



in the law, there was no fundamental defect in imposing a standard range sentence when the defendant recommended a standard range sentence, and the court did not misunderstand its authority?

C. STATEMENT OF THE CASE.

Time Meippen was found guilty by a jury of robbery in the first degree, assault in the first degree and unlawful possession of a firearm in the second degree. Appendix at 1. The robbery was committed with a firearm. Appendix at 2.

Meippen's standard ranges were calculated as follows:

Count 1	Robbery in the first degree	51 – 68 months
Count 2	Assault in the first degree	129-171 months
Count 3	UPFA in the second degree	9-12 months

Appendix at 2. Count 1 had a 60-month firearm enhancement.

Appendix at 2, 4. Thus, the maximum standard range sentence that the trial court could impose was the high end of the range for assault in the first degree, 171 months, plus 60 months for the firearm enhancement, totaling 231 months.

In support of his personal restraint petition, Meippen has provided a transcript of the sentencing hearing. The focus of the Meippen's argument at sentencing was that the crimes should be found to be the same criminal conduct, and thus not count in his offender score for the other counts. Transcript at 8-13. The trial court rejected Meippen's argument. Transcript at 13-14. Meippen asked for a low end standard range sentence of 129 months based on his youth and immaturity. Transcript at 15-17. Meippen did not address the firearm enhancement orally, but acknowledged it in his written recommendation and agreed that the enhancement would be added to the underlying sentence of 129 months, for a total of 189 months. Appendix at 28.

The court imposed the high end of the standard range, 231 months. Appendix at 4. In light of the facts, the trial court rejected Meippen's characterization of his youth as mitigating. The court noted that Meippen's behavior was "cold, calculated, and it showed complete indifference towards another human being." Transcript at 17.

Meippen's convictions and sentence were affirmed on appeal in 2009. Appendix at 11. The mandate issued on May 29, 2009. Appendix at 10.

The facts of Meippen's crime are outlined in the Court of Appeals opinion:

Daniel Hong was working at his job as a clerk at the Cigarland tobacco shop in the Northgate neighborhood of Seattle when a young man walked into the store. Hong recognized him; the young man had previously been into the store approximately 15 times attempting to purchase cigarettes while Hong was working. Hong had always refused to sell cigarettes to the young man because he was not old enough to buy them. On the day in question, the young man was wearing a gray hooded sweatshirt and dark pants.

As usual, the young man asked Hong if he would sell him cigarettes. As usual, Hong responded that he would not. The young man then picked up a package of candy and set it on the counter. Hong proceeded to ring up the purchase as the young man put money on the counter. Looking downward, Hong then opened up the cash register drawer to make change. At this point, Hong felt something slam into his head. He fell to the floor.

As Hong lay dazed on the floor, he heard rustling above him. He then heard the sound of someone running across the store and out the door.

Before the young man had entered the store, Samantha Sterkel had been sitting outside the next-door Subway sandwich shop in which she worked, smoking a cigarette while on a break. She witnessed a young man wearing a sweatshirt with the hood up, dark pants, and red

gloves walk into Cigarland; it was not busy at the time, and he was the only customer. Soon, she heard what she described as a "couple of pops," and saw the young man run out of Cigarland with "money and items flying everywhere" from the pockets of his sweatshirt.

Sterkel then went into Cigarland. At first, she could not see anyone. However, as she approached the counter, she saw Hong lying on the floor in what she described as a "fetal position." His hands were covering his face. There was blood smeared across the floor and on his face underneath his hands. Sterkel asked him if he was "okay" and where his telephone was. He did not respond. Sterkel then hurried out of Cigarland and called 911 from the Subway shop.

Seattle Police officers arrived at Cigarland minutes after receiving the call. Other emergency responders directed the officers to a spent shell casing lying on the ground behind the counter, about three feet from where Hong was lying.

The police then spoke with Hong, who was still alive and conscious. Hong neither realized that he had been shot in the head nor understood why he was bleeding so badly; he seemed to think that he had been hit with something. Notwithstanding this, Hong was able to identify his assailant as a regular customer and accurately describe what the young man had been wearing. Hong was eventually transported to the hospital and treated for a single gunshot wound.

Appendix at 12-15. Meippen was eventually identified by Hong. A search of Meippen's home revealed clothes matching the assailant's and shell casings found inside Meippen's car matched the shell casing at the scene. Appendix at 14-15.

D. ARGUMENT

1. THE SENTENCE IMPOSED DOES NOT VIOLATE THE EIGHTH AMENDMENT.

Meippen relies on United States Supreme Court cases involving the constitutionality of life sentences imposed on juvenile offenders. These cases do not provide a basis for relief in his case. Meippen's sentence of less than 20 years does not constitute cruel and unusual punishment.

Beginning in 2005, a series of United States Supreme Court cases altered the analysis of sentences imposed on juvenile offenders under the Eighth Amendment. Taken together, these four cases hold that the Eighth Amendment requires the State to give most juvenile offenders a meaningful opportunity for release from prison within their natural lifetimes.

The first of those cases was Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). In Roper, the Court barred capital punishment for juvenile offenders. In so holding, the Court relied on general differences between juveniles under the age of 18 and adults relevant to culpability. Id. at 569. In light of these characteristics, the Court concluded that neither retribution

nor deterrence provided adequate justification for sentencing a juvenile to death. Id. at 572.

Drawing on these principles, the Court barred sentences of life imprisonment without parole for juvenile offenders who had not committed homicides in Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). The Court agreed that Graham “deserved to be separated from society for some time,” but concluded that juvenile offenders who had not committed homicide deserve “a chance to demonstrate growth and maturity.” Id. at 73. The Court held that “[a] State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide offense. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Id. at 75. In other words, the Eighth Amendment does not prohibit the State from incarcerating a nonhomicide juvenile offender for his entire lifetime, but it does prohibit the State “from making the judgment at the outset that those offenders never will be fit to reenter society.” Id.

In Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 183 L.Ed.2d 407 (2012), the Court expanded its holding in

Graham to bar the imposition of *mandatory* sentences of life imprisonment without parole upon juvenile homicide offenders. The Court concluded that mandatory sentencing schemes prevent the sentencer from taking into account the attributes of youth. Id. at 474. The Court refused to impose a categorical bar on sentencing a juvenile homicide offender to life in prison without parole, but opined that such sentences should be uncommon. Id. at 479.

Finally, in Montgomery v. Alabama, \_\_\_ U.S. \_\_\_, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), the Court held that Miller had both substantive and procedural components, and thus applies retroactively. Miller did not merely require a procedure by which youth could be considered in sentencing, but also required that life sentences not be imposed on juveniles whose crimes reflect transient immaturity. Id. at 734. In sum, but for a small group of juvenile homicide offenders who demonstrate sufficient maturity and depravity, juvenile offenders must be afforded a meaningful opportunity for release before the end of their lifetimes. Nothing in this line of cases can be read to prohibit a sentence of less than 20 years to be imposed on a juvenile. Miller is not material to Meippen's sentence.

Houston-Sconiers applied Miller to conclude that sentencing courts have discretion to impose concurrent firearm enhancements on juvenile offenders when the sentence resulting from consecutive firearm enhancements would violate the Eighth Amendment. State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). Because Houston-Sconiers was an application of Miller, this Court's decision was based solely on the Eighth Amendment.

This Court's recent decision State v. Scott, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_ (slip opinion issued May 10, 2018, located at <http://www.courts.wa.gov/opinions/pdf/940207.pdf>), is controlling. Scott was sentenced to 900 months for a murder he committed at age 17. However, RCW 9.94A.730, enacted in 2014, afforded Scott the opportunity to petition the Indeterminate Sentencing Review Board for release after serving 20 years of the sentence. This Court held that the constitutional violation identified in the Miller line of cases is the failure to allow a juvenile offender the opportunity for release. The Court held that RCW 9.94A.730 provided a sufficient remedy because it converts all juvenile sentences over 20 years into an indeterminate sentence of 20 years to life.

If an indeterminate sentence of 20 years to life does not violate the Eighth Amendment, then a determinate sentence of less than 20 years cannot possibly violate the Eighth Amendment. Scott distinguished Houston-Sconiers as being a direct appeal, not a collateral attack. Scott held that Houston-Sconiers does not require resentencing in a collateral attack if the defendant is not serving a de facto life-without-parole sentence because the defendant has a meaningful opportunity for release. This Court explicitly stated, “[A]s discussed above, under Miller, Montgomery, Houston-Sconiers, and State v. Ramos, 187 Wn.2d 420, 387 P.3d 650, cert. denied. \_\_\_ U.S. \_\_\_, 138 S.Ct. 467, 199 L.Ed.2d 355 (2017), remand for resentencing is not required by the Eighth Amendment in this case.” Likewise here, resentencing is not required by the Eighth Amendment because Meippen will be released after less than 20 years of confinement.

2. THE SENTENCING COURT PROPERLY UNDERSTOOD ITS AUTHORITY AND MEIPPEN'S 231-MONTH SENTENCE IS NOT A FUNDAMENTAL DEFECT INHERENTLY RESULTING IN A COMPLETE MISCARRIAGE OF JUSTICE.

Meippen alternatively argues that he is entitled to resentencing pursuant to State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015). However, O'Dell did not change the law, and the record does not reflect that the trial court misunderstood its authority. Meippen has failed to establish either a significant change in the law that applies retroactively to his case, or a non-constitutional error that entitles him to relief. His petition is untimely and without merit.

RCW 10.73.090 provides that no collateral attack on a judgment and sentence may be filed more than one year after the judgment becomes final, if it is valid on its face. RCW 10.73.090(1). RCW 10.73.100 provides an exception to the time bar where:

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change

in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100(6). This Court has defined the scope of this exception:

We hold that where an intervening opinion has **effectively overturned** a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a "significant change in the law" for purposes of exemption from procedural bars.

In re Pers. Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000) (emphasis added). A decision that settles a point of law without overturning precedent does not constitute a significant change in the law. State v. Miller, 185 Wn.2d 111, 114-15, 371 P.3d 528 (2016); In re Pers. Restraint of Domingo, 155 Wn.2d 356, 368, 119 P.3d 816 (2005); In re Pers. Restraint of Turay, 150 Wn.2d 71, 83, 74 P.3d 1194 (2003). For the exception to apply, the law itself must change, not practitioners' understanding of the law. Miller, 185 Wn.2d at 116.

Meippen argues that O'Dell is a significant change in the law allowing this Court to address his untimely request for

resentencing. This is incorrect. In O'Dell, this Court reaffirmed what it had said previously in State v. Ha'mim, 132 Wn.2d 834, 846, 132 P.2d 633 (1997): an exceptional sentence below the standard range may not be imposed on youth alone, but a defendant's youth may be considered as to whether the defendant lacked the capacity to appreciate the wrongfulness of his conduct or the ability to conform his conduct to the law, as provided in RCW 9.94A.535(1)(e). O'Dell, 183 Wn.2d at 689. This statutory mitigating factor has existed since the enactment of the SRA, and trial courts have never been barred from considering a defendant's youth as affecting capacity pursuant to RCW 9.94A.535(1)(e) at sentencing. Id. See Former RCW 9.94A.390(1)(e). See also State v. Ramos, 189 Wn. App. 431, 447, 357 P.3d 680 (2015), affirmed, 187 Wn. 2d 420, 387 P.3d 650 (2017) (stating "[a]ge alone' was found to be an improper mitigating factor in Ha'mim, but as we explained in Ramos IV, the decision in Ha'mim anticipated that age would be a relevant mitigating factor if the attributes of youth were relevant to culpability for a crime").

Indeed, in O'Dell, this Court explained its decision as follows:

. . . [W]e agree with much of the State's interpretation of Ha'mim. That decision did not bar trial courts from considering a defendant's youth at sentencing; it held only that the trial court may not impose an exceptional sentence automatically on the basis of youth, absent any evidence that youth in fact diminished a defendant's culpability. But we also conclude that the trial court in this case improperly interpreted Ha'mim just as O'Dell does: to bar any consideration of the defendant's youth at sentencing.

O'Dell, 183 Wn.2d at 689. This Court also stated:

It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in Ha'mim.

Id. at 695. This Court cautioned that in light of new scientific studies about adolescent brain development, the mitigating factor may be easier to establish than previously believed, but the court did not change the legal framework. O'Dell is not a significant change in the law, and Meippen's petition is untimely.

In In re PRP of Light-Roth, 200 Wn. App. 149, 401 P.3d 459, review granted, (2017), a panel of the Court of Appeals held that O'Dell is a significant change in the law. This Court accepted accelerated review in Light-Roth, and argument was held March 20, 2018.

Moreover, even if O'Dell was a significant change in the law, it is not material to this case because the trial court did not err in imposing a standard range sentence. Relief cannot be obtained by personal restraint petition unless there is a showing of a fundamental error by the trial court. Meippen did not request an exceptional sentence below the standard range at sentencing, and the trial court made no mistake of law in imposing a standard range sentence. Meippen is thus not entitled to relief.

Contrast the facts of this case with the facts of O'Dell. O'Dell requested an exceptional sentence below the standard range based on youth, and the trial court refused to entertain the request, erroneously concluding that youth was not relevant to imposition of an exceptional sentence. 183 Wn.2d at 685, 696-97.

Contrast this case to In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 166 P.3d 677 (2007), as well. Mulholland was convicted of six counts of assault in the first degree and one count of drive-by shooting. Id. at 324-25. Mulholland requested that the sentences be imposed concurrently with each other. Id. at 325. The sentencing court denied the request, stating that it had no discretion to do so. Id. After his conviction and sentence were

affirmed, Mulholland filed a timely petition challenging the trial court's conclusion that it could not impose concurrent sentences. Id. at 326. This Court concluded that the court did have discretion to impose the sentences concurrently. Id. at 331. This Court noted that the standard for relief when alleging a nonconstitutional error is an error that "constitutes a fundamental defect which inherently results in a complete miscarriage of justice." Id. at 332. The court found that the sentencing court's mistake of law met that standard. Id. at 333. Moreover, the record indicated there was a possibility that, had the trial court properly understood the law, it would have imposed a lower sentence. Id. at 334.

Meippen's case is fundamentally different. There is no showing that the trial court misunderstood the law, or wished to impose a more lenient sentence. The court could have imposed a lower standard range sentence but instead chose to impose the high end of the standard range. Meippen has failed to establish a fundamental defect that inherently results in a complete miscarriage of justice where the trial court did not deny a request for an exceptional sentence and the record contains no evidence that the court wished to impose a more lenient sentence.

E. CONCLUSION.

This petition should be dismissed. In the alternative, this petition should be stayed pending the Washington Supreme Court's decision in Light-Roth.

DATED this 16<sup>th</sup> day of May, 2018.

Respectfully Submitted,

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 06-1-05905-7 SEA
	)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY
TIME MEIPPEN	)	
	)	
Defendant,	)	

I. HEARING

I.1 The defendant, the defendant's lawyer, LOREN GRIER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Defendant's family.

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 10/09/2007 by jury verdict (counts I & II) and by bench trial (count III) of:

Count No.: <u>I</u>	Crime: <u>ROBBERY IN THE FIRST DEGREE</u>
RCW <u>9A.56.200 (1) (a) (ii) &amp; 9A.56.190</u>	Crime Code: <u>02908</u>
Date of Crime: <u>06/10/2006</u>	Incident No. _____

Count No.: <u>II</u>	Crime: <u>ASSAULT IN THE FIRST DEGREE</u>
RCW <u>9A.36.011 (1) (a)</u>	Crime Code: <u>01010</u>
Date of Crime: <u>06/10/2006</u>	Incident No. _____

Count No.: <u>III</u>	Crime: <u>UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE</u>
RCW <u>9A.41.040 (2) (a) (iii)</u>	Crime Code: <u>00532</u>
Date of Crime: <u>06/10/2006</u>	Incident No. _____

Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____

[ ] Additional current offenses are attached in Appendix A

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

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

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

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525);  
 Criminal history is attached in Appendix B.  
 One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	27	IX	51 TO 68	+60 MONTHS	<del>111 TO 128</del> 111 - 128 MONTHS	LIFE AND/OR \$50,000
Count II	24	XII	129 TO 171		<del>129 TO 171</del> 129 - 171 MONTHS	LIFE AND/OR \$50,000
Count III	23	III	9 TO 12		<del>9 TO 12</del> 9 - 12 MONTHS	5 YRS AND/OR \$10,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 **EXCEPTIONAL SENTENCE (RCW 9.94A.535):**  
 Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_. Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) \_\_\_\_\_

## IV. ORDER

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

## 4.1 RESTITUTION AND VICTIM ASSESSMENT:

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

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

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

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

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  immediately; [ ] (Date); \_\_\_\_\_ by \_\_\_\_\_ m.

68 months/days on count I; 12 months/days on count III; \_\_\_\_\_ months/day on count \_\_\_\_\_

171 months/days on count II; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I, II + III are consecutive  concurrent.

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to cause No.(s) \_\_\_\_\_

The above terms shall run  CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 60 months on Count I.

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[ ] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 231 months.

Credit is given for [ ] \_\_\_\_\_ days served  days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of LIFE years, defendant shall have no contact with \_\_\_\_\_ Daniel Hong, Hannah Yang.

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G. [ ] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [ ] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for \_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [ ] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c)  **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
  - Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
  - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
  - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
  - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
  - Felony Violation of RCW 69.50/52 - 9 to 12 months
 or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.  
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.  
 APPENDIX H for Community Custody conditions is attached and incorporated herein.  
 APPENDIX J for sex offender registration is attached and incorporated herein.

4.8  **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is  attached  as follows:

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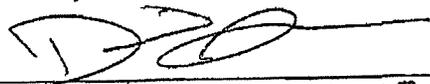


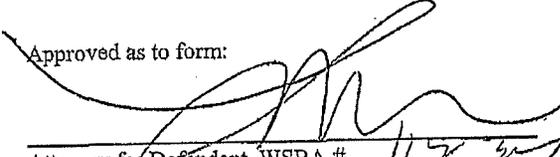
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 1/23/08

  
 JUDGE  
 Print Name: Cheryl Carey

Presented by:  
  
 Deputy Prosecuting Attorney, WSBA# 27031  
 Print Name: David Gross

Approved as to form:  
  
 Attorney for Defendant, WSBA # 1122  
 Print Name: Corne Grier

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DEFENDANT'S SIGNATURE: \_\_\_\_\_  
DEFENDANT'S ADDRESS: Key

TIME RIKAT MEIPPEN

DATED: 11/23/08  
\_\_\_\_\_  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: [Signature]  
DEPUTY CLERK

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

OFFENDER IDENTIFICATION  
S.I.D. NO.  
DOB: FEBRUARY 6, 1990  
SEX: M  
RACE: A

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

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

TIME MEIPPEN

Defendant,

No. 06-1-05905-7 SEA

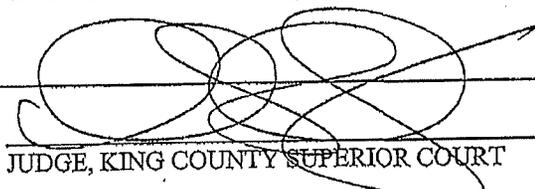
JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ASSAULT 3	06/16/2005	JUVENILE	058006338	SPOKANE CO
ASSAULT 3	06/16/2005	JUVENILE	058006338	SPOKANE CO

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 1/23/08

  
\_\_\_\_\_  
JUDGE, KING COUNTY SUPERIOR COURT

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 vs. )  
 TIME MEIPPEN )  
 Defendant, )

No. 06-1-05905-7 SEA

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

**(1) DNA IDENTIFICATION (RCW 43.43.754):**

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

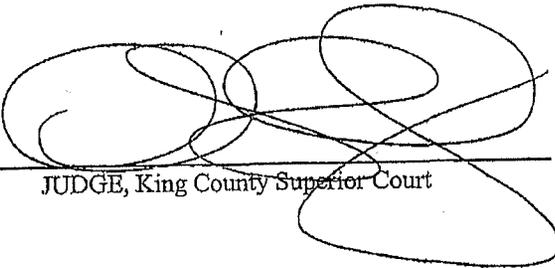
**(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):**

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

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

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

Date: 1/23/08



\_\_\_\_\_  
 JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
TIME MEIPPEN
Defendant,

No. 06-1-05905-7 SEA
JUDGMENT AND SENTENCE
APPENDIX H
COMMUNITY PLACEMENT OR
COMMUNITY CUSTODY

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

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
2) Work at Department of Corrections-approved education, employment, and/or community service;
3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
4) Pay supervision fees as determined by the Department of Corrections;
5) Receive prior approval for living arrangements and residence location;
6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
7) Notify community corrections officer of any change in address or employment; and
8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- [ ] The defendant shall not consume any alcohol.
[X] Defendant shall have no contact with: Daniel Hong; Hannah Yang.
[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit:
[ ] The defendant shall participate in the following crime-related treatment or counseling services:
[ ] The defendant shall comply with the following crime-related prohibitions:
[ ]

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

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

Date: 1/23/08

JUDGE (with signature)

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

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 v. )  
 TIME RIKAT MEIPPEN, )  
 )  
 Appellant. )

No. 61339-1-I  
MANDATE  
King County  
Superior Court No. 06-1-05905-7 SEA

**FILED**  
KING COUNTY, WASHINGTON  
JUN 11 2009  
SUPERIOR COURT CLERK

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on March 9, 2009, became the decision terminating review of this court in the above entitled case on May 29, 2009. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

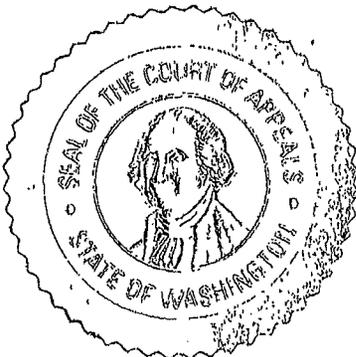
Pursuant to RAP 14.4, costs in the amount of \$4,768.49 are awarded against judgment debtor Time Rikat Meippen as follows: \$4,687.03 in favor of judgment creditor Washington Office of Public Defense and \$81.46 in favor of judgment creditor King County Prosecutor's Office.

- c: David B. Koch, NBK
- Kari L. Dady
- Patrick H. Hinds, KC
- Hon. Cheryl B. Carey
- Indeterminate Sentencing Review Board

**IN TESTIMONY WHEREOF,** I have hereunto set my hand and affixed the seal of said Court at Seattle, this 29th day of May, 2009.



**RICHARD D. JOHNSON**  
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.



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

STATE OF WASHINGTON,	)	DIVISION ONE
	)	
Respondent,	)	No. 61339-1-I
	)	
v.	)	UNPUBLISHED OPINION
	)	
TIME RIKAT MEIPPEN,	)	
	)	
Appellant.	)	FILED: March 9, 2009

---

*PER CURIAM* — Time Meippen appeals his convictions for assault in the first degree, robbery in the first degree, and unlawful possession of a firearm. The convictions stem from an incident in which Meippen entered a tobacco shop, shot the shop's clerk in the head with a handgun, and took cash from the shop's register. Meippen contends that the trial court erred by refusing to suppress physical evidence found in his primary vehicle—a spent shell casing and live ammunition that matched a spent shell casing found at the scene of the crime—because there were insufficient facts stated in the investigating police detective's search warrant affidavit to justify the issuance of the warrant authorizing the search of the car. Concluding that the warrant was properly issued and that the motion was, accordingly, properly denied, we affirm.

No. 61339-1-1/2

Daniel Hong was working at his job as a clerk at the Cigarland tobacco shop in the Northgate neighborhood of Seattle when a young man walked into the store. Hong recognized him; the young man had previously been into the store approximately 15 times attempting to purchase cigarettes while Hong was working. Hong had always refused to sell cigarettes to the young man because he was not old enough to buy them. On the day in question, the young man was wearing a gray hooded sweatshirt and dark pants.

As usual, the young man asked Hong if he would sell him cigarettes. As usual, Hong responded that he would not. The young man then picked up a package of candy and set it on the counter. Hong proceeded to ring up the purchase as the young man put money on the counter. Looking downward, Hong then opened up the cash register drawer to make change. At this point, Hong felt something slam into his head. He fell to the floor.

As Hong lay dazed on the floor, he heard rustling above him. He then heard the sound of someone running across the store and out the door.

Before the young man had entered the store, Samantha Sterkel had been sitting outside the next-door Subway sandwich shop in which she worked, smoking a cigarette while on a break. She witnessed a young man wearing a sweatshirt with the hood up, dark pants, and red gloves walk into Cigarland; it was not busy at the time, and he was the only customer. Soon, she heard what she described as a "couple of pops," and saw the young man run out of Cigarland with "money and items flying everywhere" from the pockets of his sweatshirt.

No. 61339-1-1/3

Sterkel then went into Cigarland. At first, she could not see anyone. However, as she approached the counter, she saw Hong lying on the floor in what she described as a "fetal position." His hands were covering his face. There was blood smeared across the floor and on his face underneath his hands. Sterkel asked him if he was "okay" and where his telephone was. He did not respond. Sterkel then hurried out of Cigarland and called 911 from the Subway shop.

Seattle Police officers arrived at Cigarland minutes after receiving the call. Other emergency responders directed the officers to a spent shell casing lying on the ground behind the counter, about three feet from where Hong was lying.

The police then spoke with Hong, who was still alive and conscious. Hong neither realized that he had been shot in the head nor understood why he was bleeding so badly; he seemed to think that he had been hit with something. Notwithstanding this, Hong was able to identify his assailant as a regular customer and accurately describe what the young man had been wearing. Hong was eventually transported to the hospital and treated for a single gunshot wound.

Seattle Police Detective Thomas Conrad was the primary detective assigned to the Cigarland robbery. After reviewing footage from the four security cameras inside Cigarland, each of which had captured the incident from a different angle, Conrad went to the hospital to speak with Hong.

During their discussion, Hong told Conrad what he could remember about the robbery, including that his assailant was a regular customer and what the

No. 61339-1-1/4

assailant had been wearing. Hong also remembered that his assailant had previously been in Cigarland with someone he had described as his "cousin"; while they were there, the assailant's purported cousin had used a Micronesian passport as identification to buy tobacco. Hong recalled that while they had been in the store, the two had spoken together in a language other than English, which Hong presumed to be Micronesian based on the passport that he had seen. Hong also remembered that his assailant had once mentioned that he attended Nathan Hale High School.

Two days after the shooting, Conrad telephoned Seattle Police Officer Wendy Boyd, who was assigned to Nathan Hale. Conrad described what had happened at Cigarland and what he had learned from Hong. Boyd immediately told Conrad that Meippen fit Hong's description of the suspect, that he was actually a student at Summit K-12 (an alternative school across the street from Nathan Hale), and that he drove a purple Cadillac. Boyd then referred Conrad to David Raybern, the security guard assigned to Summit.

Like Boyd, Raybern immediately identified Meippen as matching Hong's description. Raybern also stated that Meippen's primary vehicle was a purple Cadillac.

Conrad then obtained a photograph of Meippen and created a photomontage containing it, along with photographs of five similar-looking men. Conrad showed the montage to Hong, as well as to Hannah Yang, one of Hong's coworkers who had also interacted numerous times at Cigarland with the person who had attacked Hong. Hong immediately identified the photograph of Meippen

No. 61339-1-1/5

as showing the person who had shot him. Likewise, Yang separately identified the picture of Meippen as the individual who regularly came into Cigarland and attempted to buy tobacco without identification.

Based on this information, Conrad sought a warrant to search Meippen's apartment, the purple Cadillac, and Meippen's person. The affidavit submitted in support of a finding of probable cause to search recounted the details of the robbery, everything that Conrad had learned since, and stated that Meippen's "primary vehicle is the above purple Cadillac," identifying the car driven by Meippen by its Washington license number. The warrant application also stated that Meippen's residence was an apartment that he shared with his mother. Based on Conrad's affidavit, the warrant was issued by a King County Superior Court judge.

The warrant was served shortly thereafter. In Meippen's bedroom, police officers discovered a sweatshirt, t-shirt, pants, and shoes that matched those worn by Hong's assailant in the security camera footage, as well as Hong's and Sterkel's descriptions. In the purple Cadillac, they found an expended shell casing and two undischarged ammunition cartridges that exactly matched the expended shell casing found on the ground next to Hong's head in the Cigarland store. They also found a red glove in Meippen's pants pocket and \$140 in cash on his person.

Meippen was arrested and ultimately charged with assault in the first degree, robbery in the first degree, and unlawful possession of a firearm based on the allegation that he possessed the pistol used in the assault while still a

No. 61339-1-I/6

minor. Prior to trial, Meippen moved to suppress the evidence obtained in the search of the car, contending that Conrad's affidavit failed to state facts sufficient to support a determination of probable cause to believe that evidence of the Cigarland robbery would be found therein. The trial court denied Meippen's motion, and allowed the State to present at trial evidence of the items found in the car.

A jury found Meippen guilty of both the assault and robbery charges. In a severed proceeding, the trial court found Meippen guilty of the unlawful firearm possession charge.

## II

Meippen's primary contention is that the search warrant obtained by Conrad was issued without establishing probable cause to search the Cadillac in which the spent shell casing and ammunition cartridges were found. According to Meippen, the physical evidence of the shell casings and cartridges should have been suppressed, and its erroneous admission requires reversal of his convictions. We disagree. Conrad's affidavit provided sufficient information linking the Cadillac to the crime to support a finding of probable cause.

A search warrant may be issued only upon a determination of probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." Thein, 138 Wn.2d at 140. A magistrate's determination that the facts stated in a warrant application establish probable

No. 61339-1-1/7

cause and thus justify the issuance of a warrant is reviewed for abuse of discretion. State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869 (1980); State v. Dalton, 73 Wn. App. 132, 136, 868 P.2d 873 (1994). That is, where an investigating officer properly seeks a search warrant and a judge issues the warrant after determining that the application establishes probable cause to search, any “[d]oubts should be resolved in favor of the validity of the warrant” on appeal. State v. Garcia, 63 Wn. App. 868, 871, 824 P.2d 1220 (1992) (citing State v. Fisher, 96 Wn.2d 962, 964, 639 P.2d 743 (1982); State v. Partin, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977)). However, unlike the actual determination of probable cause by the issuing magistrate, the trial court’s assessment of the magistrate’s probable cause ruling in deciding a suppression motion is reviewed de novo on appeal. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008).

Melppen bases his contention that Conrad’s affidavit was insufficient to justify a probable cause determination on two cases: Thein and Dalton. In Dalton, we reversed the defendant’s conviction for manufacturing marijuana, concluding that the application for a warrant to search the defendant’s home had stated no facts that tied the home to illegal conduct. Dalton, 73 Wn. App. at 140. Specifically, we stated that tips by anonymous informants that the defendant later planned to sell marijuana in Alaska could not reasonably support the inference that the defendant had marijuana at his home in Washington. We adopted the reasoning that “[p]robable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home.”

No. 61339-1-I/8

Dalton, 73 Wn. App at 140 (quoting Commonwealth v. Kline, 234 Pa. Super. 12, 17, 33 A.2d 361 (1975)).

In Thein, our Supreme Court ruled similarly, holding that mere conclusory assertions in a warrant application about the common habits of drug dealers were not enough, by themselves, to support the issuance of a warrant to search a suspected drug dealer's home for contraband. Thein, 138 Wn.2d at 150-51. Specifically, the court held that the conclusory assertion in a police officer's affidavit that "it is generally a common practice for drug traffickers to store at least a portion of their drug inventory and drug related paraphernalia in their common residences," in the absence of any statements actually tying the defendant's home to suspected criminal activity, was insufficient to "establish a nexus between evidence of illegal drug activity" and the place to be searched. Thein, 138 Wn.2d at 138-39, 151.

Both of those cases differ from this case. Unlike the affidavit at issue in Dalton, Conrad's affidavit was not based on an anonymous tip of dubious reliability that Meippen might engage in criminal activity at some later date and in some other state. To the contrary, there were *significant facts*—for example, positive identification by the victim of Meippen as the Cigarland assailant—stated in Conrad's warrant application to support the inference that Meippen had already committed a crime and that evidence of that crime might either be found in his apartment, where he could be expected to dispose of his clothing, or in the purple Cadillac, his "primary vehicle."

No. 61339-1-1/9

Unlike the warrant application in Thein, the facts stated in Conrad's warrant application had nothing to do with generalized assumptions about the behavior of a certain class of criminals, such as drug dealers. Instead, Conrad's affidavit set forth specific and explicit facts supporting the conclusion that Meippen had been the person who came into the Cigarland store, shot Hong in the head, and ran out of the store with the contents of the cash register.

To be entirely clear: the magistrate who issued the warrant for the search of the Cadillac could reasonably infer from the facts stated in the affidavit that (1) Meippen had committed the crimes of robbery and assault in the Cigarland store, (2) the Cigarland store was sufficiently far from Meippen's home that Meippen may have driven to and from the scene of the crime, (3) the purple Cadillac was Meippen's primary vehicle, (4) if Meippen drove away from the scene of the shooting, he likely used his primary vehicle to do so, (5) because Meippen lived in an apartment with his mother, he was unlikely to keep a contraband weapon therein, and (6) because of these facts, evidence related to the crime might be located within the Cadillac.

Contrary to Meippen's implication, Conrad's affidavit was not required to spell out this chain of reasoning explicitly in order for the judge to have acted within the scope of her discretion by issuing the warrant to search the Cadillac. On the contrary, it is well established that magistrates reviewing warrant applications are entitled to rely upon their own "common sense and experience" to determine what inferences may "reasonably to be drawn from the facts" stated in the applications for purposes of making probable cause determinations.

No. 61339-1-I/10

Thein, 138 Wn.2d at 148-49. This being the case, it is unsurprising that numerous appellate opinions have upheld the issuance of search warrants for vehicles on similar (or less) evidence than was presented to the issuing judge herein. See, e.g., State v. Clark, 143 Wn.2d 731, 749-50, 24 P.3d 1006 (2001) (combination of prior criminal history and inadmissible polygraph evidence sufficient for probable cause to search vehicle).

There were sufficient concrete facts articulated in Conrad's warrant application to establish the required nexus between the Cadillac and the Cigarland robbery such that the judge did not abuse her discretion by issuing the warrant to search the Cadillac. Because of this, the trial court did not err by refusing to suppress the evidence obtained as a result of the search. There was no error.

### III

In a pro se pleading, Meippen also asserts several additional grounds for reversal of his conviction. None has merit.

First, Meippen contends that the composition of the jury was unconstitutional because it excluded lower-income jurors and jurors from lower-income neighborhoods. There is no evidence whatsoever that this is true.

Second, Meippen contends that his attorney was so incompetent that his representation violated Meippen's constitutional right to effective assistance of counsel. According to Meippen, this is so because the attorney failed "to call witnesses from the crime-lab, to testify on behalf of their 'reports'" regarding the security camera footage, and because he failed "to question a very critical part" of the State's case. But Meippen does not articulate why examination of the

No. 61339-1-I/11

crime-lab employees would have aided his case, what particular part of the State's case his counsel failed to challenge, or how doing so would have altered the outcome of the trial. This being the case, we can discern nothing in Meippen's argument that would justify the conclusion that his attorney was anything but competent.

Third, Meippen contends that someone (he never says who) tampered with the evidence against him. Again, there is no evidence whatsoever that supports this assertion.

Fourth, Meippen contends that his robbery and assault convictions were for the "same offense" and thus, presumably, violate the Double Jeopardy Clauses of the state and federal constitutions. Meippen's contention is based on his misconception that a single course of criminal conduct cannot result in multiple convictions and multiple punishments, even where the legislature intends for that to be the case. He is wrong. See, e.g., State v. Freeman, 153 Wn.2d 765, 776, 108 P.3d 753 (2005) ("the legislature *did* intend to punish first degree assault and robbery separately") (emphasis added).

Finally, Meippen appears to contend that his separate convictions for assault and robbery should have only combined to raise his offender score by a single point because the sentences imposed for those convictions are to run concurrently. This contention is simply wrong. See RCW 9.94A.589(1)(a) ("[W]henver a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of

No. 61339-1-I/12

the offender score."); RCW 9.94A.525(2)(a) ("Class A . . . prior felony convictions shall always be included in the offender score"). There was no error.

Affirmed.

FOR THE COURT:

Dwyer, A.C.J.

Cox, J.

Leach, J.

COPY RECEIVED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,	)	
	)	NO. 06-1-05905-7 SEA
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S PRE-SENTENCE
	)	REPORT/SENTENCE RECOMMENDATION
TIME R. MEIPPEN,	)	
	)	
Defendant.	)	

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Defendant Name:	Time Rikat Meippen
Date of Birth:	02/06/1990
Birthplace:	Chuuk State, Micronesia
Sentencing Date:	11/21/2007 - 3:30 p.m. - Judge C. Carey
Crimes:	Count 1: first degree assault, Count 2: first degree robbery, Count 3: UPF second degree
Offender Score:	Unresolved

*Lorne M. Grier*  
Attorney At Law  
20016 Cedar Valley Road, Suite 108  
Lynnwood, WA 98036-6332  
(425) 775-6809

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- Issues:
1. Does Time Meippen have prior convictions and if so, have those convictions been proved by competent evidence?
  2. Are the convictions Counts 1 and 2 "same criminal conduct" for purposes of calculating the offender score under RCW 9.94A.589?

#### DISCUSSION

At trial it was established that Daniel Hong was shot one time by a .25 caliber handgun from close range during a robbery of cash from the cash drawer of the Cigarland store in the Northgate area of Seattle. The security video shown at trial depicted the robber entering the store and loitering for several seconds before approaching the sales counter with a small item which was placed on the counter. As the clerk (Hong) was engaged in ringing up the item the robber pulled a small handgun from the pocket of his sweatshirt and fired one shot from close range, hitting the clerk in the face. As the clerk fell to the floor, the robber pulls several bills from the open cash drawer and quickly leaves the premises.

Time R. Meippen was convicted by a jury of the crimes of first degree robbery and first degree assault and the court entered a guilty finding to the unlawful possession of a firearm in the second degree count at a bench trial held concurrently with the jury trial on counts 1 and 2 of unlawful possession of a firearm in the second degree.

Issue 1. In order to prove criminal history for offender score purposes, absent a stipulation or agreement by the defendant of prior felony convictions, the prosecution must present competent evidence of prior felony convictions at the sentencing hearing. *State v. Ford*, 137 Wn.2d 472 (1999). The best evidence of prior convictions are certified copies of the judgment and sentence. *Ford*, supra; *State v. Cabrera*, 73 Wn. App. 165 (1994). The

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defendant has not been provided with any competent evidence of alleged prior convictions that would increase his offender score.

Issue 2. In the recent case of *State v. Freeman*, 118 Wn. App. 365 (2003), *aff'd in part*, *State v. Freeman*, 153 Wn.2d 765 (2005), the sentencing court was asked to determine, among other things, whether convictions for first degree robbery and first degree assault arising from the same criminal incident and involving the same victim were "same criminal conduct" under RCW 9.94A.589(1).

In *Freeman*, the defendant and some friends had picked up another man to take him to a party. Instead, the men drove the victim to a secluded and the defendant pulled a gun and demanded the victim's money. The victim expressed shock and did not immediately comply with the request for money. The defendant shot the victim who then tried to escape. The defendant again demanded money and told the victim he would shoot him again if he didn't comply with the demand for money. The victim gave the defendant his money and was left seriously wounded at the scene.

RCW 9.94A.589(1)(a) states is part that "same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." "All three prongs must be met; the absence of any one of them prevents a finding of 'same criminal conduct'." *State v. Vike*, 125 Wn.2d 407 at 410 (1994). The issue in *Freeman* was whether first degree robbery and first degree assault involved the same intent. In *State v. Dunaway*, 109 Wn.2d 207 (1987) the court held that "in construing the 'same criminal intent' prong, the standard is the extent to which the criminal intent, objectively viewed, changed from one crime to the next." *Dunaway* at 215; *Vike*, supra at 411. Whether the objective intent changed from the first degree assault to the robbery "is measured, in part by whether one crime furthered the other." *State v. Garza-Villarreal*, 123 Wn.2d 42 at 47; *Vike* at 411. In *Freeman*, the defendant, who was acquainted with the victim pulled a gun and verbally demanded money. When the victim questioned the

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3 demand and did not immediately comply, the defendant shot him and again demanded  
4 money. The sentencing court in *Freeman* ruled that what began as a robbery ended up as a  
5 shooting after Freeman's subjective and objective intent changed and he decided to shoot the  
6 victim. 118 Wn. App. at 370. The appellate court ruled that since the objective intent of the  
7 defendant changed from intent to rob the victim to the intent to shoot the victim, the robbery  
8 and the assault were not "same criminal conduct." The portion of the appellate court decision  
9 dealing with the issue of "same criminal conduct" was not addressed by the Washington  
10 Supreme Court on appeal in 153 Wn. 2d. 765.

11  
12 In the present case, the robber entered the store, loitered for several seconds, then  
13 approached the counter with a piece of candy and immediately pulled a gun and shot the  
14 clerk, grabbed the currency from the till and left. The evidence at trial established that the  
15 intent to use force in the form of an assault with a gun to accomplish the robbery was present  
16 when the robber entered the store and never changed. The robber did not demand money  
17 before firing the gun, he simply pulled the gun from his pocket, fired the gun into the face of  
18 the clerk and grabbed the currency from the open till. All evidence at trial clearly indicated  
19 that the shooter had always planned to accomplish the robbery by shooting the clerk. In this  
20 case, the shooting was the means of accomplishing the robbery and was only done to further  
21 the robbery. The first degree assault and the first degree robbery should be considered "same  
22 criminal conduct" for offender score calculation purposes.

23  
24 The unlawful possession of a firearm second degree charge as charged under RCW  
25 9.41.040(1)(b)(iii) by the second amended information filed by the prosecutor following the  
26 close of the state's case required only that the state prove that the defendant was in possession  
27 of a firearm and was under the age of eighteen. The first degree assault charge in count II of  
28 the second amended information charged that the assault was committed by shooting the  
29 victim in the face with a firearm. Accordingly, the first degree assault and the unlawful  
30

1  
2 possession of a firearm in the second degree are "same criminal conduct" because the  
3 evidence clearly showed that the firearm was only possessed on the day of the offense to be  
4 used in the assault and involved the same victim at the same time and place.

5 Count I, first degree robbery should be assigned an offender score of 1(U PF2); Count  
6 II first degree assault should be assigned an offender score of zero; Count III U PF2 should be  
7 assigned an offender score of 1(rob 1). If the state produces competent evidence in the form of  
8 a certified copy of a judgment and sentence that Mr. Meippen has been convicted of one or  
9 more other crimes, then the offender score should be adjusted appropriately. All sentences  
10 should be served concurrently. RCW 9.94A.589(1)(a).  
11

12  
13 SENTENCE RECOMMENDATION  
14

15 At the time of the commission of the crimes for which he is being sentenced in the  
16 case, Time Meippen was 16 years old. He had only been in the United States since he was 14  
17 and had lived most of that time in Hawaii and Spokane, WA with uncles and aunts. In March  
18 of 2006, Time moved to Seattle to live with his mother. His mother was the sole source of  
19 support for he and his sister and struggled to make ends meet. Time got involved with some  
20 older boys who were very influential over his behavior. Time felt it necessary to impress these  
21 older young men by showing them how "tough" he was. The serious nature of this case  
22 required an automatic decline and Time was tried as an adult. However, state law does not  
23 automatically make children think like adults and does not give them the understanding of the  
24 nature and seriousness of the act of shooting another person. Surely, an immature 16 year old  
25 would understand that the act of shooting and robbing someone is wrong, but would not  
26 appreciate the consequences that would ensue for both the victim and himself when forming  
27 such a plan. In my many discussions with Time, I have found him to be very immature in his  
28 thought processes and beliefs. He lacks an understanding to this day of the seriousness of the  
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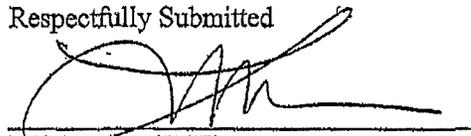
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situation he involved himself in when he shot Mr. Hong and continues to cling to the belief that he will be going home soon. He has not been able to grasp the reality of how many years he will be spending in prison. Time is of slight stature and is very naïve and easily manipulated. He will not fare well in prison and will no doubt be assaulted in prison by more powerful and older inmates. I fear that the thoughtless violent act that took a sixteen year old one minute to accomplish has doomed him to a short life filled with violence and crime in prison.

Because Time was too young to truly consider and appreciate the nature and consequences of his actions on June 10, 2006 and because the experience of serving many years in prison will no doubt be much more difficult for him than an adult offender, I am recommending to the court that Time Meippen be given a sentence at the bottom of the standard range for first degree assault and that the first degree robbery and UPF 2 sentences run concurrently with the assault sentence. There is one five year firearm enhancement which must be served consecutive to the sentences for the underlying crimes.

DATED this 14<sup>th</sup> day of November, 2007.

Respectfully Submitted



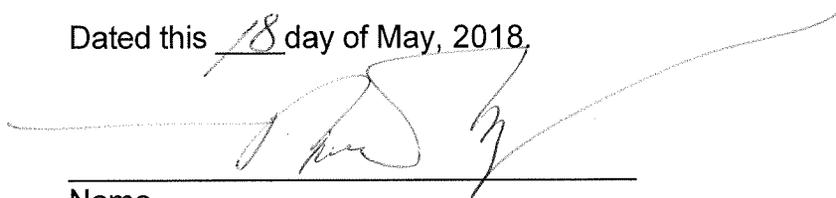
LORNE M. GRIER  
Attorney for Defendant  
WSBA #11237

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Time Rikat Meippen, the petitioner, at DOC # 315209, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 98326-0769 containing a copy of the State's Response to Personal Restraint Petition, in Re Personal Restraint of Time Rikat Meippen, Cause No. 95394-5, in the Supreme Court, for the State of Washington.

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

Dated this 18 day of May, 2018.

A handwritten signature in black ink, appearing to be 'J. Meippen', written over a horizontal line.

Name  
Done in Seattle, Washington

**KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT**

**May 18, 2018 - 12:38 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95394-5  
**Appellate Court Case Title:** Personal Restraint Petition of Time Rikat Meippen  
**Superior Court Case Number:** 06-1-05905-7

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