

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Apr 23, 2014, 2:03 pm  
BY RONALD R. CARPENTER  
CLERK  
NO. 89502-3

---

RECEIVED BY E-MAIL

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Petitioner,

v.

JOSEPH A. PELTIER,

Respondent.

*ll* **Filed**  
**Washington State Supreme Court**

*fb* **APR 30 2014**

**Ronald R. Carpenter**  
**Clerk**

---

PETITIONER'S REPLY TO  
SUPPLEMENTAL BRIEF OF RESPONDENT

---

MARK K. ROE  
Prosecuting Attorney

SETH A. FINE  
Deputy Prosecuting Attorney  
Attorney for Petitioner

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

 ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ADDITIONAL ISSUES ..... 1

III. ADDITIONAL STATEMENT OF THE CASE ..... 1

IV. ADDITIONAL ARGUMENT ..... 3

    A. THE DEFENDANT'S CHALLENGE TO THE VOLUNTARINESS  
    OF HIS WAIVER SHOULD NOT BE CONSIDERED. .... 3

        1. Under RAP 13.4(d), A Respondent Who Wishes To Raise  
        Additional Issues "Must" Raise Them In The Answer To The  
        Petition For Review. .... 4

        2. Under RAP 13.7(b), This Court Will Only Consider Issues That  
        Were Raised In The Petition For Review And The Answer. .... 6

        3. An Issue Cannot Be Considered For The First Time On Appeal If  
        The Record Is Inadequate For Proper Consideration. .... 8

    B. IF THE ISSUE CAN BE RAISED, THE RECORD PROVIDES  
    NO BASIS FOR OVERTURNING THE TRIAL COURT'S FINDING  
    THAT THE DEFENDANT MADE A KNOWING, VOLUNTARY, AND  
    INTELLIGENT WAIVER OF HIS RIGHTS..... 10

V. CONCLUSION ..... 15

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<u>Bernal v. American Honda Motor Co.</u> , 87 Wn.2d 406, 553 P.2d 107 (1976).....	9
<u>In re the Personal Restraint of Stoudmire</u> , 141 Wn.2d 342, 5 P.3d 1240 (2000).....	2
<u>Shoreline Community College Dist. no. 7 v. Employment Security Dept.</u> , 120 Wn.2d 394, 942 P.2d 938 (1992).....	7
<u>State v. Cashaw</u> , 4 Wn. App. 243, 480 P.2d 528, <u>review denied</u> , 79 Wn.2d 1002 (1971).....	13
<u>State v. Kuljis</u> , 70 Wn.2d 168, 422 P.2d 480 (1967).....	12
<u>State v. Leyda</u> , 157 Wn.2d 335, 138 P.3d 610 (2006).....	7
<u>State v. Peltier</u> , 176 Wn. App. 732, 309 P.3d 506 (2013).....	2

### FEDERAL CASES

<u>Acevedo-Ramos v. United States</u> , 961 F.2d 305 (1 <sup>st</sup> Cir.), <u>cert. denied</u> , 506 U.S. 905 (1992).....	10
<u>States v. Caldwell</u> , 859 F.2d 805, 806 (9 <sup>th</sup> Cir. 1988), <u>cert. denied</u> , 489 U.S. 1039 (1989).....	10, 14
<u>United States v. Flood</u> , 635 F.3d 1255 (10 <sup>th</sup> Cir. 2011).....	10, 11

### OTHER CASES

<u>Cowan v. Superior Court</u> , 14 Cal. 4 <sup>th</sup> 367, 58 Cal. Rptr. 2d 458, 460-61, 926 P.2d 438 (1996).....	11, 14
<u>Padie v. State</u> , 594 P.2d 50 (Alaska 1979).....	11

### COURT RULES

RAP 1.2(b).....	5
RAP 2.5(a).....	9
RAP 13.4(d).....	4, 5, 6, 8
RAP 13.7(b).....	6, 7, 8
RAP 18.8(a).....	5, 6

## I. INTRODUCTION

This court granted review on one issue: whether a defendant *can* waive the statute of limitations. In his supplemental brief, the defendant raised a new issue: whether he *did* adequately waive that statute. This brief addresses that issue.

## II. ADDITIONAL ISSUES

(1) Should this court consider an issue that was raised for the first time in a supplemental brief, where no record of the relevant facts was made at trial?

(2) If the issue is considered, does the record show that the defendant made a voluntary conditional waiver of the statute of limitations?

## III. ADDITIONAL STATEMENT OF THE CASE

In the trial court, the defendant argued that the court lacked jurisdiction to accept a waiver of the statute of limitations. He never denied the existence of a waiver or claimed that the waiver was involuntary. See CP 65-83, 6-19, 32-35. On appeal, he repeated the same argument: the statute of limitations is jurisdictional, so it cannot be waived. Brief of Respondent at 4-8. The Court of Appeals affirmed on a slightly different ground. It held that the trial

court lacked authority, rather than jurisdiction, to accept a waiver.

State v. Peltier, 176 Wn. App. 732, 309 P.3d 506 (2013).

The State's Petition for Review raised the following issue:

Can a criminal defendant expressly relinquish the rights conferred by the statute of limitations?

P.R.V. at 1.

The defendant's Answer set out substantially the same issue, in different language:

In *In re the Personal Restraint of Stoudmire*, [141 Wn.2d 342, 5 P.3d 1240 (2000),] this Court established that once the statute of limitations has run, the trial court no longer has authority to act. Where a trial court imposes a sentence after the statute of limitations has run, the court exceeds the authority given it. Here, the State conceded the statute of limitations had run, thus the trial court lacked authority to sentence Mr. Peltier. Has the State established sufficient reasons for this Court to overrule its decision in *Stoudmire*?

Answer to P.R.V. at 1.

In his supplemental brief, however, the defendant raised and argued the following issue:

If a waiver of the statute of limitations is allowed, must the waiver be made knowingly, voluntarily and intelligently?

Supp. Brief of Respondent at 1. The State moved to strike this issue and the corresponding argument, but that motion was denied.

#### IV. ADDITIONAL ARGUMENT

##### A. THE DEFENDANT'S CHALLENGE TO THE VOLUNTARINESS OF HIS WAIVER SHOULD NOT BE CONSIDERED.

The defendant's supplemental brief raises a new issue. Until that brief was filed, the defendant's argument related to the *power* of a court to accept a waiver of the statute of limitations. In the trial court and the Court of Appeals, he argued that courts lack "jurisdiction" to accept a waiver. CP 65-83, 6-19, 32-35; Brief of Respondent at 4-8. In his answer to the petition for review, he changed the argument to lack of "authority." Answer to P.R.V at 1. The trial court and the Court of Appeals accepted this argument.

This argument raises a pure legal issue. Under this argument, the voluntariness of a defendant's waiver does not matter. No matter how clearly he might understand his rights, or how much advantage he might gain from a waiver, a court cannot accept it. The facts of the particular case are irrelevant.

The issue raised in the supplemental brief is different. It necessarily assumes that courts *can* accept a waiver. Resolution of the issue depends on the facts. Did *this* defendant understand his rights? Was his action voluntary? Did he have the opportunity to

consult with counsel? Rather than being irrelevant, the facts of the particular case are critical.

A new issue of this nature cannot be raised for the first time in a supplemental brief. Allowing a defendant to raise it in this manner violates multiple rules of appellate procedure.

**1. Under RAP 13.4(d), A Respondent Who Wishes To Raise Additional Issues “Must” Raise Them In The Answer To The Petition For Review.**

First, RAP 13.4(d) requires respondents to raise any additional issues in their answer:

If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer.

Application of this rule does not depend on the nature of the issue raised. It applies to “any issue that is not raised in the petition for review.” The breadth of this requirement is clear from the reference to “issues that were raised but not decided in the Court of Appeals.” Resolution of such issues may be necessary for the ultimate disposition of the case. Nonetheless, if a respondent wants this court to review such issues, he *must* include them in his answer. The word “must” emphasizes the importance of this requirement: “The word ‘must’ is used in place of ‘should’ ... to

emphasize failure to preform the act in a timely way may result in more severe than usual sanctions." RAP 1.2(b).

Of course, few if any of the requirements of the rules of appellate procedure are absolute. Under RAP 18.8(a), this court may "waive or alter the provisions of any of these rules ... in order to serve the ends of justice." If the defendant believed that consideration of an additional issue was necessary, he could have filed a motion under RAP 18.8(a) to allow him to raise that issue. By doing so, he would have given the State notice that the issue needed to be addressed. Presumably this court would have established a briefing schedule that would have allowed the issue to be briefed in a fair and orderly manner.

Instead of following this course, counsel for the defendant chose to ignore RAP 13.4(d). He has acknowledged that he did this for tactical reasons.<sup>1</sup> The effect of this tactical decision is to ambush the State with a new issue. Even if the State had anticipated this issue, it could not have addressed it, because this court's rules would not permit it. The State, which strictly followed the rules, is

---

<sup>1</sup> The Respondent's Answer to the State's Motion to Strike says: "There are stylistic and tactical decisions which go into the answer to the petition for review as opposed to the supplemental brief."

left scrambling to brief an additional issue in the short time available before oral argument.<sup>2</sup> The defendant, who failed to do something that he “must” do, is rewarded with a substantial tactical advantage.

RAP 13.4(d) places both parties on notice of what issues the court will consider. If it is necessary to consider additional issues in a particular case, RAP 18.8(a) provides a way to do so without allowing either party to be ambushed. Following these rules ensures fairness to both parties and allows full briefing of all issues that this court intends to consider. Allowing violations of the rules threatens these interests, with no compensating advantages. This court should refuse to consider issues that were not raised in the petition for review or answer, as required by RAP 13.4(d).

**2. Under RAP 13.7(b), This Court Will Only Consider Issues That Were Raised In The Petition For Review And The Answer.**

The requirements of RAP 13.4(d) are reinforced by RAP 13.7(b):

If the Supreme Court accepts review of a Court of Appeals decision, the Supreme Court will review only the questions raised in ... the petition for review and

---

<sup>2</sup> This problem was worsened by the respondent’s motion for an extension of time to file the supplemental briefs. When the court granted that motion, it shortened the time available before oral argument by three weeks. The respondent’s motion did not mention that he intended to raise a new issue in his brief.

the answer, unless the Supreme Court orders otherwise upon the granting of the motion or petition.

As discussed above, neither the petition for review nor the answer raised any issue concerning the adequacy of the defendant's waiver. In granting review, this court did not order consideration of any additional issue. Consequently, under RAP 13.7(b), that issue is outside the scope of this court's review.

This court has said that it will "generally" not consider issues raised for the first time in a supplemental brief. State v. Leyda, 157 Wn.2d 335, 340, 138 P.3d 610 (2006). The court nonetheless has asserted its "inherent authority to consider the issue if such consideration is necessary to reach a proper decision." Shoreline Community College Dist. no. 7 v. Employment Security Dept., 120 Wn.2d 394, 402, 942 P.2d 938 (1992). Here, there is no reason for the court to depart from its general practice. Without considering any additional issues, the court can reach a proper decision on the issue on which it granted review: the legal issue of whether a defendant *can* waive the statute of limitations. Whether *this* defendant effectively waived the statute can if necessary be resolved on remand.

Supplemental briefs provide unique opportunities for abuse. They are the only briefs in Washington that are filed simultaneously. They are also the last briefs filed in the case, and they are frequently filed close to oral argument. If new issues are raised in the supplemental brief, the opposing party has limited opportunity to respond to them. To ensure basic fairness, this court should be vigilant in enforcing its rules against raising new issues in supplemental briefs. As provided by RAP 13.7(b), review should be limited to the issue raised in the petition for review and answer.

**3. An Issue Cannot Be Considered For The First Time On Appeal If The Record Is Inadequate For Proper Consideration.**

Even apart from RAP 13.4(d) and 13.7(b), the adequacy of the waiver in this case cannot properly be considered, because it was not raised in the trial court. In moving to dismiss, the defendant argued *only* that the court lacked jurisdiction to accept a waiver of the statute of limitations. He never claimed that his waiver was involuntary. See CP 65-83, 6-19, 32-35. Such a claim cannot be raised for the first time on appeal.

There are limitations on a respondent's ability to raise issues for the first time on appeal:

A party may present a ground for affirming a trial court decision which was not presented to the trial court if

the record has been sufficiently developed to consider the ground.

RAP 2.5(a). Here, the record is *not* sufficiently developed. It does not even include a transcript of the hearing at which the waiver occurred.

The defendant's argument is based on purported deficiencies in the record.<sup>3</sup> For example, he argues that "there is nothing in the record that established, that with this knowledge, he consulted with counsel prior to waiving this right." Supp. Brief of Resp. at 15. The reason the record is silent is because the issue was not raised. It is grossly unfair for a party to raise an issue for the first time on appeal, when a record cannot be made, and then rely on the absence of a record.

[T]he underlying assumption of the general rule permitting affirmance of the trial court upon a correct, alternative ground not considered by the trial court is, of course, that the parties had a full and fair opportunity to develop facts relevant to the decision. Where this opportunity has not been available, the proper resolution of the appeal is not affirmance but remand.

---

<sup>3</sup> As discussed below, the absence of a record actually weighs against the defendant, not the State. If, however, the court accepts the defendant's argument that the absence of a record weighs against the State, it is unfair to deprive the State of the opportunity of making a record.

Bernal v. American Honda Motor Co., 87 Wn.2d 406, 414, 553 P.2d 107 (1976) (citation omitted). This observation is applicable here. If the voluntariness of the waiver must be addressed, it should be done on remand, where an adequate record can be made.

**B. IF THE ISSUE CAN BE RAISED, THE RECORD PROVIDES NO BASIS FOR OVERTURNING THE TRIAL COURT'S FINDING THAT THE DEFENDANT MADE A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER OF HIS RIGHTS.**

Assuming that the issue can be waived, this court should hold that the record establishes a valid waiver. The statute of limitations is not constitutional in nature. As a result, the standards for waiver of constitutional rights are inapplicable. United States v. Flood, 635 F.3d 1255, 1258-59 (10<sup>th</sup> Cir. 2011). Federal courts have disagreed on the requirements for waiving the statute of limitations. Some have held that a guilty plea, by itself, is sufficient to waive the statute of limitations. Acevedo-Ramos v. United States, 961 F.2d 305 (1<sup>st</sup> Cir.), cert. denied, 506 U.S. 905 (1992). Others have required an explicit waiver. United States v. Caldwell, 859 F.2d 805, 806 (9<sup>th</sup> Cir. 1988), cert. denied, 489 U.S. 1039 (1989). Even under the more stringent standard, a waiver is adequate if it is knowing and voluntary. This standard is satisfied if "the defendant was fully cognizant of the consequences of such a

waiver and decided to execute it on the advice of his attorney for his own benefit." Id. There is no requirement that the waiver occur in court. Flood, 635 F.3d at 1259.

The defendant cites the standards suggested by the California Supreme Court:

[A] statute of limitations can be waived if the trial court determines that the following prerequisites have been met: (1) the waiver is knowing, intelligent, and voluntary; (2) it is made for the defendant's benefit and after consultation with counsel; and (3) the defendant's waiver does not handicap his defense or contravene any other public policy reasons motivating the enactment of the statutes

Cowan v. Superior Court, 14 Cal. 4<sup>th</sup> 367, 372, 58 Cal. Rptr. 2d 458, 460-61, 926 P.2d 438, 440-41 (1996), quoting Padie v. State, 594 P.2d 50, 57 (Alaska 1979). This does not appear to be substantially different from the standards applied by those Federal courts that require an explicit waiver.

In the present case, this standard was satisfied. The defendant's stipulation agreement contained an express conditional waiver of the statute of limitations:

If the defendant violates any ... provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial

delay, statutes of limitations, mandatory joinder requirements, or double jeopardy.

CP 117 ¶ 7. The provisions of the agreement included a promise not to challenge his conviction. Id. ¶ 6. This agreement was signed by both the defendant and his attorney, as well as the prosecutor and the trial judge. CP 118. (The entire agreement is attached to this brief as an appendix.)

The stipulation includes a finding by the court that the defendant's waiver and agreement were knowingly, intelligently, and voluntarily made. CP 115. The defendant has not produced any record of the hearing at which the court accepted his stipulation. Absent such a record, the trial court's findings become the established facts of the case. See State v. Kuljis, 70 Wn.2d 168, 170, 422 P.2d 480 (1967). It is therefore conclusively established that the defendant's waiver was knowing, intelligent, and voluntary.

Even apart from the court's finding, the record establishes a valid waiver. The defendant and the prosecutor had negotiated a substantial reduction of charges, in return for the defendant's stipulation to his guilt of lesser charges. The prosecutor was concerned about the possibility that the defendant might later

attempt to repudiate his agreement. The prosecutor was not willing to allow the defendant to retain the benefits of his agreement (the reduction of charges) while repudiating the detriments (his stipulation to guilt of lesser charges). Consequently, the agreement provided that *if* the defendant violated his agreement, he would waive procedural protections against the filing of greater charges.

The import of the agreement was clear. The defendant knew what would happen if he violated the agreement – he could be prosecuted for greater charges. There is no indication that he suffered from any incapacity that prevented him from understanding this agreement. Nor is there any showing that he was subject to any improper inducement. His agreement was therefore knowing, voluntary, and intelligent. See State v. Cashaw, 4 Wn. App. 243, 248-49, 480 P.2d 528, review denied, 79 Wn.2d 1002 (1971) (discussing meaning of “voluntary, knowing, and intelligent” waiver of Miranda rights).

The agreement shows on its face that it was negotiated with the advice of counsel. The defendant entered into the agreement to obtain an advantage – a substantial reduction of charges. No public policy is violated by the waiver. As applied in this case, the waiver simply restores the status quo after the defendant’s repudiation of

his agreement. Under the standards in Cowan and Caldwell, a voluntary waiver has been shown.

The defendant claims that there was no valid waiver because he “was never explicitly told that the statute of limitations had expired on the offenses to which he was pleading guilty.” Supp. Brief of Respondent at 15. (It was actually not a guilty plea, but a stipulated trial.) This argument confuses two distinct kinds of waiver: (1) an *immediate* waiver with regard to the charges on which the defendant stipulated guilt vs. (2) a *conditional* waiver as to charges that could be brought if the defendant violated the agreement. An *immediate* waiver was not included in the agreement – which is why the defendant was able to repudiate his stipulation. A *conditional* waiver did occur.

With regard to the *conditional* waiver, the defendant *could not* have been properly advised that the statute of limitations had already expired. As pointed in the petition for review, the statute of limitations *had not* expired as to the original charges. P.R.V. at 2. Whether it would expire in the future depended on how long the defendant would wait before repudiating his agreement. That question could not be answered in advance. All the defendant could be told was that *if* he chose to repudiate his agreement, the State

would regain the right to file additional charges, regardless of the lapse of time.

The stipulation agreement contained an explicit conditional waiver of the statute of limitations. The defendant entered into that agreement on the advice of counsel. The court approved the agreement as knowingly, intelligently, and voluntarily made. This court has no basis for overturning that finding. The waiver was valid.

#### V. CONCLUSION

The order of dismissal should be reversed, and the case remanded for further proceedings.

Respectfully submitted on April 23, 2014.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:

  
\_\_\_\_\_  
SETH A. FINE, WSBA # 10937  
Deputy Prosecuting Attorney  
Attorney for Petitioner

*Sent via e-mail*  
On this day I mailed a ~~properly stamped envelope~~ addressed to the attorney for the defendant that contained a copy of this document.  
I certify under penalty of perjury under the laws of the State of Washington that this is true.  
Signed at the Snohomish County Prosecutor's Office  
this 23<sup>rd</sup> day of April, 2014



FILED

03 JUL 30 PM 4:57

PAUL DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASH.



02-1-01945-0

46

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

PELTIER, JOSEPH ALBERT

Defendant.

No. 02-1-01945-0

STIPULATION FOR BENCH  
TRIAL ON AGREED  
DOCUMENTARY EVIDENCE

The defendant is charged with the crimes of Count I: Third Degree Rape and Count II: Indecent Liberties. The defendant, defense counsel, and the deputy prosecuting attorney appeared in open court for trial. The parties desired to proceed by stipulated bench trial on agreed documentary evidence.

I. ADVISEMENT AND WAIVER OF RIGHTS

1.1 The defendant has the following rights: (a) trial by jury; (b) at trial to confront and listen to the testimony of the witnesses against defendant and to cross-examine witnesses; (c) at trial to call witnesses for the defense at no expense to the defendant; (d) for the defendant to testify in his/her own defense at trial, and (e) the right to appeal a finding of guilt.

1.2 The rights listed in section 1.1, (a) through (d), above will be lost by agreement to a bench trial on agreed documentary evidence. A bench trial is a trial in which the judge (instead of a jury) decides the case. The use of agreed documentary evidence means that no live witnesses will be called to testify. Since only the agreed documentary evidence will be

TD  
46

introduced at trial, the defense will not call live witnesses and the defendant will not testify. The judge will consider the agreed documentary evidence to decide the case.

1.3 The defendant wants to proceed with a bench trial on agreed documentary evidence. No promises or threats have been made to the defendant (or to other persons) to cause defendant to give up the rights listed in section 1.1 (a) through (e), or to cause the defendant to agree to a bench trial on agreed documentary evidence. Defendant acknowledges that he/she knowingly, freely, and voluntarily waives (gives up) the rights in section 1.1, (a) through (e), and agrees to a bench trial on agreed documentary evidence.

1.4 The defendant understands that he/she is charged with the crime of Count I: Third Degree Rape, which has a maximum sentence of 5 years and a standard sentence range of 41-54 months and Count II: Indecent Liberties, which has a maximum sentence of 10 years and a standard sentence range of 77-102 months.

\* pp 1-171

## II. STIPULATION

The defendant and the State of Washington agree and stipulate as follows:

2.1 There will be a bench trial where a judge (instead of a jury) will function as the sole trier of fact and decide this case.

2.2 The evidence to be considered at this bench trial shall consist only of the agreed documentary evidence which is (a) the affidavit(s) of probable cause on file in this cause plus (b) the reports, statements, lab tests, photos, diagrams, and other documents contained in "Appendix E" to this stipulation.

2.3 The person present in court is the defendant charged in this cause. Further, the defendant is the same person named and referred to in the agreed documentary evidence.

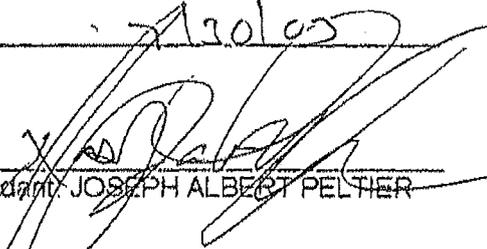
2.4 The offense(s) occurred in Snohomish County, Washington. Venue is properly in Snohomish County, Washington.

III. SIGNATURES

I have read this statement or my lawyer has read it to me. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have no further questions to ask the judge.

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

Date

7/30/03  


Date

7/30/03  


Defendant: JOSEPH ALBERT PELTIER

John T. Hicks, #13133  
Attorney for Defendant

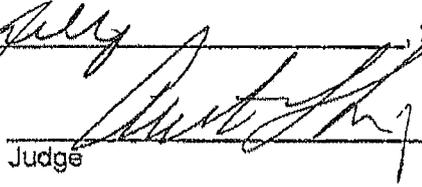
IV. FINDINGS

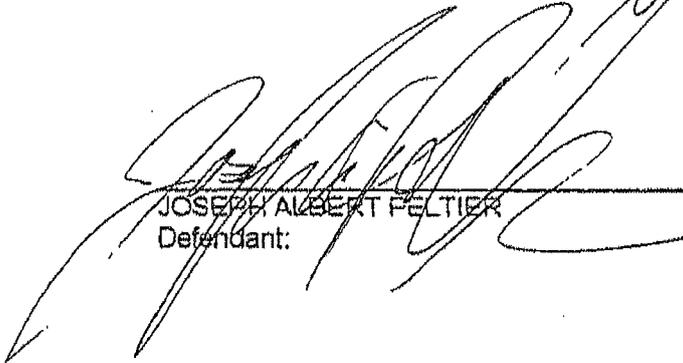
4.1 Understanding of Waiver

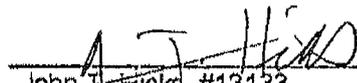
The court finds that the defendant's waiver of rights and agreement to a bench trial on agreed documentary evidence was knowingly, intelligently, and voluntarily made.

DATED this 30<sup>th</sup> day of July, 2003.

Judge



  
JOSEPH ALBERT PELTIER  
Defendant:

 13133  
John T. Hicks, #13133  
Attorney for Defendant

AGREEMENT UPON STIPULATION  
(SENTENCING REFORM ACT)

Defendant: PELTIER, JOSEPH ALBERT CAUSE NO.: 02-1-01945-0  
xx AS CHARGED in the amended information, Rape 3, Indecent Liberties with Forcible  
Compulsion

Special Finding/Verdict of possession of deadly weapon on Count(s) \_\_\_\_\_  
(RCW 9.94A.125).

The State of Washington and the defendant enter into this AGREEMENT which is accepted only  
by entering a stipulation for bench trial upon agreed evidence. This agreement may be  
withdrawn at any time prior to entry of the stipulation. The AGREEMENT is indicated above and  
as follows:

1.  DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss  
Count(s) \_\_\_\_\_.
- 2A.  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In  
accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may  
consider as real and material facts information as follows:  
 as set forth in the affidavit(s) of probable cause filed herein  
 as set forth in attached Appendix C.
- 2B.  SENTENCING FACTS: Facts to be considered for imposing a standard range  
sentence are as set forth in the affidavits(s) of probable cause filed herein.
3.  RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as  
follows:  
 in full to victim(s) on charged counts  
 as set forth in attached Appendix C.
4.  OTHER:

The defendant agrees to undergo an evaluation by Treatment Alternatives to Street  
Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting  
Attorney, prior to sentencing.

5.  SENTENCE RECOMMENDATION:  
 The defendant agrees to the foregoing Agreement and that the attached  
Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached  
Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the  
defendant was represented by counsel or waived counsel at the time of prior conviction(s). Any  
challenge by the defendant to the criminal history or scoring will constitute a breach of this  
agreement. The State makes the sentencing recommendation set forth in State's Sentence  
Recommendation. The sentencing recommendation may increase in severity if any additional  
convictions are discovered.

The defendant disputes the Prosecutor's Statement of the Defendant's Criminal  
History, and the State makes no agreement with regard to a sentencing recommendation and  
may make a sentencing recommendation for the full penalty allowed by law.  
Mandatory Minimum Term (RCW 9.94A.120(4) only):

Mandatory license revocation RCW 46.20.285.  
Ten years jurisdiction and supervision for monetary payments.  
RCW 9.94A.120(9).

6. AGREEMENT NOT TO CHALLENGE CONVICTION: The defendant agrees not to challenge the conviction for this crime, whether by moving to withdraw the stipulation, appealing the conviction, filing a personal restraint petition, or in any other way. If an exceptional sentence is imposed, the defendant may appeal the sentence without violating this agreement.

7. NON-COMPLIANCE WITH AGREEMENT: If the defendant fails to appear for sentencing, or if prior to sentencing the defendant commits any new offense or violates any condition of release, the State may recommend a more severe sentence.

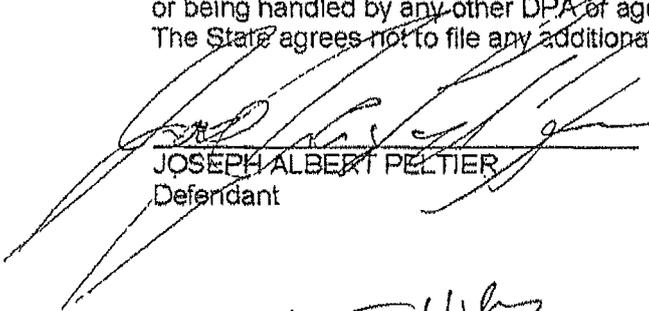
If the defendant violates any other provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial delay, statutes of limitations, mandatory joinder requirements, or double jeopardy.

In any event, the defendant will remain bound by the agreement and will not be allowed to withdraw the stipulation. If the defendant's violation of the agreement constitutes a crime, the defendant may be charged with that crime.

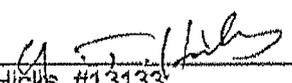
8. AGREEMENT NOT TO FILE ADDITIONAL CHARGES

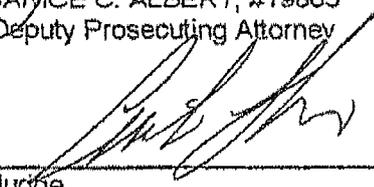
This agreement is limited to cause numbers or crimes specifically referred to in this plea agreement and identified by crime, victim, and police incident number immediately following this paragraph and does not apply to any other matters which may be under investigation, pending, or being handled by any other DPA or agency.

The State agrees not to file any additional charges regarding SG, previously a named victim.

  
\_\_\_\_\_  
JOSEPH ALBERT PELTIER  
Defendant

  
\_\_\_\_\_  
JANICE C. ALBERT, #19865  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
John T. Hicks, #13133  
Attorney for Defendant

  
\_\_\_\_\_  
Judge

APPENDIX D TO PLEA AGREEMENT

**NOTIFICATION OF REGISTRATION REQUIREMENT - RCW 9A.44.130, .140.**

If I am convicted of any "sex offense" or "kidnapping offense" as defined by RCW 9A.44.130, I have been informed and fully understand that I must register as follows:

1. I will be required to register with the County Sheriff in the Washington county of my residence. If I am not a resident of Washington, then I must register with the County Sheriff of the Washington county where I attend school, work or carry on a vocation. Additionally, if I am admitted to a public or private institution of higher education, within 10 days of enrolling or the first business day after arriving at the institution, whichever is sooner, I must notify the County Sheriff of the county of my residence of my intent to attend the institution.
2. If not in custody, I must report to register immediately after sentencing. If I am in custody, I must register at the time of my release with the person designated by the agency that has me in custody, and also I must register again within 24 hours of release with the County Sheriff as specified in section 1.
3. If I am not a Washington resident but I become one, I must register within 24 hours of moving to Washington if I am under the supervision of the State Department of Corrections, or within 30 days of moving to Washington if I am not under the supervision of the State Department of Corrections.
4. When registering, I must provide the County Sheriff with the following information: (a) Name; (b) Address; (c) Date and place of birth; (d) Place of employment; (e) Crime for which convicted; (f) Date and place of conviction; (g) Aliases used; (h) Social Security number; (i) photograph; (j) fingerprints; and, (k) if I have no fixed address, where I plan to stay.
5. If I change my residence address within the same county, I must send written notice of the change of address to the County Sheriff within 72 hours of moving. If I move to a new county, at least 14 days before moving, I must send written notice to the County Sheriff of the new county and I must register with the County Sheriff in the new county within 24 hours of moving. Additionally, I must also send written notice within ten days of the change of address to the County Sheriff with whom I last registered.
6. If I move to another state or a foreign country, within 10 days of moving I must send written notice of the move to the County Sheriff with whom I last registered in Washington. If I move to another state, or work, carry on a vocation, or attend school in another state, I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence or beginning to work, carry on a vocation or attend school.
7. If I lack a fixed residence, I am required to register. If I lack a fixed residence and I am under the supervision of the Department of Corrections, I must register in the county where I am supervised. Registration must occur within 24 hours of release from custody. If I was registered at a fixed residence, but then ceased to have a fixed residence, I must provide written notice to the County Sheriff of the county where I last registered within 48 hours, excluding weekends and holidays, after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I must register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be made during normal business hours on a day specified by the county sheriff's office. I may be required to list the locations where I have stayed during the last 7 days. The lack of a fixed residence is

- a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large.
8. If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol at least five days before the entry of the order granting the name change. Upon receipt of an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol no more than five days after entry of the order.
  9. If I am required to register pursuant to the above obligations and if I knowingly fail to do so, or if I change my name without notifying the county sheriff and the state patrol, I may be charged and convicted of a crime.
  10. The crime(s) to which I am pleading guilty defined as "sex offense" or "kidnapping offense" by RCW 9A.44.130 is(are) :

**COUNT #**

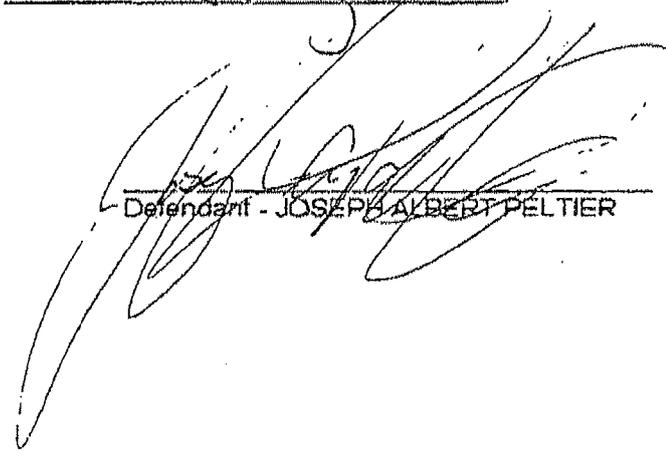
\_\_\_\_\_ ( ) a. **Class A felony.** My obligation to register continues until I am specifically relieved of it by court order.

\_\_\_\_\_ ( ) b. **Class B felony.** My obligation to register continues for 15 years after the last date of release from confinement, if any (including full-time residential treatment), pursuant to the conviction or entry of the judgment and sentence, if I have spent fifteen consecutive years in the community without being convicted of any new offenses; except that if I have a prior conviction for any sex offense or kidnapping offense or my current conviction is for an offense listed in RCW 9A.44.140(5), then my duty to register continues until specifically ended by court order.

\_\_\_\_\_ ( ) c. **Class C felony, a violation of RCW 9.68A.030 or 9A.44.035, or an attempt, solicitation, or conspiracy to commit a Class C felony.** My obligation to register continues for 10 years after the last date of release from confinement, if any (including full-time residential treatment), pursuant to the conviction, or entry of the judgment and sentence, if I have spent ten consecutive years in the community without being convicted of any new offenses; except that if I have a prior conviction for any sex offense or kidnapping offense or my current conviction is for an offense listed in RCW 9A.44.140(5), then my duty to register continues until specifically ended by court order.

Dated this 30~~7~~ / 30 day of July, 2003.

Cause No. 02-1-01945-0

  
Defendant - JOSEPH ALBERT PELTIER

STATE'S SENTENCE RECOMMENDATION (CONFINEMENT OF OVER ONE YEAR)  
(SENTENCING REFORM ACT)

DATE: July 14, 2003

DEFENDANT: JOSEPH ALBERT PELTIER

CAUSE NO.: 02-1-01945-0

State recommends that the sentence of this defendant be as follows:

TOTAL CONFINEMENT: State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I 54 months

Count II 102 months

Terms on each count to run concurrently.

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Secretary of the Department within 10 years:

Restitution as set forth on attached page entitled "Plea Agreement" and  Appendix C.

Mandatory Victim Penalty Assessment

\$100.00 prior to June 6, 1996; \$500.00 on or after June 6, 1996.

Pay a fine of \$ \_\_\_\_\_.

Pay costs of extradition.

Pay court costs and costs of appointed counsel.

Pay mandatory \$100 state crime lab fee.

COMMUNITY PLACEMENT: The defendant shall serve a 24 month term of community placement subject to the conditions set forth in RCW 9.94A.120(8)(b) and the following conditions. The defendant shall:

Have no direct contact with victims

Not consume alcohol.

Participate in crime-related treatment and counseling.

Shall remain (within)(outside of) the following geographical area: \_\_\_\_\_

Shall comply with the following crime-related prohibitions: \_\_\_\_\_

CHEMICAL DEPENDENCY SCREENING REPORT: If there is a finding a chemical dependency has contributed to the defendant's offense, the state will recommend a chemical dependency screening report be prepared and reserves the right to recommend any affirmative conduct allowed by law.

PROBATION REVOCATION/MODIFICATION: State recommends revocation/modification of probation or community supervision on Snohomish County Cause Number(s) \_\_\_\_\_ and recommends that terms be run concurrently/consecutively.

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.

OTHER:

State agrees to consider recommendation of SCSA,  
depending upon evaluation results

  
JANICE C. ALBERT, #19865  
Deputy Prosecuting Attorney

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

DATE: July 10, 2003 (da/gp)  
 DEFENDANT: PELTIER, Joseph Albert  
 DOB: 03/14/77 I/M  
 SID: WA16479178 FBI: 524425XA5 DOC: 747539 DOL: PELTI-JA-232DM

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
<b>ADULT FELONIES:</b>			
VUCSA - Delivery (Cocaine) (2 Counts)	3/27/96	Snohomish County 95-1-00640- 4	36 Mos. Confinement 1 Yr. Comm. Placement
Attempting to Elude	6/24/96	Snohomish County 95-1-01511-0	12 Mos. Comm. Supervision 5 Mos. Confinement
<b>ADULT MISDEMEANORS:</b>			
1. No Valid License/Expired License	9/5/92	Snohomish County	
2. No Valid License/Expired License	1/21/95	Snohomish County	
3. No Valid License/Expired License	2/2/95	Snohomish County	
4. No Valid License/Expired License	4/3/95	Snohomish County	
5. Minor Possess/Consume Alcohol	8/9/95	Snohomish County	
6. Assault - DV	4/16/97	Snohomish County	
7. First Degree Neglligent Driving	9/6/97	Snohomish County	
8. Driving While Suspend/Revoked	9/6/97	Snohomish County	
9. Assault - DV (2 Counts)	9/5/99	Snohomish County	
10. Open/Consume Liquor in Public	12/19/99	Snohomish County	Bail Forfeit
11. Driving While Suspend/Revoked	3/26/00	Snohomish County	
12. Driving Under the Influence	4/1/00	Snohomish County	
13. Driving While Suspend/Revoked	4/1/00	Snohomish County	
<b>JUVENILE FELONIES:</b>			
*Attempted Residential Burglary	10/3/91	Snohomish County	Community Supervision
*Conviction "washes"			
First Degree Theft	2/9/93	Snohomish County	Community Supervision

PELTIER, Joseph Albert

JUVENILE MISDEMEANORS:

Third Degree Theft	9/5/92	Snohomish County
Fourth Degree Assault	1/13/93	Snohomish County
Fourth Degree Assault	4/2/94	Snohomish County
Disorderly Conduct	4/28/94	Snohomish County
Fourth Degree Assault	4/2/94	Snohomish County
Second Degree Criminal Trespass	5/3/94	Snohomish County
Minor in Possession	6/7/94	Snohomish County
Minor in Possession	12/20/94	Snohomish County

July 14, 2003  
DATE

Joseph Albert  
Deputy Prosecuting Attorney/WSBA #

APPENDIX C TO PLEA AGREEMENT  
SENTENCING MEMORANDUM (REAL FACTS/RESTITUTION)  
(SENTENCING REFORM ACT)

Date: July 14, 2003

Defendant: JOSEPH ALBERT PELTIER · Cause No.:02-1-01945-0

A. [ ] REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:

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

B. [xx] SENTENCING FACTS: Facts to be considered for imposing a standard range sentence are as set forth in the affidavit(s) of probable cause filed herein:

*(AS to standard range as pled)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

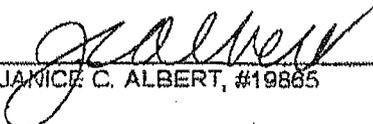
C. [xx] RESTITUTION-CHARGED COUNTS (indicate count, police department, police number and victim's name) is as follows:

Everett Police Department 95-338, Jackie Dorsey  
Everett Police Department 01-16700, Bridgette Martin  
Everett Police Department 01-16700, Sarah Balam

D. [ ] RESTITUTION-UNCHARGED CRIMES, RCW 9.94A.140(2) (indicated police department, police number and victim's name) is as follows:

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

As conditions of any plea agreement, the defendant must agree to allow the court to consider the above-stated REAL FACTS at sentencing and/or agree to make the above-stated RESTITUTION on uncharged crimes.

  
\_\_\_\_\_  
JANICE C. ALBERT, #19885

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, April 23, 2014 2:04 PM  
**To:** 'Kremenich, Diane'; tom@washapp.org; wapofficemail@washapp.org  
**Subject:** RE: State v. Joseph A. Peltier

Rec'd 4-23-14

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:** Kremenich, Diane [mailto:Diane.Kremenich@co.snohomish.wa.us]  
**Sent:** Wednesday, April 23, 2014 2:02 PM  
**To:** OFFICE RECEPTIONIST, CLERK; tom@washapp.org; wapofficemail@washapp.org  
**Subject:** State v. Joseph A. Peltier

Good Afternoon...

RE: State v. Joseph A. Peltier  
Supreme Court No. 89502-3

Attached please find:

- (1) State's Motion to File Supplemental Response
- (2) Petitioner's Reply to Supplemental Brief of Respondent

Please let me know if there is a problem opening the attachment(s).

Thanks.

Diane.

Diane K. Kremenich  
 Snohomish County Prosecuting Attorney - Criminal Division  
Legal Assistant/Appellate Unit  
Admin East, 7th Floor  
(425) 388-3501  
[Diane.Kremenich@snoco.org](mailto:Diane.Kremenich@snoco.org)

### CONFIDENTIALITY STATEMENT

This message may contain information that is protected by the attorney-client privilege and/or work product privilege. If this message was sent to you in error, any use, disclosure or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and [delete this message](#) without printing, copying, or forwarding it. Thank you.

 please consider the environment before printing this email