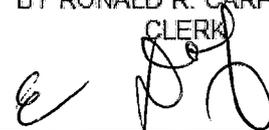


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SUPREME COURT
STATE OF WASHINGTON
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CLERK



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NO. 87717-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

CARL WILLIAMS, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-00326-6

RESPONSE TO PERSONAL RESTRAINT PETITION

Attorneys for Respondent:

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 ORIGINAL

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A. IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT

The State of Washington is the Respondent in this matter. Mr. Williams is restrained under the authority of the judgment and sentence entered by the Superior Court of Clark County for Counts One – Three: Child Molestation in the Second Degree, Counts Four – Six: Child Molestation in the Third Degree, and Count Seven: Delivery of Narcotic to Person Under Eighteen, under cause number 07-1-00326-6. *See* Appendix A.

B. ISSUE PRESENTED

- I. WHETHER THE COURT SHOULD DISMISS THIS PETITION BECAUSE IT IS UNTIMELY, BECAUSE IT IS A SUCCESSIVE COLLATERAL ATTACK, AND BECAUSE IT IS FRIVOLOUS?

C. STATEMENT OF THE CASE

The defendant sexually molested his niece on a number of occasions and over a period of years, when his niece was either less than twelve years old or less than fourteen years old. III-A RP at 183. Following a trial by jury, the defendant was convicted of three counts of Child Molestation in the Second Degree, three counts of Child

Molestation in the Third Degree, and one count of Delivery of a Narcotic to a person under eighteen years old.

On February 20, 2008, the defendant was sentenced before the Clark County Superior Court to 100 months confinement. *See* Appendix A, at p.6, sec. 4.5.

The defendant filed a timely appeal of his convictions, which was denied on the merits by the Court of Appeals for Division Two (COA No. 37450-1-II). The court issued a mandate terminating review on October 26, 2010. *See* Appendix B.

On July 11, 2011, the defendant filed his first personal restraint petition on this instant case (No. 86240-1). The defendant filed his petition directly with the Washington Supreme Court. In his petition, the defendant alleged ten errors including insufficient evidence, trial court error in admitting ER 404(b) evidence, trial court error in admitting witness testimony, and double jeopardy violations. Many of these alleged errors were raised and litigated in the defendant's direct appeal. The Court found the defendant's claims were without merit and dismissed his first petition.

On August 19, 2011, the defendant filed his second personal restraint petition on this instant case with this Court (No. 86385-7). In his second petition, the defendant challenged the amount of "good time

credit” he was awarded for his pre-sentence incarceration in the Clark County Jail. *See* Appendix C. Pursuant to the Clark County Jail’s good time policy, the jail awarded the defendant good time credit equal to 15% of the time he spent incarcerated at the jail (16 days of good time credit). The defendant alleged the jail’s good time policy violated his constitutional right to equal protection because it was less than 30% of his sentence, which is the percentage of good time credit an offender may be awarded if he is incarcerated by the Department of Corrections (“DOC”) or if he is incarcerated in another county. In the alternative, the defendant alleged the jail violated its own good time credit policy because it awarded him credit based on the amount of time he spent at the jail, not his total sentence. The defendant claimed the relief to which he was entitled was a modification of his good time credit certification to reflect either 54 days in good time credit (if the Court found an equal protection violation) or 18 days in good time credit (if the Court found the jail violated its own good time policy).

This Court reviewed the defendant’s second petition on the merits. *See* Appendix D. The Court found the Clark County Jail’s policy for good time credit did not violate equal protection because the jail was not required to award credit at the same rate as DOC. *See* Appendix D, at p. 2, *citing In re. Pers. Restraint of Fogle*, 128 Wn.2d 56, 64-65, 904 P.2d

722 (1995). In addition, the Court found the jail was not required to award credit commensurate to the amount of credit awarded in other counties because the legislature gave the county jails the authority to adopt their own early release credit policies. *See* Appendix D, at p. 2, *citing Fogle*, 128 Wn.2d at 65-65; *see also* RCW 9.94A.729 (formerly RCW 9.94A.728). Consequently, this Court held the defendant's equal protection claim was meritless. Meanwhile, this Court agreed with the defendant that the Clark County Jail's calculation of 15% good time credit should be based on the total sentence imposed, not based on the time the defendant spent in the jail. Therefore, this Court held the limited remedy to which the defendant was entitled was an additional 3 days of good time credit. The Court dismissed the defendant's second petition, conditioned upon the State obtaining from the Clark County Jail an amended good time certificate, reflecting 19 days of good time credit instead of 16 days. *See* Appendix D, at p. 3-4. The State obtained the amended certificate, as requested by the Court and the Court dismissed the defendant's second petition accordingly. *See* Appendix E. This third personal restraint petition followed.

D. ARGUMENT AS TO WHY PETITION SHOULD BE
DISMISSED

I. THE COURT SHOULD DISMISS THIS PETITION BECAUSE IT IS UNTIMELY, BECAUSE IT IS A SUCCESSIVE COLLATERAL ATTACK, AND BECAUSE IT IS FRIVOLOUS.

The defendant filed the instant petition on August 7, 2012. In this petition, the defendant again challenges the amount of “good time credit” he was awarded for his pre-sentence incarceration in the Clark County Jail. Again, the defendant claims the jail’s good time policy violated his constitutional right to equal protection because it awarded good time credit for less than 30% of his sentence, which is the percentage of good time credit an offender may receive at the Clark County Jail if he is eligible for the work program and which is the amount of good time credit an offender may receive if he is incarcerated in a jail in another county. *See* Personal Restraint Petition (“Petition”) at p. 5. In addition, for the first time, the defendant claims the Clark County Jail’s good time policy violated his constitutional right to due process because, by not awarding the statutory maximum for good time credit (30% credit), the policy deprived him of a liberty interest without first holding a hearing. *See* Petition, at p. 7-8. The defendant again claims the relief to which he is entitled is a modification of his good time credit certification from the Clark County Jail to reflect 54 days of good time credit. *See* Petition, at p. 6-7. For the reasons set

forth below, the defendant's Petition is without merit and it should be dismissed.

a. *The defendant's petition is untimely.*

A personal restraint petition is a collateral attack on the judgment and sentence. RCW 10.73.090(2). A collateral attack may not be filed more than one year after the judgment becomes final. RCW 10.73.090(1). A judgment and sentence becomes final the date it is filed with the clerk of the trial court or the date the appellate court issues its mandate disposing of a timely direct appeal from the conviction. RCW 10.73.090(3). An exception to the one-year time limit applies if the judgment and sentence is invalid on its face. RCW 10.73.090(1). A judgment and sentence is invalid on its face "if [it] evinces the invalidity without further elaboration." *State v. Lewis*, 141 Wn. App. 367, 394, 166 P.3d 786 (2007), *review denied*, 163 Wn.2d 1030 (2008). Facial invalidity must be "a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." *In re Pers. Restraint of McKiernan*, 165 Wn.2d 777, 783, 203 P.3d 375 (2009). An exception to the one-year time limit may also apply if the defendant can demonstrate that his or her petition is (1) based on newly discovered evidence; (2) the statute of which the defendant was convicted was unconstitutional; (3) the conviction was

barred by double jeopardy; (4) the defendant pled not guilty and the evidence was insufficient to support his conviction; (5) the sentence imposed was in excess of the court's jurisdiction; or (6) there has been a significant change in the law. RCW 10.73.100.

Here, the defendant filed the instant petition on August 7, 2012, over four years after his judgment and sentence was entered (February 20, 2008) and almost two years after the Court of Appeals issued a mandate terminating review of his direct appeal (October 26, 2010). The defendant does not allege that any of the exceptions listed under RCW 10.73.100 apply in his case. Further, the defendant has made no showing that his judgment and sentence is facially invalid. Consequently, this Court should dismiss the defendant's petition, pursuant to RCW 10.73.090, because it is untimely.

b. *The defendant's petition is a successive collateral attack.*

Washington Rule of Appellate Procedure ("RAP") 16.4(d) states: "[n]o more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown."¹ Under RAP 16.4(d), a successive petition for similar relief must be dismissed absent

¹ Washington Revised Code ("RCW") § 10.73.140 (Collateral Attack – Subsequent Petitions) applies only to the Court of Appeals of Washington, whereas RAP 16.4(d) applies to the Supreme Court of Washington. *In re. Pers. Restraint of Johnson*, 131 Wn.2d 558, 566, 933 P.2d 1019 (1997).

good cause shown. *In re. Pers. Restraint of VanDelft*, 158 Wn.2d 731, 147 P.3d 573 (2006), *overruled on other grounds in State v. Vance*, 168 Wn.2d 754, 762-63, 230 P.3d 1055 (2010). The phrase “similar relief” relates to the grounds for the relief, rather than the type of relief sought. *Johnson*, 131 Wn.2d at 565. Good cause for requesting similar relief in a successive petition may be shown when there has been a “significant, intervening change in the law [which] may occur as a result of a decision by this court.” *In re. Pers. Restraint of Holmes*, 121 Wn.2d 327, 331, 849 P.2d 1221 (1993).

In the present case, the defendant seeks relief on the same grounds raised in his second personal restraint petition (No. 86385-7). Specifically, the defendant again claims he is entitled to a modification of his Clark County Jail good time certificate to reflect credit for 30% of his total sentence, as opposed to credit for 15% of his total sentence. In both petitions, the defendant claims he is entitled to a modification of his pre-sentence calculation of good time credit because the jail’s good time credit policy violates his constitutional right to equal protection by not awarding him good time credit at the statutory maximum rate of 30%.

This Court previously reviewed the defendant’s challenge to the jail’s calculation of good time credit on the merits in his second petition (No. 86385-7). This Court previously held the defendant’s claim was

meritless. The defendant cites to no intervening change in the law to support his “equal protection” challenge to the jail’s calculation of good time credit. Further, the defendant fails to provide good cause as to why he did not raise his “due process” challenge to the jail’s calculation of good time credit in either of his previous personal restraint petitions or in his direct appeal. For each of these reasons, the defendant’s challenge to the jail’s calculation of good time credit has already been reviewed on the merits and the defendant has failed to justify why subsequent review of the same issue is warranted. Therefore, pursuant to RAP 16.4(d), the defendant’s petition should be dismissed.

c. *The defendant’s petition is frivolous.*

Assuming, arguendo, this Court finds the defendant’s petition is not procedurally barred under RCW 10.73.090 or RAP 16.4(d), the Court should dismiss the defendant’s petition because it is frivolous.

A personal restraint petition is an extraordinary remedy that is designed to address fundamental legal defects that lead to restraints on an individual’s freedom. *See In re Hagler*, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982). In order to prevail in a personal restraint petition on a claim of constitutional error, the complaining party must show “actual prejudice.” *Hagler*, 97 Wn.2d at 825-26. In order to prevail in a personal

restraint petition on a claim of non-constitutional error, the complaining party must show the “error constitutes a fundamental defect that inherently results in a complete miscarriage of justice.” *In re Cook*, 114 Wn.2d 812, 792 P.2d 506 (1990). The petitioner bears the burden of proving error by a preponderance of the evidence. *Cook*, 114 Wn.2d at 814.

Here, the defendant claims the jail’s good time policy violated his constitutional right to equal protection because it awarded good time credit for less than 30% of his sentence, which is the percentage of good time credit an offender may receive at the Clark County Jail if he is eligible for the work program and which is the amount of good time credit an offender may receive if he is incarcerated in a jail in another county. In addition, the defendant claims the Clark County Jail’s good time policy violated his constitutional right to due process because it deprived him of earning the 30% statutory maximum in good time credit without first holding a hearing.² For the reasons set forth below, the defendant’s arguments must fail.

Equal protection requires that persons similarly situated receive like treatment. *In re. Pers. Restraint of Mota*, 114 Wn.2d 465, 473, 788 P.2d 538 (1990). Also, equal protection requires that good time credit be

² The defendant does not dispute that he received 15% in good time credit from the jail and he does not dispute that he was ineligible for the work program.

made available for pre-sentence detention. *See Mota*, 114 Wn.2d at 473. However, there is no equal protection requirement that pre-sentence prisoners receive the same percentage of good time credit when they are incarcerated in different jails or when they are differently situated but incarcerated in the same jail. *See Fogle*, 128 Wn.2d at 59. In fact, the legislature specifically authorized county jails to develop their own good time credit policies; thereby, allowing each county jail to determine how it will award good time credit and the amount of good time credit that will be awarded. *Id.*, citing former RCW 9.94A.150(1), *re-codified as* former RCW 9.94A.728.³ Former RCW 9.94A.728 provides:

(1)...the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time....

³ Former RCW 9.94A.150 was re-codified as former RCW 9.94A.728 in 2001. Laws 2001, Ch. 10, § 6. Former RCW 9.94A.728 was in effect at the time the defendant was sentenced. Former RCW 9.94A.728 was later re-codified as RCW 9.94A.729. Laws, 2009, Ch. 10, § 6.

In *Fogle*, the Court addressed equal protection and due process challenges mirroring the challenges raised by the defendant in the instant Petition. The defendants in *Fogle* were incarcerated in either the Clark County Jail or in the Pierce County Jail, pre-sentence. *Fogle*, at 60. The defendants, who were each awarded 15% in pre-sentence good time credit, argued their respective awards in good time credit violated equal protection because the awards were less than they would have received if they had been incarcerated at DOC and because the awards were less than they would have received if they had been eligible for the work program. *Id.*, at 60-61. Further, the defendants alleged their awards in good time credit violated due process because the jails failed to establish procedures for pre-sentence prisoners to earn the statutory maximum in good time credit. *Id.*, at 61, 65.

This Court disagreed with the defendants on all accounts. *Fogle*, at 63, 66. In regards to the defendants' equal protection claims, the Court recognized that the State has a substantial interest in maintaining prisoner discipline, "particularly in preventing flight from prosecution" for pre-sentence prisoners. *Fogle*, at 63. Further, the Court recognized that good time credit policies promote the State's interest in maintaining prisoner discipline and in preventing flight. *Id.*, at 63-64. Next, the Court

determined that individual jails are in the best position to determine how good time credit should be awarded, in order to serve the State's substantial interests. *Id.*, at 64-65. Lastly, the Court recognized that former RCW 9.94A.150 (re-codified as former RCW 9.94A.728) did not require that all prisoners be allowed to participate in work programs. *Id.*, at 62. Therefore, the Court held, under an intermediate scrutiny test, the State's substantial interests justified the disparate treatment of prisoners who were incarcerated at different facilities, as well prisoners who were incarcerated within the same facility. *Id.*, at 63-65. Consequently, no equal protection violations occurred. *Id.*

In regards to the defendants' due process claims, the Court recognized "the statutory right to earned early release credits creates a limited liberty interest requiring minimal due process." *Fogle*, at 65-66, citing *In re. Anderson*, 112 Wn.2d 546, 548, 772 P.2d 510 (1989). However, "where due process concerns are implicated in an equal protection challenge, the court will generally rest its decision on an equal protection analysis." *Id.*, at 66, citing *Mota*, 114 Wn.2d at 474, n. 1. Regardless, the Court held both the Clark County Jail and the Pierce County Jail properly established good time credit policies and they adhered to their established policies when awarding good time credit to

both of the defendants. *Id.* Consequently, no due process violations occurred. *Id.*

Fogle should control in this case. Here, the Clark County Jail established a good time credit policy that was consistent with the requirements of Former RCW 9.94A.728, *see Petition*, at Appendix D. The defendant was awarded good time credits consistent with Clark County Jail's policy. Pursuant to the Clark County Jail's policy, the defendant was not eligible to receive additional credits as a participant in the work program, due to the offenses with which he was charged. That he could not participate in the work program does not offend equal protection because the jail was at liberty to implement a good time credit policy that was consistent with its interests in promoting prisoner discipline and in preventing flight.

In addition, consistent with the Court's holding in *Fogle*, there is no requirement that county jails implement the same good time credit policies. Also, due to the State's substantial interests, it does not offend equal protection for the defendant to have been awarded a percentage of good time credit that may or may not have been different than the credit he

would have received at a different county jail.⁴ For each of these reasons, the defendant's right to equal protection was not violated.

Lastly, the defendant's right to due process was not violated because the Clark County Jail established a written policy for awarding good time credit and it adhered to that policy when awarding good time credit in the defendant's case.

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⁴ It is not apparent that the defendant would have been eligible for a different award of good time credit had he been incarcerated at either the Pierce County jail or at the Snohomish County Jail. The defendant did not provide the good time credit policy for Snohomish County and Pierce County's policy appears to be the same as Clark County. *See Petition*, at Appendix F, C.

E. CONCLUSION

The defendant's petition is untimely. The defendant's petition is also a successive collateral attack. In addition, the defendant's petition is frivolous because he has failed to demonstrate constitutional error resulting in actual prejudice or non-constitutional error resulting in a complete miscarriage of justice. For each of these reasons, the defendant's petition should be dismissed.

DATED this 8 day of October, 2012.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: Abigail E. Bartlett
ABIGAIL E. BARTLETT, WSBA #36937
Deputy Prosecuting Attorney

APPENDIX A

15c

FILED

FEB 20 2008

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

CARL GREGORY WILLIAMS,
Defendant.

SID: WA14404042
If no SID, use DOB: 12/30/1972

No. 07-1-00326-6

Felony Judgment and Sentence (FJS)

Prison RCW 9.94A.712 Prison Confinement
 Clerk's Action Required, para 4.5 (SDOSA),
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

08-9-01090-1

I. Hearing

1.1 The court conducted a sentencing hearing this date; 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, in accordance with the proceedings in this case, the court **Finds:**

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
 guilty plea jury-verdict bench trial:

Count	Crime	RCW	Date of Crime
01	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2003 to 9/11/2005
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2003 to 9/11/2005
03	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2004 to 9/11/2005
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2005 to 12/16/2006
05	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2005 to 12/16/2006

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06	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2005 to 12/16/2006
07	OVER 18 AND DELIVER A NARCOTIC FROM SCHEDULE III-V, OR A NONNARCOTIC FROM SCHEDULE I-V TO SOMEONE UNDER 18 AND 3 YEARS JUNIOR)	69.50.406(b)	9/12/2004 to 12/16/2006

Additional current offenses are attached in Appendix 2.1.

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712**.
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____, RCW 9.94A.____.
- The offense was predatory as to Count _____, RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____, RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____, RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count , 07. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count _____, RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____, RCW 9.94A.602, 9.94A.533.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. **RCW 10.99.020**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

<i>Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>Date of Crime</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>
No known felony convictions					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
01	9	VII	87 MONTHS to 116 MONTHS		87 MONTHS to 116 MONTHS	10 YEARS \$20,000
02	9	VII	87 MONTHS to 116 MONTHS		87 MONTHS to 116 MONTHS	10 YEARS \$20,000
03	9	VII	87 MONTHS to 116 MONTHS		87 MONTHS to 116 MONTHS	10 YEARS \$20,000
04	9	V	72 MONTHS to 96 MONTHS		72 MONTHS to 96 MONTHS	5 YEARS \$10,000
05	9	V	72 MONTHS to 96 MONTHS		72 MONTHS to 96 MONTHS	5 YEARS \$10,000
06	9	V	72 MONTHS to 96 MONTHS		72 MONTHS to 96 MONTHS	5 YEARS \$10,000
07	6	III - D	100 MONTHS to 120 MONTHS		100 MONTHS to 120 MONTHS	10 YEARS \$10,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

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

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

2.4 **Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

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

2.5 **Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

III. Judgment

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

3.2 The defendant is found **Not Guilty** of Counts _____.

The court **Dismisses** Counts 08 (FURNISHING LIQUOR TO MINORS WITH SEXUAL MOTIVATION).

IV. Sentence and Order

It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE
RTN/RJN

\$ TBS Restitution to

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ _____ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SPS/SFW/WRF

Jury demand fee \$ ~~200.00~~ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Trial per diem, if applicable *
 \$ _____ Court appointed defense expert and other defense costs * RCW 9.94A.760
 FCM/MTH \$ 500.00 Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional
 fine deferred due to indigency RCW 69.50.430
 CDF/LDI/FCD \$ _____ Drug enforcement Fund # 1015 1017 (TF) RCW 9.94A.760
 NTF/SAD/SDI
 CLF \$ _____ Crime lab fee suspended due to indigency RCW 43.43.690
 \$ 100.00 Felony DNA collection fee not imposed due to hardship RCW 43.43.7541
 RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000
 maximum) RCW 38.52.430
 \$ _____ Other costs for: _____
 \$ _____ **Total** RCW 9.94A.760

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

shall be set by the prosecutor.

is scheduled for _____

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

<u>Name of other defendant</u>	<u>Cause Number</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
--------------------------------	---------------------	------------------------	--------------------

RJN

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll
 Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule
 established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets
 forth the rate here: Not less than \$100 per month commencing upon release from custody (jail)
 RCW 9.94A.760.

The defendant shall report as directed by the Superior Court Clerk and provide financial information as
 requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business
 on the next working day after the date of sentencing or release from custody. A map has been provided to
 the defendant showing the location of the Superior Court Clerk Collections Unit at 500 West 8th Street,
 Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers
 to the Collections Unit within 72 hours of moving.

The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for
 the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless
 another rate is specified here: _____. (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until
 payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal
 against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 **No Contact:** The defendant shall not have contact with K M L (female, 9/12/1991) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for ~~XXXX~~ TEN years (not to exceed the maximum statutory sentence).

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

4.4 **Other:** _____

4.5 **Confinement Over One Year.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

~~90~~ see 712 days/months on Count 01
~~90~~ days/months on Count 02
~~90~~ days/months on Count 03
~~60~~ days/months on Count 04
~~60~~ days/months on Count 05
~~60~~ days/months on Count 06
~~100~~ days/months on Count 07

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count 07 includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone
 manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 100.

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____
in either District Court or Superior Court unless otherwise specified herein: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01	minimum term	<u>96</u>	maximum term	<u>10 years</u>
Count 02	minimum term	<u>86</u>	maximum term	<u>10 years</u>
Count 03	minimum term	<u>86</u>	maximum term	<u>10 years</u>
Count 04	minimum term	_____	maximum term	<u>5 years</u>
Count 05	minimum term	_____	maximum term	<u>5 years</u>
Count 06	minimum term	_____	maximum term	<u>5 years</u>
Count 07	minimum term	_____	maximum term	<u>10 years</u>

(c) 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 jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 91 dly

4.6 Community Placement or Community Custody. The court orders community placement or community custody as follows:

Community Placement:

Count 01 for _____ months
Count 02 for _____ months
Count 03 for _____ months
Count 04 for _____ months
Count 05 for _____ months
Count 06 for _____ months
Count 07 for _____ months

Community Custody for count(s) 1, 2, 3, 4, 5, and 6, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

Community Custody:

Count 01	for a range from	<u>24</u>	to	_____	months;
Count 02	for a range from	<u>24</u>	to	_____	months;
Count 03	for a range from	<u>24</u>	to	_____	months;
Count 04	for a range from	_____	to	_____	months;
Count 05	for a range from	_____	to	_____	months;
Count 06	for a range from	_____	to	_____	months;
Count 07	for a range from	<u>9</u>	to	<u>12</u>	months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before

July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with: ANY MINORS - EXCEPT SON
- The defendant shall remain within outside of a specified geographical boundary, to wit: as determined by the Department of Corrections.
- The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- The defendant shall participate in the following crime-related treatment or counseling services: PSYCHO-SEXUAL TREATMENT and quarterly polygraphs
- 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: _____
- Other conditions: _____
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 **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. 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 4.6.

- 4.8 **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.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court 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.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **Restitution Hearing.**
 I waive any right to be present at any restitution hearing (sign initials): _____
- 5.5 **Community Custody Violation.**
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 5.6 **Firearms.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicoard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

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

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

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

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

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's

office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

- 5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

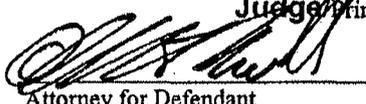
5.10 Persistent Offense Notice

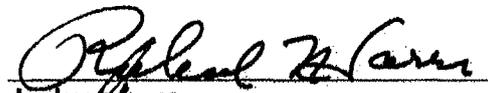
The crime(s) in count(s) 01, 02, 03 is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.

The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 20 February 2008


 Deputy Prosecuting Attorney
 WSBA No. 08728
 Print Name: Kimberly R. Farr


 Attorney for Defendant
 WSBA No. 09048
 Print Name: Charles H. Buckley


 Judge/Print Name:
 Refused to sign
 Defendant
 Print Name:
 CARL GREGORY WILLIAMS

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

Defendant's signature: Refused to sign

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

Interpreter signature/Print name: _____

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

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

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

CARL GREGORY WILLIAMS

SID No: WA14404042
(If no SID take fingerprint card for State Patrol)

Date of Birth: 12/30/1972

FBI No. 309657KB8

Local ID No.

PCN No. _____

Other _____

Alias name, DOB:

Race: W

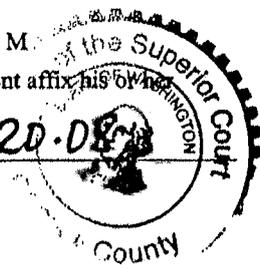
Ethnicity:

Sex: M

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, Kathy Boehm

Dated: 2.20.08



The defendant's signature: REFUSED TO SIGN

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
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SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 07-1-00326-6

v.

CARL GREGORY WILLIAMS,

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

Defendant.

RCW 9A.94A.712

SID: WA14404042

DOB: 12/30/1972

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

GREETING:

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

COUNT	CRIME	RCW	DATE OF CRIME
01	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2003 to 9/11/2006
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2003 to 9/11/2006
03	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	9/12/2004 to 9/11/2006
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2006 to 12/18/2006
05	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2005 to 12/18/2006
06	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	9/12/2005 to 12/18/2006
07	OVER 18 AND DELIVER A NARCOTIC FROM SCHEDULE III-V, OR A NONNARCOTIC FROM SCHEDULE I-V TO SOMEONE UNDER 18 AND 3 YEARS JUNIOR)	89.50.406(b)	9/12/2004 to 12/18/2006

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

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

COUNT	CRIME	TERM
01	CHILD MOLESTATION IN THE SECOND DEGREE	96 Days/Months
02	CHILD MOLESTATION IN THE SECOND DEGREE	96 Days/Months
03	CHILD MOLESTATION IN THE SECOND DEGREE	96 Days/Months
04	CHILD MOLESTATION IN THE THIRD DEGREE	60 Days/Months
05	CHILD MOLESTATION IN THE THIRD DEGREE	60 Days/Months
06	CHILD MOLESTATION IN THE THIRD DEGREE	60 Days/Months
07	OVER 18 AND DELIVER A NARCOTIC FROM SCHEDULE III-V, OR A NONNARCOTIC FROM SCHEDULE I-V TO SOMEONE UNDER 18 AND 3 YEARS JUNIOR)	100 Days/Months

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

The defendant has credit for 91 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

Richard H. Lane

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 2.20.08

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

By: *Karry Boehm*
Deputy



APPENDIX B

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FILED

OCT 27 2010

10:50

Sherry W. Parker, Clerk, Clark Co.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CARL G. WILLIAMS,

Appellant.

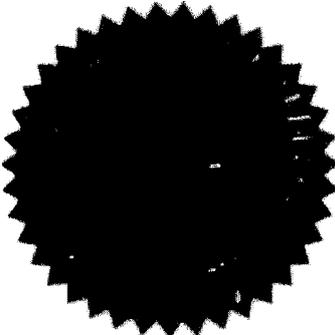
No. 37450-1-II

MANDATE

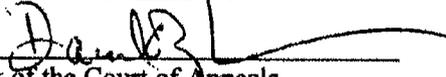
Clark County Cause No.
07-1-00326-6

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

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on February 23, 2010 became the decision terminating review of this court of the above entitled case on October 6, 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.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 26th day of October, 2010.


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

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APPENDIX C

8/19/11

PAYMENT OF FILING
FEE WAIVED

Ronald R. Carpenter

Ronald R. Carpenter
Supreme Court Clerk

In The Supreme Court
Of The State of Washington

CLERK
2011 AUG 19 AM 7:58
STATE OF WASHINGTON
CLERK

Carl Williams,
Petitioner,
Vs.
State of Washington,
Respondent.

Case No.: 86385-7

In re Personal Restraint

1. IDENTITY OF MOVING PARTY

Carl Williams, Appellant, pro se, requests the relief as designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Appellant requests an order from this court to the Clark County Jail to recalculate the appellant's Jail and Good-time Certification that is forwarded to the Department of Corrections (DOC).

3. FACTS RELEVANT TO MOTION

The appellant was convicted by jury on November 21, 2007, Clark County cause 07-1-00326-6. Appellant was in the Clark County jail from November 21, 2007 until March 7, 2008. Appellant received one additional day credit for April 10, 2007.

The jail certification gives credit as follows:

100 days time served eligible for early release credit

15 days early release credit

Photocopy of certification enclosed as appendix A.

Appellant did not receive any disciplinary sanctions to preclude him from receiving full good-time credit. Photocopy of jail inmate request slip enclosed as appendix B.

Appellant has attempted to rectify this miss-calculation with the Clark County jail. Photocopies of letters enclosed as appendix C.

Appellant received less than 15% credit for good-time.

4. STANDARD OF REVIEW

A personal restraint petitioner may obtain relief by demonstrating either a constitutional violation or a violation of the laws of the State of Washington. RAP 16.4 (c) (2), (6); *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148, 866 P.2d 8 (1994). Constitutional guarantees protect against deprivation of life, liberty, or property interests without due process and an inmate has a limited interest in good-time credits. *In re Pers. Restraint of Dutcher*, 114 Wn.App. 755, 758, 60 P.3d 635 (2002). Thus, a DOC [or County Jail] decision that wrongfully denies an inmate good-time credit results in an unlawful restraint of the inmate and can be challenged in a PRP if the inmate has no other means of obtaining judicial review of the decision. *Dutcher*, 114 Wn.App. at 758 (citing *In re Pers. Restraint of Capello*, 106 Wn.App. 576, 580-81, 24 P.3d 1074 (2001)) [emphases added].

5. GROUNDS FOR RELIEF SOUGHT AND ARGUMENT

In *Personal Restraint of Schaupp*, 66 Wn.App. 45, 52, 831 P.2d 156 (1992) the Court said "Allowing less than one-third credit would constitute a denial of equal protection insofar as a defendant, while detained on one county, cannot be treated differently from a defendant similarly detained in another county."

In *Macfarlane v. Walter*, 179 F.3d 1131, 1143 (9th Cir 1999), the Court said that the county jail must calculate the amount of credit that the petitioner would have received had they been subject to the state good-conduct policy for the period of time they spent in the county jail.

In *Personal Restraint of Williams*, 121 Wn.2d 655, 659, 853 P.2d 444 (1993), the court said: "The critical feature of such calculation is that it is not based upon the amount of time the offender is incarcerated. Instead, the allowable good time is calculated based upon one-third of the sentence imposed."

The Clark County jail certification is facially invalid. The good-time credit has been calculated based on the time served, not the sentence imposed. Appellant received credit for 100 days served and 15 days good-time credit. Although appellant was actually in the jail for 108 days. A recommended calculation method is attached as appendix D.

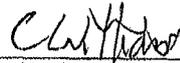
The county has violated their own policy by giving credit based on the time served, not the sentence imposed, and has violated the petitioners Constitutional rights. Based on the county's policy, appellant should have received 18 days credit not 15 days.

However, based on *Macfarlane v. Walter and Pers. Restraint of Schaupp*, appellant should have received 54 days of good-time credit.

6. CONCLUSION

Based on the forgoing argument and authorities, the appellant's good-time certification should be remanded or an order to correct for the proper calculation of 108 days served and 54 days good-time credit for a total of 162 days should be granted.

Respectfully submitted this 17 day of August, 2011



Carl Williams
312782 4-B65
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

appendix A



I CERTIFY THAT THE FOREGOING IS
A TRUE COPY OF THE ORIGINAL ON FILE
Date: 05/20/07 Officer: [Signature]
Clark County Sheriff's Office, Vancouver, WA

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

JAIL AND GOOD TIME CERTIFICATION

NAME: WILLIAMS, CARL GREGORY
LOCAL ID #: (CFN) 187777

CHARGE	CASE NUMBER
CHILD MOLESTATION II (3 CTS)	07-1-00326-6
CHILD MOLESTATION III (3 CTS)	07-1-00326-6
DELIVER OF NARCOTIC TO SOMEONE UNDER 18 AND 3 YEARS JR	07-1-00326-6

DATE (S) OF JAIL CONFINEMENT:
11/21/07 TO 02/29/08
04/10/07 TO 04/10/07

TIME SERVED CREDITS:

<u>91</u>	Credit per Judgment and Sentence
<u>9</u>	Days served prior to transfer
<u>100</u>	Total Time Served Eligible for Early Release Credit
<u>15</u>	Early Release Credit Based on Clark County 15% Policy*
<u>0</u>	Credit Lost for Misconduct
<u>15</u>	Total Credit Authorized

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

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: DRM/3917 Date: 2/28/2008

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

360-397-2211

Appendix B

CLARK COUNTY CUSTODY DIVISION
INMATE REQUEST SLIP

ONE NAME PER KITE
INMATES NAME: Williams Carl CPN: 187777

CELL #: F1-H6 DATE: 12-1-8

INFORMATION NEEDED ON: (CIRCLE ONE) Sentence, Fine, Cell Change,
Commissary, Money Account, Program Request, Suggestions For Improvements,
Disciplinary Appeals, Property Other

COMMENTS: (BE SPECIFIC) ONE REQUEST PER KITE

I would like for someone to verify if I received any
sanctions that would have precluded me from receiving
Full good-time credit while I was here between
November, 31st 2007 and March 7th 2008.

(Past incarceration)

INMATE SIGNATURE: Williams DATE: 12-1-8

RECEIVING OFFICER: EB 4381 DATE: 12-1-08

FORWARDED TO: ~~EB 4381~~ RECORDS DATE: 12-1-08

ANSWER TO REQUEST:

Your Jail and Goodtime Calculation from
March shows we authorized
16 days of Goodtime Based on Clark
County Jail Policy -

No Disciplinary Sanctions to
Remove Goodtime

RESPONDING OFFICER / CLERK: [Signature] 3932 DATE: 12-5-08

Appendix C

Marked 4-21-9

To Pam Clark:
Corrections Office
Clark County

I am writing concerning my good-conduct time that was certified by the Clark County jail to DOC on my current cause number 07-1-00326-6. My Clark County Inmate number is 187777.

The certification given to DOC was calculated incorrectly. I was in the Clark County jail from November 21st, 2007 until March 7th, 2008. That is 107 days. I was given 16 days of good-conduct time for a total of 123 days. Based on the current policy I should have received at least 19 days of good-conduct time due to the fact I did not receive any sanctions that precluded me from all of my good-conduct time. Please see included kite. However, I believe that I should have been given 54 days of good-conduct time based on *Personal Restraint of Schaupp* 66 Wn.App. 45, 52, 831 P.2d 136 (1992), *Macfarlane v Walter* 179 F.3d 1131, 1143 (9th Cir 1999) and *Personal Restraint of Williams* 121 Wn.2d 655, 853 P.2d 444 (1993).

In Re Schaupp the appellate court said an offender is entitled to one-third good-time unless the offender disqualifies himself by receiving an infraction that would deduct good-time. *In Re Schaupp* goes on to indicate that giving "less than one-third credit would constitute a denial of equal protection insofar as a defendant, while detained in one county, cannot be treated differently from a defendant similarly detained in another county."

Macfarlane v Walter indicates that the good-time credit must be calculated as if the offender was subject to the DOC policy "for the period of time they spent in the county jails".

In Re Williams explains how the calculation is to be completed and that the calculation is based on the sentence imposed and not the time served.

In closing I am asking that you re-certify my good-conduct time to reflect the 107 days served and 54 days of good-time.

Thank you,

Capt. Williams

c: Bill Barron
Gary Lucas

Appendix C



Garry E. Lucas
Sheriff
Records Division
360 397-2211

May 12, 2009

Carl Gregory Williams, DOC# 312782
McNeil Island Corrections Center
PO BOX 881000, D416-2
Steilacoom, WA 98388

RE: Earned Early Release Credits for case 07-1-00326-6

Mr. Williams;

Per your recent request received by our office, your Jail and Goodtime Certification has been reviewed for accuracy. Credit is based on 'Total Imposed Sentence' which is consistent with State v. Williams Wn.2nd 655 (1993).

Enclosed is a certified copy of Clark County's Jail and Goodtime Certification for your records. A certified copy has also been mailed to the Department of Corrections.

Sincerely,

Jennifer Bell
Supervisor- Records Division

Enclosure: Clark County Jail and Goodtime Certification

Appendix C

1141120 5-11-09

May 18, 2009

Jennifer Bell
Supervisor - Records Division
Clark County Sheriff Office
PO Box 410
Vancouver, WA 98666

RE: Earned Early Release Credits for case 07-1-00326
CFN 187777

Ms. Bell:

Your response is peculiar. The good-time calculation sheet that you included is not correct even according to the *Williams* case. The calculation you sent was calculated based on the time served, not sentence imposed. If you take 15% of the sentence imposed for the time served of 100 days you get 117.65 days. That alone gives minimum 17 days if not 18 days of good-time not 15.

However, I was in the jail for 107 days not 100. I arrived November 21, 2007 and left March 7, 2008. November 21 to November 30 is 10 days; December 1 to December 31 is 31 days; January 1 to January 31 is 31 days; February 1 to February 28 is 28 days; and March 1 to March 7 is 7 days; plus the April 10, 2007. Therefore, the copy of the certification you sent me is incorrect. Fifteen percent of a sentence imposed that would result in 107 days of time served would be 126 days; based on a 15% earned time policy.

Moreover, the federal case of *Macfarlane v. Walter*, that I cited in my previous letter, reads that the county good-time is to be calculated as if the inmate was subject to the DOC policy "for the period of time they spent in the county jails." *In Re Schaupp*, that I also previously cited also indicates that the jails are to give 1/3 credit.

I would appreciate it if you would correct my jail good-time certificate to be 107 days time served with 54 days of earned time for a total of 161 days.

Sincerely,

Carl Williams

Cc: Bill Barron
Gary Lucas

Appendix D

If a person is sentenced to 100 days and will receive a 15% reduction for good-time, the following would be the calculation:

$$100 \times 15\% = 15$$

$$100 - 15 = 85$$

OR

$$100 \times .85 = 85$$

If a person was in jail for 85 days and the sentence imposed is not known the calculation would look like:

$$(\text{sentence imposed}) \times .85 = 85$$

To figure out what the sentence imposed is, you would calculate the following:

$$85 / .85 = 100(\text{sentence imposed})$$

Therefore if a person was in jail for 108 days the following would calculate the sentence imposed:

$$108 / .85 = 127.0588 \text{ or } 127 \text{ day sentence}$$

Days served would be 108 and good-time credit would be 19.

APPENDIX D

FILED
SUPREME COURT
11 DEC 28 AM 11:04
BY RONALD N. CARPENTER

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:
CARL GREGORY WILLIAMS
Petitioner.

NO. 86385-7

**RULING CONDITIONALLY
DISMISSING PERSONAL RESTRAINT
PETITION**

Carl Williams was convicted in 2008 of several counts of second degree child molestation and one count of delivering a controlled substance to a minor. Mr. Williams had spent his time before trial and sentencing in the Clark County Jail. When he was transferred to the Department of Corrections, the jail certified that he had served 107 days in jail and earned 16 days early release credit at the county's 15-percent rate (with no credit lost for misconduct), for a total jail time of 123 days. In August 2011 Mr. Williams filed a personal restraint in this court challenging the calculation of his jail early release credits. Now before me for determination is whether to dismiss the petition or refer it to the court for a decision on the merits. RAP 16.5(b), 16.11(b).

Mr. Williams asserts two challenges to the jail's calculation of his early release credits. First, and primarily, he contends that under equal protection principles

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the jail must award him credit at a rate of one-third of his sentence. (Clark County awards credit at a one-third rate only to inmates who work.) But this argument has no merit. To the extent Mr. Williams is suggesting that the jail must award credit at the same rate as the Department of Corrections, he is wrong. *In re Pers. Restraint of Fogle*, 128 Wn.2d 56, 64-65, 904 P.2d 722 (1995). Mr. Williams relies on *MacFarlane v. Walter*, 179 F.3d 1131 (9th Cir. 1999), but the Supreme Court vacated that decision and remanded to the Ninth Circuit to dismiss the case as moot. See *Lehman v. MacFarlane*, 529 U.S. 1106, 120 S. Ct. 1959, 146 L. Ed. 2d 790 (2000). Mr. Williams therefore cannot rely on that decision.

Mr. Williams also argues that he may not be treated differently than jail inmates in other counties, citing the Ferry County Jail policy of awarding all inmates one-third early release credits. He supports this argument with *In re Personal Restraint of Schaupp*, 66 Wn. App. 45, 831 P.2d 156 (1992). But the court in *Schaupp* was not squarely presented with this issue, and it did not explain its reasoning in any event. It simply cited *In re Personal Restraint of Mota*, 114 Wn.2d 465, 788 P.2d 538 (1990). *Schaupp*, 66 Wn. App. at 52. But the court in *Mota* did not hold that all counties must award jail early release at the same rate. See *In re Pers. Restraint of Cromeenes*, 72 Wn. App. 353, 358 n.4, 864 P.2d 423 (1993) (questioning *Schaupp*). And when *Mota* was decided only the Department of Corrections had authority to award early release credits. See *In re Pers. Restraint of Williams*, 121 Wn.2d 655, 662, 853 P.2d 444 (1993). The legislature has since given county jails the authority to adopt their own early release credit policies, recognizing that each jail is uniquely positioned to determine the best means for disciplining and controlling its inmate population. *Fogle*, 128 Wn.2d at 64-65. To raise a legitimate equal protection issue in relation to other county jails, Mr. Williams must demonstrate that as a Clark County inmate he is similarly situated to inmates in other counties with respect to disciplinary

policies. *See State v. Handley*, 115 Wn.2d 275, 289-90, 796 P.2d 1266 (1990) (person asserting equal protection challenge must show he is similarly situated to others who are treated differently). He does not assert, much less show, that to be the case. Plainly, if differences between Department of Corrections and county early release policies do not violate equal protection principles, as this court held in *Fogle*, then neither do differences among the counties.

Mr. Williams next argues that even if he is properly subject to early release credits at a rate of 15 percent, the Clark County Jail miscalculated his credits by applying that rate to the 107 days he actually served. (Fifteen percent of 107 is 16, which the jail awarded Mr. Williams.) This argument has merit. On its face the Clark County Jail certification form states that it calculates early release credits consistent with *Williams*, 121 Wn.2d 655.¹ But in this case it did not. It applied the 15-percent rate to the time Mr. Williams actually served in jail. As this court explained in *Williams*, the rate is applied to the sentence imposed, not the time actually served. *Williams*, 121 Wn.2d at 659. Thus, for a person who served time in jail before trial and sentencing, the amount of early release credit given must be an amount that, when subtracted from the sentence "imposed," results in the amount of time that the inmate actually served, in this case 107 days. *Id.* In other words, it must be determined what number will result in 107 when that number is reduced by 15 percent. That number is 126 (107 is 85 percent of 126). Subtracting 107 from 126 results in early release credits of 19 days. Since Mr. Williams received no reduction in credits for misconduct, he is entitled to that amount.

Since this is the only relief to which Mr. Williams is entitled, the personal restraint petition is dismissed on the condition that within 30 days of this ruling the State obtain from the Clark County Jail (and forward to the Department of

¹ The inmate in *Williams* is a different Williams.

Corrections) an amended jail and good time certificate for Mr. Williams reflecting early release credits of 19 days and file a copy of the amended certificate in this court.

A handwritten signature in black ink, appearing to read "Steven Goff". The signature is written in a cursive style with a horizontal line extending from the end of the name.

COMMISSIONER

December 28, 2011

APPENDIX E

THE SUPREME COURT OF WASHINGTON

In Re the Personal Restraint Petition of
CARL GREGORY WILLIAMS,
Petitioner.

CERTIFICATE OF FINALITY

NO. 86385-7

This is to certify that the Supreme Court Commissioner entered a ruling on December 28, 2011, conditionally dismissing the Personal Restraint Petition with the provision that the State obtain from the Clark County Jail (and forward to the Department of Corrections) an amended jail and good time certificate for Mr. Williams and file a copy of the amended certificate in this Court. That condition was met on January 17, 2012, and the matter is now final in this Court.



I have affixed the seal of the Supreme Court of the State of Washington and filed this Certificate of Finality this 21st day of March, 2012.

Ronald R. Carpenter,
Clerk of the Supreme Court
State of Washington

cc: Carl Gregory Williams
Anne Mowry Cruser
Abigail E. Bartlett
Reporter of Decisions

FILED
SUPREME COURT
STATE OF WASHINGTON
12 MAR 21 AM 7:21
RONALD R. CARPENTER
CLERK

146/123

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint Petition of
CARL GREGORY WILLIAMS,
Petitioner.

NO. 86385-7

ORDER

Department II of the Court, composed of Chief Justice Madsen and Justices Chambers, Fairhurst, Stephens and González (Justice C. Johnson sat for Justice Chambers, who recused), considered this matter at its March 6, 2012, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 7th day of March, 2012.

For the Court

Madsen, C J
CHIEF JUSTICE

BY RONALD R. CARPENTER
CLERK

FILED
SUPREME COURT
WASHINGTON
2012 MAR -7 A 8:39

3RD AMENDED



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

JAIL AND GOOD TIME CERTIFICATION

NAME: **WILLIAMS, CARL GREGORY**
 LOCAL ID #: (CFN) **187777**

<u>CHARGE</u>	<u>CASE NUMBER</u>
CHILD MOLESTATION II (3 CTS)	07-1-00326-6
CHILD MOLESTATION III (3 CTS)	07-1-00326-6
OVER 18 DELIVER OF NARCOTIC TO SOMEONE UNDER 18 AND 3 YEARS JUNIOR	07-1-00326-6

DATE (S) OF JAIL CONFINEMENT:
11/21/07 TO 03/07/08
04/10/07 TO 04/10/07

TIME SERVED CREDITS:

91	Credit per Judgment and Sentence
16	Days served prior to transfer
107	Total Time Served Eligible for Early Release Credit
19	Early Release Credit Based on Clark County 15% Policy*
0	Credit Lost for Misconduct
19	Total Credit Authorized

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

Revised 8/2007

Clark County Sheriff's Office, Records Division

By: **JB3677**

Date:

1/10/2012

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

360-397-2211

OFFICE RECEPTIONIST, CLERK

To: Casey, Jennifer
Subject: RE: 87717-3 In re PRP of Williams

Rec'd 10/8/12

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

From: Casey, Jennifer [<mailto:Jennifer.Casey@clark.wa.gov>]
Sent: Monday, October 08, 2012 3:16 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: 87717-3 In re PRP of Williams

Dear Clerk,

Attached please find the State's *Response to Personal Restraint Petition and Declaration of Mailing*. Please accept these documents for filing in the above matter. If you have any questions or need anything further, please contact me.

Sincerely,

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

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