

66682-7

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88770-5  
~~89992-4~~

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

In re Personal Restraint )  
Petition of )  
)  
)  
)  
)  
)  
MUHAMMADOU JAGANA, )  
Petitioner. )  
\_\_\_\_\_ )

No. 66682-7-1  
  
STATE'S RESPONSE TO  
PERSONAL RESTRAINT  
PETITION

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Muhammadou Jagana was convicted of possession of cocaine pursuant to Judgment and Sentence in King County Superior Court No. 05-1-09670-1 SEA in 2006. Appendix A. He is no longer confined pursuant to that conviction. He has satisfied his legal financial obligations and is under no further restraint other than the fact of conviction. Appendix B.

B. ISSUES PRESENTED.

1. Whether this personal restraint petition should be dismissed where it time-barred?

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STATE OF WASHINGTON  
*[Signature]*

2. Whether this personal restraint petition should be dismissed where petitioner has failed to establish ineffective assistance of counsel?

C. STATEMENT OF THE CASE.

In August of 2005, Jagana was charged by information with the crime of possession of cocaine. Appendix C. The Certification for Determination of Probable Cause reflects that Jagana was found with 16.1 grams of crack cocaine, an amount with a street value of approximately \$1300. Appendix C.

Jagana had no known criminal history, thus his standard range was calculated to be 0 to 6 months. Appendix C. In exchange for a plea of guilty, the State agreed to recommend two months of work release and one month of community service. Appendix C. In the Statement of Defendant on Plea of Guilty, which was translated for Jagana and which he signed and represented that he understood, he was advised "If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Appendix C, at 7.

E-mail exchanges between the prosecuting attorney and Jagana's attorney prior to the plea reveal that the immigration consequences of the plea were a central consideration for the parties. Appendix D. The exchange reveals that Jagana's attorney consulted with immigration advisors before advising Jagana to plead guilty to the charge of possession of cocaine. Appendix D. In one email, Jagana's attorney states, "I appreciate you trying to help Mr. Jagana out with the immigration situation." Appendix D. The emails reflect, however, that while the State was willing to allow Mr. Jagana to plead guilty to an alternative charge of solicitation, which would have resulted in a higher standard range, the State was unwilling to reduce the charges further. Appendix D. Jagana chose to plead guilty to the charge with the lowest standard range. Appendix C and D.

Jagana was sentenced to three months of electronic home detention on June 7, 2006. Appendix A. He did not appeal. The judgment and sentence was filed with the clerk of the trial court on June 9, 2006. Appendix A.

D. ARGUMENT.

1. THIS PETITION IS TIME-BARRED BECAUSE PADILLA V. KENTUCKY IS A NEW RULE OF CRIMINAL PROCEDURE THAT DOES NOT APPLY RETROACTIVELY TO CASES THAT WERE FINAL BEFORE MARCH 31, 2010.

Jagana has filed this untimely collateral attack, arguing that he should be allowed to withdraw his guilty plea based on Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). He argues that Padilla is a significant change in the law pursuant to RCW 10.73.100(6). However, Padilla is not a significant change in the law that applies retroactively to cases that became final before March 31, 2010. This collateral attack is therefore time-barred pursuant to RCW 10.73.090.

No petition collaterally attacking a judgment and sentence may be filed more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1); see In re Personal Restraint of Runyan, 121 Wn.2d 432, 444, 449, 853 P.2d 424 (1993). A judgment becomes final on the date that it is filed with the clerk of the trial court if no appeal is taken, or the date that the appellate court issues its mandate if the conviction is appealed,

whichever is later. RCW 10.73.090(3). The judgment in this case became final on June 9, 2006.

Jagana contends that Padilla v. Kentucky constitutes a significant change in the law, and thus his claim falls within an exception to the time bar set forth in RCW 10.73.100. RCW 10.73.100(6) provides an exception to the one-year time limit if there has been a "significant change in the law" that is material to the conviction or sentence being challenged. However, a significant change in the law can only be material to a defendant's conviction or sentence if the change in the law is retroactive to the defendant's case. See State v. Abrams, 163 Wn.2d 277, 291, 178 P.3d 1021 (2008); In re Personal Restraint of Bonds, 165 Wn.2d 135, 140 n.2, 196 P.3d 672 (2008). Padilla v. Kentucky is a new rule of criminal procedure that does not apply retroactively to cases that were final before March 31, 2010, and cannot be the basis for relief in this case.

In Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), the United States Supreme Court set forth a new formulation for determining the retroactive application of new rules. The Court sought to clarify the standard for retroactivity because, for decades, the Court's cases had dealt with the

retroactivity question without a "unifying theme." 489 U.S. at 300. The principals set forth in Teague v. Lane were unanimously applied in Penry v. Lynaugh, 492 U.S. 302, 329-30, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), and have been repeatedly applied by the Court. See e.g. Schiro v. Summerlin, 542 U.S. 348, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) (new rule requiring jury to decide aggravating circumstances in capital case not retroactive to convictions already final); Lambrix Singletary, 520 U.S. 518, 117 S.Ct. 1517, 137 L.Ed.2d 771 (1997) (new rule regarding the "weighing" of aggravating and mitigating factors in capital case not retroactive to convictions already final); Gilmore v. Taylor, 508 U.S. 333, 113 S.Ct. 2112, 124 L.Ed.2d 306 (1993) (new rule requiring jury instruction on mitigating mental states not retroactive to convictions already final); Graham v. Collins, 506 U.S. 461, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (new rule regarding consideration of mitigating circumstances in capital case not retroactive to convictions already final). Washington courts have adopted the retroactivity standard set forth in Teague and its progeny. See State v. Evans, 154 Wn.2d 438, 447, 114 P.3d 627 (2005) (new rule that jury, not judge, must find aggravating fact that supports an exceptional sentence not retroactive to convictions

already final); In re Personal Restraint of Markle, 154 Wn.2d 262, 273, 111 P.3d 249 (2005) (new rule regarding confrontation clause not retroactive to convictions already final); In re St. Pierre, 118 Wn.2d 321, 324-27, 823 P.2d 492 (1992) (noting that "we have attempted from the outset to stay in step with the federal retroactivity analysis.")

Pursuant to Teague, when a court's decision results in a new rule, that rule applies to all cases pending on direct review. Summerlin, 124 S.Ct. at 2522. As to convictions that were already final when the new rule was announced, new substantive rules, such as interpretations of criminal statutes, generally apply retroactively. Id. In contrast, new rules of procedure do not apply retroactively unless the new rule constitutes a "watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." Id. (citing Teague, 489 U.S. at 311). In order to fall within this narrow category the rule must be one "without which the likelihood of an accurate conviction is *seriously* diminished." Id. (emphasis in original) (citing Teague, 489 U.S. at 313).

As set forth in Teague, a "new rule" is defined as follows:

[A] case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final.

489 U.S. at 301 (emphasis in original). A rule is "dictated" by existing precedent when the application of that precedent is "apparent to all reasonable jurists." Lambrix v. Singletary, 520 U.S. at 527-28 (1997). Padilla announced a new rule, and imposed on defense counsel an obligation that had not previously been imposed. As the state supreme court observed in State v. Sandoval, \_\_\_ Wn.2d \_\_\_, 249 P.3d 1015 (2011), Padilla rejected "the limited conception of the right to counsel" held by "many courts." Likewise, Justice Alito noted in his concurrence that the Court's decision was a "dramatic departure" from "the longstanding and unanimous position of the federal courts" that defense counsel need not advise defendants of deportation consequences. Padilla, 130 S.Ct. at 1487 (Alito, concurring). Padilla set forth a new rule that was not dictated by precedent and apparent to all reasonable jurists.

A rule is substantive if it alters the range of conduct or the class of persons that the law punishes. Summerlin, 124 S.Ct. at 2523. A rule is procedural if it regulates the manner of determining the defendant's culpability. Id. The rule set forth in Padilla v.

Kentucky--that a defense attorney engages in deficient performance by failing to advise his client of deportation consequences--is a rule of criminal procedure. It does not alter the range of conduct of the class of persons the law punishes. Rather, it regulates the manner of determining the defendant's culpability, in particular, the level of attorney assistance that is required under the Sixth Amendment.

A new rule of criminal procedure will not be applied retroactively unless it constitutes a "watershed rule of criminal procedure implicating fundamental fairness and accuracy of the criminal proceeding." Summerlin, 124 S.Ct. at 2524. The United States Supreme Court explained that "[t]his class of rules is extremely narrow, and 'it is unlikely that any ... "ha[s] yet to emerge.'" In re Markel, 154 Wash.2d at 269 (quoting Teague, 489 U.S. at 313). This exception is so narrow that it has not been applied to such game-changing decisions as Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000),<sup>1</sup> and Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)<sup>2</sup>. Indeed, the only new rule ever specifically determined by the Supreme Court to fall within this narrow category

was Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), which established the Sixth Amendment right to counsel. See Beard v. Banks, 542 U.S. 406, 418, 124 S.Ct. 2504, 159 L.Ed.2d 494 (2006). The rule announced in Padilla is not a watershed rule of criminal procedure on par with Gideon.

“Final” for purposes of retroactivity analysis means “a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” St. Pierre, 118 Wn.2d at 327 (quoting Griffith v. Kentucky, 479 U.S. 314, 321 n. 6 (1987)). The new rule of criminal procedure announced in Padilla v. Kentucky does not apply retroactively to cases that became final before March 31, 2010. This Court cannot grant the defendant relief based on Padilla v. Kentucky.<sup>3</sup>

2. JAGANA HAS FAILED TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL.

Even assuming this petition was not time-barred, Jagana has failed to establish ineffective assistance of counsel. He has failed to

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<sup>1</sup> See Evans, supra, 154 Wn.2d at 447.

<sup>2</sup> See In re Markle, supra, 154 Wn.2d at 273.

<sup>3</sup> Although Padilla v. Kentucky arose from a collateral attack filed in state court, there is no discussion in the majority, concurring or dissenting opinions of Teague. This is likely because Kentucky did not argue that Padilla was asserting a new rule of criminal procedure. The Court may decline to apply Teague if the

establish that counsel failed to advise him of truly clear immigration consequences. The record reflects that counsel did advise him of the risk of adverse immigration consequences. Moreover, Jagana cannot show that it would have been rational to reject the plea offer in this case.

A criminal defendant has a constitutional right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The petitioner has the burden of establishing ineffective assistance of counsel. Strickland, 466 U.S. at 687. To prevail on a claim of ineffective assistance of counsel the defendant must meet both prongs of a two-part standard: (1) counsel's representation was deficient, meaning it fell below an objective standard of reasonableness based on consideration of all the circumstances (the performance prong); and (2) the defendant was prejudiced, meaning there is a reasonable probability that the result of the proceeding would have been different (the prejudice prong). Strickland, 466 U.S. at 687; State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If the court decides that either prong has not been met, it need not address the other prong. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244 (1990).

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State does not argue it. Caspari v. Bohlen, 510 U.S. 383, 389, 114 S.Ct 948,

The inquiry in determining whether counsel's performance was constitutionally deficient is whether counsel's assistance was reasonable considering all the circumstances. Strickland, 466 U.S. at 688. In judging the performance of trial counsel, courts must engage in a strong presumption of competence. Strickland, 466 U.S. at 689. In plea negotiations, counsel's duty is to assist the defendant in evaluating the evidence against him and determining whether to plead guilty. State v. S.M., 100 Wn. App. 401, 410-11, 996 P.2d 1111 (2000). In order to establish the prejudice prong, the defendant must establish a reasonable probability that, but for counsel's errors, he would not have pled guilty. In re Personal Restraint of Riley, 122 Wn.2d 772, 780-81, 803 P.2d 554 (1993).

In Padilla v. Kentucky, the Supreme Court held that in order to provide effective assistance of counsel, defense counsel must advise a noncitizen client regarding the risk of deportation. Padilla, 130 S.Ct. at 1482. Recognizing that immigration law is complex, the Court acknowledged that in most situations the deportation consequences are uncertain. Id. at 1483. The Court held that "When the law is not succinct and straightforward (as it is in many of the scenarios posited by Justice Alito), a criminal defense attorney need

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953, 127 L.Ed.2d 236 (1994).

do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." Id. When the "deportation consequence is truly clear" the duty is to give correct advice. Id. Thus, deficient performance can be established by showing that 1) the deportation consequences are truly clear and counsel gave the defendant incorrect advice, or 2) the deportation consequences are uncertain and counsel failed to advise the client that the conviction could carry a risk of adverse immigration consequences. See also State v. Sandoval, \_\_\_ Wn.2d \_\_\_, 249 P.3d 1015 (2011) (following Padilla and finding ineffective assistance where petitioner showed that the deportation consequence was truly clear).

In the present case, Jagana has failed to establish deficient performance. He has provided this Court with no information about the immigration consequences of his 2006 guilty plea to possession of cocaine. He has fallen far short of establishing any "truly clear" immigration consequences of which he should have been advised. Thus, the only duty on defense counsel was to advise Jagana of the risk of adverse immigration consequences. This was accomplished in the plea form itself, which advised Jagana that the conviction could be grounds for deportation. Moreover, the email exchanges

between defense counsel and the prosecuting attorney prior to the plea show that counsel had consulted with immigration advisors regarding the consequences of the plea. In light of these emails, Jagana's assertion that counsel did not advise him of any immigration consequences is simply not credible, and should be rejected out of hand.

Moreover, Jagana has failed to establish prejudice. In Padilla, the Court remanded the case to the lower court to determine whether Padilla could establish prejudice. Padilla, 130 S.Ct. at 1487. The prejudice prong requires the petitioner to convince the reviewing court that a decision to reject the plea bargain would have been rational under the circumstances. Sandoval, 249 P.3d at 1021. Jagana has not met that burden in this case. It is clear that the evidence against Jagana supported a much higher charge, possession of cocaine with intent to deliver, pursuant to RCW 69.50.401(1) and (2). If convicted of this higher charge at trial, his standard range would have been 12 to 20 months. RCW 9.94A.517 and 9.994A.518. Moreover, conviction for possession with intent would likely have had worse immigration consequences because drug trafficking is an aggravated felony under Immigration Law while possession of a controlled substance is not. See Lopez v. Gonzales, 549 U.S. 47, 50-51, 127

S.Ct. 625, 166 L.Ed.2d 462 (2006). See also Padilla, 130 S.Ct. at 1480 (discretionary relief to cancel removal is not available for trafficking offenses). It would not have been rational for Jagana to proceed to trial, risking conviction for a higher crime with a certain prison sentence and more adverse immigration consequences. Jagana has failed to establish either deficient performance or prejudice.

E. CONCLUSION.

This petition should be dismissed, as Padilla does not apply retroactively to Jagana's case. Jagana has failed to make a threshold showing of a timely claim of constitutional error resulting in actual prejudice. In re Personal Restraint of Rice, 118 Wn.2d 876, 885, 828 P.2d 1086 (1992). If this Court believes a threshold showing has been made, the State requests a reference hearing to resolve the factual disputes presented herein.

DATED this 20th day of June, 2011.

Respectfully Submitted,

DAN SATTERBERG  
King County Prosecuting  
Attorney

by   
ANN SUMMERS, #21509  
Senior Deputy Prosecuting  
Attorney  
Attorneys for Respondent  
Office ID #91002

W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9650

## APPENDIX A

FILED

2006 JUN -9 AM 9: 53

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

COMMITMENT ISSUED ~~JUN 9~~ 2003

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

*Muhammadou Jagana*

Defendant,

No. *05-1-09670-1 SEA*

JUDGMENT AND SENTENCE  
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, \_\_\_\_\_, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

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 *6/7/06* by *plea* of:

Count No.: *I* Crime: *VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT: Possession Cocaine*

RCW *69.50.403* Crime Code: \_\_\_\_\_

Date of Crime: *3/20/05* Incident No. *05-117105*

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(4).
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9.94A.835.
- (d)  A V.U.C.S.A offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69.50.435.
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g)  Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h)  Domestic violence offense as defined in RCW 10.99.020 for count(s) \_\_\_\_\_.
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count 1	0	1	0 to 6 mos	-	0 to 6 mos	5 years / 10 K
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

**2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):**

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_. Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
    - Date to be set.
    - Defendant waives presence at future restitution hearing(s).
  - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500. ✓

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ \_\_\_\_\_, Court costs;  Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b)  \$100 DNA collection fee;  DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;  Recoupment is waived (RCW 9.94A.030);
- (d)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.430);
- (e)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived; (RCW 9.94A.030)
- (f)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (g)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (RCW 9.94A.760(2));
- (h)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT ONE YEAR OR LESS: Defendant shall serve a term of confinement as follows, commencing:  immediately;  (Date): Sept. 20 2006 by 4:00 p.m.  
3 months/ days on count \_\_\_\_\_; \_\_\_\_\_ months/ days on count \_\_\_\_\_; \_\_\_\_\_ months/ days on count \_\_\_\_\_

This term shall be served:  
 in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections. \* Costs of EHD are waived.  
 in King County Work/Education Release subject to conditions of conduct ordered this date.  
 in King County Electronic Home Detention subject to conditions of conduct ordered this date.  
 For burglary or residential burglary offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release.  
 The terms in Count(s) No. \_\_\_\_\_ are consecutive/ concurrent.  
This sentence shall run  CONSECUTIVE  CONCURRENT to the sentence(s) in cause \_\_\_\_\_

The sentence(s) herein shall run  CONSECUTIVE  CONCURRENT to any other term previously imposed and not referenced in this order.  
Credit is given for  \_\_\_\_\_ day(s) served  days determined by the King County Jail solely for confinement under this cause number pursuant to RCW 9.94A.505(6).  Jail term is satisfied; defendant shall be released under this cause.

ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.680: \_\_\_\_\_ days of confinement are hereby converted to:  
 \_\_\_\_\_ days/ hours community service under the supervision of the Department of Corrections to be completed;  on a schedule established by the defendant's Community Corrections Officer; or  as follows: \_\_\_\_\_  
 Alternative conversion was not used because:  Defendant's criminal history,  Defendant's failure to appear,  Other: \_\_\_\_\_

4.5 COMMUNITY  SUPERVISION, for crimes committed before 7-1-2000,  CUSTODY, for crimes committed on or after 7-1-2000, is ordered pursuant to RCW 9.94A.545 for a period of 12 months. The defendant shall report to the Department of Corrections within 72 hours of this date or of his/her release if now in custody; shall comply with all the rules, regulations and conditions of the Department for supervision of offenders (RCW 9.94A.720); shall comply with all affirmative acts required to monitor compliance; shall not possess any firearms or ammunition; and shall otherwise comply with terms set forth in this sentence.  
 The court finds that chemical dependency contributed to this offense justifying treatment conditions imposed herein (RCW 9.94A.607).  
 Appendix F, Additional Conditions is attached and incorporated.

4.6  NO CONTACT: For the maximum term of \_\_\_\_\_ years, defendant shall have no contact with \_\_\_\_\_

4.7 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, as ordered in Appendix G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in Appendix G.

4.8  OFF-LIMITS ORDER: (known drug trafficker) Appendix I is an off limits order that is part of and incorporated by reference into this Judgment and Sentence.

4.9  SEX OFFENDER REGISTRATION: (sex offense conviction) Appendix J covering sex offender registration, is attached and incorporated by reference into this Judgment and Sentence.

Date: 6-7-06

Barbara Harris  
JUDGE  
Print Name: Barbara Harris protem

Presented by:  
[Signature] 3662  
Deputy Prosecuting Attorney, WSBA#  
Print Name: NIESEN

Approved as to form:  
[Signature]  
Attorney for Defendant, WSBA# 32824  
Print Name: Dan Moran

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Muhammad Jagan

Defendant.

No. 05-1-09670-1 SEA

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):

~~(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)~~

~~The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.~~

If (2) is checked, two independent biological samples shall be taken.

Date: 6-7-06

Barbara Harris Pro Tem

JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Muhammad Jagan

Defendant.

No. 05-1-09672-1 SEA

JUDGMENT AND SENTENCE
APPENDIX H
COMMUNITY PLACEMENT OR COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
2) Work at Department of Corrections-approved education, employment, and/or community service;
3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
4) Pay supervision fees as determined by the Department of Corrections;
5) Receive prior approval for living arrangements and residence location;
6) Not own, use, or possess a firearm or ammunition (RCW 9.94A.120(16));
7) Notify community corrections officer of any change in address or employment; and
8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

[ ] The defendant shall not consume any alcohol.

[ ] Defendant shall have no contact with:

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to-wit:

[X] The defendant shall participate in the following crime-related treatment or counseling services:

Substance abuse evaluation & follow recommended treatment, if any

[ ] The defendant shall comply with the following crime-related prohibitions:

[ ]

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

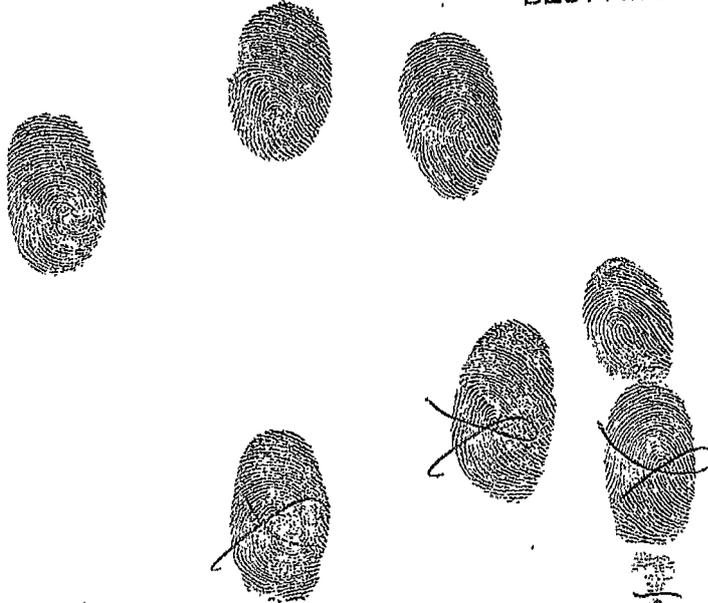
Date:

6-7-06

Barbara Hansen
JUDGE
pro Tem

FINGERPRINTS

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RIGHT HAND  
FINGERPRINTS OF:  
M. JAWARA

DEFENDANT'S SIGNATURE: *M. Jawara*  
DEFENDANT'S ADDRESS: 7128 15th St  
Ave S 98118

DATED: 6-7-06

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: *Anne O. Smart*  
DEPUTY CLERK

*Barbara Minner PRO TEM*  
JUDGE, KING COUNTY SUPERIOR COURT

CERTIFICATE

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

OFFENDER IDENTIFICATION

S.I.D. NO.  
DOB:  
SEX:  
RACE:

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

## APPENDIX B

FILED

07 SEP 26 AM 10:21

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 05-1-09670-1 SEA

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

vs.

JAGANA, MUHAMMADOU

Defendant.

NO. 05-1-09670-1 SEA

FULL SATISFACTION OF JUDGMENT

LEGAL FINANCIAL OBLIGATION

(SCOMIS Code: STFJG) RCW 4.56.100

Date of Judgment: 06/09/2006

JUDGMENT CREDITOR: **King County Superior Court Clerk**

acknowledges full satisfaction of the judgment for legal financial obligation in the amount of:

	Restitution
	Court Costs
500.00	Victim Assessment
	Fine / Penalty
	Interest
	Other:
500.00	<b>TOTAL</b>

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

Date: 9/26/2007

By: Nghe Au Deputy Clerk

~~~~~  
Case Number: 05-1-09670-1  
Case Title: STATE OF WASHINGTON VS JAGANA, MUHAMMADOU AKA  
Document Title: OTHER  
User's Name: nghe au  
Filed Date: 9/26/2007 10:21:12 AM

User Signed

Signed By: nghe au  
WSBA #: N/A  
Date: 9/26/2007 10:13:43 AM

## APPENDIX C

BEST AVAILABLE IMAGE POSSIBLE

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KING COUNTY, WASHINGTON

JUN 19 2006

2006 JUN 19 AM 9:51

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

SEA  
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 05-1-09670-1 SEA

vs.

Muhammad Jayana

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY TO FELONY  
NON-SEX OFFENSE (STDFG)

Defendant.

1.  My true name is Muhammad Jayana
2.  My date of birth is 2/2/76 (5/10/90) correct date of birth
3.  I went through the 10th grade. - Arabic School

I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is DARON MORRIS

(b) I am charged with the crime(s) of VACSA POSSESSION OF COCAINE

The elements of this crime(s) are set forth in the information/ amended information, which is incorporated by reference and which I have reviewed with my lawyer.



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

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

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

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

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

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

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

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

(a) The crime(s) with which I am charged carries a sentence(s) of:

| Count No. | Standard Range | Enhancement That Will Be Added to Standard Range | Maximum Term and Fine   |
|-----------|----------------|--------------------------------------------------|-------------------------|
| I         | 0-6 mos.       |                                                  | 5 years<br>\$ 10,000    |
|           |                |                                                  | _____ years<br>\$ _____ |
|           |                |                                                  | _____ years<br>\$ _____ |

1 The crime of \_\_\_\_\_ is a most serious offense as defined by  
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this  
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent  
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence  
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not  
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge *MS*]

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

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

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

20 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a  
21 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to  
22 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances.

1 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,  
2 attorney fees, and other costs and fees. Furthermore, the judge may place me on community  
3 supervision, community placement or community custody and I will have restrictions and  
4 requirements placed upon me.

5 (f) In addition to confinement, the judge will sentence me to a period of community  
6 supervision, community placement or community custody.

7 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community  
8 supervision for a period of up to one year; or (B) to community placement or community custody for  
9 a period up to three years or up to the period of earned release awarded pursuant to RCW  
10 9.94A.728, whichever is longer. [If not applicable, this paragraph should be stricken and initialed  
11 by the defendant and the judge MS.] *BK*

12 For crimes committed on or after July 1, 2000, the judge will sentence me to the community  
13 custody range which is from 0 months to 12 months or up to the period of earned  
14 release awarded pursuant to 9.94A.728, whichever is longer, unless the judge finds substantial and  
15 compelling reasons to do otherwise. During the period of community custody I will be under the  
16 supervision of the Department of Corrections, and I will have restrictions and requirements placed  
17 upon me. My failure to comply with these conditions will result in the Department of Corrections  
18 transferring me to a more restrictive confinement status or other sanctions being imposed. [If not  
19 applicable, this paragraph should be stricken and initialed by the defendant and the judge     .]

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

21 3 months custody, in Work Release, with  
22 30 days (240 hours) converted to Community Service,  
12 months community custody, obtain a substance abuse

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*evaluation and follow all recommended treatment, pay \$500 VPA and court costs. No more MUSA charges in this case*  
 The prosecutor will make the recommendation stated in the plea Agreement and State's

Sentence Recommendation, which are incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge MD.] *BA*

(j) The crime charged in Count \_\_\_\_\_ includes a firearm / deadly weapon sentence enhancement of \_\_\_\_\_ months. This additional confinement time is mandatory and must be served consecutively to any other sentence and any other enhancement I have already received or will receive in this or any other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge MD.] *BA*

(k) The sentences imposed on counts \_\_\_\_\_, except for any weapons enhancement, will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and judge

MS.] *BA*

1 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or  
2 any drug, the sentence will be increased by two years for each prior offense as defined in RCW  
3 46.61.5055(8). This additional confinement time is mandatory and must be served consecutively to  
4 any other sentence and any other enhancement I have already received or will receive in this or any  
5 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and  
6 the judge MS.] *BK*

7 (m) Counts \_\_\_\_\_ are serious violent offenses arising from separate and distinct  
8 criminal conduct and the sentences on those counts will run consecutively unless the judge finds  
9 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be  
10 stricken and initialed by the defendant and the judge MS.] *BK*

11 (n) The judge may sentence me as a first-time offender instead of imposing a sentence  
12 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as  
13 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I may  
14 be sentenced up to two years of community supervision if the crime was committed prior to July 1,  
15 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The  
16 judge also may require me to undergo treatment, to devote time to a specific occupation, and to  
17 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph  
18 should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

19 (o) The judge may sentence me under the a special drug offender sentencing alternative  
20 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001, or  
21 RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a  
22 period of total confinement for one-half of the midpoint of the standard range and community

1 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions  
2 described in paragraph (6)(e). The judge could impose a residential treatment-based DOSA  
3 alternative that would include three to six months of residential chemical dependency treatment and  
4 24 months of community custody, plus all the other conditions described in paragraph (6)(e).  
5 During confinement and community custody under either alternative, I will be required to  
6 participate in substance abuse evaluation and treatment, not to use illegal controlled substances and  
7 to submit to testing to monitor that, and other restrictions and requirements will be placed on me. (M) (B)

8 (p) This plea of guilty will result in revocation of my privilege to drive under RCW  
9 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not  
10 applicable, this paragraph should be stricken and initialed by the defendant and the judge (M) (B)]

11 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the  
12 judge finds I used a motor vehicle in the commission of this felony.

13 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with  
14 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus  
15 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the  
16 judge (M) (B)]

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

20 (t) I will be required to provide a biological sample for purposes of DNA identification  
21 analysis.

1 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a  
2 minor, I will be required to register with the sheriff of the county of the state of Washington where I  
3 reside, study, or work. The specific registration requirements are described in the "Offender  
4 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the  
5 defendant and the judge MS.] BAK

6 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in  
7 my control any firearm unless and until my right to do so is restored by a court of record.

8 (w) Because this is a crime of domestic violence, I may be ordered to pay a domestic  
9 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court  
10 may order me to participate in a domestic violence perpetrator program approved under RCW  
11 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and  
12 the judge MS.] BAK

13 (x) Because this crime involves the manufacture, delivery, or possession with intent to  
14 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,  
15 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be  
16 assessed, RCW 69.50.410. [If not applicable, this paragraph should be stricken and initialed by the  
17 defendant and the judge MS.] BAK

18 (y) Because this crime involves a violation of the state drug laws, my eligibility for state and  
19 federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21  
20 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant  
21 and the judge \_\_\_\_\_.]

1 (z) Because the crimes I am pleading guilty to include both a conviction under RCW  
2 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more  
3 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the  
4 sentences imposed for these crimes shall be served consecutively to each other. RCW  
5 9.94A.589(c). [If not applicable, this paragraph should be stricken and initialed by the defendant  
6 and the judge MS.]

7 7. I plead guilty to the crime(s) of VUCSA POSSESSION  
8 OF COCAINE

9  
10 as charged in the information/ ~~amended information~~. I have received a copy of  
11 that information.

12 8. I make this plea freely and voluntarily.

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

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

17 11. The judge has asked me to state briefly in my own words what I did that makes me  
18 guilty of this (these) crime(s). This is my statement:

19 ON 3/20/05, IN KING COUNTY, WA,  
20 I DID UNLAWFULLY AND FELLOWSHLY  
21 POSSESS COCAINE, A CONTROLLED  
22 SUBSTANCE AND NARCOTIC DRUG.

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

JAWA  
DEFENDANT

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

[Signature]  
PROSECUTING ATTORNEY  
Print Name: NIELSEN  
WSBA# 3662

[Signature]  
DEFENDANT'S LAWYER  
Print Name: Dan Mans  
WSBA# 32529

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

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

Dated this 7<sup>th</sup> day of June, 2006

[Signature]  
JUDGE ped Tem

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I am a certified interpreter or have been found otherwise qualified by the court to interpret in the Soninke <sup>maraka</sup> language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7 day of June, 2006

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

  
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INTERPRETER  
Print Name: Sabo Gumerel

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

|                          |            |                      |
|--------------------------|------------|----------------------|
| THE STATE OF WASHINGTON, | )          |                      |
|                          | Plaintiff, | )                    |
| v.                       | )          | No. 05-1-09670-1 SEA |
| MUHAMMADOU JAGANA        | )          | INFORMATION          |
| AKA MOHAMED J. JAWARE    | )          |                      |
|                          | )          |                      |
|                          | )          |                      |
|                          | Defendant. | )                    |

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse MUHAMMADOU JAGANA AKA MOHAMED J. JAWARE of the crime of **Violation of the Uniform Controlled Substances Act**, committed as follows:

That the defendant MUHAMMADOU JAGANA AKA MOHAMED J. JAWARE in King County, Washington on or about March 20, 2005, unlawfully and feloniously did possess Cocaine, a controlled substance and narcotic drug;

Contrary to RCW 69.50.4013, and against the peace and dignity of the State of Washington.

NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Nicole A. Gaines, WSBA #26127  
Deputy Prosecuting Attorney



SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE - NARCOTICS**

|                  |           |
|------------------|-----------|
| INCIDENT NUMBER  | 05-117105 |
| UNIT FILE NUMBER |           |

That Police Officer Carl J Anderson #6749 of the Seattle Police Department believes that there is probable cause that Mohamed J Jawara, B/M Dob: 05/10/1970 committed the crime(s) of Violation of the Uniformed Controlled Substances Act on March 20, 2005 at 19:53 within the City of Seattle, County of King, State of Washington by possessing with intent to deliver/manufacture Cocaine, a controlled substance.

This belief is predicated on the following facts and circumstances:

On 03/20/05 I was working as uniformed patrol unit 3S4 with my partner, Officer Samson. We were on routine patrol, traveling northbound on 48<sup>th</sup> Ave S, towards S Othello St. We observed a blue Cadillac 4dr, bearing WA plate #543NIH, traveling northbound in front of us. We observed that the vehicle had a defective license plate light. We followed the vehicle as it turned westbound onto S Othello St and then stopped it for the traffic violation near the intersection of 43<sup>rd</sup> Ave S and S Othello St.

We contacted the driver, who identified himself via WADL as S/Jaware. As I explained the reason for the stop, Jaware became very nervous. I told Jaware to keep his hands up on the steering wheel. I returned to my patrol vehicle, leaving Officer Samson up at the Cadillac to keep eyes on the suspect.

As soon as I returned to my patrol car, Officer Samson observed Jaware take his right hand off of the steering wheel and reach underneath the front of the driver's seat. Officer Samson stepped forward and illuminated the inside of the vehicle with her flashlight. She observed Jaware pushing or pulling something underneath the drivers seat and saw something white in his hand.

Fearing that Jaware might be attempting to retrieve or hide a weapon, we removed him from the vehicle for Officer safety. As I patted Jaware down for weapons, Officer Samson conducted a frisk for weapons inside the vehicle.

While conducting the frisk, Officer Samson found a clear cellophane baggie full of off-white colored rocks. She immediately recognized the substance in the baggie as crack cocaine based upon her training and experience. When Officer Samson told me what she found, I placed Jaware under arrest. Officer Samson then read Jaware his Miranda Warnings.

Unit K95 and PD Scar responded to the scene per our request. PD Scar gave a positive sit response, indicating the presence of narcotics, when he found the baggie of suspected Cocaine. Unit K95 also found a small clear plastic baggie containing suspected Marijuana.

Officer Samson and I transported Jaware and the evidence to the South Precinct. At the precinct, I field-tested the suspected crack cocaine with a #13 field tester. The substance field-tested positive for cocaine. The cocaine weighed 16.1 grams and has an approximate street value of \$1288.00. I packaged the cocaine in narcotics envelope #A002422 and submitted it to the SPD Evidence Unit.

Jaware was booked into KCJ for Investigation of VUCSA.

ORIGINAL

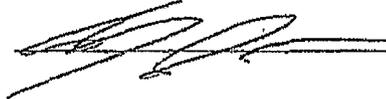


SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE NARCOTICS**

|                  |           |
|------------------|-----------|
| INCIDENT NUMBER  | 05-117105 |
| UNIT FILE NUMBER |           |

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 20<sup>TH</sup> day of MARCH, 2005, at Seattle, Washington.

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CAUSE NO. 05-1-09670-1 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR  
CONDITIONS OF RELEASE

The Certification for Determination of Probable Cause prepared by Seattle Police Department Officer Carl Anderson for police incident number 05-117105 is incorporated by reference.

REQUEST FOR BAIL

The State requests bail in the amount of \$5,000.

Nicole A. Gaines, WSBA #26127

BEST AVAILABLE IMAGE POSSIBLE

FELONY PLEA AGREEMENT

Date of Crime: 3-20-05

Date: \_\_\_\_\_

Defendant: Moneta J. Gaud Cause No: 05-1-69670-1 SEA/KNE

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) 1 VUCSA Possession of the  original  amended information.

With Special Finding(s):  deadly weapon - firearm, RCW 9.94A.510(3);  deadly weapon other than firearm, RCW 9.94A.510(4);  sexual motivation, RCW 9.94A.835;  protected zone, RCW 69.50.435;  domestic violence, RCW 10.99.020;  other \_\_\_\_\_; for count(s): \_\_\_\_\_

DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss Count(s): \_\_\_\_\_.

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in  Appendix C;  \_\_\_\_\_.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and  agrees to pay restitution in the specific amount of \$ \_\_\_\_\_  agrees to pay restitution as set forth in  Appendix C;  \_\_\_\_\_.

OTHER: NO MORE VUCSA CHARGE IN THIS CASE  
(SPD 05-17105)

CRIMINAL HISTORY AND OFFENDER SCORE:

a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

- (1) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_
- (2) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

c. The State's recommendation may change if the score used by the court at sentencing differs from that set out in Appendix A.

Maximum on Count(s) 1 is not more than 05 years each and \$ 5000 fine each.

Maximum on Count(s) \_\_\_\_\_ is not more than \_\_\_\_\_ years each and \$ \_\_\_\_\_ fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: \_\_\_\_\_

Mandatory weapon sentence enhancement for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each; for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

\_\_\_\_\_  
Defendant

711. Hreg  
\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Attorney for Defendant

\_\_\_\_\_  
Judge, King County Superior Court

03/20/2005

|                                      |                              |                         |
|--------------------------------------|------------------------------|-------------------------|
| OFFENDER'S NAME<br>MUHAMMADOU JAGANA | OFFENDER'S DOB<br>02/02/1976 | STATE ID#<br>WA21596159 |
| JUDGE                                | CAUSE #<br>05-1-09670-1 SEA  | FBI #<br>30559XB3       |
|                                      |                              | DOC #                   |

**POSSESSION OF A CONTROLLED SUBSTANCE THAT IS EITHER HEROIN OR NARCOTICS FROM SCHEDULE I OR II OR FLUNITRAZEPAM (e.g., Cocaine)**

(RCW 69.50.401(d))

CLASS C - NONVIOLENT

For offenses occurring after June 30, 2003 (RCW 9.94A.517)

(If sexual motivation finding/verdict, use form on page III-)

**I. OFFENDER SCORING (RCW 9.94A.525(7))**

**ADULT HISTORY:**

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

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions ..... x 1 = \_\_\_\_\_

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

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

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

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

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

0

**II. DRUG GRID SENTENCE RANGES**

| Offender Score:        | 0 to 2        | 3 to 5          | 6 to 9+          |
|------------------------|---------------|-----------------|------------------|
| Standard Range Level I | 0 to 6 months | 6+ to 18 months | 12+ to 24 months |

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. Add 12 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.510).
- D. A \$1,000 mandatory fine shall be imposed (\$2,000 for a subsequent conviction), unless indigent (RCW 69.50.430).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- or III- to calculate the enhanced sentence.
- F. For sentence ranges for anticipatory drug offenses, see page III-269.
- G. Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

\*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See *State v. Howell*, 102 Wn. App. 288, 6 P.3d 1201 (2000).

\*\*The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See *In re Hopkins*, 137 Wn.2d 897 (1999).

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: MUHAMMADOU JAGANA

FBI No.: 3059XB3

State ID No.: WA21596159

DOC No.:

This criminal history compiled on: August 12, 2005

- |                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> None known. Recommendations and standard range assumes no prior felony convictions.              |
| <input type="checkbox"/> Criminal history not known and not received at this time. WASIS/NCIC last received on 08/12/2005 |

**Adult Felonies - None Known**

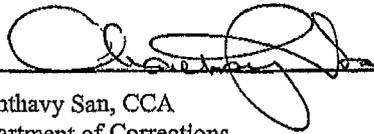
**Adult Misdemeanors - None Known**

**Juvenile Felonies - None Known**

**Juvenile Misdemeanors - None Known**

**Comments**

Prepared by:

  
\_\_\_\_\_  
Chanthavy San, CCA  
Department of Corrections

STATE'S SENTENCE RECOMMENDATION  
(FELONIES COMMITTED ON OR AFTER 7/1/2000; SENTENCE OF ONE YEAR OR LESS)

Date of Crime: 3-20-05

Date: 8-16-05

Defendant: Jagana

Cause No.: \_\_\_\_\_ SEA/KNT

The State recommends that the defendant be sentenced to a term of confinement as follows:

3 months/days on Count I  
\_\_\_\_\_ months/days on Count \_\_\_\_\_

Possessed  
16 grams  
crack

\_\_\_\_\_ months/days on Count \_\_\_\_\_  
\_\_\_\_\_ months/days on Count \_\_\_\_\_

This term shall be served:

in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections

in King County Work/Education Release subject to conditions of conduct

in King County Electronic Home Detention subject to conditions of conduct

For burglary or residential burglary offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: \_\_\_\_\_

\_\_\_\_\_ Terms to be consecutive to any other term(s) not specifically referred to in this form.

This is an agreed recommendation.

ALTERNATIVE CONVERSION (RCW 9.94A.680): ~~30~~ days of total confinement should be converted to:

240 days/hours of community restitution (maximum of 30 days conversion from confinement, violent offenses not eligible, RCW 9.94A.680) under the supervision of the Department of Corrections to be completed as follows:

on a schedule established by the community corrections officer;  other: \_\_\_\_\_

REASONS FOR NOT RECOMMENDING NON-JAIL ALTERNATIVE SENTENCE:  criminal history;  failure to appear history;  violent offense - not eligible;  other \_\_\_\_\_

EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form or brief.

COMMUNITY CUSTODY: Pursuant to RCW 9.94A.545, the defendant should complete 12 months of community custody as defined in RCW 9.94A.030 and the State recommends the following additional conditions:

Obtain an alcohol/substance abuse evaluation and follow all treatment recommendations; not possess or use alcohol.

Enter into, make reasonable progress in, and successfully complete Domestic Violence Batterer's treatment, per WAC 388-60.

Other: \_\_\_\_\_

NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: \_\_\_\_\_

NO CONTACT: For the maximum term, defendant shall have no unsupervised contact with minors.

MONETARY PAYMENTS: Defendant shall make the following monetary payments under the supervision of the Department of Corrections for up to 10 years pursuant to RCW 9.94A.753 and RCW 9.94A.760.

Restitution as set forth in the "Plea Agreement" page and  Appendix C.

Court costs; mandatory \$500 Victim Penalty Assessment; recoupment of cost for appointed counsel; \$100 DNA collection fee.

King County Local Drug Fund \$ 100.00;  \$100 lab fee (RCW 43.43.690).

Fine of \$ \_\_\_\_\_;  \$1,000 fine for VUCSA;  \$2,000 fine for subsequent VUCSA.

Costs of incarceration in K.C. Jail at \$50 per day (RCW 9.94A.760(2)).

Emergency response \$ \_\_\_\_\_ (RCW 38.52.430);  Extradition costs of \$ \_\_\_\_\_;  Other \_\_\_\_\_

MANDATORY CONSEQUENCES: HIV blood testing (RCW 70.24.340) for any sex offense, prostitution related offense, or drug offense associated with needle use. DNA testing (RCW 43.43.754). Revocation of right to possess a FIREARM (RCW 9.41.040). DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420). REGISTRATION: ALL persons convicted of sex offenses and some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.44.130.

915

M. K. B.  
Deputy Prosecuting Attorney, WSBA No. \_\_\_\_\_

APPENDIX D

## Hogan, Michael

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**From:** Morris, Daron  
**Sent:** Monday, May 22, 2006 4:11 PM  
**To:** Hogan, Michael  
**Subject:** RE: Jagana 6-7-06

Yes.

-----Original Message-----  
**From:** Hogan, Michael  
**To:** Morris, Daron  
**Sent:** 5/19/06 10:35 AM  
**Subject:** RE: Jagana 6-7-06

I think I wrote up the solicitation. If you're sure he wants the possession, I'll tear up the solicitation and redraft the possession. Is this what he wants?

-----Original Message-----  
**From:** Morris, Daron  
**Sent:** Friday, May 19, 2006 10:24 AM  
**To:** Hogan, Michael  
**Subject:** RE: Jagana 6-7-06

Mike,

I consulted with my immigration advisors about the proposal to offer solicitation to deliver. It looks like that would offer no benefit, anyway. The reasons for this are somewhat complicated and probably not worth going into here. Mr. Jagana will be better off under the original offer that you wrote up: Possession with a non-agreed 3 month WER rec, with 30 days converted to CS. Please keep this offer available for the P&S date on 6/7.

Thank you,  
- Daron

-----Original Message  
**From:** Hogan, Michael  
**To:** Morris, Daron  
**Sent:** 5/16/06 8:45 AM  
**Subject:** RE: Jagana 6-7-06

Sol on a low end std range is the best I can offer. It gives him what he needs. He is not bound by it.

-----Original Message-----  
**From:** Morris, Daron  
**Sent:** Monday, May 15, 2006 3:21 PM  
**To:** Hogan, Michael  
**Subject:** RE: Jagana 6-7-06

I believe that does address the eligibility issues. But 9 months is a very big increase off of his standard range as charged, which is 0 to 6 months. Would it be possible to do an agreed FTOW on Solicitation to deliver, where you recommend 90 days? I appreciate you trying to help Mr. Jagana out with the immigration situation, but there must be some way to do it that doesn't result a 9-15 month standard range.

Thanks,  
- Daron

-----Original Message-----  
**From:** Hogan, Michael  
**To:** Morris, Daron

Sent: 5/15/06 11:00 AM  
Subject: Jagana 6-7-06

I talked with Erin Becker. I can offer Solicitation to Deliver, a std range of 9-15 motnhs and First Offender Eligible, which is 0-90 days. I would recommend 9 months, etc. Let me know if he wants it, it is the best I can offer and seems to address his elibility issues.

CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Nicholas Marchi, at the following address:

Carney and Marchi, 108 S. Washington St., Suite 406, Seattle, WA 98104-3433, attorney for the petitioner, containing a copy of the State's Response to Personal Restraint Petition in In re Personal Restraint of Jagana, No. 66682-7-I, in the Court of Appeals of the State of Washington.

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



Name  
Done in Seattle, Washington

Date

06/20/11

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2011 JUN 20 AM 4:54