

FILED (S)

The Court of Appeals for Washington
Division III

OCT 24 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____Steven L. Canha # 321815
PO Box 769 Connell, WA 99326

Oct 22, 2013

320022

RE: Cause # 07-1-01052-5 / Cr Rule 7.8 Motion

To The Honorable Court,

It's MY understanding that the Benton County Superior Court has forwarded my CrR 7.8 Motion to this Court to be considered as a Personal Restraint Petition. This gives me Cause for Great Concern. I did not write A Personal Restraint Petition due to the "Burden of Proof being mine Completely. I am sorry that my legal education is not more advanced.

I wish to convey to the Court that the trial Court 4 points from out of State convictions that were never given a proper comparability analysis as is required by the SRA as is clearly outlined in my motion. Therefore I believe that the Order to transfer this motion as a PRP per CrR 7.8(c) to be in error. For the Court made no determination in it's order. CrR 7.8(c)(2) It is also my humble opinion that this motion will require a factual hearing to resolve this issue

Per CrR 7.8(C)(2)(ii) As well as CrR 7.8(2)(c)(i) whereby I believe I have made quite a substantial showing through case law that I am entitled to relief to correct my offender score.

I humbly request of this Court to reject the Courts order to consider my motion as a Personal Restraint Petition and return the motion to the Benton County Superior Court and order the Court to conduct an evidentiary hearing.

Thank You for your time and consideration

Respectfully Submitted by

Steven L. Canha

Steven Canha



JOSIE DELVIN
BENTON COUNTY CLERK

OCT 14 2013

FILED

Nov 14, 2013

Court of Appeals

Division III

State of Washington

SUPERIOR COURT OF WASHINGTON
BENTON COUNTY

FILED

511

STATE OF WASHINGTON
Plaintiff,
v.
STEVEN LOUIS CANHA
Defendant

No. 07-1-01052-5
Motion to Modify or Correct Judgment and
Sentence (J & S)

FACTS

- I. Comes now STEVEN LOUIS CANHA, Defendant, pro se, in the above entitled matter.
- II. The Defendant appeared before Judge CAMERON MITCHEL.
- III. The State being represented by ANDREW MILLER and JULIE LONG of Benton County Prosecutors Office, and the Defendant being represented by Christopher Swaby, Defense Attorney,
- IV. The Defendant, at trial and received a sentence of 154 months.

GROUNDS

Pursuant to Rule 35, Federal Rules of Criminal Procedure, the court imposed sentence. The Defendant only seeks modification of sentence, not retrial. Error in sentencing court happened when:
The trail court erred when it imposed the above sentence without properly comparing the defendants out of state convictions. Thereby making his sentence illegal on its face and seeks to have the sentence corrected per Criminal Rule 7.8 below:

Rule 7.8. Relief from judgment or order.

(a) *Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.* On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) *Procedure on vacation of judgment.*

(1) *Motion.* Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) *Transfer to Court of Appeals.* The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

(3) *Order to show cause.* If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted

Furthermore the defendant believes that most or all of his out of state convictions will not compare to Washington crimes. Therefor he must be brought before this court to have a proper comparability analysis of those alleged convictions. At no time did the defendant stipulate to any of the out of state convictions nor did his attorney. Mr. Canha was not given the opportunity to have a proper hearing before the court to compare such allegations as provided for in the Sentence Reform Act (SRA)

Under the Sentencing Reform Act (SRA), acknowledgment allows the judge to rely on unchallenged facts and information introduced for the purposes of sentencing. Acknowledgment

does not encompass bare assertions by the state unsupported by the evidence. Furthermore, classification is a mandatory step in the sentencing process under the SRA. Wash. Rev. Code 9.94A.360(3). Thus, while unchallenged facts and information are acknowledged by the defendant and may be properly relied upon by the court to support a determination of classification, under the statutory scheme classification of out-of-state convictions is a process unto itself, entirely distinct from the acknowledged existence of any fact which informs the court's conclusions. Accordingly, a defendant does not acknowledge the state's position regarding classification absent an affirmative agreement beyond merely failing to object. The State bears the burden of proving by a preponderance of the evidence the existence of prior convictions, whether used for determining an offender score or as predicate strike offenses for purposes of the POAA. *State v. Ford*, 137 Wn.2d 472, 479-80, 973 P.2d 452 (1999) (prior convictions for offender score); *Lopez*, 147 Wn.2d at 519 (predicate strike offense). The burden is on the State "because it is 'inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove.'" *Ford*, 137 Wn.2d at 480 (quoting *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988)). Where the prior convictions are from another jurisdiction, the State also bears the burden of proving the convictions are comparable to Washington crimes. *Id.* at 482-83; *State v. McCorkle*, 137 Wn.2d 490, 495, 973 P.2d 461 (1999).

Citing ford:

The SRA creates a grid of standard sentencing ranges factored by the defendant's "offender score" and the "seriousness level" of the current offense. *State v. Wiley*, 124 Wn.2d 679, 682, 880 P.2d 983 (1994). The offender score measures a defendant's criminal history and is calculated by totaling the defendant's prior convictions for felonies and certain juvenile offenses. *Wiley*, 124 Wn.2d at 683. Except in the case of felony traffic offenses, prior misdemeanors are not included in the offender score. *Wiley*, 124 Wn.2d at 683.

Where a defendant's criminal history includes out-of-state convictions, the SRA requires these convictions be classified "according to the comparable offense definitions and sentences provided by Washington law." *Wiley*, 124 Wn.2d at 683 (quoting RCW 9.94A.360(3)). To properly classify an out-of-state conviction according to Washington law, the sentencing court must compare the elements of the out-of-state offense with the

elements of potentially comparable Washington crimes. *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998); *Wiley*, 124 Wn.2d at 684; *State v. Weiland*, 66 Wn. App. 29, 31-32, 831 P.2d 749 (1992). If the elements are not identical, or if the Washington statute defines the offense more narrowly than does the foreign statute, it may be necessary to look into the record of the out-of-state conviction to determine whether the defendant's conduct would have violated the comparable {973 P.2d 456} Washington offense. *Morley*, 134 Wn.2d at 606.

In *State v. Ammons*, 105 Wn.2d 175, 186, 713 P.2d 719, , 718 P.2d 796 (1986), we held that the use of a prior conviction as a basis for sentencing under the SRA is constitutionally permissible if the State proves the existence of the {137 Wn.2d 480} prior conviction by a preponderance of the evidence. See RCW 9.94A.110 (criminal history must be proved by a preponderance of the evidence). Similarly, where prior out-of-state convictions are used to increase an offender score, the State must prove the conviction would be a felony under Washington law. RCW 9.94A.360(3); *State v. Cabrera*, 73 Wn. App. 165, 168, 868 P.2d 179 (1994). See also *State v. Duke*, 77 Wn. App. 532, 535-36, 892 P.2d 120 (1995) (foreign conviction could not be included in offender score because State failed to prove underlying conduct met statutory elements under Washington law).

The best evidence of a prior conviction is a certified copy of the judgment. *Cabrera*, 73 Wn. App. at 168. However, the State may introduce other comparable documents of record or transcripts of prior proceedings to establish criminal history. *Cabrera*, 73 Wn. App. at 168; see also *Morley*, 134 Wn.2d at 606 (court may look at foreign indictment and information to determine whether underlying conduct satisfies elements of Washington offense). But see *Morley*, 134 Wn.2d at 606 (facts and allegations contained in record of prior proceedings, if not directly related to the elements of the charged offense, may be insufficiently proved and unreliable).

The above underscores the nature of the State's burden under the SRA. It is not overly difficult to meet. The State must introduce evidence of some kind to support the alleged criminal history, including the classification of out-of-state convictions. The SRA expressly places this burden on the State because it is "inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could

not or chose not to prove." *In re Personal Restraint of Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988).

Thus, contrary to the State's position, it is the State, not the defendant, which bears the ultimate burden of ensuring the record supports the existence and classification of out-of-state convictions. Absent a sufficient record, the sentencing court is without the necessary evidence to reach {137 Wn.2d 481} a proper decision, and it is impossible to determine whether the convictions are properly included in the offender score.

In this case, the State not only failed to meet the preponderance standard mandated by the SRA, the admitted lack of any evidence supporting classification falls below even the minimum requirements of due process.

Although facts at sentencing need not be proved beyond a reasonable doubt, fundamental principles of due process prohibit a criminal defendant from being sentenced on the basis of information which is false, lacks a minimum indicia of reliability, or is unsupported in the record. *See, e.g., Torres v. United States*, 140 F.3d 392, 404 (2d Cir. 1998); *United States v. Safirstein*, 827 F.2d 1380, 1385-87 (9th Cir. 1987); *United States v. Bass*, 175 U.S. App. D.C. 282, 535 F.2d 110, 118-19 (D.C. Cir. 1976); *United States v. Looney*, 501 F.2d 1039, 1042 (4th Cir. 1974); *State v. Johnson*, 856 P.2d 1064, 1071 (Utah 1993); *Mayes v. State*, 604 A.2d 839, 843 (Del. 1992). *See also State v. Herzog*, 112 Wn.2d 419, 426, 771 P.2d 739 (1989) (any action taken by the sentencing judge which fails to comport with due process requirements is constitutionally impermissible).

Information relied upon at sentencing "is 'false or unreliable' if it lacks 'some minimal indicium of reliability beyond mere allegation.'" *United States v. Ibarra*, 737 F.2d 825, 827 (9th Cir. 1984) (emphasis added) (quoting *United States v. Baylin*, 696 F.2d 1030, 1040 (3d Cir. 1982)). *See also United States v. Ward*, 68 F.3d 146, 149 (6th Cir. 1995); *United States v. Fatico*, 458 F. Supp. 388, 397-98 (E.D.N.Y. 1978) (misinformation, misunderstanding, or material false assumptions "'as to any facts relevant to sentencing, renders the entire sentencing procedure invalid {973 P.2d 457} as a violation of due process'" (quoting *United States v. Malcolm*, 432 F.2d 809, 816 (2d Cir. 1970)), *aff'd*, 603 F.2d 1053 (2d Cir. 1979), *cert. denied*, 444 U.S. 1073, 100 S. Ct. 1018, 62 L. Ed. 2d 755 (1980). Furthermore, where the State offers no evidence in support of its position, it is impermissible to place the

burden of refutation on the defendant. *See, e.g., United States v. Weston*, 448 F.2d 626, 634 (9th Cir. 1971); *Fafco*, 458 F. Supp. at 398.

{137 Wn.2d 482} In accordance with these basic principles of due process, Washington courts have long held "that in imposing sentence, the facts relied upon by the trial court *must have some basis in the record.*" *State v. Bresolin*, 13 Wn. App. 386, 396, 534 P.2d 1394 (1975) (emphasis added). *Accord State v. Woldegiorgis*, 53 Wn. App. 92, 95, 765 P.2d 920 (1988); *State v. Balkin*, 48 Wn. App. 1, 4, 737 P.2d 1035 (1987); *State v. Russell*, 31 Wn. App. 646, 649-50, 644 P.2d 704 (1982); *State v. Giebler*, 22 Wn. App. 640, 644-45, 591 P.2d 465 (1979). *See also Herzog*, 112 Wn.2d at 426 (sentencing decisions under the SRA must comport with requirements of due process).

The State's argument that Ford must point to facts in the record to prove the challenged classification is erroneous turns the burden of proof on its head. A criminal defendant is simply not obligated to disprove the State's position, at least insofar as the State has failed to meet its primary burden of proof. The State does not meet its burden through bare assertions, unsupported by evidence. Nor does failure to object to such assertions relieve the State of its evidentiary obligations. To conclude otherwise would not only obviate the plain requirements of the SRA but would result in an unconstitutional shifting of the burden of proof to the defendant.

In concluding as we do, we emphasize we are placing no additional burden on the State not already required under the SRA. In the normal course, the State gathers evidence pertaining to a defendant's criminal history. If the evidence of prior out-of-state convictions is sufficient to support classification under comparable Washington law, that evidence should be presented to the court for consideration. If the evidence is insufficient or incomplete, the State should not be making assertions regarding classification which it cannot substantiate.

We also reject the State's argument that Ford "acknowledged" the classification of the California convictions by failing to specifically take issue with the State's position at sentencing. Under the SRA, acknowledgment allows the {137 Wn.2d 483} judge to rely on unchallenged facts and information introduced for the purposes of sentencing. *See RCW 9.94A.370(2)* ("In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved

in a trial or at the time of sentencing. Acknowledgment includes not objecting to information stated *in the presentence reports.*") (emphasis added). Acknowledgment does not encompass bare assertions by the State unsupported by the evidence. 3

Furthermore, classification is a mandatory step in the sentencing process under the SRA. RCW 9.94A.360(3) ("Out-of-state convictions for offenses *shall be classified* according to the comparable offense definitions and sentences provided by Washington law.") (emphasis added). Thus, while unchallenged *facts and information* are acknowledged by the defendant and may be properly relied upon by the court to support a determination of classification, under the statutory scheme classification of out-of-state convictions is a process unto itself, entirely distinct from the acknowledged existence of any fact which informs the court's conclusions. 4 Accordingly, a defendant does not "acknowledge" the State's position regarding {973 P.2d 458} classification absent an affirmative agreement beyond merely failing to object. 5

Finally, we disagree that a personal restraint petition is the more appropriate remedy rather than direct appeal. In a collateral attack on a conviction or sentence the criminal defendant must show unlawful restraint due to a constitutional {137 Wn.2d 484} error resulting in actual or substantial prejudice, or a fundamental defect of nonconstitutional magnitude which inherently results in a complete miscarriage of justice. *In re Personal Restraint of Cook*, 114 Wn.2d 802, 810-12, 792 P.2d 506 (1990). A prisoner may not claim unlawful restraint in general terms, but the facts upon which the claim is based and the evidence reasonably available to support the factual allegations must be stated. *In re Cook*, 114 Wn.2d at 813. This effects the same burden shifting we disapprove of, as stated above, and which is directly contrary to the mandate of the SRA.

Sentencing is a critical step in our criminal justice system. The fact that guilt has already been established should not result in indifference to the integrity of the sentencing process. Determinations regarding the severity of criminal sanctions are not to be rendered in a cursory fashion. Sentencing courts require reliable facts and information. To uphold procedurally defective sentencing hearings would send the wrong message to trial courts, criminal defendants, and the public:

The meaning of appropriate due process at sentencing is not ascertainable in strictly utilitarian terms. There is an important symbolic aspect to the requirement of due process.

Our concept of the dignity of individuals and our respect for the law itself suffer when inadequate attention is given to a decision critically affecting the public interest, the interests of victims, and the interests of the persons being sentenced. Even if informal, seemingly casual, sentencing determinations reach the same results that would have been reached in more formal and regular proceedings, the manner of such proceedings does not entitle them to the respect that ought to attend this exercise of a fundamental state power to impose criminal sanctions. *American Bar Ass'n, STANDARDS FOR CRIMINAL JUSTICE: SENTENCING* std. 18-5.17, at 206 (3d ed. 1994).

For the foregoing reasons, we decline to limit prior case law permitting illegal or erroneous sentences to be challenged for the first time on appeal. Accordingly, we hold a {137 Wn.2d 485} challenge to the classification of out-of-state convictions, like other sentencing errors resulting in unlawful sentences, may be raised for the first time on appeal. In the present case, the evidence is insufficient to support the conclusion that the disputed convictions would be classified as felonies under Washington law. Consequently, the offender score used to calculate the proper standard range is incorrect and the sentence unlawful.

"It has been the consistent holding of this court that the existence of an erroneous sentence requires resentencing." *Brooks v. Rhay*, 92 Wn.2d 876, 877, 602 P.2d 356 (1979) (citing cases). This rule extends to the imposition of an exceptional sentence under the SRA where, as here, an incorrect offender score is used to calculate the standard range. *State v. Parker*, 132 Wn.2d 182, 190, 937 P.2d 575 (1997) ("We are hesitant to affirm an exceptional sentence where the standard range has been incorrectly calculated because of the great likelihood that the judge relied, at least in part, on the incorrect standard ranges in his calculus."). In this case, the sentencing judge specifically included the potentially incorrect offender score of "9 or more" as an aggravating factor supporting the exceptional sentence. Resentencing, therefore, is required.

In the normal case, where the disputed issues have been fully argued to the sentencing court, we would hold the State to the existing record, excise the unlawful portion of the sentence, and remand for resentencing without allowing further evidence to be adduced. *See State v. McCorkle*, 88 Wn. App. 485, 500, {973 P.2d 459} 945 P.2d 736 (1997). Under the present facts, however, while we necessarily hold that a sentence based on insufficient evidence may not stand, we recognize that defense counsel has some obligation to bring the

deficiencies of the State's case to the attention of the sentencing court. Accordingly, where, as here, the defendant fails to specifically put the court on notice as to any apparent defects, remand for an evidentiary hearing to allow the State to prove the classification of the disputed convictions is appropriate. *See McCorkle*, 88 Wn. App. at 500. {137 Wn.2d 486} This preserves the purpose of the SRA to impose fair sentences based on provable facts, yet provides the proper disincentive to criminal defendants who might otherwise purposefully fail to raise potential defects at sentencing in the hopes the appellate court will reverse without providing the State further opportunity to make its case. Accordingly, we reverse and remand for resentencing, to include an evidentiary hearing to allow the State to introduce evidence to support the proper classification of the disputed convictions.

Guy, C.J., and Durham, Smith, Madsen, and Sanders, JJ., concur.

RELIEF SOUGHT

Citing the reasons above the defendant, Steven Louis Canha requests this court to remand this case to this court for resentencing based on a proper comparability analysis of the alleged out of state felonies.

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

Dated at Coyote Ridge Corrections Center (place) on the 9th day of August, 2013.

Signature

Steven Canha Doc # 32185

Printed Name / DOC #

Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

Steven W. Lunn
Doc # 321815
P.D. Box 769
Connell, Wa. 99326

Honorable Judge

August 5, 2013

Cameron Mitchell, Benton County

RECEIVED
AUG 13 2013

Dear Judge Mitchell,

BY:.....

As You can See it has taken me great lengths and effort to submit this motion to You. In September of 2012, April of 2013 I Sent this C.R. 7-8 Motion to Correct my Judgment and Sentence whereby there are only several options available. It seems that none of those options have been exercised as of yet. As You can see I have had this copy of the previous motion and a new motion faxed to You by my family. Due to the others being lost or misplaced by the Court Clerk several times. I recently seen on the news that a certain Serial Sex offender, Mr Webster was able to have his day in front of You. As stated before the options to the Court are to require me to be in Court to show cause as to why this request for relief should not be granted or transfer the motion to the Court of Appeals for consideration as a Personal Restraint Petition. For reasons cited below which are very clear that the error is not harmless in nature and not time based either.

I respectfully request that You decide the First option and allow me the opportunity to present my case before You in Court as Mr. Webster recently has had his opportunity.

I have left the note motion for Docket blank for the clerk to fill in as needed due to security needs. As well as the motion and order to transport me to the court.

I am not asking for anything extraordinary. I am just asking that things be done the right way, nothing more, nothing less.

Please accept the old copies and the new copies of the exact same motion except the date being different.

As stated above, this motion is not barred by statute for being untimely, therefore this honorable must bring me before it in order to seek relief.

I look forward to your due diligence in matter before your court.

Sincerely,
Steven Canha

Steven Canha



JOSIE DELVIN
BENTON COUNTY CLERK

OCT 14 2013

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October 14, 2013
Court of Appeals
Division III
State of Washington

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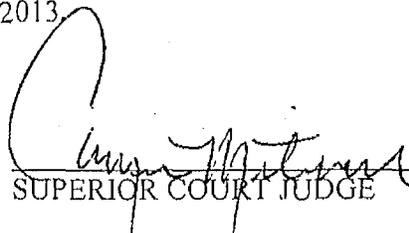
**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES**

)	
STATE OF WASHINGTON,)	320022
Plaintiff,)	
)	CAUSE NO: 07-1-01052-5
vs)	_____
)	
)	ORDER TO TRANSFER MOTION TO
Steven L Canha,)	THE COURT OF APPEALS
Defendant.)	
_____)	

This court received a "Motion to Modify or Correct Judgment and Sentence (J&S) pursuant to CrR 7.8 from defendant, Steven Louis Canha, along with a request for hearing. This matter having been reviewed and considered along with the provisions of CrR 7.8(c), this Court finds the ends of justice would be served by transferring it to the Court of Appeals to be heard as a Personal Restraint Petition.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion be transferred to the Court of Appeals, Division III, to be heard as a Personal Restraint Petition.

DONE THIS 14th day of October, 2013



SUPERIOR COURT JUDGE

JOSIE DELVIN
BENTON COUNTY CLERK

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A.
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SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

JUDGMENT DOCKET
NO 08-9-02031-0

STATE OF WASHINGTON

No. 07-1-01052-5

Plaintiff

FELONY JUDGMENT AND SENTENCE (FJS)

Prison

vs.

STEVEN LOUIS CANHA

CLERK'S ACTION REQUIRED:

Restraining Order

Firearms rights revoked

Clerk's Action Required, para 4.1, 4.3, 5.6 and 5.8

Defendant

SID:

DOB: 02/20/1966

BCSO #07-13749

I. HEARING

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

II. FINDINGS

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

- 2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on July 30, 2008
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
1	ASSAULT IN THE SECOND DEGREE	RCW 9A.36.021(1)(c)	10/20/2007
2	ASSAULT IN THE SECOND DEGREE	RCW 9A.36.021(1)(c)	10/20/2007
3	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	RCW 9.41.040(1)(a)	10/20/2007
4	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	RCW 9.41.040(1)(a)	10/20/2007

(If the crime is a drug offense, include the type of drug in the second column.)

(X) as charged in the Amended Information.

[] The court finds that the defendant is subject to indeterminate sentencing under RCW 9.94A.712.

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

[X] The defendant used a **firearm** in the commission of the offense in Count(s) I and II. RCW 9.94A.602, 9.94A.533.

[] The defendant used a **deadly weapon other than a firearm** in the commission of the offense in Count(s) _____ . RCW 9.94A.602, 9.94A.533.

[] Count(s) _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[] The defendant committed a **crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture** in Count(s) _____ . RCW 9.94A.605, RCW 69.50.401(a), RCW 69.50.440.

[] Count _____ is a **criminal street gang-related felony offense** in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. Laws of 2008, ch.276 § 302.

[] Count _____ is the **crime of unlawful possession of a firearm**. The defendant was a **criminal street gang member or associate** when the defendant committed the crime. RCW 9.94A.545.

[] The defendant committed [] **vehicular homicide** [] **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030

[] Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime, the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch.219 § 2.

[] Count _____ is a **felony** in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

[] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

[] The crime charged in Count(s) _____ involve(s) **domestic violence**. RCW 10.99.020.

[X] Counts I and II encompass the same criminal conduct and count as one crime in determining the offender score are RCW 9.94A.589.

Other current convictions listed under different cause numbers used in calculating the offender score are:

<i>CRIME</i>	<i>CAUSE NUMBER</i>	<i>COUNTY/STATE</i>

2.2 CRIMINAL HISTORY RCW 9.94A.525:

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 Hindering Prosecution	January 6, 2005	Jackson County Circuit Court, Oregon	November 9, 2004	A	NV
2 Criminal Mischief in the First Degree	November 20, 2001	Klamath County Circuit Court, Oregon	July 22, 2001	A	NV
3 Felon in Possession of a Firearm	September 29, 2000	Jackson County Circuit Court, Oregon	August 4, 2000	A	NV
4 Manslaughter	August 5, 1991	California	October 18, 1990	A	SV
5					

- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525
- The prior convictions listed as number(s) _____ above, the court finds that they are one offense for purposes of determining the offender score. RCW 9.94A.525.
- The prior convictions listed as number(s) _____ above, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	7	IV	43 to 57 months	Yes (Firearm)	79 to 93 months	10 years \$20,000
2	7	IV	43 to 57 months	Yes (Firearm)	79 to 93 months	10 years \$20,000
3	5	VII	41 to 54 months			10 years \$20,000
4	5	VII	41 to 54 months			10 years \$20,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520 (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8). (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

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

2.4 EXCEPTIONAL SENTENCE. The court finds that substantial and compelling reasons exist which justify an exceptional sentence:

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

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

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by a jury by special interrogatory.
 Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached.
 The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change.

The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

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

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. JUDGMENT

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

3.2 The Court DISMISSES Counts _____ in the charging documents.

3.3 The Defendant is found NOT GUILTY of Counts _____ in the charging documents.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

RTN/RJN Restitution to:

TOTAL ORDERED: \$0

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV	\$ 500	Victim assessment	RCW 7.68.035
CRC	\$ See Attached Cost Bill	Court costs, including <i>(Transportation costs on FTA Warrants in this case will be assessed at the current legal rate. Other costs as assessed by the Clerk and set forth in the Cost Bill to be attached upon filing of this Judgment and Sentence. If FTA costs and fees are contested, a hearing must be requested at the time of sentencing.)</i>	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
EXT	\$ _____	Extradition Costs	RCW 9.94A.120
FCM/MTH	\$500	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LD/FCD	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ 100	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.7541
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for:	
	\$ _____	TOTAL	RCW 9.94A.760

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

[] is scheduled for _____

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

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with..

NAME CAUSE NUMBER

R/N

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

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____, RCW 9.94A.760

The defendant shall report to the Benton County Clerk, 7122 W. Okanogan, Kennewick, WA and provide financial information as requested. RCW 9.94A.760(7)(b).

[] The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

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

[X] The defendant shall pay up to \$50.00 per month to be taken from any income the defendant earns while in the custody of the Department of Corrections. This money is to be applied towards legal financial obligations. ESB 5990

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

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 OTHER: _____

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

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

<u>43 79</u>	(43 + 36)	Months on Count	<u>I</u>	<u>41</u>	months on Count	<u>IV</u>
<u>43 79</u>	(43 + 36)	Months on Count	<u>II</u>		months on Count	
<u>41</u>		Months on Count	<u>III</u>		months on Count	

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

The confinement time on Count I & II includes 72 (36 + 36) months as enhancement for firearm deadly weapon VUCSA in a protected zone manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 154 months

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

This sentence shall run consecutively with the sentence in cause number(s): _____, but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____
- (c) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.5 COMMUNITY PLACEMENT or COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.700, .705, and .715).

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:
Count I for a range from 18 to 36 months;
Count II for a range from 18 to 36 months;
Count _____ for a range from _____ to _____ months;

(B) DOC shall supervise the defendant if DOC classified the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community restitution; (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by the Department of Corrections; (8) perform affirmative acts

necessary to monitor compliance with the orders of the court as required by the Department of Corrections; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; (10) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders sentenced under RCW 9.94A.710 may be extended for up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

not consume any alcohol.

have no contact with: _____

remain within outside of a specified geographical boundary, to wit: _____

participate in the following crime-related treatment or counseling services: _____

undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions: _____

(C) For sentences imposed under RCW 9.94A.712, the Indeterminate Sentence Review Board may impose other conditions, including electronic monitoring if DOC so recommends. In an emergency, DOC may impose other conditions for a period not to exceed seven (7) working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

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

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 COMMUNITY CUSTODY VIOLATION** (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634. (b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 5.5 FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.6 MOTOR VEHICLE:** If the court found in Section 2.1 that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

6.0 OTHER:

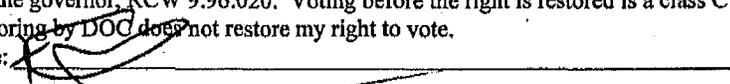
DONE in Open Court and in the presence of the defendant this date: 8-7-08


 JUDGE Print name: _____

 Deputy Prosecuting Attorney
 OFC WSBA # 91004
 Print name: JULIE E. LONG

 Attorney for Defendant
 WSBA # _____
 Print name: SWABY

 Defendant
 Print name:
 STEVEN LOUIS CANHA

VOTING RIGHTS STATEMENT: I acknowledge that I have lost my right to vote due to this felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660. Termination of monitoring by DOC does not restore my right to vote.
 Defendant's signature: 

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

CAUSE NUMBER of this case: _____

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

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

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

IDENTIFICATION OF DEFENDANT

SID No: _____ Date of Birth: 02/20/1966
(If no SID take fingerprint card for State Patrol)

FBI No: _____ Local ID No: 8109145

PCN No: _____ SS No: 565-35-6675

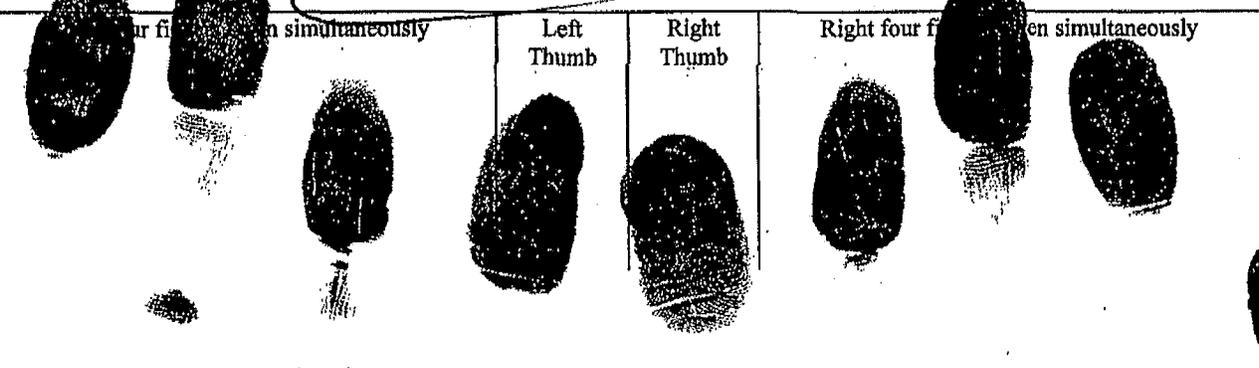
Alias name, SSN, DOB: _____ Other _____

Race: M Ethnicity: _____ Sex: W
 Hispanic
 Non-Hispanic

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

And signature thereto. Clerk of the Court: [Signature] Deputy Clerk/Bailiff. Dated: 8-7-08

DEFENDANT'S SIGNATURE: [Signature]



SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN LOUIS CANHA,)
)
 Defendant.)

NO. 07-1-01052-5
 COST BILL

The following court costs have been incurred by the county in the above-entitled matter and are owing:

		<u>ORD</u>	<u>ASS'D</u>
FILING FEE	\$ <u>200.00</u>	<u>X</u>	_____
CLERK'S FEE FOR FTA WARRANTS	\$ _____	_____	_____
_____ \$ _____	\$ _____		
_____ \$ _____	\$ _____		
SHERRIFF'S SERVICE FEE	\$ <u>600⁰⁰</u>	<u>X</u>	_____
10-25.07 \$ <u>60⁰⁰</u>	\$ _____		
_____ \$ _____	\$ _____		
JURY DEMAND FEE	\$ <u>250⁰⁰</u>	<u>X</u>	_____
WITNESS FEES	\$ <u>166⁰⁰</u>	<u>X</u>	_____
ATTORNEY'S FEES	\$ <u>700⁰⁰</u>	<u>X</u>	_____
SPECIAL COSTS REIMBURSEMENT	\$ <u>1516⁹⁸</u>	<u>X</u>	_____
EXTRADITION COSTS	\$ _____	_____	_____
TOTAL ORDERED AND/OR ASSESSED	\$ <u>2893⁹⁸</u>		_____

EJV 900⁰⁰
 EJV 127⁷⁸
 EJV 489²⁰

DATED: Aug 7, 2008

JOSIE DELVIN
 SUPERIOR COURT CLERK

By: [Signature]
 Deputy

BENTON SUPERIOR COURT CLERK

October 14, 2013 - 2:22 PM

Transmittal Letter

Document Uploaded: 07-1-01052-5 NTDRCA & FJS.pdf

Case Name: State of Washington vs. Louis Cahna

County Cause Number: 07-1-01052-5

Court of Appeals Case Number:

Notice of Appeal (NOA)/Notice of Discretionary Review (DR)/CrR 7.8 Transfer (PRP)

Check All Included Documents

Judgment & Sentence/Order Judgment/Order of Disposition
Signing Judge: Cameron Mitchell

Order of Indigency

Filing Fee Paid - Receipt No: ____ - Receipt Date: ____

Affidavit of Service

Other:
Signing Judge: _____

Clerk's Papers - No. of Volumes: _____ Total Number of Pages: _____

Verification of Verbatim Report of Proceedings Filed - Date ____

No. of Volumes:

Hearing Date(s):

Reporter/Transcriptionist:

Other: _____

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

Sender Name/Email Address: Camas M Murry - camas.murry@co.benton.wa.us