

FILED

JUL 16 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

IN RE THE PERSONAL RESTRAINT OF: )  
 ) No. 336191  
Earl O. Flippo ) PERSONAL RESTRAINT PETITION  
(petitioner's full name) ) (regarding LFOs post *Blazina*)

A. STATUS OF PETITIONER

I, EARL O. FLIPPO (AT A.H.C.C.) PO. Box 2049 Alderway  
Height Washington (full name and address), apply  
for relief from restraint. I am  am not \_\_\_\_\_ now in custody serving a sentence upon  
conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody  
because of the following type of court order: \_\_\_\_\_  
(identify type of court order).

- The court in which I was sentenced is: Walla Walla County Superior Court
- I was convicted of the crime of: 9A.44.083
- I was sentenced after (check one) Trial  Plea of Guilty \_\_\_\_\_ on  
4-21-2008 (date of sentence).
- The Judge who imposed sentence was Hon. Robert L. Zagelow
- My lawyer at trial court was James E. Barrett W.S.BA. #4927  
Public Defender E man Walla Walla Wa. (name and address if known).
- I did  did not \_\_\_\_\_ appeal from the decision of the trial court. (If the answer is that I  
did), I appealed to: Division III Appeal Court N 500 Cedar St  
Spokane Washington (name of court or courts to which appeal took place).
- My lawyer on appeal was: Court Appointed Dennis Morjan

In Ritzville Washington (name and address if known; if none, write 'none').

8. The decision of the appellate court was \_\_\_ was not  published. (If it is published, and I have this information), the decision is published in \_\_\_\_\_  
\_\_\_\_\_ (volume number, Wa.App. or Wa.2d, and page number).
9. Since my conviction I have  have not \_\_\_ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was Washington State Supreme Court (name of court or courts in which relief was sought). Temple of Justice  
Relief was denied on: 12-21-2011 / 8-7-2012 (date of decision[s]).
10. (If I have answered in question 9 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 9 was: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (name and address if known; if none, write 'none').
11. If the answers to the above questions do not really tell about the proceedings, the courts, judges and attorneys in your case tell about it here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. GROUNDS FOR RELIEF:**

1. I should be released from the imposition of Judgment as it pertains to the Legal Financial Obligation portion(s) only, because:
- The trial court failed to make an individualized inquiry into petitioner's ability to pay any LFOs, which warrants resentencing.
  - The trial court relied on boiler-plate language, which petitioner alleges is prejudicial, to impose Judgment on the defendant.
  - Defendant at all times alleges that he is indigent for the reasons found at number (2), and states that payment of the imposed judgment will impose a manifest hardship on the petitioner and/or his family.
2. The following facts are important when considering my case:
- Petitioner is physically/mentally disabled and does not have the future ability to be gainfully employed.
  - Petitioner's current household income falls below 125% of the federal poverty guideline.
  - Distinctions exist between petitioner's financial circumstances at time of sentence and petitioner's current financial status.

- Petitioner owes \$ \_\_\_\_\_ in restitution which cannot be waived per statute. However, restitution should be considered as a financial responsibility which weighs on the petitioner's ability to pay other discretionary LFOs.
- Petitioner requests the court to also review the LFO's ordered under these additional cause numbers, as long as review does not invoke a mixed petition rule.

- Petitioner owes LFOs in several Court jurisdictions within this division which also cause a distinguishable financial hardship.
- Petitioner receives assistance from a needs based, means tested assistance program.
- Petitioner's household income is above 125% of the federal poverty guideline and the defendant has recurring basic living expenses, as defined in RCW 10.101.010(4) (d), that render him without financial ability to pay.
- Other compelling circumstances exist that demonstrate the petitioner's inability to pay any LFO.
- No fact was entered into the record which would support the conclusion that the defendant has had, or will ever have, the ability to pay the LFO imposed under this cause number(s).

Petitioner was ordered to pay LFOs as follows:  
(Check those that apply and enter amounts)

<input checked="" type="checkbox"/> Victims' Penalty Assessment	\$ 500 <sup>00</sup>
<input checked="" type="checkbox"/> Court Costs	\$ 200 <sup>00</sup>
<input checked="" type="checkbox"/> DNA Fee	\$ 100 <sup>00</sup>
<input checked="" type="checkbox"/> Attorney Costs	\$ 775 <sup>00</sup>
<input type="checkbox"/> Bench Warrant Fee	\$ _____
<input type="checkbox"/> Extradition Costs	\$ _____
<input checked="" type="checkbox"/> Jury Fee	\$ 250 <sup>00</sup>
<input checked="" type="checkbox"/> Witness Costs	\$ 286 <sup>00</sup>
<input type="checkbox"/> Restitution	\$ _____
<input checked="" type="checkbox"/> Appellate Costs	\$ 4087 <sup>00</sup>
<input type="checkbox"/> Drug Offense Costs	\$ _____
<input type="checkbox"/> Investigative fees	\$ _____
<input checked="" type="checkbox"/> Other: <u>Sheriff Fees, Booking Fees</u>	\$ 508.15

- Public, needs-based government benefits are not subject to attachment, garnishment, or execution.
- Petitioner has previously filed a PRP, and may be subject to successive petition rule; petitioner claims that issues have not been previously raised, issues were not previously reviewable per statute, and could not be raised in the first petition accordingly.

3. The following reported court decisions show the error alleged to have occurred in my case:

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (March 12, 2015) (trial courts must consider a defendant's individual financial circumstances, and make an individualized inquiry into the defendant's present and future ability to pay).

Matter of Vandervlugt, 120 Wn.2d 427, 842 P.2d 950 (1992) (the decision found in Blazina should be retroactive due to the fairness factors which themselves compel retroactive application).

Bennet v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204 (1988); Nelson v. Heiss, 271 F.3d 891, 895 (9<sup>th</sup> Cir. 2001) (citing Bennet) (government benefits are not subject to execution, to include court-ordered LFOs; if state procedure conflicts with federal statute then the Supremacy Clause of the United States Constitution requires that the federal statute stands).

State v. Lundy, 176 Wn.App. 96, 308 P.3d 755 (2013) (if the court intends to impose discretionary LFOs as a sentencing condition, it must consider the defendant's present or likely future ability to pay).

State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992) (establishing seven factors regarding permissible costs and fees structure).

4. The following statutes and constitutional provisions should be considered by the Court:

- Petitioner failed to object to the imposition of LFOs, however the Court should consider RAP 1.2, providing broad ability to waive or alter any rule, including RAP 2.5, to serve the ends of justice by reviewing this petition.
- This Court should consider RCW 10.01.160(3) and (4) before applying the one year time-bar in RCW 10.73.090, where LFO judgments are not 'final', and a defendant "may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof." Additionally, this Court should consider RCW 10.73.100(6) as there has been a significant change in the law according to the decision recently made in the Washington Supreme Court in State v. Blazina, supra. This change should overcome application of RCW 10.73.090.
- When determining petitioner's claim of indigence this Court should consider Washington Court Rule GR 34 and RAP Rule 15.2. These two rules, combined with RCW 10.01.160(3), provide guidance to the Court regarding what constitutes indigence, and give rise to the petitioner's claim on review.
- Where petitioner receives need-based government benefits, this Court should consider 42 U.S.C. § 407 and 38 U.S.C. § 5301 (such benefits are exempt from garnishment or other legal process).

5. This petition is the best way I know to receive the relief I am requesting, and no other option will work as well because prejudice has occurred which has caused a manifest hardship to be imposed on the petitioner contrary to State statute.

 C. STATEMENT OF FINANCES

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do  do not  ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have a spendable balance of \$ \_\_\_\_\_ in my prison or institution account.
3. I do  do not  ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.
4. I am  am not  employed. My salary or wages amount to \$ \_\_\_\_\_ a month.  
My employer is

\_\_\_\_\_  
Name and address of employer

5. During the past 12 months I did  did not  get any money from a business, profession, or other form of self-employment. If I did, it was \_\_\_\_\_  
(type of self-employment) and the total income I received was \$ \_\_\_\_\_.
6. During the past 12 months I:

Did  Did Not  Receive any rent payments. If so, the total I received was \$ \_\_\_\_\_

Did  Did Not  Receive any interest. If so, the total I received was \$ \_\_\_\_\_

Did  Did Not  Receive any dividends. If so, the total I received was \$ \_\_\_\_\_

Did  Did Not  Receive any other money. If so, the total I received was \$ \_\_\_\_\_

Do  Do Not  Have any cash except as said in question 2 of Statement of Finances.

If so the total amount of cash I have is \$ \_\_\_\_\_.

Do  Do Not  Have any savings or checking accounts. If so the total amount in all accounts is \$ \_\_\_\_\_.

Do  Do Not  Own stocks, bonds, or notes. If so their total value is: \$ \_\_\_\_\_.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value

8. I am \_\_\_ am not  married. If I am married, my wife or husband's name and address are:

\_\_\_\_\_

\_\_\_\_\_

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age

10. All of the bills I owe are listed here:

Name & Address of Creditor	Amount

**D. REQUEST FOR RELIEF**

I respectfully request this Court to:

VACATE my Legal Financial Obligations Judgment and remand for resentencing.

VACATE my Legal Financial Obligations Judgment and dismiss the Judgment with Prejudice without resentencing.

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E. OATH OF PETITIONER

THE STATE OF WASHINGTON )  
 ) :SS:  
COUNTY OF Spokane )

After being first duly sworn, on oath, I depose and say:

That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true and correct.

Earl O Flippo  
(Signature)

EARL O. FLIPPO  
(Print name)

A.H.C.C. M-A 48-4

P.O. Box 2049

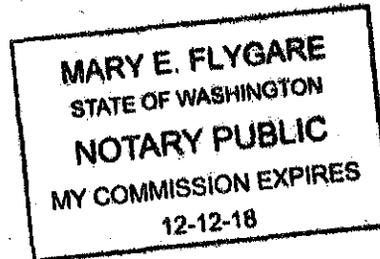
Airway Heights Washington 99001-2049  
(Address)

SUBSCRIBED AND SWORN to me this 10 day of July, 2015.

Mary E Flygare  
Notary Public in and for the state of Washington,

Residing at Airway Heights

My commission expires: 12-12-18



**FILED**

DEC 16 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

336191-III (CA.)

No. \_\_\_\_\_

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON, Respondent,  
v.  
EARL FLIPPO, Petitioner,

---

MOTION FOR DISCRETIONARY REVIEW

---

EARL FLIPPO  
[Name of petitioner]

AHCC/M-A 48

Box 2049

AIRWAY HEIGHTS, WA

99001

[Address]

## A. IDENTITY OF PETITIONER

Earl C. Flippo asks this court to accept review of the decision designated in Part B of this motion.

## B. DECISION

The Court of Appeals, in and for Division III entered a Published OPINION on November 24, 2015 in the matter of: In re Flippo, C.O.A. # 33619-1-III, dismissing the PRP of this petitioner.

This decision restrained petitioner from review of his PRP by applying RCW 10.73.090(1). A copy of the decision and appellate court opinion is in the Appendix at pages A-

## C. ISSUES PRESENTED FOR REVIEW

1. The appellate court for Division III erred in entering the order of November 24, 2015, denying review of petitioner's PRP which alleges a violation of RCW 10.01.160(3).

## D. STATEMENT OF THE CASE.

It is the decision of the Appellate Court that the petitioner's PRP is time-barred pursuant to RCW 10.73.090(1). (OPINION, at p.8)

RCW 10.73.090(1) provides, in part:

"No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final...."

According to the court's decision, petitioner's reliance of RCW 10.01.160(4) as authority which allows his petition to be filed beyond the one year restraint of RCW 10.73.090, is improper because "in no way does the statute alter the finality date of his judgment and sentence...." (OPINION, at p.7).

RCW 10.01.160(4) provides, in part:

"A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the [court] for remission of the payment of costs or of any unpaid portion thereof." (emphasis added)

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Petitioner seeks review of this decision pursuant to RAP 13.5A(1), and alleges that the decision of the Court of Appeals for Division III is in conflict with a decision of the Supreme Court as held in State v. Blazing, 182 Wn.2d 827, 344 P.3d 680 (2015).

As held by Blazing, RAP 2.5(a) gives appellate courts discretion whether to consider a defendant's LFO challenge. Blazing, 182 Wn.2d at 834-35.

Correctly the court acknowledges that RAP 1.2(a) does authorize the rules to be "liberally interpreted to promote justice and facilitate the decision of cases on the merits." (OPINION, at P.6)

As a matter of discretion the court decided not to look beyond the appellate rules stating "Since Blazing imposes no obligation for appellate courts to review LFO challenges.... Blazing does not require review of LFO claims made initially in a personal restraint petition...." (OPINION, at P.6)

It is a material fact that although petitioner seeks relief of the court according to the decision held in Blazing, the merit of this petition actually is the violation of RCW 10.01.160 by the trial court and its subsequent unlawful

restraint of the petitioner, by imposing discretionary LFO's without legislative authority to do so. RCW 10.01.160(3)

The issue before this court is did the Appellate court abuse it's discretionally authority when it failed to apply the "rule of lenity" and where RCW 10.73.090 clearly conflicts with RCW 10.01.160(4).

For the purpose of review here the Court should look to the plain language or plain meaning of the statutes. *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013).

As decided in *Paysano v. Kitsap County*, 186 Wn. App. 465, 346 P.3d 784 (Wash. App. Div. 2, 2015)

If a statute is still susceptible to more than one interpretation after court conducts a plain meaning review, then the statute is ambiguous. The "rule of lenity," provides that, if a criminal statute is ambiguous, a court strictly construes it in favor of the defendant.

Clearly Rcw 10.73.090 and Rcw 10.01.160(4) are in conflict when read together. According to this conflict the court should have looked to how the petitioner would be prejudiced before ruling. To bar the defendant from the due process right authorized by Rcw 10.01.160(4) denying him the ability to seek relief "at any time" causes this statute to be muted.

The court is given its discretionary authority by the legislation not to overturn statutes but to be directed by them under color of law.

For this court to ignore the plain language of Rcw 10.01.160(4) only worsens the unlawful restraint caused by the trial court when it too failed to abide by this very statute.

Therefore petitioner should be given review of his original petition, and this court should overturn the Appellate Court's decision to further restrain him from receiving relief.

## F. CONCLUSION

This court should accept review for the reasons indicated in Part E and overturn the decision of Division III to deny review of petitioner's PRP.

Dated this        day of December, 2015.

Respectfully Submitted,

Earl Flippo

EARL FLIPPO

PETITIONER, PRO-SE

DECLARATION OF MAILING

I, (name) EARL FLIPPO, declare that, on the 14 day of (month) DECEMBER, 2015, I placed the foregoing (name of motion[s] and/or papers) DISCRETIONARY REVIEW

\_\_\_\_\_, or copy thereof, in the internal legal mail system of the (name of institution) Albany Heights CORRECTIONS Corrections Center, with appropriate postage, addressed to:

(list all addresses):

Teresa J Chen  
Attorney at Law  
P.O. Box 5889  
Pasco wa,  
99301-5501

Washington State Supreme  
Court Temple of Justice  
P.O. Box 40929  
OLYMPIA wa.  
98504-0929

The Court of Appeals  
State of Washington Division III  
500 N Ceder St  
Spokane wa 99201-1205

I swear in accordance with the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of (month) DECEMBER, 2015.

Earl Flippo  
(signature)

EARL FLIPPO  
(printed name/address)



FILED

Jul 24, 2015

Court of Appeals

Division III

State of Washington

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JUDY MARTIN  
CLERK

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COURT OF APPEALS  
STATE OF WASHINGTON

WALLA WALLA COUNTY  
WASHINGTON

*Handwritten signature*

#336191

SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,

Plaintiff,

-vs-

EARL OWEN FLIPPO,  
SID NO. WA 14169783

Defendant.

JUDGMENT # 08 9 00431 3

NO. 07 1 00419 7

JUDGMENT AND SENTENCE  
(FELONY)

PCN NO. 948191296  
AND 94819920

I. HEARING

1.1 A sentencing hearing in this case was held: APRIL 21, 2008  
(Date)

1.2 The defendant, the defendant's lawyer, JAMES E. BARRETT, and  
the Deputy Prosecuting Attorney, MICHELLE M. MULHERN, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): Defendant was found guilty on 03/06/08 by  
verdict of:

Count No.: 1 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code \_\_\_\_\_

Date of Crime 12/01/05-03/31/06 Incident No. \_\_\_\_\_

Count No.: 2 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code \_\_\_\_\_

Date of Crime 12/01/05-03/31/06 Incident No. \_\_\_\_\_

OFFICE OF THE PROSECUTING ATTORNEY

JUDGMENT AND SENTENCE (8/05)  
(RCW 9.94A.505)  
P. - 1

240 WEST ALDER, SUITE 201  
WALLA WALLA, WA 99162-2807  
PHONE (509) 524-5446

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5 Count No.: 3 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

6 RCW 9A.44.083 Crime Code \_\_\_\_\_

7 Date of Crime 12/01/05-03/31/06 Incident No. \_\_\_\_\_

8 Count No.: 4 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

9 RCW 9A.44.083 Crime Code \_\_\_\_\_

10 Date of Crime 06/01/06-12/31/06 Incident No. \_\_\_\_\_

11 as charged in the (X Amended) Information.

- 12 ( ) Additional current offenses are attached in Appendix 2.1.
- 13 ( ) A special verdict/finding for use of a firearm was returned on
- 14 Count(s) \_\_\_\_\_. RCW 9.94A.510.
- 15 ( ) A special verdict/finding for use of a deadly weapon other than a
- 16 firearm was returned on Count(s) \_\_\_\_\_. RCW 9.94A.510.
- 17 ( ) A special verdict/finding of sexual motivation was returned on
- 18 Count(s) \_\_\_\_\_. RCW 9.94A.535.
- 19 ( ) A special verdict/finding of a RCW 69.50.401(a) and RCW 69.50.435
- 20 violation was returned on Count(s) \_\_\_\_\_ in a school, school bus,
- 21 within 1000 feet of a designated school bus route or the perimeter
- 22 of a school grounds; a public transit vehicle, public park, public
- 23 transit stop shelter; or in or within 1000 feet of the perimeter of
- 24 a civic center designated as a drug free zone by a local government
- 25 authority.
- 26 ( ) A special verdict/finding that the defendant committed a crime
- 27 involving the manufacture of methamphetamine, including its salts,
- 28 isomers, and salts of isomers, when a juvenile was present in or
- 29 upon the premises of manufacture was returned on Count(s) \_\_\_\_\_.
- 30 RCW 9.94A.605, 69.50.401, 69.50.440.
- 31 ( ) The defendant was convicted of Vehicular Homicide wherein the
- 32 defendant was driving a vehicle while under the influence of
- intoxicating liquor or drug or by operating a vehicle in a reckless
- manner and therefore is a violent offense. RCW 9.94A.030.
- ( ) This case involves Kidnapping in the first degree, kidnapping in the
- second degree, or unlawful imprisonment as defined in chapter 9A.40
- RCW, where the victim is a minor and the offender is not the minor's
- parent. RCW 9A.44.130.

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5 ( ) The court finds that the defendant has a chemical dependency that  
6 has contributed to the offense(s). RCW 9.94A.\_\_\_\_\_.
- 7 ( ) The offense in Count(s) \_\_\_\_\_ was committed in a county jail or  
8 state correctional facility. RCW 9.94A.510(5).
- 9 ( ) Current offenses encompassing the same criminal conduct and counting  
10 as one crime in determining the offender score are (RCW  
11 9.94A.589(1)):
- 12 ( ) Other current convictions listed under different cause numbers used  
13 in calculating the offender score are (List offense and cause  
14 number):

15 2.2 CRIMINAL HISTORY: (RCW 9.94A.525):

Crime	Sentencing Date	Court County/State	Date of Crime	Adult or Juv.	Crime Type
-------	-----------------	--------------------	---------------	---------------	------------

16 NONE COUNTABLE

- 17 ( ) Additional criminal history is attached in Appendix 2.2
- 18 ( ) The defendant committed a current offense while on community  
19 placement, which adds one point to the score. RCW 9.94A.525(17).
- 20 ( ) Prior convictions served concurrently and counted as one offense in  
21 determining the offender score are (RCW 9.94A.525):

22 2.3 SENTENCING DATA:

Count No.	Offender Score	Serious-ness Level	Standard Range	Enhancement*	Total Standard Range	Maximum Term
23 1	9+	X	149-198 MOS		149-198 MOS	LIFE
24 2	9+	X	149-198 MOS		149-198 MOS	LIFE
25 3	9+	X	149-198 MOS		149-198 MOS	LIFE
26 4	9+	X	149-198 MOS		149-198 MOS	LIFE

27 \* (F) Firearm, (D) Deadly Weapon, (V) VUCSA in a protected zone, (VH)  
28 Vehicular Hom. RCW 46.61.520, (P) Jail/Prison RCW 9.94A.510(4).

- 29 ( ) Additional current offenses sentencing data is attached in Appendix  
30 2.3.

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2.4 EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) \_\_\_\_\_.

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

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

Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ( ) did ( ) did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. (RCW 9.94A.760) The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability or likely future ability to pay the legal financial obligations ordered herein.

( ) Extraordinary circumstances exist that make restitution inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ( ) attached ( ) as follows: \_\_\_\_\_.

III. JUDGMENT

3.1 The defendant is GUILTY of the counts and charges listed in paragraph 2.1.

3.2 The court DISMISSES count(s) \_\_\_\_\_.

3.3 The defendant is found NOT GUILTY of counts \_\_\_\_\_.

IV. SENTENCE AND ORDER

IT IS ORDERED:

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4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of Court:

\$ TBD, Restitution to: \$ TBD \_\_\_\_\_  
\_\_\_\_\_

\$ 200.00, Court costs (9.94A.030 & .760, 10.01.160, 10.46.190);

\$ 286.05, Witness fees;

\$ 250.00, Jury Demand fees;

\$ 508.15, Sheriff fees; (X) including booking fee (RCW 70.48.390);

\$ 500.00, Victim assessment (RCW 7.68.035);

\$ \_\_\_\_\_, Fine (RCW 9A.20.021); ( ) VUCSA additional fine waived due to indigency (RCW 69.50.430);

\$ 775.00, Fees for court appointed attorney;

\$ \_\_\_\_\_, Court appointed defense expert and other defense costs (RCW 9.94A.030);

\$ \_\_\_\_\_, Drug Enforcement fund of \_\_\_\_\_

\$ \_\_\_\_\_, Crime laboratory fee (RCW 43.43.680/690) ( ) waived due to indigency;

\$ 100.00, \$100.00 Biological Sample fee for felony committed after July 1, 2002 (RCW 43.43.7541)

\$ \_\_\_\_\_, Emergency Response Costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum - RCW 38.52.430)

\$ \_\_\_\_\_, Extradition costs (RCW 9.94A.760)

\$ \_\_\_\_\_, Domestic Violence Penalty Assessment (RCW 10.99.\_\_\_\_, \$100 maximum, effective 06/10/04)

\$ 2,619.20, TOTAL legal financial obligations \*

\* VICTIM(S) REQUIRE CONTINUING MEDICAL/COUNSELING CARE FOR INJURIES SUSTAINED DURING THE CRIME. THE COURT RESERVES THE RIGHT TO MODIFY THE RESTITUTION AMOUNT FOR FUTURE MEDICAL COSTS.

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(X) The above amount does not include all restitution. Restitution shall be ordered at a later hearing scheduled for TBD.

Payments shall be made on a schedule established by the Department of Corrections or the Clerk of the Court, commencing immediately, unless the Court sets forth the rate as follows: not be less than \$ 50<sup>00</sup> per month commencing 60 days after release. RCW 9A.9.94A.760.

(X) The Department of Corrections shall have authority to disburse money from the defendant's personal account while he/she is in custody, pursuant to RCW 72.11.020, for court-ordered legal financial obligations.

Payments shall be made to the Clerk of the Court by certified check, money order or cash. Personal checks will not be accepted. Per RCW 10.82.090, Financial Obligations imposed shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. The defendant shall immediately notify the Clerk of any change of address. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall remain under the court's jurisdiction, for purposes of payment of the legal financial obligations, until the legal financial obligation is completely satisfied. (RCW 9.94A.753(4) and .760(4)).

(X) The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7603.

(X) The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

( ) In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay said costs at the rate of \$50.00 per day, unless another rate is specified here \_\_\_\_\_. RCW 9.94A.760(2).

( ) Restitution ordered above shall be jointly and severally with:

<u>Name</u>	<u>Cause Number</u>	<u>Victim</u>	<u>Amount</u>

(X) Bond is hereby exonerated.

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5 4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following  
6 sentence:

7 (a) CONFINEMENT: Defendant is sentenced to the following term of  
8 total confinement in the custody of the Department of  
9 Corrections commencing \_\_\_\_\_:  
(Date)

10 \_\_\_\_\_ months on Count No. \_\_\_\_\_ ( ) concurrent ( ) consecutive  
11 \_\_\_\_\_ months on Count No. \_\_\_\_\_ ( ) concurrent ( ) consecutive  
12 \_\_\_\_\_ months on Count No. \_\_\_\_\_ ( ) concurrent ( ) consecutive

13 ( ) Actual number of months of total confinement ordered is:  
14 ( ) This sentence shall be ( ) concurrent with ( ) consecutively  
15 to the sentence in \_\_\_\_\_  
16 Count(s) or cause number(s)

17 (b) SEXUAL OFFENDER SENTENCING (for specified sex offenses  
18 committed after September 1, 2001):

19 The court imposes the following term of confinement in the custody  
20 of the Department of Corrections pursuant to RCW 9.94A.712:

21 Count   1   Minimum Term 149-198 MOS Maximum Term LIFE  
22 Count   2   Minimum Term 149-198 MOS Maximum Term LIFE  
23 Count   3   Minimum Term 149-198 MOS Maximum Term LIFE  
24 Count   4   Minimum Term 149-198 MOS Maximum Term LIFE

25 (X) Credit is given for 107 days served.

26 (c) COMMUNITY PLACEMENT/CUSTODY (RCW 9.94A.700-.720). The  
27 defendant is sentenced to (X) community custody ( ) community  
28 placement for LIFE or for the period of earned  
29 early release awarded pursuant to RCW 9.94A.728, whichever is  
30 longer and statutory mandatory conditions are ordered.  
31 Community custody or placement for sex offenders may be  
32 extended for up to the statutory maximum term of the sentence.  
For specified sex offenses committed after September 1, 2001,  
the Defendant is placed on community custody under the  
Department of Corrections and the authority of the  
Indeterminate Sentencing Review Board for any period of time  
the defendant is released from total confinement before the  
expiration of the maximum sentence. The terms of community  
custody or placement shall include the following conditions  
and affirmative acts necessary to monitor compliance:

(i) The defendant shall report to and be available for  
contact with the assigned community corrections officer  
as directed.

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- (ii) The defendant shall work at Department of Corrections-approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) The defendant shall not unlawfully possess controlled substances while in community custody.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.
- (vi) Defendant shall obey all laws.
- (vii) Defendant shall not directly or indirectly contact the victims of this case or a specified class of individuals:
- (viii) The defendant shall remain within, or outside, of a specified geographical boundary:
- (ix) The defendant shall participate in crime related treatment or counseling services as follows:
  - ( ) inpatient or outpatient alcohol/drug program at his/her expense, at the discretion of his/her probation/community corrections officer. That the duration of treatment is to be at the discretion of his/her probation/community corrections officer.
  - ( ) state certified domestic violence perpetrator treatment or anger management counseling through a state licensed counselor, at the discretion of his/her probation/community corrections officer, at his/her own expense.
  - ( ) Other:
- (x) The defendant shall not consume alcohol.
- (xi) The defendant's residence location and living arrangements, if a sex offender, shall be subject to the prior approval of the Department of Corrections.
- (xii) The defendant shall not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). RCW 9.94A.030 (8)

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5 (xiii) The defendant shall comply with any crime related  
6 prohibitions as follows: *No contact with*  
7 *children under age 18*

8 4.4 (X) The defendant shall not have contact, directly or indirectly,  
9 with JANIE HOMAN, TAMARA HOMAN, BRANDON L. MANGINI, AND ALYSSA M. CRUZ,  
10 for a period of LIFE years (not to exceed the maximum  
11 statutory sentence). Violation of a no-contact provision of this order  
12 is a criminal offense under RCW 10.99 and will subject a violator to  
13 arrest; any assault, drive-by shooting, or reckless endangerment that is  
14 a violation of this order is a felony.

15 ( ) A domestic violence protection or antiharassment order is attached  
16 as Appendix 4.3.

17 ( ) Defendant shall enroll in, participate and successfully complete a  
18 state certified anger management counseling program at his own expense.

19 4.5 ( ) WORK ETHIC CAMP PROGRAM. The court finds that the defendant  
20 is eligible for the Work Ethic Camp Program pursuant to RCW 9.94A.690  
21 and is likely to qualify for said program. If the defendant successfully  
22 completes the Program, the Department of Corrections shall convert the  
23 period of Work Ethic Camp confinement at the rate of one day of camp  
24 confinement to three days of total standard confinement, and the  
25 defendant shall be released on community custody for any remaining time  
26 of total confinement. The conditions of community custody are attached  
27 hereto in paragraph 4.3 above.

28 4.6 (X) HIV TESTING. The Health Department or designee shall test the  
29 defendant for HIV as soon as possible and the defendant shall fully  
30 cooperate in the testing. RCW 70.24.340.

31 4.7 (X) DNA TESTING. The defendant shall have a biological sample  
32 taken for the purposes of DNA identification analysis. RCW 43.43.754.

33 4.8 ( ) OFF LIMITS ORDER (RCW 10.66.020). The following areas are off  
34 limits to the defendant while under the supervision of the Department of  
35 Corrections: \_\_\_\_\_

36 V. NOTICES

37 5.1 COLLATERAL ATTACK. You are hereby notified that any petition or  
38 motion for collateral attack on this judgment and sentence, including  
39 but not limited to any personal restraint petition, state habeas corpus  
40 petition, motion to vacate judgment, motion to withdraw guilty plea,  
41 motion for new trial or motion to arrest judgment, must be filed within  
42 one year of the final judgment in this matter, except as provided in RCW  
43 10.73.100. RCW 10.73.090.

44 JUDGEMENT AND SENTENCE (FELONY)  
45 CONFINEMENT OVER ONE YEAR - P. - 9  
46 (RCW 9.94A.505)

47 OFFICE OF THE PROSECUTING ATTORNEY  
48 240 WEST ALDER, SUITE 201  
49 WALLA WALLA, WA 99382-2807  
50 PHONE (509) 624-5445

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5.2 INCOME WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7603. Other income-withholding action under RCW 9.94A. may be taken without further notice. RCW 9.94A.7609.

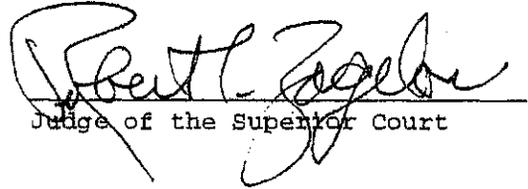
5.3 EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.634(3)).

5.4 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. The clerk shall forward the defendant's driver's license, identicard, or comparable identification to the Department of licensing with the date of conviction. RCW 9.41.040,.04.

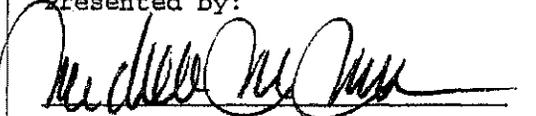
5.5 (X) SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130. If applicable, requirements are attached in Appendix 5.5.

ROBERT L. ZAGELOW

Date: 4-21-'08

  
\_\_\_\_\_  
Judge of the Superior Court

Presented by:

  
\_\_\_\_\_  
MICHELLE M. MULHERN WSBA# 23185  
Deputy Prosecuting Attorney

Approved as to form:

  
\_\_\_\_\_  
JAMES E. BARRETT WSBA# 4927  
Lawyer for Defendant

JUDGEMENT AND SENTENCE (FELONY)  
CONFINEMENT OVER ONE YEAR - P. - 10  
(RCW 9.94A.505)

OFFICE OF THE PROSECUTING ATTORNEY  
240 WEST ALDER, SUITE 201  
WALLA WALLA, WA 99362-2807  
PHONE (509) 524-5445



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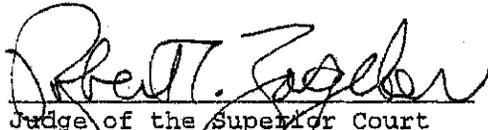
this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered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

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

ROBERT L. ZAGELOW

Date: 4-21-'08

  
Judge of the Superior Court

Presented by:

  
MICHELLE M. MULHERN WSBA# 23185  
Deputy Prosecuting Attorney

Approved as to form:

  
JAMES E. BARRETT WSBA# 4927  
Lawyer for Defendant

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SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 07 1 00419 7
	)	
-vs-	)	WARRANT OF COMMITMENT
	)	
EARL OWEN FLIPPO,	)	
	)	
Defendant.	)	

THE STATE OF WASHINGTON

TO: The Sheriff of Walla Walla County.

The defendant: EARL OWEN FLIPPO has been convicted in the Superior Court of the State of Washington of the crime(s) of:

- Count 1: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 2: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 3: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 4: CHILD MOLESTATION IN THE FIRST DEGREE

and the court has ordered that the defendant be punished by serving the determined sentence of:

- 149-198 (day(s)/month(s)) on Count No. 1,
- 149-198 (day(s)/month(s)) on Count No. 2,
- 149-198 (day(s)/month(s)) on Count No. 3, and
- 149-198 (day(s)/month(s)) on Count No. 4.

( ) \_\_\_\_\_ (day(s)/month(s)) of partial confinement in the County Jail.

( ) \_\_\_\_\_ (day(s)/month(s)) of total confinement in the County Jail.

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5 Defendant shall receive credit for 107 days served prior  
6 to this date.

7 ( ) YOU, THE SHERIFF, ARE COMMANDED to receive the defendant  
8 for classification, confinement and placement as  
ordered in the Judgment and Sentence.

9 *P* YOU, THE SHERIFF, ARE COMMANDED to take and deliver  
10 the defendant to the proper officers of the Department  
of Corrections; and

11 *Y* YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF  
12 CORRECTIONS, ARE COMMANDED to receive the defendant for  
classification, confinement and placement as ordered  
in the Judgment and Sentence.

13 ( ) The defendant is committed for up to thirty (30) days  
14 evaluation at Eastern State Hospital to determine  
amenability to sexual offender treatment.

15 ( ) YOU, THE SHERIFF, ARE COMMANDED to take and deliver the  
16 defendant to the proper officers of the Department of  
Social and Health Services.

17 ( ) YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE  
18 DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE  
19 COMMANDED to receive the defendant for evaluation as  
ordered in the Judgment and Sentence.

20 By Direction of the Honorable  
21 ROBERT L. ZAGELOW

22 Date: APR 21 2008

ROBERT L. ZAGELOW

Judge of the Superior Court

24 KATHY MARFIN

Clerk

25 *Kathy Marfin*  
26 Deputy Clerk

27 cc: Prosecuting Attorney  
28 Attorney for Defendant  
29 Defendant  
Jail  
30 Institutions (3)

31 WARRANT OF COMMITMENT  
(RCW 9.94A.120)

32 P. *19*

OFFICE OF THE PROSECUTING ATTORNEY  
240 WEST ALDER, SUITE 201  
WALLA WALLA, WA 99362-2807  
PHONE (509) 524-5445

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FINGERPRINTS



Right Hand  
Fingerprints of:

EARL OWEN FLIPPO

Dated: 4-21-08

Attested by:

By: [Signature]  
OFFENDER IDENTIFICATION

CERTIFICATE

I, Kathy Martin,  
Clerk of this Court, certify  
that the above is a true copy  
of the Judgment and Sentence  
in this action on record in  
my office.

Dated: MAY - 7 2008

Kathy Martin

By: [Signature] Clerk  
Deputy Clerk

S.I.D. No. WA14169783

Date of Birth: 03/25/69

Sex: M Race: W

PCN: 948191296/948191920

ORI \_\_\_\_\_

OCA \_\_\_\_\_

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DOA \_\_\_\_\_

OFFICE OF THE PROSECUTING ATTORNEY

JUDGEMENT AND SENTENCE (FELONY)  
FINGERPRINTS (CrR7.3; RCW 9.94A.110,  
.120(7), 10.64.110) P-15

240 WEST ALDER, SUITE 201  
WALLA WALLA, WA 99362-2807  
PHONE (509) 524-5445

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

STATE OF WASHINGTON	)	Cause No.: 07-1-419-7
	)	
	Plaintiff )	
	v. )	<b>JUDGEMENT AND SENTENCE (FELONY)</b>
Earl Flippo	)	<b>APPENDIX F</b>
	Defendant )	<b>ADDITIONAL CONDITIONS OF SENTENCE</b>
	)	
DOC No. 958101	)	

**CRIME RELATED PROHIBITIONS:**

1. Do not have direct contact or indirect contact with minors below the age of 18.
2. Do not purchase, possess and/or consume alcohol.
3. Do not purchase, possess and/or consume illegal drugs.
4. Do not use, and/or possess, any pornography.
5. Do not purchase, possess, access or use the internet.
6. Do not purchase, possess or use a computer.
7. Do not purchase enter or frequent any location where children are likely to congregate to include schools, parks, pools, playgrounds, and/or video arcades as determined by the Community Corrections Officer.
8. Enter into and complete a state certified sex offender treatment program.
9. Comply with curfew requirements issued by the Department of Corrections.
10. Allow Department of Corrections to do random and unannounced home visits and/or walk through.
11. Comply with written and verbal instructions issued by the Department of Corrections.
12. Comply with electronic monitoring as required by the Department of Corrections.
13. Comply with polygraph condition as determined by the Community Corrections Officer.

4-21-08 *Robert J. [Signature]*

07-1-419-7  
Earl Flippo 958101  
Page 1 of 1

*p. 14*