

No. 94175-1



**FILED**  
**Mar 16, 2016**  
Court of Appeals  
Division III  
State of Washington

NO. 32002-2-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

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**IN RE THE PERSONAL RESTRAINT PETITION OF**

**STEVEN LOUIS CANHA,**

Petitioner.

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**SUPPLEMENTAL BRIEF OF PETITIONER**

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### **ASSIGNMENTS OF ERROR**

1. The sentencing court failed to conduct a comparability analysis of the California and Oregon convictions.
2. Defense counsel did not provide effective assistance of counsel at the sentencing hearing.
3. Appellate counsel did not provide effective assistance of counsel on appeal.

### **ISSUES RELATING TO ASSIGNMENTS OF ERROR**

1. In the absence of a comparability analysis involving foreign convictions must the case be sent back to the sentencing court to conduct that analysis?
2. Was Steven Louis Canha denied effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and Const. art. I, § 22 at the sentencing hearing?
3. Was Mr. Canha denied effective assistance of counsel on appeal when the appellate attorney failed to raise the issue of the trial court's failure to conduct a comparability analysis of the foreign offenses?

## STATEMENT OF THE CASE

Mr. Canha was sentenced on August 7, 2008, to one hundred and fifty-four (154) months in prison based upon convictions for two (2) counts of second degree assault and two (2) counts of unlawful possession of a firearm in the first degree.

The Judgment and Sentence contains the following information under Paragraph 2.2:

	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

(Appendix "A")

The trial court failed to conduct a comparability analysis. The transcript of the sentencing hearing (Appendix "B"), mislabeled as August 8, 2008, contains the following exchange:

THE COURT: Okay. Mr. Swaby [defense counsel], anything else you'd like to say?

MR. SWABY: I haven't actually allocated [sic] at all yet, your Honor, and I -- the court doesn't have before it the facts of the manslaughter. I mean, the court obviously can take into account there was a manslaughter conviction, but it doesn't have the facts. So,

I'm not sure how much I want the court to rely on those.

You heard the trial. You heard what is alleged to have happened. You heard my client I think very candidly say at trial, "What they're saying isn't impossible. I do not believe I did that, but I'm not saying it's impossible."

(RP 119, l. 20 to RP 120, l. 7).

Other than the mention of the manslaughter conviction defense counsel did not raise the issue of the sentencing court's need to conduct a comparability analysis.

The Court went on to impose sentence:

The court is going to impose a sentence of 43 months on Count I, 43 months on Count II, 41 months on Count III, 41 months on Count IV, 41 months on Count III and Count IV will be run consecutive for a total of 82 months. 43 months on Counts I and II will run concurrently with those 82 months. So, that will be a total of 82 months. An additional 36 months for firearm enhancement in Count I. Additional 36 months for the firearm enhancement in Count II. A total of 154 months.

(RP 121, ll. 8-17)

Mr. Canha appealed his convictions. The Court of Appeals, in an unpublished opinion (27426-8-III), affirmed his convictions. (Appendix "C")

Appellate counsel did not raise the issue of the lack of a comparability analysis. There was no stipulation on the record concerning the comparability of the California and Oregon offenses.

Mr. Canha challenged the trial court's denial of his suppression motion, raised a double-jeopardy issue with regard to firearm enhancements, and claimed ineffective assistance of counsel for failure to request a voluntary intoxication instruction.

Mr. Canha timely filed a Personal Restraint Petition (PRP). He again raised the issue of ineffective assistance of counsel, but this time it related to failure to request a lesser included offense instruction. The Court of Appeals dismissed the PRP on July 11, 2012, under Cause Number 30598-8-III. (Appendix "D")

On October 14, 2013 Mr. Canha filed a Motion to Modify or Correct Judgment and Sentence (J & S) in Superior Court. (Appendix "E")

The Superior Court entered an order transferring the motion to the Court of Appeals as a Personal Restraint Petition that same date. (Appendix "F")

The Court of Appeals dismissed the PRP as untimely, frivolous and improperly successive. Mr. Canha sought review by the Washington State Supreme Court. In an order dated April 6, 2015, the Supreme Court

remanded the case to the Court of Appeals to review, on the merits, the issues raised in the PRP. (Appendix "G")

The Court of Appeals ordered supplemental briefing by an order dated January 14, 2016. (Appendix "H")

### **SUMMARY OF ARGUMENT**

Whenever the State seeks to use a foreign conviction as a basis for increasing a defendant's offender score, a comparability analysis must be conducted by the sentencing court. Failure to conduct the comparability analysis is a deprivation of due process under the Fourteenth Amendment to the United States Constitution and Const. art. I, § 3.

If defense counsel does not challenge the use of the foreign convictions, in the absence of a comparability analysis, a defendant is deprived of his constitutional right to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Const. art. I, § 22.

If appellate counsel fails to recognize an issue that has constitutional implications, then an appellant is deprived of his constitutional right to effective assistance of counsel under the same constitutional provisions.

## ARGUMENT

### I. COMPARABILITY ANALYSIS

#### A. California Conviction

The sentencing court did not conduct a comparability analysis. The State did not provide any underlying judgment and sentences on the foreign convictions in California and Oregon. Defense counsel, by merely mentioning the California manslaughter conviction, did not challenge the lack of the comparability analysis. His presentation was insufficient to alert the sentencing court to the need to conduct that analysis.

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 sentence provided by Washington law." *Wiley* [*State v. Wiley*, 124 Wn.2d 679, 880 P.2d 983 (1994)] 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).

*State v. Ford*, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). See also: *Personal Restraint of Crawford*, 150 Wn. App. 787, 793, 209 P.3d 507 (2009).

The State has conceded that the January 6, 2005, hindering prosecution conviction from Oregon does not qualify as a felony under the Laws of the State of Washington. Rather, it is equivalent to rendering criminal assistance second degree. *See*: RCW 9A.76.080.

On the other hand, the State continues to claim that the California voluntary manslaughter conviction, and the convictions for criminal mischief in the first degree and felon in possession of a firearm in Oregon, are comparable to Washington felony offenses.

The State asserts that the California voluntary manslaughter conviction is comparable to Washington's definition of second degree murder.

It is not.

California Penal Code (CPC), Section 192 states:

Manslaughter is the unlawful killing of a human being **without malice**. It is of three kinds:

- (a) Voluntary -- upon a sudden quarrel or heat of passion.
- (b) Involuntary -- in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.
- (c) Vehicular -- ....

(Emphasis supplied.)

Manslaughter, in California, requires that the killing be “without malice.”

California Penal Code, Section 188 states:

Such **malice** may be express or implied. It is express when there is manifested a of **deliberate intention** unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the **intentional** doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforesaid. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

(Emphasis supplied.)

The definition of malice in CPC § 188 precludes and counters the State’s argument that it is comparable to second degree murder in the State of Washington. Second degree murder is an intentional act without premeditation.

Thus, since CPC § 192 requires that the killing be “without malice,” it negates intent.

Mr. Canha also contends that CPC § 192(a) is neither comparable to first degree manslaughter (RCW 9A.32.060(1)) nor second degree manslaughter (RCW 9A.32.070(1)).

RCW 9A.32.060(1) provides:

A person is guilty of manslaughter in the first degree when:

(a) He or she recklessly causes the death of another person; ....

When CPC § 192(a) is compared to RCW 9A.32.060(1)(a) it is readily apparent that the definitions set forth different elements. Death is an element of both definitions. However, CPC § 192(a) does not contain the element of "recklessness." RCW 9A.32.060(1)(a) does not include the element of "a sudden quarrel or heat of passion."

RCW 9A.08.010 (1)(c) defines recklessness as:

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

"Reckless conduct, ... includes a subjective and objective component. Whether an act is reckless depends on both what the defendant knew and how a reasonable person would have acted knowing these facts." *State v. R.H.S.*, 94 Wn. App. 844, 847, 974 P.2d 1253 (1999).

The State did not supply any information to the trial court with regard to the underlying facts of the California manslaughter conviction. The State did not present a judgment and sentence from California to the sentencing court.

“... [W]here 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.” *State v. Ford, supra*, 480.

The *Ford* Court went on to note at 482:

In accordance with ... 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). [Citations omitted.]

RCW 9A.32.070(1) provides: “A person is guilty of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.”

RCW 9A.08.010(1)(d) defines criminal negligence as follows:

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

Mr. Canha's plea to the California manslaughter conviction was based upon CPC § 192(a). He asserts that second degree manslaughter in Washington may be equivalent to the definition of manslaughter under CPC § 192(b) which states:

Involuntary -- in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. ...

The only factual predicate that the State set forth in its original brief is as follows:

The people's reasoning for this sentencing on this murder case is that apparently there was a lot of contact between victim and the defendant and that this appears to be a homicide that took place during a sudden quarrel.

(Appendix "J" of State's brief, p. 2, ll. 13-17)

These factual predicates are insufficient to meet any of the definitions in Ch. 9A.32 RCW pertaining to homicide. Moreover, Mr. Canha's plea was as to CPC § 192(a) as opposed to CPC § 192(b).

## **B. Oregon Convictions**

### **(1) Criminal Mischief in the First Degree**

The State claims that a conviction for criminal mischief in the first degree under ORS § 164.365 is equivalent to second degree malicious mischief in the State of Washington.

ORS § 164.365(1) currently states:

A person commits the crime of criminal mischief in the first degree who, with intent to damage property, and having no right to do so nor reasonable ground to believe that the person has such right:

- (a) Damages or destroys property of another:
  - (A) In an amount exceeding \$1,000.00

....

Mr. Canha's conviction for criminal mischief in the first degree occurred on November 20, 2001.

In 2001 the monetary level for first degree criminal mischief was \$500.00 in Oregon. In 2001 former RCW 9A.48.080(1) had a monetary level of \$250.00.

Mr. Canha asserts that the issue of monetary levels between the two (2) statutes is not the controlling factor as to whether or not the two (2) offenses are comparable.

ORS § 164.365(1) requires both intent and a lack of justification.

RCW 9A.48.080(1) requires that the act be "knowing and malicious."

The differing language between the respective statutes calls into question whether or not they are indeed comparable. In the absence of the comparability analysis, along with defense counsel's failure to direct the Court to the need to conduct a comparability analysis, the offense should not have been included in the offender score.

... [F]undamental 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. [Citations omitted.]

*State v. Ford, supra*, 481.

The record, at this point, and during the sentencing hearing, is insufficient to have allowed the inclusion of the Oregon conviction for purposes of sentencing. "[W]here the State offers no evidence in support of its position, it is impermissible to place the burden of refutation on the defendant." *State v. Ford, supra*, 481.

## (2) Felon in Possession of a Firearm

ORS § 166.270(1) states:

**Any person who has been convicted of a felony under the law of this state or any other state ... who owns or has in the persons possession or under the persons custody or control any firearm commits the crime of felon in possession of a firearm.**

(Emphasis supplied.)

RCW 9.41.040(1)(a) provides, in part:

**A person ... is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted ... in this state or elsewhere of any serious offense as defined in this chapter.**

(Emphasis supplied.)

RCW 9.41.040(2)(a) provides, in part:

**A person ... is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:**

**(i) After having previously been convicted ... in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section ....**

(Emphasis supplied.)

ORS § 166.270(1) does not require that the felony be a “serious felony.”

The Oregon conviction for felon in possession of a firearm occurred September 29, 2000. It appears from Mr. Canha’s criminal history

that the only other felony he had at that time was the California manslaughter conviction.

Mr. Canha does not argue that the California manslaughter conviction was not a felony. The question is whether or not it was a serious felony. If it is not comparable to second degree murder, first degree manslaughter or second degree manslaughter under the definitions contained in the Washington statutes, it is not a "serious felony."

The State relies upon the fact that there was a stipulation at trial that Mr. Canha had previously been convicted of a "serious felony." Mr. Canha asserts that that stipulation should not be carried over to sentencing.

Defense counsel's representation was defective for not ascertaining if the voluntary manslaughter conviction was comparable to a serious offense in Washington. (*See: II. (a), infra*)

Mr. Canha contends that a comparability analysis is required with regard to the California manslaughter conviction and whether it would constitute a felony under the Laws of the State of Oregon. If not, then this conviction should not be included in his offender score.

## **II. INEFFECTIVE ASSISTANCE OF COUNSEL**

To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel's representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consid-

eration of all of the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different.

*State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

#### **A. Trial Counsel**

Defense counsel's performance at the sentencing hearing was deficient. It was also prejudicial since the trial court included offenses in the offender score without the required comparability analysis.

Removal of the out-of-state convictions from the offender score would result in a substantial reduction in the standard range sentences for second degree assault and unlawful possession of a firearm first degree. (See Appendices "I" and "J")

Mr. Canha maintains that the circumstances in his case are similar to what occurred in *State v. Crawford*, 128 Wn. App. 376, 115 P.3d 387 (2005), and *In re Personal Restraint of McCready*, 100 Wn. App. 259, 996 P.2d 658 (2000).

In the *McCready* case, neither the State nor defense counsel advised the defendant that he was subject to a mandatory minimum term. *McCready* rejected the State's plea offer, went to trial and was convicted.

He then became aware of the mandatory minimum term at sentencing. It was imposed on him.

By means of a PRP, *McCready* alleged that his attorney's performance was deficient and that the deficiency was prejudicial because he would have accepted the State's offered plea if he had known about the mandatory minimum term. The *McCready* Court, at 265, accepted the petition and remanded for further proceedings.

*Crawford* also involved an issue of a mandatory minimum term. This time it was life without parole. It involved the failure to investigate and examine a Kentucky conviction prior to trial and avoiding a mitigation package or engaging in intensive plea negotiations.

The *Crawford* Court concluded at 384-85 that Crawford was "denied the effective assistance of counsel as well as procedural due process ...." See also: *Personal Restraint of Crawford*, 150 Wn. App. 787, 209 P.3d 507 (2009) (recognizing that *State v. Crawford*, 128 Wn. App. 376 was overturned in *State v. Crawford*, 159 Wn.2d 86, 147 P.3d 1288 (2006), finding that ineffective assistance of counsel because the out-of-state conviction was neither legally nor factually comparable to a Washington offense qualifying for a persistent offender sentence).

## **B. Appellate Counsel**

“Illegal or erroneous sentences ... may be challenged for the first time on appeal.” *State v. Nitsch*, 100 Wn. App. 512, 519, 997 P.2d 1000, *review denied*, 141 Wn.2d 1030 (2000).

*State v. Rice*, 159 Wn. App. 545, 571, 246 P.3d 234 (2011).

Mr. Canha’s sentence is an erroneous sentence due to the fact that the trial court did not conduct the comparability analysis.

Counsel on appeal failed to recognize the sentencing court’s failure. “A sentencing court acts without statutory authority under the Sentencing Reform Act of 1981 when it imposes a sentence based on a miscalculated offender score.” *Personal Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997).

By failing to conduct a comparability analysis the sentencing court imposed a sentence based on a miscalculated offender score. The miscalculation resulted in a sentence exceeding that authorized under the SRA.

Mr. Canha is entitled to proceed with his PRP for the following reasons:

1. The Supreme Court’s Order; and
2. *State v. Mandanas*, 163 Wn. App. 712, 262 P.3d 522 (2011).

The *Mandanas* Court was dealing with a successive appeal which raised new issues. The Court ruled at 716-17:

The general rule is that a defendant is prohibited from raising issues on a second appeal that were or could have been raised on the first appeal. *State v. Sauve*, 100 Wn.2d 84, 87, 666 P.2d 894 (1983); *State v. Jacobsen*, 78 Wn.2d 491, 493, 477 P.2d 1 (1970).

... [O]ur supreme court stated in *Sauve* that even an issue of constitutional import cannot be raised in a second appeal:

Even though an appeal raises issues of constitutional import, at some point the appellate process must stop. Where, as in this case, the issues could have been raised on the first appeal, we hold they may not be raised in a second appeal. Nonetheless, **defendant is not without a remedy. He may choose to apply for a personal restraint petition** under RAP 16.3, 16.4 and with a *prima facie* showing of actual prejudice arising from constitutional error would be entitled to “a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(a) and RAP 16.12.”

100 Wn.2d at 87 (quoting *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983)). Similarly, *Mandanas's* remedy is through a personal restraint petition.

(Emphasis supplied.)

Moreover, as recognized in *Personal Restraint of Dalluge*, 152 Wn.2d 772, 787, 100 P.3d 279 (2004):

[T]he United States Supreme Court has recognized that a criminal defendant has a right to have effective assistance of counsel on his first appeal of right. *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed.2d 821 (1985). A criminal defendant's first opportunity to raise an ineffective assistance of counsel claim is often on collateral review. *See, e.g., Maxfield [Personal Restraint of Maxfield]*, 133 Wn.2d 332, 945 P.2d 196 (1997)] at 344.

Finally, based upon the Supreme Court order directing the Court of Appeals to consider the PRP, there is no issue of preclusion. The Supreme Court has already made a determination that good cause exists for hearing the petition. *See: Personal Restraint of Johnson, supra*, 567.

## CONCLUSION

Mr. Canha has been denied both effective assistance of counsel and due process. As a result of these violations he has been actually and substantially prejudiced by being sentenced to a term in prison that is over and above his correct offender score.

As the Court noted in *State v. Jackson*, 129 Wn. App. 95, 106, 117 P.3d 1182 (2005):

... [W]e think that where the sentencing court has neglected the proper statutory comparison, the appellate court may exam-

ine the elements of the foreign statute and, if the elements are identical to those of a Washington felony, determine the propriety of the defendant's offender score.

In Mr. Canha's case the sentencing court never conducted the comparability analysis required by the SRA. The sentencing court's failure to conduct the comparability analysis required by the SRA deprived Mr. Canha of due process under the Fourteenth Amendment to the United States Constitution and Const. art. I, § 3. Further, it violated the statutory requirement that a comparability analysis be conducted.

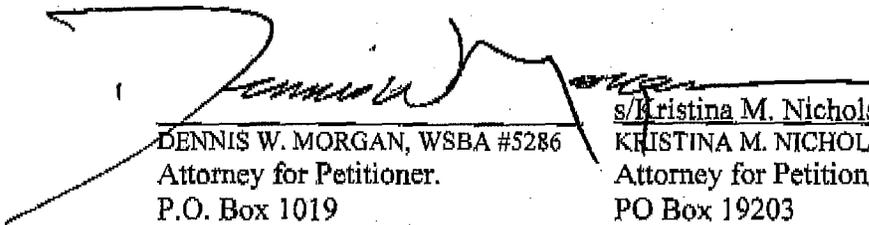
Defense counsel never brought the lack of a comparability analysis to the attention of the sentencing court. Defense counsel provided ineffective assistance of counsel at sentencing. The brief mention of the California manslaughter conviction was insufficient to call the sentencing court's attention to the need for a comparability analysis. The State also failed to raise the issue with the sentencing court.

Appellate counsel never raised the issue of the lack of a comparability analysis. This further exacerbated the constitutional violations and deprived Mr. Canha of the opportunity to present the issue on the initial appeal. In the absence of a comparability analysis the sentencing is constitutionally and statutorily defective.

The Court of Appeals has the choice of conducting a comparability analysis based upon the documentation submitted to the Court, or, alternatively, remanding the case to the trial court to conduct a comparability analysis.

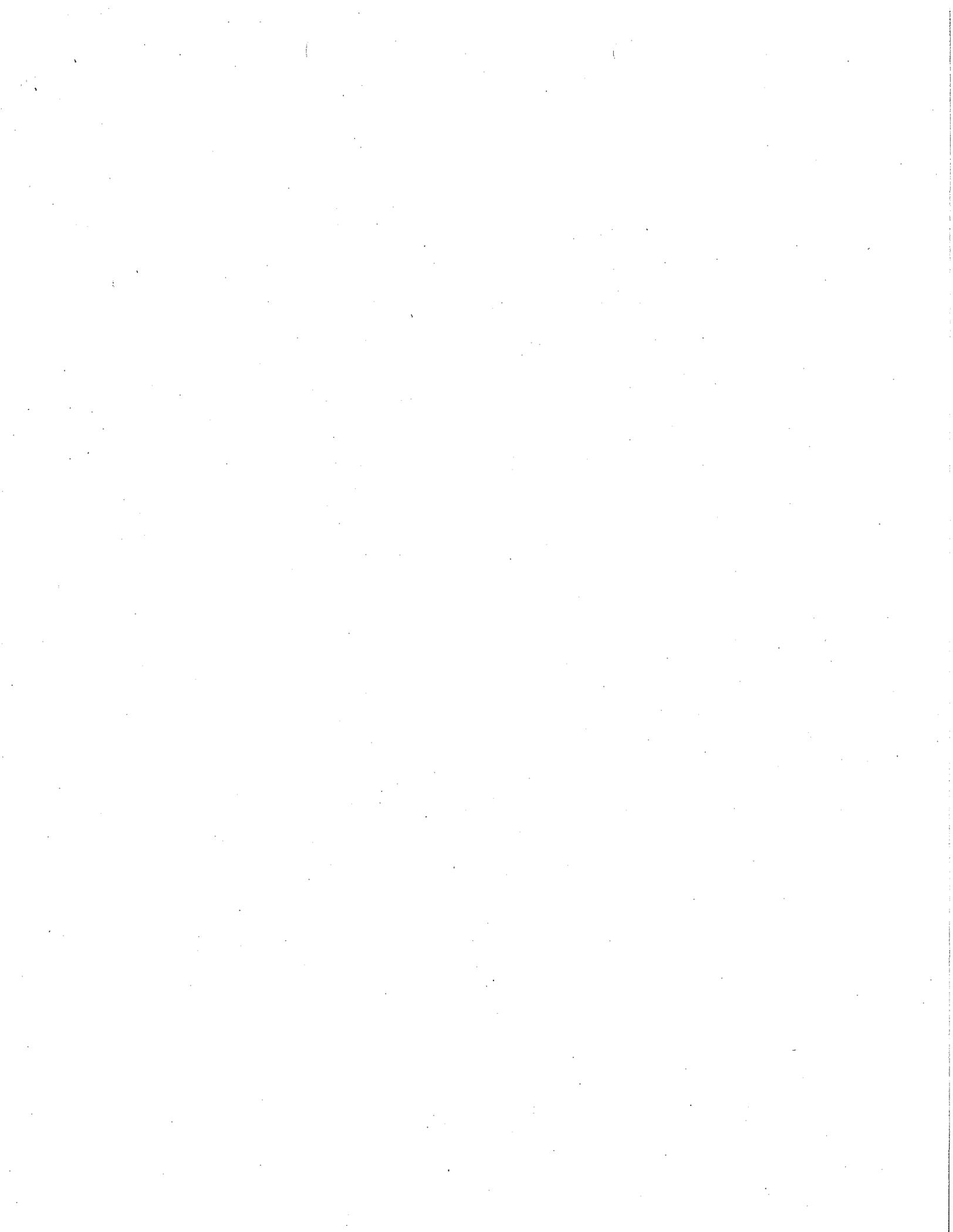
DATED this 16th day of March, 2016.

Respectfully submitted,



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APPENDIX "A"

JOSIE DELVIN  
BENTON COUNTY CLERK

AUG 27 2008

FILED

A.  
M

SUPERIOR COURT OF WASHINGTON  
COUNTY OF BENTON

JUDGMENT DOCKET  
NO. 08-9-0224-0

STATE OF WASHINGTON

No. 07-1-01052-5

Plaintiff

FELONY JUDGMENT AND SENTENCE (FJS)

Prison

vs.

STEVEN LOUIS CANHA

CLERIC'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

BOSO # 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 9A.040(1)(a)	10/20/2007
4	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	RCW 9A.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:

CRIME	CAUSE NUMBER	COUNTY/STATE

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	SERIOUSNESS 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 (JF) 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:

**CLASS CODE**

**RTN/RJN** Restitution to:

**TOTAL ORDERED:** \$0

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

<b>PCV</b>	\$ 500	Victim assessment	<i>RCW 7.68.035</i>
<b>CRC</b>	\$ See Attached	Court costs, including	<i>RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190</i>
	Cost Bill	<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>	
<b>EXT</b>	\$ _____	Extradition Costs	<i>RCW 9.94A.120</i>
<b>FCM/MTH</b>	\$500	Fine	<i>RCW 9A.20.021;</i>
		<input type="checkbox"/> VUCSA chapter 69.50 <i>RCW, [ ] VUCSA additional fine deferred due to indigency</i>	
			<i>RCW 69.50.430</i>
<b>CDF/DI/FCD</b>	\$ _____	Drug enforcement fund of _____	<i>RCW 9.94A.760</i>
<b>CLF</b>	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	<i>RCW 43.43.690</i>
	\$ 100	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	<i>RCW 43.43.7541</i>
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	<i>RCW 38.52.430</i>
	\$ _____	Other costs for:	
	\$ _____	<b>TOTAL</b>	<i>RCW 9.94A.760</i>

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, Kennecott, 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.

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</u> <u>79</u>	(43+36)	Months on Count	<u>I</u>	<u>41</u>	months on Count	<u>IV</u>
<u>43</u> <u>99</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).

FELONY JUDGMENT AND SENTENCE (FJS) (Prison)  
(RCW 9.94A.500-.505)(WPF CR 84.0400 (6/2008))

Page 7

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.

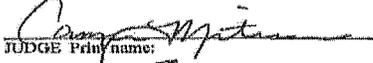
5.4 **COMMUNITY CUSTODY VIOLATION** (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634. (b) If you have not completed your maximum term of total confinement 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, Identicaid, 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: \_\_\_\_\_  
(If no SID take fingerprint card for State Patrol)

Date of Birth: 02/20/1966

FBI No:

Local ID No: 8109145

PCN No:

SS No: 565-35-6675

Alias name, SSN, DOB: \_\_\_\_\_

Other \_\_\_\_\_

Race: M

Ethnicity:

Sex: W

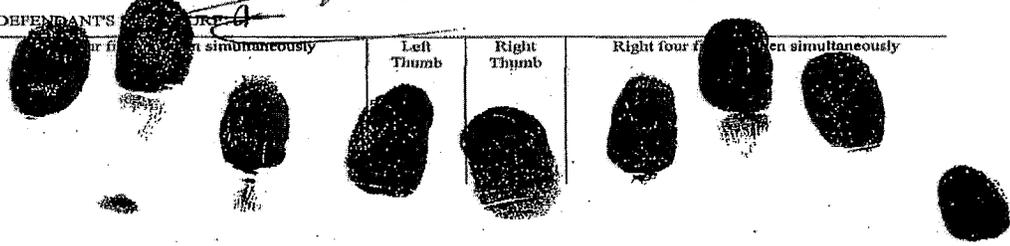
Hispanic

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/Judge: [Signature] Dated: 8-7-08

DEFENDANT'S



**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	\$ 200.00		X	
CLERK'S FEE FOR FTA WARRANTS	\$ _____			
_____ \$ _____	\$ _____			
_____ \$ _____	\$ _____			
SHERIFF'S SERVICE FEE	\$ 600 <sup>00</sup>		X	
10-25-07 \$ 60 <sup>00</sup>	\$ _____			
_____ \$ _____	\$ _____			
JURY DEMAND FEE	\$ 250 <sup>00</sup>		X	
WITNESS FEES	\$ 160 <sup>00</sup>		X	
ATTORNEY'S FEES	\$ 700 <sup>00</sup>		X	
SPECIAL COSTS REIMBURSEMENT	\$ 1516 <sup>00</sup>		X	
EXTRADITION COSTS	\$ _____			
TOTAL ORDERED AND/OR ASSESSED	\$ 2873 <sup>00</sup>			

INV 1100<sup>00</sup>  
 INV 127<sup>78</sup>  
 INV 481<sup>20</sup>

DATED: Aug 7, 2008

JOSIE DELVIN  
 SUPERIOR COURT CLERK  
 By: [Signature]  
 Deputy

APPENDIX "B"

17  
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1                   IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2                   IN AND FOR THE COUNTY OF BENTON  
3           DEPARTMENT B           HON. CAMERON MITCHELL, JUDGE  
4   STATE OF WASHINGTON,           )  
5                    Plaintiff,                    COA NO. 27426-8-III  
6                    vs.                                 NO. 07-1-01052-5  
7   STEVEN L. CANHA,  
8                    Defendant.                    )  
9  
10   Kennewick, Washington        Thursday           August 08, 2008

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12  
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16  
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TRANSCRIPT OF THE VERBATIM  
REPORT OF PROCEEDINGS

APPEARANCES:

18 St\_V\_S\_Canha\_4\_1235174204  
For the Plaintiff: JULIE LONG  
19 Deputy Prosecuting Attorney  
TERRY BLOOR  
20 Deputy Prosecuting Attorney  
7122 W. Okanogan Place  
21 Kennewick, WA 99336  
22 For the Defendant: CHRISTOPHER SWABY  
Attorney at Law  
23 P.O. BOX 771  
Richland, WA 99352  
24  
25 Reported by: RENEE L. MUNOZ, CCR 2330, RPR, CRR

577

1 Thursday, August 8, 2008, at 4:00 p.m.  
2 Kennewick, Washington  
3

4 MR. SWABY: Can I call number 14, Canha. I  
5 understand the state's witnesses are here. They want to  
6 address the court.

7 MS. LONG: Your Honor, the victims are present  
8 today in court, but they do not wish to address the  
9 court.

10 THE COURT: Nothing you wish to say?

11 THE AUDIENCE: (Nodded head.)

12 THE COURT: Ms. Long?

13 MS. LONG: Your Honor, this is kind of a little  
14 bit confusing. I've indicated in the judgment and  
15 sentence Counts I and II encompass the same criminal  
16 conduct and count as one crime in determining the  
17 offender score. I've also indicated that on I and II the  
18 jury returned a special verdict. Therefore, the standard

19 St\_V\_S\_Canha\_4\_1235174204  
ranges for Counts I and II would be 43 to 57 months.  
20 However, the firearm enhancement raises that to 79 to 93  
21 months.  
22 we also have Counts III and IV. I've indicated in  
23 the J and S that those pursuant to statute run  
24 consecutive to each other. So, the standard ranges on  
25 those would be 41 to 54, those consecutive to each other,

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1 as well as the firearm enhancement. So based upon the  
2 defendant's criminal history, which is set forth on page  
3 three, the State is requesting the maximum sentence in  
4 this matter, which would be 144 months.

5 That's based upon the fact that the defendant had  
6 previously been convicted of manslaughter. I had a  
7 chance to review those police reports, and they're  
8 frighteningly similar to the incident in this case in  
9 that he got into an argument with a gentleman. He  
10 bludgeoned him with a two by four and then shot him.

11 In this case obviously Kevin Price wasn't shot, and  
12 I don't know if it was because he was able to get the  
13 firearm away or because his mother was standing in the  
14 way when the defendant got the second firearm. What's  
15 more troubling is the defendant has already been  
16 convicted out of Oregon of felon in possession of a  
17 firearm.

18 So despite being convicted of manslaughter, he was  
19 once again in possession of a firearm out of Oregon. It

20                   st\_v\_s\_Canha\_4\_1235174204  
20       Looks like he was sentenced in 2000, and now again he's  
21       here with two firearms. He doesn't seem to get the fact  
22       that he's a danger, and he's not supposed to be in  
23       possession of a firearm.  
24               Counts I and II also carry 18 to 36 months of  
25       community custody. There's no restitution. We would ask

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1       for the standard fines and fees.  
2               THE COURT: Before you begin, Mr. Swaby, I'm  
3       trying to follow again your calculation of the months.  
4       You asked for 93 on counts I and II.  
5               MS. LONG: I think it's -- right.  
6               THE COURT: 57 plus 36?  
7               MS. LONG: Right, and I think the firearm, the  
8       three years runs consecutive to the 108.  
9               THE COURT: So, we have --  
10              MR. SWABY: I'm comin' up with 211 -- I'm sorry  
11       201 is what I'm comin' up with at the top end. The 108  
12       plus the 93.  
13              MS. LONG: I think the 43 to 57 runs concurrent  
14       with the 82 to 108, and then the 36 runs consecutive to  
15       the 108.  
16              MR. BLOOR: The way I understood it, your Honor,  
17       the unusual thing is the firearm charges, Counts III and  
18       IV. I think if -- I don't know if the court has the  
19       statute up there.  
20              THE COURT: I don't unfortunately.

21 St\_V\_5\_Canha\_4\_1235174204  
MR. BLOOR: I don't have it with me, but I know  
22 on the consecutive and concurrent statute under the  
23 Sentencing Reform Act there's a special provision  
24 regarding -- I know that there is a provision -- do you  
25 care if I take a moment?

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1 THE COURT: No, please do. On 99.4A.589 it  
2 provides that in the case an offender convicted of  
3 unlawful possession of a firearm first or second degree,  
4 the sentences for those crimes are served consecutive for  
5 each conviction, and let me read the actual quote. All  
6 right, it's actually Subsection C. "If the offender is  
7 convicted under 94.040 for possession of a firearm in the  
8 first or second degree, the standard sentence range for  
9 each of these current offenses shall be determined by  
10 using all the other current and prior convictions except  
11 for other convictions, these types of felonies."

12 So, we had the assault charge in calculating the  
13 offender score for the firearm possessions that we don't  
14 count those against each other. So the defendant had  
15 four priors, and then we're suggesting that the two  
16 assault charges are in the same course of criminal  
17 conduct. So, that would be five.

18 THE COURT: Right.

19 MR. BLOOR: So, we listed an offender score on  
20 III and IV as an offender score of five.

21 THE COURT: I follow you.

22 MR. BLOOR: Those are supposed to run  
23 consecutive to each other.  
24 THE COURT: Okay.  
25 MR. BLOOR: Your Honor, I'll hand up, if you

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1 want to see this, you probably do.  
2 THE COURT: Thank you.  
3 MR. BLOOR: Can I just approach the bench?  
4 THE COURT: Thank you.  
5 MR. BLOOR: Reading from subsection C.  
6 THE COURT: Thank you.  
7 MR. BLOOR: And then we're saying that the  
8 firearms charges do count in determining the standard  
9 range of the assault charges.  
10 THE COURT: Correct. I follow that.  
11 MR. BLOOR: So, the range on that is 43 to 57,  
12 and those do run concurrently with the other current  
13 offenses. However, the three months -- three years  
14 that's imposed as a firearm requirement, I think under  
15 the statute just has to be run -- the defendant just has  
16 to do three years on that.  
17 so, our recommendation is for the high end of the  
18 range on counts -- on all the counts. So, it would be 54  
19 months on Counts I and II, 54 months and 54 months, those  
20 two counts would have to run consecutively. so, that's  
21 108 months, and then he'd also get three years, 36 months  
22 for the firearms enhancement.

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23 THE COURT: So the two possession of firearm  
24 enhancements would run consecutively for 108 months but  
25 concurrently with the assault.

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1 MR. BLOOR: Yes.  
2 THE COURT: So the 98 months would be subsumed  
3 in the 108 and then add 96 for the firearm enhancement.  
4 MR. BLOOR: Right.  
5 THE COURT: That's how you get to --  
6 MR. BLOOR: At least that will be my explanation  
7 to the Department of Corrections when we get a letter.  
8 THE COURT: Mr. Swaby, are you following that?  
9 There is the maximum penalty is ten years.  
10 MR. BLOOR: I think -- I know there's a  
11 provision on the enhancement.  
12 THE COURT: Can the enhancement can go beyond?  
13 MR. BLOOR: Yes.  
14 THE COURT: Okay. I think I'm following.  
15 Mr. Swaby?  
16 MR. SWABY: I'm thinking about it, your Honor.  
17 The idea that the 57 months would be consumed in the two  
18 consecutive counts on III and IV?  
19 THE COURT: Correct.  
20 MR. SWABY: But because the three-year firearm  
21 enhancement has to be run consecutively anyway, it runs  
22 consecutive to the other consecutive counts?  
23 THE COURT: That's the way I'm understanding it.

24 St\_V\_S\_Canha\_4\_1235174204  
MR. SWABY: It's logically consistent, your  
25 Honor, and any other reading -- well, I guess it made --

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1 your Honor, that seems like a reasonable reading of the  
2 statutes as Mr. Bloor just read them, and the 43 to 57  
3 being the same criminal conduct I understand how that  
4 merges into the other larger sentences.

5 So any argument I would make about the calculation  
6 would end up with more than the 120 months, and I'm  
7 certainly not gonna make an argument the proper sentence  
8 is more than 120 months. So, we're willing to accept  
9 that iteration of the various counts.

10 THE COURT: Based on the State's calculations,  
11 the top of the standard range is 144 months total.

12 MS. LONG: Correct, your Honor.

13 MR. SWABY: But they can go over -- they can  
14 go -- the statute allows for going over the maximum in  
15 connection with an enhanced sentence.

16 THE COURT: They can.

17 MS. LONG: I think

18 MR. BLOOR: I think we're in agreement.

19 MR. SWABY: I think we are.

20 MR. BLOOR: I have to say Ms. DeVin might have  
21 the best legal mind on this side of the bench and table  
22 and pointed out there is a provision saying that the  
23 firearms enhancements have to be consecutive to each  
24 other. So, that's under -- I think I was wrong in

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advising Ms. Long about this, but there's a section

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1 99.4A.533 and I'm looking at 4(e), "All firearms  
2 enhancements under this section are mandatory."

3 MS. LONG: So, that would add another 36 months,  
4 and he's looking at 180 at the top of the range.

5 THE COURT: Honestly, I think that is my  
6 understanding. That issue has been raised, that firearm  
7 enhancements are consecutive to each other.

8 MR. SWABY: There's a merger argument to be  
9 made, your Honor, where they're separate incidents, but I  
10 think in this particular case the State's argument would  
11 be, and I think the way they've proposed it as I  
12 understood it at trial, was that there were actually two  
13 separate guns.

14 So even though there is the same complainant, which  
15 is why I believe the two assault charges would merge,  
16 there are two separate firearms of which he was  
17 convicted, and that would lead to the two separate  
18 enhancements and those enhancements can't be run  
19 concurrently.

20 THE COURT: Okay. Mr. Swaby, anything else  
21 you'd like to say?

22 MR. SWABY: I haven't actually allocated at all  
23 yet, your Honor, and I -- the court doesn't have before  
24 it the facts of the manslaughter. I mean, the court  
25 obviously can take into account there was a manslaughter

1 conviction, but it doesn't have the facts. So, I'm not  
2 sure how much I want the court to rely on those.

3 You heard the trial. You heard what is alleged to  
4 have happened. You heard my client I think very candidly  
5 say at trial, "what they're saying isn't impossible. I  
6 do not believe I did that, but I'm not saying it's  
7 impossible."

8 This is not a person who had bad feelings for  
9 these -- for the complainants. He had arguably a healthy  
10 and happy relationship with all. They did with him.  
11 What happened is tragic here, if everyone is to be  
12 believed, and firearms are used. No firearm was fired.  
13 Nobody was hurt substantially, save perhaps my client.

14 I don't think this warrants the top of the range.  
15 My client didn't buy the guns. The guns weren't my  
16 clients. 180 months just seems, even if it is legal,  
17 seems grossly disproportionate to what happened here. I  
18 do not think anybody would have contemplated this kind of  
19 time. For someone my client's age, while it's not a life  
20 count, it's truly the better part of what remains of his  
21 life.

22 36 of those months will be done without any -- no,  
23 I'm sorry, 72 of those months will be done without any  
24 good time. Wow, that's -- I'm gonna ask the court for  
25 the bottom of the range, the 41 months on each. I guess

1 you can't do anything about the 72, your Honor. If I'm  
2 not wrong, that's 154 months, and that's a goodly amount  
3 of time, your Honor.

4 THE COURT: Mr. Canha, anything you'd like to  
5 say, sir?

6 THE DEPENDANT: I don't believe there's anything  
7 I really can say.

8 THE COURT: The court is going to impose a  
9 sentence of 43 months on Count I, 43 months on Count II,  
10 41 months on Count III, 41 months on Count IV, 41 months  
11 on Count III and Count IV will be run consecutive for a  
12 total of 82 months. 43 months on Counts I and II will  
13 run concurrently with those 82 months. So, that will be  
14 a total of 82 months. An additional 36 months for  
15 firearm enhancement in Count I. Additional 36 months for  
16 the firearm enhancement in Count II. A total of 154  
17 months.

18 sir, you'll also be responsible for crime victim's  
19 assessment of \$500.00, \$500.00 fine, \$100.00 felony DNA  
20 collection fee, and subject to community custody for a  
21 period of 18 to 36 months on each of Counts I and II.

22 MS. LONG: Your Honor, on page six at the top of  
23 the page we would ask that you check the box saying the  
24 confinement time on Counts I and II is 36 months.  
25 enhancement for a firearm, 36 I guess plus 36.

1 MR. SWABY: Where?  
2 MS. LONG: On page six at the top. I think you  
3 would write out 41 plus 41 plus 36 plus 36.  
4 THE COURT: On top of the time on Counts I and  
5 II includes 72 months as enhancements for a firearm,  
6 correct?  
7 MS. LONG: Yes.  
8 THE COURT: 36 plus 36?  
9 MS. LONG: Correct.  
10 THE COURT: Then we go down to --  
11 MS. LONG: The actual number of months of total  
12 confinement ordered is?  
13 THE COURT: The 154 months, correct?  
14 MS. LONG: Okay.  
15 THE COURT: I also would indicate, Mr. Canha,  
16 you are also responsible for the amount of attorneys fees  
17 in the amount of \$600.00, court costs in the amount of  
18 \$776.10. Excuse me, I'm just gonna say the cost bill  
19 because there are a number of amounts to be added. so,  
20 process that out in the cost bill. You are subject to  
21 the period of community custody for the period of 18 to  
22 36 months on Counts I and II.  
23 Mr. Canha, you have the right to appeal your  
24 conviction. If you wish to do so, you must file your  
25 notice of appeal within 30 days or you will forever waive

1 your right to appeal conviction. Also, sir, if you are  
2 unable to afford a lawyer one will be appointed to assist  
3 you with the appeal, you also have the right to have the  
4 clerk of the court file for you any documents necessary  
5 to perfect your appeal, and you have the right to have  
6 any portions of the transcript necessary to perfect your  
7 appeal transcribed at no cost to you.

8 Again, sir, if you wish to appeal, you need to file  
9 your appeal within 30 days of today's date. Any  
10 collateral attack on this judgment and sentence must be  
11 filed within one year of today's date.

12 Any questions about that, sir?

13 THE DEFENDANT: No. Is this where I say I  
14 want --

15 MR. SWABY: I'm gonna do it. I'll be filing a  
16 notice of appeal in the morning.

17 THE COURT: Thank you.

18 MR. SWABY: There is a no contact order that's  
19 been signed and proposed for the court. Mr. Canha has  
20 items still at the home and would like to be able to have  
21 his parents pick them up. I hope that's not going to be  
22 considered a violation of the no contact order.

23 They will have his power of attorney. So, any  
24 disposition of the home I guess they would act in  
25 Mr. Canha's behalf in the disposition of that home. He

1 still has an ownership interest there, and I guess it  
2 won't be resolvable with him in prison without someone on  
3 the outside being able to communicate. I do not think  
4 the no contact order contemplates a bar to contact to  
5 resolve legal matters.

6 I guess I'd inquire of the State if it feels  
7 differently about that.

8 MS. LONG: I believe that the victim's family  
9 would like the sheriff or some deputy to stand by while  
10 that occurred.

11 MR. SWABY: I guess that doesn't -- I mean, if  
12 the deputies are willing to be there, that seems  
13 reasonable, but someone -- someone would have to -- to  
14 get the property it seems someone would have to go there,  
15 the person would be coming on my client's behalf. I  
16 suppose the argument could be made that's third party  
17 violative contact. I don't think that's what the State  
18 means in the no contact order.

19 MS. LONG: No. Ms. Price had already contacted  
20 me about what to do with the defendant's items. So, we  
21 anticipated them being taken from the house.

22 THE COURT: Okay. Thank you, Ms. Long. Thank  
23 you very much.

24  
25

(whereupon the proceedings concluded at 4:25 p.m.)

1 STATE OF WASHINGTON }  
2 COUNTY OF BENTON } SS.  
3

4 I, RENEE L. MUNOZ, Official Court Reporter of the  
5 Superior Court of the Kennewick Judicial District, State  
6 of Washington, in and for the County of Benton, hereby  
7 certify that the foregoing pages comprise a full, true  
8 and correct transcript of the proceedings had in the  
9 within-entitled matter, recorded by me in stenotype on  
10 the date and at the hour herein written, and thereafter  
11 transcribed by me into typewriting.  
12

13 That I am certified to report superior Court  
14 proceedings in the State of Washington.  
15

16 WHEREFORE, I have affixed my official signature this  
17 day of , 2009.  
18  
19  
20  
21  
22

23 RENEE L. MUNOZ  
24 Official Court Reporter  
25 Benton-Franklin Counties  
Superior Court

APPENDIX "C"

**FILED**

JAN 27 2011

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>STATE OF WASHINGTON,</b>	)	<b>No. 27426-8-III</b>
<b>Respondent,</b>	)	<b>Division Three</b>
<b>v.</b>	)	<b>UNPUBLISHED OPINION</b>
<b>STEVEN LOUIS CANHA,</b>	)	
<b>Appellant.</b>	)	

BROWN, J. — Steven L. Canha appeals his convictions for two counts of second degree assault with firearms enhancements and two counts of unlawful possession of a firearm. He contends the trial court erred in denying his evidence suppression motion, he received ineffective assistance of counsel, and the firearms enhancements violate double jeopardy. Mr. Canha, pro se, mainly raises evidence and speedy trial concerns in his statement of additional grounds for review (SAG). We affirm.

**FACTS**

In October 2007, Steven Canha and Karen Price went out drinking with Ms. Price's son, Kevin Price, and his girl friend, Kim Douglas. Mr. Canha and Ms. Price were celebrating their home refinancing. They used some refinancing money to pay debts of Ms. Price and Mr. Price. Mr. Price and Ms. Douglas lived in a mobile home on the home property. Mr. Price considered Mr. Canha like family, but when Mr. Canha first started dating his mother, he had written Mr. Canha's name on a bullet and said

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that if he did not treat Ms. Price right, the bullet was for him. Mr. Canha believed Mr. Price was joking.

After consuming significant amounts of alcohol, the group returned home. There, Mr. Price believed he saw Mr. Canha push his mother and confronted him. Mr. Canha denied the pushing and ordered Mr. Price to leave. Mr. Price refused. Mr. Canha told him that he would make him leave and began walking upstairs. Mr. Price followed. What happened next is disputed, but substantial evidence at trial showed Mr. Canha first pointed a .22 caliber derringer at Mr. Price; the pair fought and Mr. Price wrestled the .22 away from Mr. Canha and threw it aside. Ms. Price took the .22 and put it in a bedroom drawer. More fighting followed. Ms. Douglas called the police, reporting a fight involving firearms. About this time, Mr. Price saw Mr. Canha pointing a .38 caliber derringer at him. Mr. Price ran to his mobile home.

Benton County Sheriff's Deputy Scott Runge was first to arrive. The deputy encountered Ms. Price and Mr. Price emerging from their separate residences. Mr. Canha apparently disregarded orders to come out until he cared for his dogs. The police noticed Mr. Canha was intoxicated, but still followed police instruction. Mr. Canha was bleeding and complaining of back pain. An ambulance transported Mr. Canha to the hospital for treatment. Then, the remaining officers performed a protective sweep of the house to ensure no other persons were inside who might be armed or injured. They followed a blood trail leading to an upstairs bedroom. The police saw, in plain view, two firearms inside an opened drawer. When the police came back out, they

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questioned Ms. Price about the firearms, who admitted she owned them. She then allowed police to come back into the house and voluntarily handed over the guns.

The State charged Mr. Canha with two counts of second degree assault and two counts of unlawful possession of a firearm (Mr. Canha is a convicted felon). Mr. Canha moved unsuccessfully to suppress the evidence found in the house. The court reasoned the evidence was admissible because it was found in plain view during the protective sweep, and Mr. Canha was not removed from the scene to avoid getting his consent to search. Mr. Price gave a statement to Deputy Runge on the night of the incident admitting he struck Mr. Canha first. Later, he asserted he struck in an attempt to get a gun away from Mr. Canha. Mr. Price was issued a criminal citation for assault in the fourth degree (domestic violence) that evening, but the charge was later dismissed.

At trial, the witnesses seemed to agree all four participants were drunk. Mr. Canha testified he could not remember the events of the evening because he had been too drunk. Deputy Runge testified that to characterize all the parties at the residence as "highly intoxicated" was a "fair understatement." Report of Proceedings (RP) at 362. Deputy Runge described Mr. Canha as blubbering like a small child, rambling, incoherent, and needing help to stand. He described Mr. Canha as "an emotional mess." RP at 417. He noted "intoxication was an apparent factor" in this case. RP at 389. Defense counsel did not propose a voluntary intoxication instruction.

Mr. Canha was arraigned on November 1, 2007. On December 6, 2007, Mr. Canha was ordered to undergo a mental health evaluation with a stay in proceedings.

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*State v. Canha*

Mr. Canha later unsuccessfully moved to dismiss for a speedy trial violation. Mr. Canha's first counsel was disqualified on March 20, 2008. Mr. Canha's second counsel was disqualified on March 27, 2008. The proceedings were continued on several occasions. Mr. Canha again moved to dismiss on speedy trial grounds. Eventually, Mr. Canha signed a speedy trial waiver on May 29, 2008. Trial occurred in July 2008. Mr. Canha was convicted, as charged, and sentenced to 79 months for the assault counts, along with an additional 72 months to be served consecutively, as a result of the firearms enhancements. Mr. Canha appeals.

#### ANALYSIS

##### A. Suppression Motion

The issue is whether the trial court erred in denying Mr. Canha's motion to suppress evidence, considering he did not give his consent.

We review the trial court's suppression motion conclusions of law de novo. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). The trial court's suppression hearing findings of fact are reviewed for substantial evidence. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Under article I, section 7 of the Washington Constitution, warrantless searches are per se unreasonable. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). Article I, section 7 provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." The warrant provides the requisite "authority of law." *State v. Ladson*, 138 Wn.2d 343, 360, 979 P.2d 833 (1999). Exceptions to the warrant requirement are to be "jealously and carefully drawn." *State*

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*v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (quoting *Hendrickson*, 129 Wn.2d at 72). One exception is consent. *State v. Walker*, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998). The State bears the burden of establishing the validity of a warrantless search based upon consent. *State v. Mathe*, 102 Wn.2d 537, 540, 688 P.2d 859 (1984). The State must meet three requirements to show a warrantless but consensual search was valid: (1) the consent must be voluntary; (2) the person granting consent must have authority to consent; and (3) the search must not exceed the scope of the consent. *State v. Nedergard*, 51 Wn. App. 304, 308, 753 P.2d 526 (1988).

In search and seizure cases involving cohabitants, the court has adopted the common authority rule. *State v. Morse*, 156 Wn.2d 1, 7-8, 123 P.3d 832 (2005). A cohabitant with common authority over the premises has authority to consent to a search and that consent is valid against an absent, nonconsenting person with whom that authority is shared. *United States v. Matlock*, 415 U.S. 164, 170, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974). But if cohabitants with equal authority over common areas are present, the police must obtain consent from each cohabitant. *Morse*, 156 Wn.2d at 13; *State v. Haapala*, 139 Wn. App. 424, 428-29, 161 P.3d 436 (2007).

Here, Ms. Price gave police consent to enter into her home. At the time Ms. Price gave consent, Mr. Canha was either en route, or at the hospital receiving treatment. The record clearly shows Mr. Canha was taken to the hospital for medical treatment. Where an occupant with an equal privacy right in the premises acts in her self-interest to allow seizure, her consent is effective even if the other occupant has not been given an opportunity to consent. *State v. Vidor*, 75 Wn.2d 607, 452 P.2d 961

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(1969). The record shows Ms. Price voluntarily acted in her self-interest when she allowed the police to remove the guns from the home to protect her, Mr. Canha, and Mr. Price. The latter two were prohibited from being in the home with firearms present. Thus, Ms. Price's consent to search was sufficient for officers to gain entry into the home without a warrant.

Moreover, the seizure of the guns would have been proper under the "plain view" doctrine. The "plain view" doctrine is an exception to the Fourth Amendment's warrant requirement that applies after police have intruded into an area in which there is a reasonable expectation of privacy. *State v. Myers*, 117 Wn.2d 332, 346, 815 P.2d 761 (1991). "The doctrine requires that the officer had a prior justification for the intrusion and immediately recognized what is found as incriminating evidence such as contraband, stolen property, or other item[s] useful as evidence of a crime." *State v. O'Neill*, 148 Wn.2d 564, 582-83, 62 P.3d 489 (2003). The "protective sweep" was recognized as a justification for this intrusion in *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990); *United States v. Pena*, 924 F. Supp. 1239, 1247 (D. Mass. 1996); *State v. Boyer*, 124 Wn. App. 593, 600, 102 P.3d 833 (2004). The sweep is limited to a cursory inspection of places a person may be found and must last no longer than necessary to dispel the reasonable suspicion of danger or to complete the arrest, whichever occurs sooner. *Buie*, 494 U.S. at 335-36.

Here, police were dispatched to investigate a crime involving firearms. Mr. Canha initially refused to exit the house and was covered in blood and injured when he finally did exit. The police were justified in entering the home under the "protective

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sweep" doctrine because they needed to enter the home to ensure that no other persons were present who might be armed or injured in the home. The officers were lawfully in a vantage point to see the guns but did not reach or seize them; Ms. Price voluntarily retrieved the guns for them when the officers determined the guns were crime evidence. In sum, the seizure was lawful and the trial court did not err in denying suppression.

B. Assistance of Counsel

The issue is whether trial counsel was ineffective in the second degree assault prosecutions for failing to request a voluntary intoxication instruction.

"We review a challenge to the effective assistance of counsel de novo." *State v. White*, 80 Wn. App. 408, 410, 907 P.2d 310 (1995). We conduct a three-part inquiry: (1) whether Mr. Canha was entitled to the instruction, (2) whether it was appropriate not to ask for the instruction, and (3) whether Mr. Canha was prejudiced. *State v. Kruger*, 116 Wn. App. 685, 690-92, 67 P.3d 1147 (2003).

Under RCW 9A.16.090, a defendant is entitled to have the jury consider intoxication in determining whether the defendant could form the requisite intent to commit the crime charged: no act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state.

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Voluntary intoxication instructions are proper solely when (1) a particular mental state is an element of the crime charged and when substantial evidence shows (2) the defendant consumed alcohol and (3) that the drinking affected his ability to form the required mental state. *State v. Everybodytalksabout*, 145 Wn.2d 456, 479, 39 P.3d 294 (2002). The evidence "must reasonably and logically connect the defendant's intoxication with the asserted inability to form the required level of culpability to commit the crime charged." *State v. Gabryschak*, 83 Wn. App. 249, 252-53, 921 P.2d 549 (1996). Substantial evidence must show that the alcohol consumption affected the defendant's ability to form the required mental state. *Everybodytalksabout*, 145 Wn.2d at 479. A defendant is entitled to a voluntary intoxication instruction if the State's evidence, and evidence the defense elicits during cross-examination of the State's witnesses, contains substantial evidence of the defendant's drinking and its effect on his mind or body. *Gabryschak*, 83 Wn. App. at 253.

Here, the State had to prove a particular mental state for the second degree assault charges under RCW 9A.36.021(c). Case law requires the State to prove the common law element of intent. *State v. Allen*, 116 Wn. App. 454, 463-64, 66 P.3d 653 (2003) (citing *State v. Davis*, 119 Wn.2d 657, 662, 835 P.2d 1039 (1992)). The jury was instructed that "[a]n assault is an act done with the intent to create in another apprehension and fear of bodily injury." Clerk's Papers at 34.

The record shows substantial evidence of Mr. Canha's intoxication. While some evidence shows he was able to remember some events and was coherent during his booking and bond hearing, substantial evidence shows Mr. Canha's drinking affected

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both his mind and body. He sobbed, ranted, and was generally incoherent. Mr. Canha delayed in leaving the house so he could care for his dogs, even though the house was surrounded by police officers with guns drawn. He repeatedly testified that he did not remember the incident because he was too drunk. Other witnesses, including Deputy Runge recognized his intoxication was apparent. Considering all, an intoxication instruction was warranted on the two assault charges.

Next, we examine whether the failure to request the instruction was ineffective assistance. *Strickland v. Washington* requires both deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). As to the first prong, the question is whether a reasonable attorney should propose an intoxication instruction under these facts. See e.g., *State v. Glenn*, 86 Wn. App. 40, 44, 935 P.2d 679 (1997) (counsel's performance is deficient if it falls below "a minimum objective standard of reasonable attorney conduct"). Counsel's actions pertaining to the defendant's theory of the case do not constitute deficient performance. *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994).

We believe counsel made a strategic decision not to provide the jury with a voluntary intoxication instruction because doing so would be inconsistent with his theory of the case. Mr. Canha's theory of the case was that he never touched the guns. He argued in closing that none of the State's witnesses were to be believed because they were intoxicated. Tactically, Mr. Canha would be in no position to rebut the State's case if he was so drunk that he did not know what he was doing. If counsel had provided a voluntary intoxication instruction to the jury regarding his intent in holding the guns

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without intent to assault, it would cut against his defense that he never touched the guns. It also would undermine the credibility of his testimony. Considering his strategy, his intent did not need to be addressed in an intoxication instruction that may confuse by seeming to admit he held the guns, even though without intent to assault. The firearm charges, after all, were the more serious charges in terms of sentencing consequences. Therefore, deciding not to provide the jury with the voluntary intoxication instruction did not constitute deficient performance.

"If an ineffective assistance claim can be resolved on one prong of this test, the court need not address the other prong." *State v. Staten*, 60 Wn. App. 163, 171, 802 P.2d 1384 (1991). Since counsel's performance was not deficient, we do not address prejudice. Mr. Canha did not receive ineffective assistance of counsel.

#### C. Double Jeopardy

The issue is whether the imposition of firearms enhancements for second degree assault violates double jeopardy. Mr. Canha contends his right to be free from double jeopardy was violated because his assault charges were elevated to a higher degree because he was armed and was also charged with possession of a firearm.

We review double jeopardy claims de novo. *State v. Kelley*, 168 Wn.2d 72, 76, 226 P.3d 773 (2010). "Both our federal and state constitutions protect persons from being twice put in jeopardy for the same offense." *State v. Turner*, 169 Wn.2d 448, 454, 238 P.3d 461 (2010); U.S. CONST. amend. V; CONST. art. I, § 9. This includes, "being (1) prosecuted a second time for the same offense after acquittal, (2) prosecuted a

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*State v. Canha*

second time for the same offense after conviction, and (3) punished multiple times for the same offense." *State v. Linton*, 156 Wn.2d 777, 783, 132 P.3d 127 (2006).

"With respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S. Ct. 673, 74 L. Ed. 2d 535 (1983). If the legislature intends to impose multiple punishments, their imposition does not violate the double jeopardy clause. *Id.* at 368. In short, when a single trial and multiple punishments for the same act or conduct are at issue, the initial and often dispositive question is whether the legislature intended that multiple punishments be imposed. *State v. Kier*, 164 Wn.2d 798, 803-04, 194 P.3d 212 (2008).

Mr. Canha contends the court must utilize the *Blockburger* or "same elements" test to determine if double jeopardy is violated. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). However, we turn to *Blockburger* if the legislative intent is unclear. *Kier*, 164 Wn.2d at 804.

Washington courts generally hold double jeopardy is not offended by weapon enhancements even when being armed with the weapon is an element of the underlying crime. See e.g., *State v. Claborn*, 95 Wn.2d 629, 636-37, 628 P.2d 467 (1981); see also *State v. Husted*, 118 Wn. App. 92, 95-96, 74 P.3d 672 (2003) ("a person who commits certain crimes while armed with a deadly weapon will receive an enhanced sentence, notwithstanding the fact that being armed with a deadly weapon was an

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*State v. Canha*

element of that offense”) (quoting *State v. Caldwell*, 47 Wn. App. 317, 320, 734 P.2d 542 (1987))).

Mr. Canha relies on *Apprendi* and *Blakely* to argue there is no longer any difference between an element and a sentencing factor. *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *Blakely v. Washington*, 542 U.S. 296, 306-07, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). His argument fails to account for the fact that cumulative punishments can be imposed in the same proceeding if this is the legislature’s intent, notwithstanding *Blockburger*.

Most recently, *State v. Aguirre*, 168 Wn.2d 350, 229 P.3d 669 (2010) addressed the issue of whether the addition of a deadly weapon enhancement to an offender’s sentence for second degree assault violated double jeopardy. The *Aguirre* court rejected Mr. Canha’s argument and decided *Apprendi* and *Blakely* do not alter the double jeopardy analysis. *Aguirre*, 168 Wn.2d at 357. The *Aguirre* court based its decision on its recent holding in *Kelley*, 168 Wn.2d 72. The *Kelley* court reviewed the legislature’s intent as to whether cumulative punishments are intended by imposition of a deadly weapon/firearm enhancement. *Id.* at 78. The court concluded cumulative punishment is clearly intended. *Id.* at 80.

#### D. Evidence Rulings

The issue is whether the trial court abused its discretion in excluding evidence of Mr. Price’s citation for fourth degree assault and evidence of a prior threat made by Mr. Price to Mr. Canha. Mr. Canha contends evidence of Mr. Price’s role as an aggressor was relevant and admissible.

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*State v. Canha*

A trial court's admission of evidence is reviewed for abuse of discretion. *State v. Pirtle*, 127 Wn.2d 628, 648, 904 P.2d 245 (1996). Likewise, a trial court's exclusion of evidence is reviewed for an abuse of discretion. *State v. Posey*, 161 Wn.2d 638, 648, 167 P.3d 560 (2007). The trial court's balancing of the danger of prejudice against the probative value of the evidence is a matter within the trial court's discretion, which we will overturn "only if no reasonable person could take the view adopted by the trial court." *Id.*

Evidence of a person's character is generally not admissible to show action in conformity therewith on a particular occasion. ER 404(a). But in criminal cases, a defendant may introduce evidence of the victim's violent disposition to prove the victim acted in a violent manner at the time of the crime. *State v. Alexander*, 52 Wn. App. 897, 900, 765 P.2d 321 (1988); ER 404(a)(2).

Here, the trial court excluded evidence regarding the issuance of a criminal citation to Mr. Price, a charge later dismissed. Mr. Canha was not precluded from questioning Mr. Price or Deputy Runge about the basis for the citation -- whether Mr. Price assaulted Mr. Canha by punching him in the face or about whether Mr. Price gave conflicting statements to Deputy Runge. Testimony was presented about the different versions of what happened between Mr. Price and Mr. Canha. Thus, the court did not abuse its discretion when excluding testimony regarding the citation.

The trial court excluded testimony about Mr. Price writing Mr. Canha's name on a bullet. Mr. Canha himself admitted that the incident was a joke. Considering the basis for the joke was Mr. Canha's manslaughter conviction, had the trial court admitted

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*State v. Canha*

testimony regarding the bullet, the State likely would have been able to introduce evidence regarding that conviction. Thus, the trial court did not abuse its discretion in excluding the testimony regarding the bullet.

E. SAG

Mr. Canha raises several issues in his SAG. We note one brief hearing was held before Judge Carrie Runge during which she set new trial dates when Mr. Canha had been assigned new counsel. No evidence shows Mr. Canha was prejudiced by the trial settings or his brief appearance before Judge Runge for those routine matters. We turn now to Mr. Canha's speedy trial concerns.

CrR 3.3 generally requires the State to bring an in-custody defendant to trial within 60 days of arraignment; if not, the trial court will dismiss the case with prejudice. CrR 3.3(b)(1)(i), (h). The threshold for a constitutional speedy trial violation, however, is higher than that for a violation of CrR 3.3. *State v. Fladebo*, 113 Wn.2d 388, 393, 779 P.2d 707 (1989); *see also* U.S. CONST. amend. VI; CONST. art. I, § 22. The constitutional right to a speedy trial is not violated by passage of a fixed time but, rather, at the expiration of a reasonable time. *State v. Monson*, 84 Wn. App. 703, 711, 929 P.2d 1186 (1997). Courts consider four factors in determining whether a delay in bringing a defendant to trial impairs the constitutional right to the prompt adjudication of criminal charges: "the [l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 920, 952 P.2d 116 (1998) (quoting *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)).

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*State v. Canha*

Mental incompetence at the time of trial is a bar to trial. RCW 10.77.060. If the trial court has reason to doubt the defendant's competency to stand trial, the court must order an expert evaluation of the defendant's mental condition. RCW 10.77.060(1)(a). The "reason to doubt" language "vests a large measure of discretion in the trial judge." *City of Seattle v. Gordon*, 39 Wn. App. 437, 441, 693 P.2d 741 (1985). "Defense counsel's opinion as to the defendant's competence is a factor that carries considerable weight with the court." *State v. Harris*, 122 Wn. App. 498, 505, 94 P.3d 379 (2004). An order for evaluation under RCW 10.77.060(1)(a) automatically stays the criminal proceedings until the court determines that the defendant is competent to stand trial. CrR 3.3(g)(1).

Here, an order for mental health evaluation and an order to stay proceedings were entered on December 6, 2007. Ultimately, Mr. Canha filed a motion to dismiss based on the argument that his counsel did not inform him that the evaluation would delay his trial. The court dismissed the claim and ultimately counsel withdrew because of the conflict. Mr. Canha again filed a motion to dismiss and again the court found his speedy trial rights were not violated because of the evaluation and stay.

CrR 3.3(c)(2)(vii) partly states the commencement date for trial begins anew upon, "The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification." Mr. Canha argues the commencement date would be the disqualification of his first defense attorney. However, Mr. Canha fails to take into account that the court appointed a second counsel who was disqualified from this matter on March 27, 2008; the time for trial

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State v. Canha

began anew on that date. Based upon the March 27, 2008 commencement date, the State set a new trial date of May 27, 2008, which was within speedy trial.

Defense counsel then invoked the cure period and asked that the trial be continued to June 9, 2008. Thus, no speedy trial violation occurred during either trial setting. Mr. Canha then executed a speedy trial waiver on May 29, 2008 and requested a new trial date of June 30, 2008. The court accepted the waiver and the new trial date was set. On June 30, 2008, the State requested a new trial date of July 21, 2008, based upon new information being available, the arresting officer was recovering from surgery, and there was time left before the speedy trial deadline. The court granted the State's request and the new trial date of July 21, 2008 was set, which was within the time for speedy trial. Therefore, no speedy trial violation occurred.

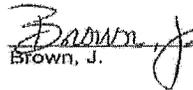
Regarding, Mr. Canha's additional ineffective assistance concerns, he complains about his trial counsels advise to undergo a competency evaluation, but we have no record of interactions between Mr. Canha and his counsel to review. Mr. Canha takes issue with his trial counsel failure to ask for a self-defense instruction, but because claiming self-defense necessitates admitting his assaultive conduct, that would be inconsistent with his denial defense. Mr. Canha raises concerns about the jury having received evidence suggesting he had been jailed at some time, but the record shows solely that one witness testified payments had been made into Mr. Canha's books. Moreover, his trial counsel introduced some of the jail references and Mr. Canha discussed phone calls he made while he was incarcerated. In sum under the *Strickland*

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standards discussed above, Mr. Canha shows neither deficient performance nor prejudice from his additional concerns.

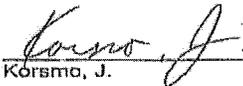
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Brown, J.

WE CONCUR:

  
Kulk, C.J.

  
Korsmo, J.

APPENDIX "D"

FILED

JUL 11 2012

COURT OF APPEALS  
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint	)	No. 30598-8-III
of:	)	
	)	
Steven Louis Canha,	)	ORDER DISMISSING PERSONAL
	)	RESTRAINT PETITION
Petitioner.	)	
	)	

In this timely petition Steven Louis Canha seeks relief from his 2008 convictions for two counts of second degree assault each with a firearm enhancement and two counts of first degree unlawful possession of a firearm. This court affirmed the convictions on appeal, and the Washington Supreme Court denied his petition for review. *State v. Canha*, 159 Wn. App. 1044, *review denied*, 171 Wn.2d 1023 (2011). In a personal restraint petition, he now contends that by failing to request a lesser included offense instruction his trial counsel was ineffective.

A personal restraint petition will be dismissed unless the petitioner establishes a violation of constitutional rights resulting in prejudice or a nonconstitutional error that constitutes a fundamental defect which inherently results in a complete miscarriage of justice. *In re Pers. Restraint of Nichols*, 171 Wn.2d 370, 373, 256 P.3d 1131 (2011). Additionally, a petitioner must be under unlawful restraint for an appellate court to afford

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PRP of Canha

remedy through a personal restraint petition. RAP 16.4(a). Finally, the petitioner must show with a preponderance of the evidence and not mere conclusory allegations that the error has caused him actual prejudice. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004).

Here, Mr. Canha contends that his trial counsel was ineffective in failing to request that the jury be instructed concerning unlawful display of a weapon as a lesser included offense of second degree assault. In order to establish ineffectiveness of counsel, a defendant must show that the counsel's representation was (1) deficient, measured against an objective standard of reasonableness, and that deficient representation (2) prejudiced the defendant. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

A defendant is entitled to an instruction on a lesser included offense if (1) each of the elements of the lesser offense is a necessary element of the offense charged and (2) the evidence in the case supports an inference that the lesser crime was committed. *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1982).

Here, the first prong of the *Workman* test is satisfied; all of the elements of unlawful display of a weapon are necessary elements of assault with a deadly weapon. *State v. Baggett*, 103 Wn. App. 564, 569, 13 P.3d 659 (2000). In order to establish the second *Workman* prong, evidence must have been presented which supports the inference that only the lesser included offense was committed and not the charged offense. *State v.*

No. 30509-8-III  
PRP of Canha

*Fernandez-Medina*, 141 Wn.2d 448, 455, 6 P.3d 1150 (2000). A defendant is not entitled to an instruction on a lesser included offense merely because the jury might disbelieve the evidence of guilt. *Id.* at 456. Rather, the evidence must affirmatively establish the defendant's theory of the case. *Id.*

While the State presented evidence that Mr. Canha twice pointed a loaded gun<sup>1</sup> at the victim, the defense's theory of the case was that he was framed and had never touched the guns. The evidence presented by the defense was to that effect. There is no evidence in the record that Mr. Canha possessed or displayed the guns in a manner which would constitute unlawful display but not assault with a deadly weapon.<sup>2</sup> Consequently the second prong of the *Workman* test is not satisfied, and Mr. Canha was not entitled to this lesser included offense instruction. Accordingly, failure to request that instruction could not have been deficient performance. Because there was no deficient performance, the ineffective assistance claim fails.<sup>3</sup>

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<sup>1</sup> Mr. Canha first pointed a .22 Derringer at the victim, who wrestled it away from him. He then retrieved a .38 Derringer and pointed it at the same victim, who then fled.

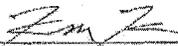
<sup>2</sup> Mr. Canha points to his testimony that he did not point a gun at the victim as evidence that unlawful display was committed. Petitioner's Reply at 2. However, this statement was made as a part of his denial of ever having touched the guns. State's Response, Appendix A at 192.

<sup>3</sup> While it is not necessary to address the issue of legitimate trial strategy, Mr. Canha relies in his petition on points of law which are no longer valid. Mr. Canha relies almost exclusively on the reasoning in *State v. Ward*, 125 Wn. App. 243, 104 P.3d 670 (2004) to argue that it was not legitimate trial strategy not to request the lesser offense instruction. However, *Ward* has been overruled on its reasoning in this regard. *State v.*

No. 30509-8-III  
*PRP of Canha*

Mr. Canha has failed to establish either a violation of his constitutional rights or any nonconstitutional error. Accordingly, this petition is dismissed pursuant to RAP 16.11(b). Additionally, Mr. Canha's request for appointed counsel is denied pursuant to RCW 10.73.150(4). *See In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999).

DATED: July 11, 2012

  
\_\_\_\_\_  
KEVIN M. KORSMO  
CHIEF JUDGE

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*Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011).

APPENDIX "E"

FILED

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

SUPERIOR COURT OF WASHINGTON  
BENTON COUNTY

JOSIE DELVIN  
BENTON COUNTY CLERK

OCT 14 2013

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.

GROUND

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 trial 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(c).

(b) *Mistakes; inadvertance; 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. Therefore 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. Canba 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. Weland*, 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 {L37 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. Baylth*, 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. Fatco*, 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. 1013, 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); *Falco*, 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 9A.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 336 (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. McCortle*, 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, J.J., 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 9<sup>th</sup> day of August, 2013.

Signature Steven Canha  
Printed Name / DOC # Steven Canha Doc # 32186

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

APPENDIX "F"

JOSIE DELVIN  
BENTON COUNTY CLERK

OCT 14 2013

FILED

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

4

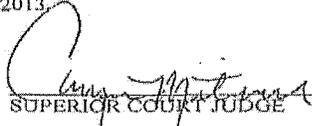
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR BENTON AND FRANKLIN COUNTIES

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 14<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
SUPERIOR COURT JUDGE

APPENDIX "G"

Filed  
Washington State Supreme Court

APR 06 2015  
Ronald R. Carpenter  
Clerk



THE SUPREME COURT OF WASHINGTON

FILED

In re the Personal Restraint of )  
STEVEN LOUIS CANHA, )  
 )  
Petitioner. )  
 )  
 )  
 )  
 )  
 )

NO. 89944-4  
ORDER  
C/A NO. 32002-2-III

APR 07 2015  
Division III  
STATE OF WASHINGTON

Department II of the Court, composed of Chief Justice Madsen and Justices Owens, Stephens, González and Yu, considered this matter at its March 31, 2015, Motion Calendar. In this case, the Petitioner filed a CrR 7.8 motion in the Benton County Superior Court in August of 2012. In October of 2013, the motion was transferred to the Court of Appeals to be treated as a personal restraint petition. The Court of Appeals dismissed the petition as untimely, frivolous and improperly successive. Because the CrR 7.8 motion was filed less than a year from the date that the United States Supreme Court denied the Petitioner's petition for review, the personal restraint petition was timely. Therefore, the Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is granted and the matter is remanded to Division Three of the Court of Appeals to review on the merits.

DATED at Olympia, Washington this 6th day of April, 2015.

For the Court  
Madsen, C.J.  
CHIEF JUSTICE

709/172

APPENDIX "H"

**FILED**

JAN 14 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

In the Matter of the Personal Restraint )  
of: )

32002-2-III

STEVEN LOUIS CANHA, )  
Petitioner. )

ORDER APPOINTING COUNSEL )  
AND REFERRING MATTER TO )  
PANEL )

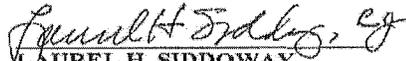
THE COURT, having determined that Steven Louis Canha is restrained, and having determined that his petition has sufficient merit to warrant appointment of counsel, in light of the possible application of *State v. Ford*, 137 Wn.2d 472, 973 P.2d 452 (1999) when determining the comparability of his out-of-state convictions;

IT IS ORDERED, that Kristina Nichols is appointed counsel for Mr. Canha;

AND IT IS FURTHER ORDERED, that counsel for Mr. Canha and the State of Washington shall submit briefing on a schedule as directed by the Clerk of Court, after

No. 32002-2-III  
*PRP of Canha*

which the matter shall be referred to a panel of judges for determination on the merits on the next available docket, without oral argument. *See* RAP 16.11(b).

  
LAUREL H. SIDDOWAY  
CHIEF JUDGE

APPENDIX "T"

**ASSAULT, SECOND DEGREE**

(RCW 9A.36.021(2)(a))

CLASS B - VIOLENT

**I. OFFENDER SCORING (RCW 9.94A.525(8))**

**ADULT HISTORY:**

Enter number of serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

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

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

Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of nonviolent felony convictions ..... x 1 = \_\_\_\_\_

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

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

--

**II. SENTENCE RANGE**

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL IV)	3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 57 months	53 - 70 months	63 - 84 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.695).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- D. If a sentence is one year or less, community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).
- E. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 18 to 36 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- F. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2005, see page III-10, Sexual Motivation Enhancement - Form C.
- G. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

\* Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021)

*Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the sentencing rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.*

APPENDIX "J"

**UNLAWFUL POSSESSION OF A FIREARM\*, FIRST DEGREE**

*\*Each firearm possessed under this section is a separate offense.*

(RCW 9.41.040(1))

CLASS B - NONVIOLENT

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

**ADULT HISTORY:**

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

**JUVENILE HISTORY:**

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

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

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

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

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

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

**II. SENTENCE RANGE**

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VII)	15 - 20 months	21 - 27 months	28 - 34 months	31 - 41 months	38 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).
- C. If the offender is a Criminal Street Gang Member or Associate at the time of the offense of Unlawful Possession of a Firearm in the First or Second Degree, then the offender is eligible for Community Custody under RCW 9.94A.715(1).
- D. If the offender is convicted under section 9.41.040 for Unlawful Possession of a Firearm in the First or Second Degree and for the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm, or both, then the offender shall serve consecutive sentences.
- E. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-10, Sexual Motivation Enhancement – Form C.
- F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

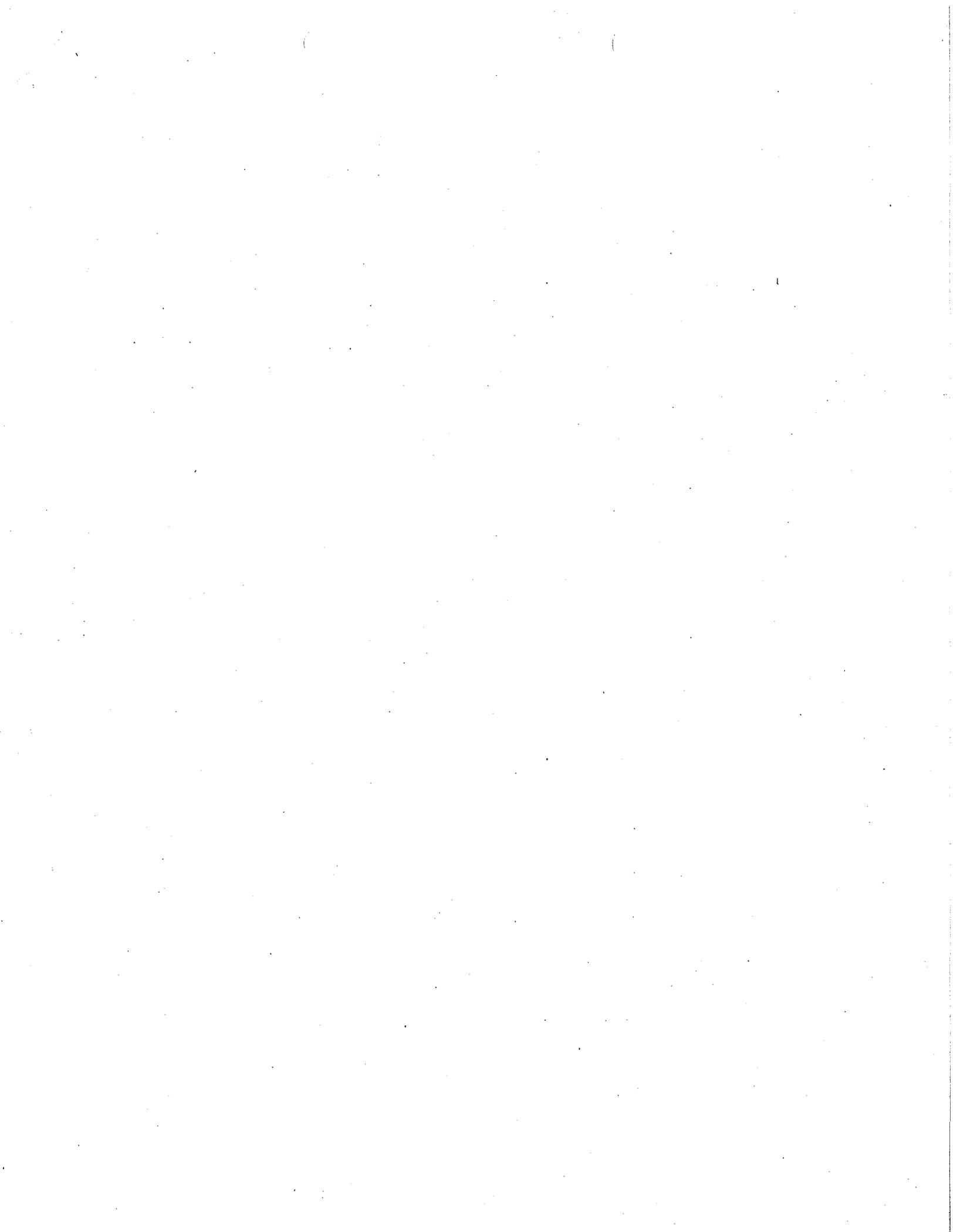
• Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1))

**III. SENTENCING OPTIONS**

- I. Work Ethic Camp; for eligibility and sentencing rules see RCW 9.94A.690.
- II. Drug Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.660.

\*\* If the present conviction is for Unlawful Possession of a Firearm 1<sup>st</sup> or 2<sup>nd</sup> and for the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm or both, charged under 9.41.040, other current convictions for Unlawful Possession of a Firearm 1<sup>st</sup> or 2<sup>nd</sup>, Possession of a Stolen Firearm, or Theft of a Firearm, may not be included in the computation of the offender score (per RCW 9.94A.589(1)(c)), rather the offender will serve consecutive sentences for those particular offenses.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.



**NO. 32002-2-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

In re the Personal Restraint Petition of )

STEVEN LOUIS CANHA, )

Petitioner. )

) BENTON COUNTY  
) NO. 07 1 01052 5

) **CERTIFICATE OF SERVICE**  
)  
)

---

I certify under penalty of perjury under the laws of the State of Washington that on this \_\_\_\_\_ day of March, 2016, I caused a true and correct copy of the *SUPPLEMENTAL BRIEF OF PETITIONER* and to be served on:

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Spokane, WA 99201

E-FILE

BENTON COUNTY PROSECUTOR'S OFFICE

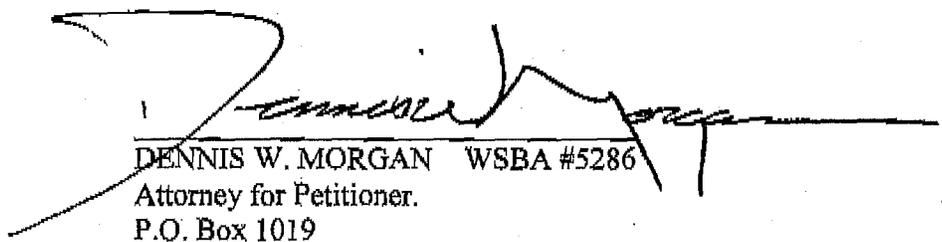
E-MAIL

Attn: Andrew Kelvin Miller  
7122 W Okanogan Pl, Bldg A  
Kennewick, WA 99336-2359  
[prosecuting@co.benton.wa.us](mailto:prosecuting@co.benton.wa.us)

STEVEN LOUIS CANHA #321815

U.S. MAIL

Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326



DENNIS W. MORGAN WSBA #5286  
Attorney for Petitioner.  
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Republic, WA 99169  
Phone: (509) 775-0777  
Fax: (509) 775-0776  
[nodbispk@rcabletv.com](mailto:nodbispk@rcabletv.com)

**NICHOLS LAW FIRM PLLC**

**March 16, 2016 - 11:48 AM**

**Transmittal Letter**

Document Uploaded: 320022-For filing. Brief of Petitioner Canha 320022.pdf

Case Name: State v. Steven Canha

Court of Appeals Case Number: 32002-2

Party Respresented: Petitioner

Is This a Personal Restraint Petition?  Yes  No

Trial Court County: Benton - Superior Court # 07-1-01052-5

**Type of Document being Filed:**

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion for Discretionary Review
- Motion: \_\_\_\_\_
- Response/Reply to Motion: \_\_\_\_\_
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill.
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to prosecuting@co.benton.wa.us.

Sender Name: Kristina M Nichols - Email: [wa.appeals@gmail.com](mailto:wa.appeals@gmail.com)

NO. 32002-2-III  
COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

In re the Personal Restraint Petition of )  
STEVEN LOUIS CANHA, ) BENTON COUNTY  
Petitioner. ) NO. 07 1 01052 5  
)  
) **CERTIFICATE OF SERVICE**  
)  
)

I certify under penalty of perjury under the laws of the State of Washington that on this 16<sup>th</sup> day of March, 2016, I caused a true and correct copy of the *SUPPLEMENTAL BRIEF OF PETITIONER* and to be served on: 

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Spokane, WA 99201

E-FILE

BENTON COUNTY PROSECUTOR'S OFFICE

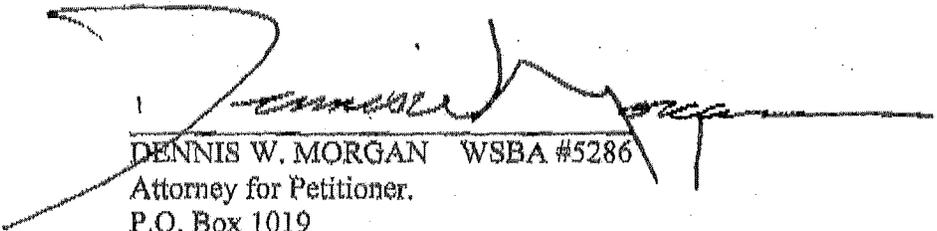
E-MAIL

Attn: Andrew Kelvin Miller  
7122 W Okanogan Pl, Bldg A  
Kennewick, WA 99336-2359  
[prosecuting@co.benton.wa.us](mailto:prosecuting@co.benton.wa.us)

STEVEN LOUIS CANHA #321815

U.S. MAIL

Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326



DENNIS W. MORGAN WSBA #5286

Attorney for Petitioner.  
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Republic, WA 99169  
Phone: (509) 775-0777  
Fax: (509) 775-0776  
[nodb1spk@rcabletv.com](mailto:nodb1spk@rcabletv.com)

*Kristen M. Nichols, WSBA #35918*  
Nichols Law Firm  
P.O. Box 19203  
Spokane, WA 99219  
(509) 721-3279  
Wa.Appeals@gmail.com

**NICHOLS LAW FIRM PLLC**

**March 16, 2016 - 2:35 PM**

**Transmittal Letter**

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Court of Appeals Case Number: 32002-2  
Party Represented: Petitioner  
Is This a Personal Restraint Petition?  Yes  No  
Trial Court County: Benton - Superior Court # 07-1-01052-5

**Type of Document being Filed:**

- Designation of Clerk's Papers
- Statement of Arrangements
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- Motion: \_\_\_\_\_
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Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

**Comments:**

Corrected proof of service pages

Proof of service is attached and an email service by agreement has been made to [prosecuting@co.benton.wa.us](mailto:prosecuting@co.benton.wa.us).

Sender Name: Kristina M Nichols - Email: [wa.appeals@gmail.com](mailto:wa.appeals@gmail.com)