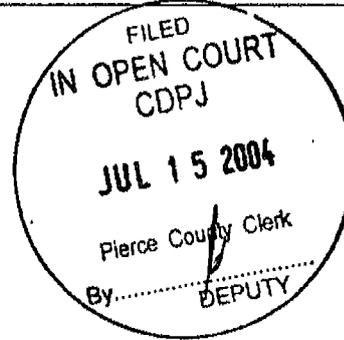
WSB #

6510

Defendant

Print name:

Adm Contreras



04-1-01908-9

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CERTIFICATE OF CLERK

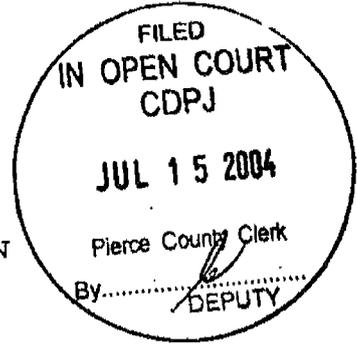
CAUSE NUMBER of this case: 04-1-01908-9

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

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

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

04-1-01908-9



IDENTIFICATION OF DEFENDANT

SID No. 20977722
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/11/1985

FBI No. 351068AC2

Local ID No. UNKNOWN

PCN No. 538099635

Other

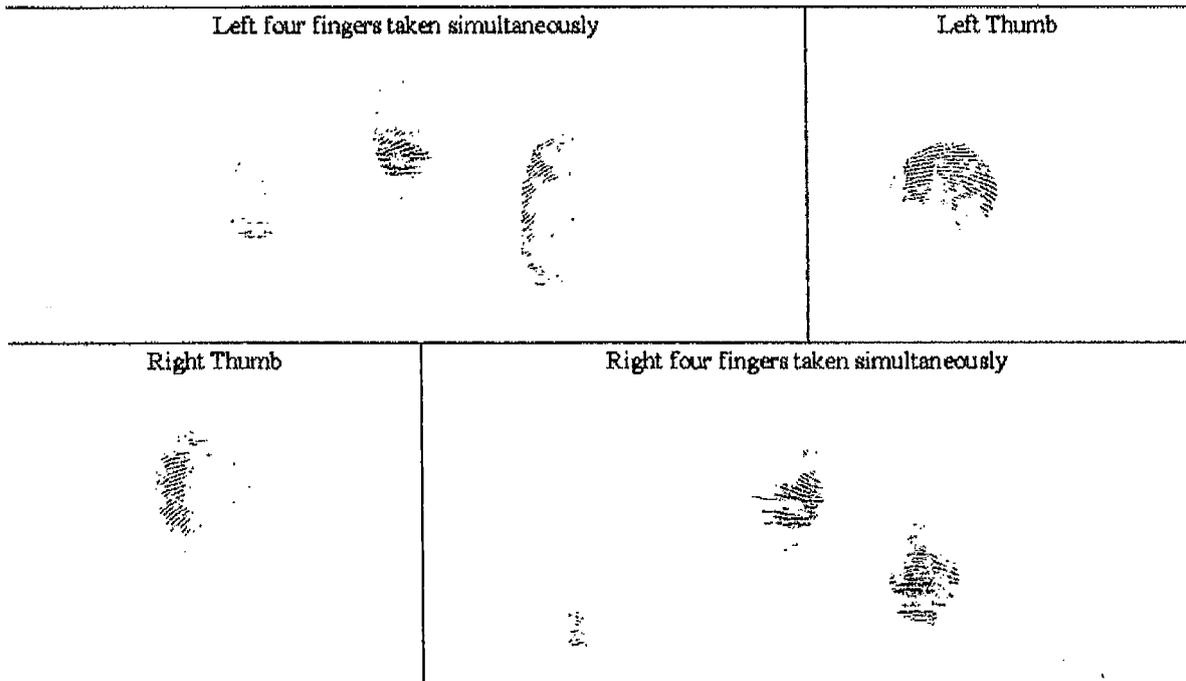
Alias name, SSN, DOB: Adrian Contreras-Robollar

Race: Asian/Pacific Islander Black/African-American Caucasian Native American Other: :

Ethnicity: Hispanic Non-Hispanic

Sex: Male Female

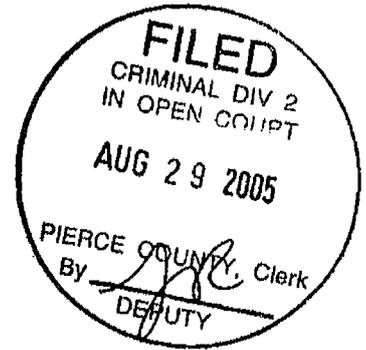
FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, L. Shepman Dated: 7/15/04

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____



05-1-03618-6 23823557 JDSWCJ 08-29-05

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 05-1-03618-6

vs.

ADRIAN CONTRERAS-REBOLLAR,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

AUG 29 2005

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 8.29.05

By direction of the Honorable

B. Chesnut

JUDGE

KEVIN STOCK

CLERK

Chris Hutton

By:

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

AUG 29 2005 By Chris Hutton Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

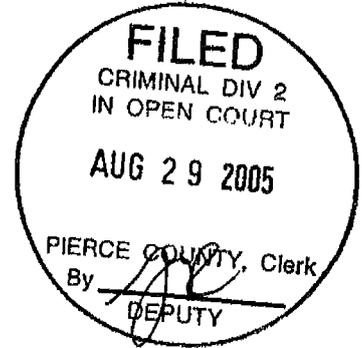
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

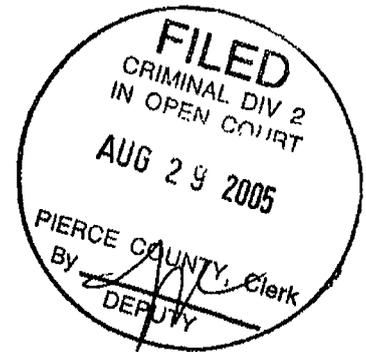
_____ day of _____, _____.

KEVIN STOCK, Clerk

By: _____ Deputy

kls





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

AUG 29 2005

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-03618-6

vs.

JUDGMENT AND SENTENCE (JS)

ADRIAN CONTRERAS-REBOLLAR

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

SID: WA20977722
DOB: 03/11/1985

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 8/29/05
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)	9.41.010(12) 9.41.040(2)(a)(i)	—	07/21/05	052021274

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

as charged in the Amended Information

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

05-9-10-12-1

05-1-03618-6

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPICSWID	03/11/03		02/05/03	Juv	NV
2	ASLT 2	07/15/04	Pierce Co.	04/15/04	A	NV

[] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	1	III	3-8 MOS.	NONE	3-8 MOS.	5 YRS.

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [] above [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

III. JUDGMENT

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

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

05-1-03618-6

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 400 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 110 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 1110 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per Clerk per month commencing per Clerk. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 [] shall be set by the prosecutor.
 [] is scheduled for _____
 [] defendant waives any right to be present at any restitution hearing (defendant's initials): _____
 [] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

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

4.6 COSTS ON APPEAL

05-1-03618-6

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

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

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

4.11 BOND IS HEREBY EXONERATED

4.12 JAIL ONE YEAR OR LESS. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

<u>3</u> days/months on Count	<u>I</u>	_____ days/months on Count	_____
_____ days/months on Count	_____	_____ days/months on Count	_____

Actual number of months of total confinement ordered is: 3 months

[X] CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

_____ The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

_____ The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] the sentence herein shall run consecutively to the felony sentence in cause number(s) _____

05-1-03618-6

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

Work Crew RCW 9.94A.135 Home Detention RCW 9.94A.180, .190

Work Release RCW 9.94A.180

CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonssex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

BTC Facility

ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

Alternatives to total confinement were not used because of: _____

criminal history failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number: RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

CTS of 40 days

4.13 COMMUNITY SUPERVISION CUSTODY. RCW 9.94A.505. Defendant shall serve _____ months (up to 12 months) in community supervision (Offense Pre 7/1/00) or community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

remain in prescribed geographic boundaries specified by the community corrections officer notify the community corrections officer of any change in defendant's address or employment

Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

Other conditions: _____

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense,

unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589. The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

4.14 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

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 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 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.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

05-1-03618-6

5.7 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 8.29.05

JUDGE

Print name

B. Chushcoff

BRYAN E. CHUSHCOFF

Siome J. Hudlow

Deputy Prosecuting Attorney

Print name:

WSB # 25104

J. L. J.

Attorney for Defendant

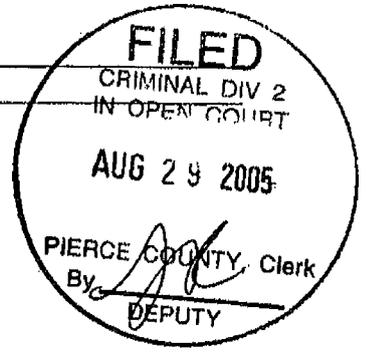
Print name: JAJ

WSB # 31813

Adrian Contreras

Defendant

Print name: _____



05-1-03618-6

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 05-1-03618-6

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

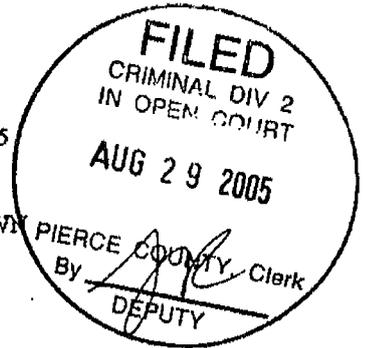
WITNESS my hand and seal of the said Superior Court affixed this date: _____

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

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05-1-03618-6

IDENTIFICATION OF DEFENDANT



SID No. WA20977722
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/11/1985

FBI No. 351068AC2

Local ID No. UNKNOWN

PCN No. 538490008

Other

Alias name, SSN, DOB: ADRIAN CONTRERAS

Race:

Asian/Pacific Islander

Black/African-American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

Other: :

Non-Hispanic

Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

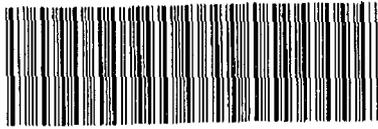
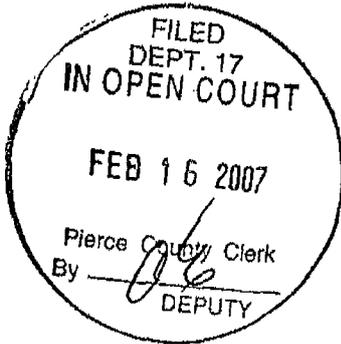
Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Richards Dated: 8/29/05

DEFENDANT'S SIGNATURE: Adrian Contreras

DEFENDANT'S ADDRESS: _____



06-1-01643-4 27004414 JDSWCD 02-21-07

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 06-1-01643-4

vs.

ADRIAN CONTRERAS-REBOLLAR,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

JAN 21 2007

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

06-1-01643-4

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 2.16.07

By direction of the Honorable

[Signature]
JUDGE
KEVIN STOCK RONALD CULPEPPER

CLERK
By: *[Signature]*
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date JAN 21 2007 By *[Signature]* Deputy

FILED
DEPT. 17
IN OPEN COURT
FEB 16 2007
Pierce County Clerk
By *[Signature]*
DEPUTY

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

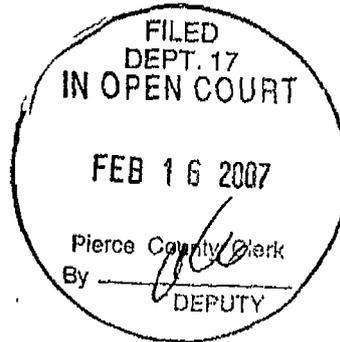
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk

By: _____ Deputy

klk

06-1-01643-4



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-01643-4

vs.

ADRIAN CONTRERAS-REBOLLAR

Defendant.

JUDGMENT AND SENTENCE (FJS)

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (DOSA), 4.15, 2, 5.3, 5.6 and 5.8

JAN 21 2007

SID: WA20977722
DOB: 03/11/85

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 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94a.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94a.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
III	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE	9.41.010(12) 9.41.040(2)(a)(i)	NONE	04/12/06	061200028

JUDGMENT AND SENTENCE (JS)
(Felony) (6/2006) Page 1 of 10

07-9-02172-7

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

06-1-01643-4

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Original Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II RCW 9.94A.602, .510
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPIMCSWID	03/11/03		02/05/03	Juv	NV
* 2	ASLT 3	07/15/04	Pierce Co.	04/15/04	A	NV
3	UPOF 2	08/29/05	Pierce Co.	07/21/05	A	NV

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

* 1 additional point included on Counts I & II 1/2 Def. on comm. custody at time of present offense date.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3.5	XII	120-160 MOS. / 29-171	60 MOS.	180-220 MOS. / 89-231	LIFE
II	0	XII	93-123 MOS.	60 MOS.	153-183 MOS.	LIFE
III	4.5	III	12+16 MOS. / 7-22	NONE	12+16 MOS.	5 YRS.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

III. JUDGMENT

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

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ LOC Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 1500 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 2,300 TOTAL

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for _____

defendant waives any right to be present at any restitution hearing (defendant's initials): _____

RESTITUTION. Order Attached

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4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

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

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with Nick Solis; Ahria Kelly (12-22-83) (8-30-87) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

Empty rectangular box for additional notes or conditions.

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

150 months on Count I months on Count
110 months on Count II months on Count

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20 months on Count III months on Count

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I months on Count No

60 months on Count No II months on Count No

months on Count No months on Count No

Sentence enhancements in Counts I + II shall run
 concurrent consecutive to each other.
Sentence enhancements in Counts I + II shall be served
 flat time subject to earned good time credit

Actual number of months of total confinement ordered is: 380 months

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: I + II

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced.

Confinement shall commence immediately unless otherwise set forth here:

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 310 DAYS

4.13 COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 24 to 48 Months;

Count II for a range from: 24 to 48 Months;

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Count III for a range from: NA to _____ 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 for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

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 DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. 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 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 not consume any alcohol.

Defendant shall have no contact with: (See paragraph 4.9)

Defendant shall remain within outside of a specified geographical boundary, to wit: Per CCO.

The defendant shall participate in the following crime-related treatment or counseling services: Per CCO.

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: See Appendix F.

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.14 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

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

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 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **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.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A
- 5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

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5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 2-16-07

JUDGE

Print name

[Signature]
Ronald C. Pepper

[Signature]
Deputy Prosecuting Attorney
Print name: GREGORY L. GREER
WSB # 22936

Attorney for Defendant

Print name:

WSB #

[Signature]
James Schoenberger
33603

Defendant

Print name:

Adrian Contreras Rebollar

FILED
DEPT. 17
IN OPEN COURT
FEB 16 2007
[Signature]

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. IF I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

[Signature]
Defendant refused to sign
RFC 2/16/07

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-01643-4

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

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

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

IDENTIFICATION OF COURT REPORTER

 Karla Johnson
Court Reporter

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO.

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: See paragraph 4.9

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: _____

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IDENTIFICATION OF DEFENDANT

SID No. WA20977722 Date of Birth 03/11/85
(If no SID take fingerprint card for State Patrol)

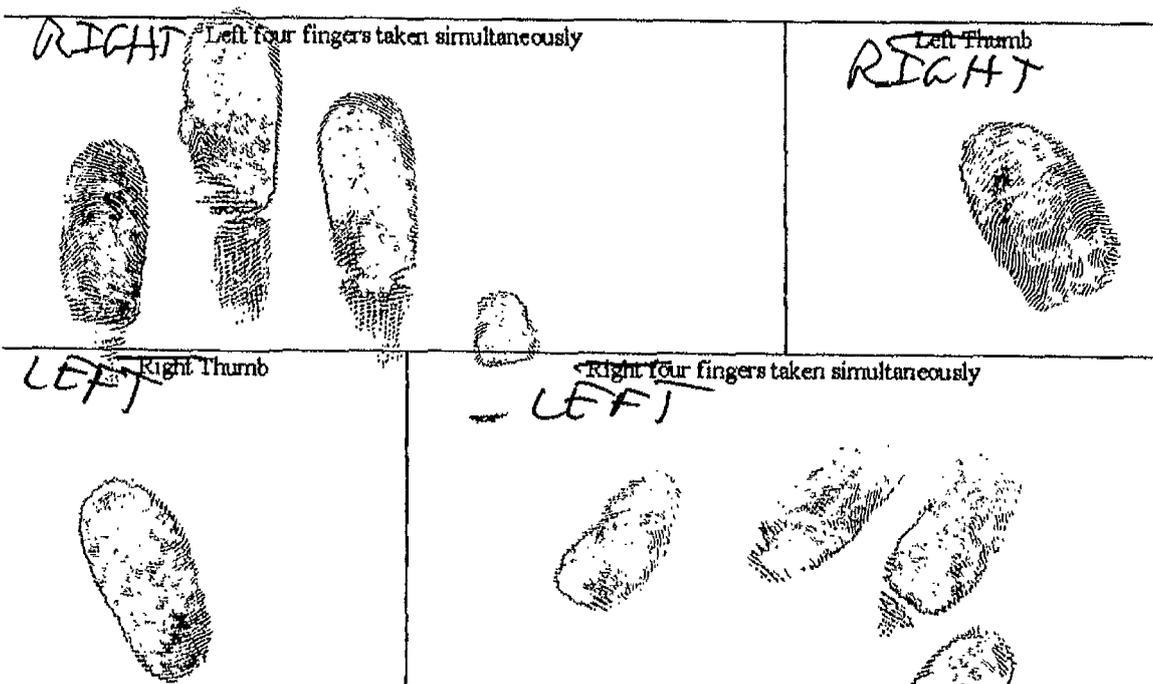
FBI No. 351068AC2 Local ID No. UNKNOWN

PCN No. 538731871 Other

Alias name, SSN, DOB: ADRIAN CONTRERAS; ADRIAN CONTRERAS REBOLLAR; ADRIAN A. CONTRERAS REBOLLER

Race:	<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	Ethnicity:	<input checked="" type="checkbox"/> Hispanic	Sex:	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other:			<input type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female	

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Al Edwards Dated: 7-16-07

DEFENDANT'S SIGNATURE: Refused

DEFENDANT'S ADDRESS: _____

APPENDIX C

CONTRERAS-REBOLLAR CONVICTION TIMELINE/CALENDAR

2004 Conviction Assault 3/DWSE

DATE OF CONVICTION	TIME RECEIVED	CREDIT FOR TIME SERVED	PRESUMED GOOD TIME	CONCLUSION OF SENTENCE	COMMENCEMENT OF COMMUNITY SERVICE
7/15/04	3 mos reg (90 days) 6 mos flat (180 days) 12 mos comm. cust.	91 days	30 days	12/10/2004	12/11/2004

Total days:

90 – 30 days good time = 60 days +180 days flat time = 240 days

240 – 91 days credit for time served = 149 days total confinement

CALENDAR OF CONFINEMENT
149 DAYS BEGINNING 7/15/04 ENDING 12/10/04

2004

April							May							June						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3							1				1	2	3	4	5
4	5	6	7	8	9	10	2	3	4	5	6	7	8	6	7	8	9	10	11	12
11	12	13	14	15	16	17	9	10	11	12	13	14	15	13	14	15	16	17	18	19
18	19	20	21	22	23	24	16	17	18	19	20	21	22	20	21	22	23	24	25	26
25	26	27	28	29	30		23	24	25	26	27	28	29	27	28	29	30			
							30	31												
July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3		1	2	3	4	5	6	7			1	2	3	4	
4	5	6	7	8	9	10	8	9	10	11	12	13	14	5	6	7	8	9	10	11
11	12	13	14	15	16	17	15	16	17	18	19	20	21	12	13	14	15	16	17	18
18	19	20	21	22	23	24	22	23	24	25	26	27	28	19	20	21	22	23	24	25
25	26	27	28	29	30	31	29	30	31					26	27	28	29	30		
October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2			1	2	3	4	5	6			1	2	3	4		
3	4	5	6	7	8	9	7	8	9	10	11	12	13	5	6	7	8	9	10	11
10	11	12	13	14	15	16	14	15	16	17	18	19	20	12	13	14	15	16	17	18
17	18	19	20	21	22	23	21	22	23	24	25	26	27	19	20	21	22	23	24	25
24	25	26	27	28	29	30	28	29	30					26	27	28	29	30	31	
31																				

JULY 15, 2004 – BEGAN SERVING SENTENCE

DECEMBER 10, 2004 – FINISHED SENTENCE

DECEMBER 11, 2004 – BEGAN COMMUNITY CUSTODY

COMMUNITY SERVICE CALENDAR

December 2004	January 2005	February 2005
SuMoTuWeThFrSa	SuMoTuWeThFrSa	SuMoTuWeThFrSa
1 2 3 4	1	1 2 3 4 5
5 6 7 8 9 10 11	2 3 4 5 6 7 8	6 7 8 9 10 11 12
12 13 14 15 16 17 18	9 10 11 12 13 14 15	13 14 15 16 17 18 19
19 20 21 22 23 24 25	16 17 18 19 20 21 22	20 21 22 23 24 25 26
26 27 28 29 30 31	23 24 25 26 27 28 29 30 31	27 28

March 2005	April 2005	May 2005
SuMoTuWeThFrSa	SuMoTuWeThFrSa	SuMoTuWeThFrSa
1 2 3 4 5	1 2	1 2 3 4 5 6 7
6 7 8 9 10 11 12	3 4 5 6 7 8 9	8 9 10 11 12 13 14
13 14 15 16 17 18 19	10 11 12 13 14 15 16	15 16 17 18 19 20 21
20 21 22 23 24 25 26	17 18 19 20 21 22 23	22 23 24 25 26 27 28
27 28 29 30 31	24 25 26 27 28 29 30	29 30 31

June 2005	July 2005	August 2005
SuMoTuWeThFrSa	SuMoTuWeThFrSa	SuMoTuWeThFrSa
1 2 3 4	1 2	1 2 3 4 5 6
5 6 7 8 9 10 11	3 4 5 6 7 8 9	7 8 9 10 11 12 13
12 13 14 15 16 17 18	10 11 12 13 14 15 16	14 15 16 17 18 19 20
19 20 21 22 23 24 25	17 18 19 20 21 22 23	21 22 23 24 25 26 27
26 27 28 29 30	24 25 26 27 28 29 30 31	28 29 30 31

September 2005	October 2005	November 2005
SuMoTuWeThFrSa	SuMoTuWeThFrSa	SuMoTuWeThFrSa
4 2 3	1	1 2 3 4 5
4 5 6 7 8 9 10	2 3 4 5 6 7 8	6 7 8 9 10 11 12
11 12 13 14 15 16 17	9 10 11 12 13 14 15	13 14 15 16 17 18 19
18 19 20 21 22 23 24	16 17 18 19 20 21 22	20 21 22 23 24 25 26
25 26 27 28 29 30	23 24 25 26 27 28 29 30 31	27 28 29 30

December 2005
SuMoTuWeThFrSa
1 2 3
4 5 6 7 8 9 10
11 12 13 14 15 16 17
18 19 20 21 22 23 24
25 26 27 28 29 30 31

DECEMBER 11, 2004 – BEGAN COMMUNITY CUSTODY
AUGUST 28, 2005 – ENDED COMMUNITY CUSTODY [TOLLING] (TOTAL 261 DAYS CC)
AUGUST 28, 2005 THRU SEPTEMBER 18, 2005 – SERVED TIME ON FIREARM CHARGE
SEPTEMBER 19, 2005 – BEGAN COMMUNITY CUSTODY AGAIN
DECEMBER 31, 2005 – ENDED 365 DAYS COMMUNITY CUSTODY

EXPLANATION OF TOLL PERIOD

**2005 Conviction
UPOF 2**

DATE OF PLEA & SENTENCE	TIME RECEIVED	CREDIT FOR TIME SERVED	PRESUMED GOOD TIME	CONCLUSION OF SENTENCE	COMMENCEMENT OF COMMUNITY SERVICE
8/29/05	3 mos (90 days)	40 days	30 days	9/18/05	NONE

Total days:

90 – 30 days good time = 60 days

60 - 40 days credit for time served = 20 days total confinement

August 2005							September 2005						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6			1	2	3		
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

August 29, 2005 – September 18, 2005 Community Custody Tolloed

**2006 CONVICTION
CHARGED WITH ASSAULT 1
DATE OF INCIDENT APRIL 12, 2006**

December 2005							January 2006							February 2006						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3		1	2	3	4	5	6	7				1	2	3	4
4	5	6	7	8	9	10	8	9	10	11	12	13	14	5	6	7	8	9	10	11
11	12	13	14	15	16	17	15	16	17	18	19	20	21	12	13	14	15	16	17	18
18	19	20	21	22	23	24	22	23	24	25	26	27	28	19	20	21	22	23	24	25
25	26	27	28	29	30	31	29	30	31					26	27	28				
March 2006							April 2006													
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa							
			1	2	3	4							1							
5	6	7	8	9	10	11	2	3	4	5	6	7	8							
12	13	14	15	16	17	18	9	10	11	12	13	14	15							
19	20	21	22	23	24	25	16	17	18	19	20	21	22							
26	27	28	29	30	31		23	24	25	26	27	28	29							
							30													

December 31, 2005 – Finished Community Custody
 April 12, 2006 – Date of Incident of 2006 Conviction

APPENDIX D

mits the lawyer to reveal such information to prevent the commission of any crime.

[21] [Reserved.]

[22] [Reserved.]

[23] The exceptions to the general rule prohibiting unauthorized disclosure of information relating to the representation "should not be carelessly invoked." *In re Boelter*, 139 Wn.2d 81, 91, 985 P.2d 328 (1999). A lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of avoidable disclosure.

[24] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer to reveal information related to the representation to comply with "other law." Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction. Limiting the exception to compliance with a court order protects the client's interest in maintaining confidentiality while insuring that any determination about the legal necessity of revealing confidential information will be made by a court. It is the need for a judicial resolution of such issues that necessitates the omission of "other law" from this Rule.

Withdrawal

[25] After withdrawal the lawyer is required to refrain from disclosing the client's confidences, except as otherwise permitted by Rules 1.6 or 1.9. A lawyer is not prohibited from giving notice of the fact of withdrawal by this Rule, Rule 1.8(b), or Rule 1.9(c). If the lawyer's services will be used by the client in furthering a course of criminal or fraudulent conduct, the lawyer must withdraw. See Rule 1.16(a)(1). Upon withdrawal from the representation in such circumstances, the lawyer may also disaffirm or withdraw any opinion, document, affirmation, or the like. If the client is an organization, the lawyer may be in doubt about whether contemplated conduct will actually be carried out by the organization. When a lawyer requires guidance about compliance with this Rule in connection with an organizational client, the lawyer may proceed under the provisions of Rule 1.13(b).

Other

[26] This Rule does not relieve a lawyer of his or her obligations under Rule 5.4(b) of the Rules for Enforcement of Lawyer Conduct.

[Comment adopted effective September 1, 2006.]

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

[Amended effective September 1, 1995; September 1, 2006.]

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been

established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

See also Washington Comment [36].

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

See also Washington Comment [37].

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] [Washington revision] When lawyers representing different clients in the same matter or in substantially related matters are related as parent, child, sibling, or spouse, or if the lawyers have some other close familial relationship or if the lawyers are in a personal intimate relationship with one another, there may be a significant risk that client confidences will be revealed and that the lawyer's family or other familial or intimate relationship will interfere with both loyalty and independent professional judgment. See Rule 1.8(1). As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer so

related to another lawyer ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from such relationships is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rules 1.8(k) and 1.10.

[12] **[Reserved.]**

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.

See Rule 1.1 (Competence) and Rule 1.3 (Diligence).

[16] **[Washington revision]** Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states other than Washington limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest. See Washington Comment [38].

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a

tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

See also Washington Comment [38].

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

See also Washington Comment [39].

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] [Reserved.]

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include; where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a

lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

See also Washington Comment [40].

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them

are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The

client also has the right to discharge the lawyer as stated in Rule 1.16.

See also Washington Comment [41].

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Additional Washington Comments (36-41)

General Principles

[36] Notwithstanding Comment [3], lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation. See Comment [1] to Rule 6.5. See Rule 1.2(c) for requirements applicable to the provision of limited legal services.

Identifying Conflicts of Interest: Material Limitation

[37] Use of the term "significant risk" in paragraph (a)(2) is not intended to be a substantive change or diminishment in the standard required under former Washington RPC 1.7(b), i.e., that "the representation of the client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests."

Prohibited Representations

[38] In Washington, a governmental client is not prohibited from properly consenting to a representational conflict of interest.

Informed Consent

[39] Paragraph (b)(4) of the Rule differs slightly from the Model Rule in that it expressly requires authorization from the other client before any required disclosure of information relating to that client can be made. Authorization to make a disclosure of information relating to the representation requires the client's informed consent. See Rule 1.6(a).

Nonlitigation Conflicts

[40] Under Washington case law, in estate administration matters the client is the personal representative of the estate.

Special Considerations in Common Representation

[41] Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.

[Comment adopted effective September 1, 2006.]

**RULE 1.8 CONFLICT OF INTEREST:
CURRENT CLIENTS: SPECIFIC
RULES**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to a client, except that:

(1) a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses; and

(2) in matters maintained as class actions only, repayment of expenses of litigation may be contingent on the outcome of the matter.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, confirmed in writing. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not:

(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Additional Washington Comments (21-29)

Financial Assistance

[21] Paragraph (e) of Washington's Rule differs from the Model Rule. Paragraph (e) is based on former Washington RPC 1.8(e). The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph (e) is intended to preserve prior interpretations of the Rule and prior Washington practice.

Client-Lawyer Sexual Relationships

[22] Paragraph (j)(2) of Washington's Rule, which prohibits sexual relationships with a representative of an organizational client, differs from the Model Rule. Comment [19] to Model Rule 1.8 was revised to be consistent with the Washington Rule.

[23] Paragraph (j)(3) of the Rule specifies that the prohibition applies with equal force to any lawyer who assists in the representation of the client, but the prohibition expressly does not apply to other members of a firm who have not assisted in the representation.

Personal Relationships

[24] Model Rule 1.8 does not contain a provision equivalent to paragraph (1) of Washington's Rule. Paragraph (1) prohibits representations based on a lawyer's personal conflict arising from his or her relationship with another lawyer. Paragraph (1) is a revised version of former Washington RPC 1.8(i). See also Comment [11] to Rule 1.7.

Indigent Defense Contracts

[25] Model Rule 1.8 does not contain a provision equivalent to paragraph (m) of Washington's Rule. Paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

[26] Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is affected in some Washington counties and municipalities through indigent defense contracts, *i.e.*, contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances,

substitute counsel is typically known as "conflict counsel."

[27] An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See WSBA Informal Ethics Opinion No. 1647 (conflict of interest issues under RPC 1.7 and 1.9 exist in requiring public defender office to recognize a conflict and hire outside counsel out of its budget); ABA Standards for Criminal Justice, Std. 5-3.3(b)(vii) (3d ed. 1992) (elements of a contract for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); *People v. Barboza*, 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(1)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

[29] Because indigent defense contracts involve accepting compensation for legal services from a third-party payer, the lawyer must also conform to the requirements of paragraph (f). See also Comments [11]-[12].

[Comment adopted effective September 1, 2006; amended effective April 24, 2007; September 1, 2008.]

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the

matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

[Amended effective September 1, 2006.]

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may

not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] [Washington revision] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(e) and (b) for the restrictions on a firm

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[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] [Washington revision] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

[Comment adopted effective September 1, 2006.]

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) When a lawyer becomes associated with a firm, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

[Amended effective September 1, 1992; September 1, 2006.]

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or