

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

In re the Personal Restraint Petition of:

ADAM BETANCOURT,

Petitioner.

RESPONSE OF  
INDETERMINATE  
SENTENCE REVIEW  
BOARD

**I. INTRODUCTION**

Betancourt and another teenager shot and killed an elderly couple in their home as part of a planned early morning home invasion robbery. Betancourt pled guilty to two counts of murder in the first degree to avoid the sentence of life without parole that would certainly come with a conviction for aggravated first-degree murder. The superior court sentenced Betancourt in 1997 to 600 months of total confinement.

In 2014, the Legislature enacted RCW 9.94A.730 in response to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), which held that a mandatory sentence of life without parole imposed on a juvenile offender violates the Eighth Amendment. Going beyond *Miller*, RCW 9.94A.730(3) requires the Indeterminate Sentence Review Board to evaluate for potential release, except for aggravated murderers and certain sex offenders, all offenders who had committed their crimes while a juvenile after they had served twenty years of confinement.

The statute directs the Board to release the offender from confinement “unless the board determines by a preponderance of the evidence that . . . it is more likely than not that the person will commit new criminal law violations if released.” RCW 9.94A.730(3). The statute also requires that the Board “shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.” RCW 9.94A.730(3).

Once Betancourt had served twenty years of confinement, the Board considered whether to release him under the statute. After considering all relevant evidence, the Board determined by a preponderance of the evidence that Betancourt was likely to commit new crimes if released. Among other things, the Board noted that Betancourt had used drugs throughout his confinement, had smuggled drugs into prison, had not participated in sober support groups as recommended, had a history of serious prison infractions and continued to incur negative behavior observations in prison. Based upon the totality of the evidence, the Board determined that Betancourt was not releasable at this time.

Betancourt now challenges the Board’s decision not to release him under RCW 9.94A.730. Betancourt does not show that the Board abused its discretion in denying release. For this reason, the Court should deny the personal restraint petition.

## II. STATEMENT OF THE CASE

### A. Betancourt Pled Guilty to the Murder of an Elderly Couple Committed During a Home Invasion Robbery

In the early morning of May 21, 1997, Adam Betancourt and Donald Lambert, two teenagers armed with firearms, entered the bedroom of the sleeping 89-year-old Homer Smithson and his wife, Vada Smithson. *Lambert v. Blodgett*, 393 F.3d 943, 949 (9th Cir. 2004). Both Betancourt and Lambert emptied their firearms into Homer Smithson, mortally wounding him. *Id.* When Vada Smithson ran to the kitchen in an effort to telephone her son for help, Betancourt and Lambert ran outside to reload their firearms. *Id.* Betancourt and Lambert entered the house a second time, shooting at Mrs. Smithson. *Lambert*, 393 F.3d at 949. After emptying their weapons, Betancourt and Lambert again exited the house to reload once more. *Id.* Through the kitchen window, Lambert could see Mrs. Smithson on the telephone, and he heard her say, “they’re killing me, they’re killing me!” *Id.* Believing that Mrs. Smithson was calling the police, the teens shot her multiple times, firing until their guns were again empty. *Id.*

When police officers responded to the scene, they found Homer Smithson in the bedroom alive, but semi-conscious and thrashing around. *Lambert*, 393 F.3d at 949. Mr. Smithson had multiple gunshot wounds to his head, chest, legs, and abdomen. *Id.* Emergency personnel transported

Mr. Smithson to the hospital, but he died shortly after arriving there. *Lambert*, 393 F.3d at 949. The police found Vada Smithson dead in her kitchen, holding the telephone. *Id.*

The police investigation revealed that Betancourt and Lambert, along with two other teenagers, had devised a plan to rob the Smithsons. *Lambert*, 393 F.3d at 950. The teenagers planned to shoot Mr. Smithson, and then force Mrs. Smithson to show them the valuables in the house. *Id.* After that, the teenagers would shoot Mrs. Smithson. *Id.* The teens were aware the Smithsons might likely die. *Id.* Lambert later admitted to the police that both he and Betancourt had shot Mr. and Mrs. Smithson, with the two trading guns throughout the shooting. *Id.* Lambert also told police that after they fled, Betancourt returned to the house, found Vada Smithson still alive, and stabbed her with his knife. *Id.*

The prosecution charged all four teens with aggravated murder. *Lambert*, 393 F.3d at 950-51. To avoid a sentence of life without parole, Betancourt pled guilty to two counts of murder in the first degree. *Id.* at 951. The superior court sentenced Betancourt to 600 months total confinement, followed by community placement. Exhibit 1, Judgment and Sentence, *State v. Betancourt*, Grant County Cause No. 97-1-00295-1, at 7; Exhibit 2, Order Amending Judgment and Sentence, *State v. Betancourt*, Grant County Cause No. 97-1-00295-1.

**B. The 2014 “Miller Fix” Enactment of RCW 9.94A.730**

In *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held for the first time that a mandatory sentence of life without the possibility of parole, as applied to an offender who was under the age of 18 at the time of the crime, violates the Eighth Amendment to the United States Constitution. In response to *Miller*, the Legislature enacted Laws of 2014, ch. 130, often referred to as the “Miller fix.” See *In re McNeil*, 181 Wn.2d 582, 586, 334 P.3d 548 (2014).

The statutory fix, however, went beyond the holding of *Miller*. Relevant here, the statutory fix directs the Board to review for potential release all offenders who had committed their crimes while a juvenile, except for offenders convicted of aggravated murder and certain sex offenders. RCW 9.94A.730. These juvenile offenders may petition the Board for early release after serving no less than twenty years confinement. RCW 9.94A.730(1). Following receipt of a petition, the Department of Corrections shall conduct an examination of the offender to assess the probability of the offender engaging in future criminal behavior if released on conditions. RCW 9.94A.730(3). The statute directs that the Board shall order the offender released unless it determines by a preponderance of the evidence that, even with conditions, the person is likely to commit a new criminal law violation if released. RCW 9.94A.730(3).

**C. The Board Denied Release after Finding by a Preponderance of the Evidence that Betancourt was Likely to Engage in New Criminal Activity if Released**

On June 26, 2018, the Board held a hearing to consider whether to release Betancourt. Exhibit 3, Decision and Reasons. The Board considered the totality of the evidence before it, including Betancourt's lengthy infraction history. Exhibit 3, at 4. That infraction history included drug use during Betancourt's first 12 years in prison, as well as Betancourt's attempt to smuggle drugs into the prison facility. Exhibit 3, at 4. Betancourt had swallowed two balloons filled with methamphetamine that he intended to sell inside the prison. Exhibit 3, at 4. This attempt ultimately failed, and nearly resulted in a fatal overdose, when the swallowed balloons broke open inside of him. Exhibit 3, at 4. The Board also considered that Betancourt had been a Sureño gang member since his teens, and that according to Betancourt, he was not fully out of the gang until 2015. Exhibit 3, at 4. The Board also noted that while Betancourt had not had a serious infraction since 2009, he did have 12 negative behavior observations. Exhibit 3, at 4.

The Board noted that while Betancourt did receive substance abuse treatment in 2016, he had not participated in a recommended sober support group. Exhibit 3, at 4-5. Betancourt's excuse for not participating in the recommended support group was that he was too busy with other programming. Exhibit 3, at 5.

The Board also noted Betancourt's relationship with a woman he described as a "drug user and a criminal just like him." Exhibit 3, at 5. Betancourt married this woman in 2011, but they had a divorce in 2016. Exhibit 3, at 5. The Board also considered Betancourt's plan to release to the home of his current fiancé, a woman Betancourt had met while in prison. Exhibit 3, at 5. The Board expressed concern about this release plan because, in the Board's experience, "few of these prison relationships work out once the inmate is released. The dynamics of the relationship changes and the adjustment is sometimes too much for either party to handle." Exhibit 3, at 5.

The Board inquired of Betancourt as to what changed since he came to prison. Betancourt discussed a mentor in prison who assisted him, and expressed remorse. Exhibit 3, at 5. Betancourt also discussed an encounter with an individual that he met in prison, whom Betancourt had incorrectly assumed was the grandson of Homer and Vada Smithson. Exhibit 3, at 5-6; Exhibit 5, Email Communication.

The Board also considered the evaluation of Dr. Wentworth. Exhibit 3, at 6. Dr. Wentworth had administered several tests to assess risk, and while one showed Betancourt to be a low risk for re-offense, another test (VRAG-R) "predicts violence" and showed him to be a moderate risk for re-offense. Exhibit 3, at 6. As for Betancourt's drug use, the report from Dr.

Wentworth noted, “**Substance Abuse:** A history of substance abuse is a high risk factor for criminal behavior. Substance abuse erodes significant pro-social bonds that contribute to an increased criminal risk to recidivate. It may facilitate or instigate criminal behavior.” Exhibit 4, Washington DOC Psychological Evaluation, at 6. The report noted that Betancourt had stopped using drugs and had received substance abuse treatment, but also recognized that a risk still exists that renewed drug use could once again pose a risk of criminal activity. Exhibit 4, at 6.

Dr. Wentworth recognized that relationships in the community relate to potential risk. Exhibit 4, at 7. Dr. Wentworth determined that Betancourt’s lack of healthy associations and relationships previously heightened his risk. Exhibit 4, at 7; Exhibit 4, at 13. Although Dr. Wentworth’s report mentions Betancourt’s current relationship, the report contains no mention of Betancourt’s marriage to the woman he described to the Board as a “drug user and criminal.” Exhibit 4.

Most important, Dr. Wentworth does not suggest that Betancourt is ready for release to the community. Exhibit 4. Rather, Dr. Wentworth opines only that Betancourt, “may be a reasonable candidate for transitioning to a less restrictive setting . . . . It would be beneficial to work his way through lower custody levels and work release so that his adjustment to re-entry issues can be monitored.” Exhibit 4, at 13.

Based on the totality of the information before it, the Board found by a preponderance of the evidence that Betancourt was more likely than not to commit new criminal violations if released. Exhibit 3, at 1. While the Board considered the length of time served thus far, that was just one factor in its decision. The Board cited Betancourt's decision not to participate in sober support groups as was previously recommended, the fact that he used drugs throughout most of his incarceration, even introducing drugs into the prison for the purpose of selling the drugs just nine years prior, and the fact that his gang ties were not completely terminated until 2015. Exhibit 3, at 2. The Board appropriately exercised its discretion and determined that a preponderance of the evidence proved Betancourt is more likely to commit new criminal offenses if released.

### **III. STANDARD OF REVIEW**

To obtain relief, Betancourt must prove that his restraint is unlawful for one or more of the reasons set forth in RAP 16.4(c). *See* RAP 16.4(a); *In re Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994); *In re Dalluge*, 162 Wn.2d 814, 817, 177 P.3d 675 (2008). Betancourt is not required to make a threshold prima facie showing of actual prejudice in order to obtain review. *In re Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). However, to prevail on his claim, Betancourt still must prove prejudice from the alleged error underlying the claim. *Id.* at 215-17.

The Court reviews issues of law *de novo*. *In re Flint*, 174 Wn.2d 539, 545, 277 P.3d 657, 660 (2012). The Court reviews the actions of the Board for an abuse of discretion. *See e.g., In re Dyer*, 164 Wn.2d 274, 286, 189 P.3d 759 (2008); *In re Addleman*, 151 Wn.2d 769, 776, 92 P.3d 221 (2004); *In re Locklear*, 118 Wn.2d 409, 418, 823 P.2d 1078 (1992); *In re Whitesel*, 111 Wn.2d 621, 628, 763 P.2d 199 (1988).

The burden rests with the petitioner to prove the Board abused its discretion. *Addleman*, 151 Wn.2d at 776. The Board abuses its discretion when it acts without consideration of and in disregard of the facts. *In re Pugh*, \_\_\_ Wn. App. \_\_\_, 433 P.3d 872 (2019) (quoting *In re Dyer*, 157 Wn.2d 358, 363, 139 P.3d 320 (2006)).

#### **IV. ISSUES PRESENTED**

Did the Board abuse its discretion when it found by a preponderance of the evidence that Betancourt was likely to commit new criminal offenses if released to the community?

## V. ARGUMENT

### A. The Board Did Not Abuse Its Discretion When It Decided not to Release Betancourt

Betancourt cites *In re Brashear*, \_\_\_ Wn. App. \_\_\_, 430 P.3d 710 (2018) to argue that the Board abused its discretion by not releasing him.<sup>1</sup> Betancourt is mistaken. The Board correctly exercised its discretion in denying release when the Board found by a preponderance of the evidence that Betancourt would likely engage in new criminal behavior if released.

The statute authorizes the Board to deny release if the Board concludes by a preponderance of the evidence that the offender is likely to engage in new criminal behavior if released. RCW 9.94A.730(3). The preponderance of the evidence standard requires proof that the proposition at issue is more probably true than not true. *In re Pugh* \_\_\_ Wn. App. \_\_\_, 433 P.3d 872 (2019); *In re the Dependency of H.W.*, 92 Wn. App. 420, 425, 961 P.2d 963 (1998); *In re Sego*, 82 Wn.2d 736, 739 n.2, 513 P.2d 831, 833 n.2 (1973). *See also 6 Washington Pattern Jury Instructions: Civil* 21.01 (6th ed. 2013) (“When it is said that a party has the burden of proof . . . by

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<sup>1</sup> The Board filed a motion for discretionary review in the Washington Supreme Court on January 2, 2019. *In re Brashear*, Supreme Court Cause No. 96695-8. As argued in the pending motion for discretionary review, *Brashear* was wrongly decided. Contrary to *Brashear*, the statute allows the Board to consider the totality of the circumstances, including input from the prosecutor and victims’ family, as well as the facts of the offender’s crime, in determining whether the offender is likely to commit new crimes.

a preponderance of the evidence, . . . it means . . . more probably true than not true.”).

In reviewing the Board’s decision regarding release, the Court may not act as “a super Indeterminate Sentencing Review Board.” *See Whitesel*, 111 Wn.2d at 628. The Court may overturn the Board’s decision only if the Board abused its discretion in denying release. *Id.*; *see also In re Dyer*, 157 Wn.2d 358, 365, 139 P.3d 320 (2006) (Holding ISRB must base its decision on the evidence presented and it was an abuse of discretion where it disregarded evidence presented, including his most recent psychological evaluation); *In re Locklear*, 118 Wn.2d 409, 411, 823 P.2d 1078 (1992) (Board erred by failing to provide sufficient written reasons to support the length of this new minimum term); *In re Shepard*, 127 Wn.2d 185, 898 P.2d 828 (1995) (Held remand for a new parolability hearing necessary where Board misapplied procedures; whether substantive or procedural, offenders are entitled “to a new hearing, not to a particular substantive outcome.).

First, a decision concerning release itself is “subtle and depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Board members based upon their experience with the difficult and sensitive task of evaluating the advisability of parole release.” *In re Ayers*, 105 Wn.2d 161, 165, 713 P.2d 88(1986). For example, in the case of *In re Sinka*, 92 Wn.2d 555, 564-65, 599 P.2d 1275

(1979), the Court recognized the Board's expertise in assessing readiness for release to the community involved a "retrospective factual determination that a prisoner's past behavior differentiates him or her from other similarly-situated inmates," and that the Board's expertise in making this determination "is not purely factual, but also predictive and discretionary."

Second, the Board has broad discretion in this area since any assessment of potential risk necessarily rests upon a subjective analysis since a particular set of facts cannot result in a particular outcome. The determination of any particular offender's potential risk for re-offense is necessarily a highly subjective evaluation that depends upon "the degree to which an inmate has become rehabilitated, and thus involve 'subjective appraisals' and 'discretionary assessment of a multiplicity of imponderables.'" *Cashaw*, 123 Wn.2d at 146 (citations omitted).

Third, the Legislature has designated the Board as the entity that makes the determination of whether the evidence proves a particular offender poses a risk of new criminal activity. Like a jury in a trial,<sup>2</sup> the Board is the trier of fact; the entity designated to determine the subjective factual issue of whether the particular offender poses a risk of re-offense.

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<sup>2</sup> Unlike a trial, the release hearing under RCW 9.94A.730 is not an adversarial judicative proceeding, with opposing parties presenting their case to the jury.

As such, the Court owes deference to the Board as the trier of fact. *See e.g.*, *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (court owes great deference to trier of fact); *Wright v. West*, 505 U.S. 277, 296-97, 112 S. Ct. 2482, 120 L. Ed. 2d 225 (1992) (same). “[A] reviewing court ‘faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.’” *Wright v. West*, 505 U.S. at 297 (quoting *Jackson v. Virginia*, 443 U.S. at 326); *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 90 P.3d 659 (2004) (factual findings of an agency are entitled to deference); *Hills v. State, Dept. of Ecology*, 131 Wn.2d 373, 932 P.2d 139 (1997) (substantial judicial deference to agency views is appropriate when agency determination is based heavily on factual matters, especially factual matters which are complex, technical, and close to heart of the agency’s expertise); *Brown v. State, Dept. of Social and Health Services*, 145 Wn. App. 177, 185 P.3d 1210 (2008) (when a party asserts action is not supported by substantial evidence, an appellate court does not weigh witness credibility or substitute its judgment for the agency’s findings of fact).

Here, the totality of the evidence before the Board, including Betancourt’s misbehavior and drug use in prison, his relationships with drug

users as recently as 2015, his continued gang affiliation until 2015, his failure to participate in recommended sober support groups, and the lack of stable relationships in the community to help him avoid criminal behavior, support the Board's conclusion that Betancourt is likely to commit new crimes if released. Exhibit 3, at 2.

Dr. Wentworth reported that Betancourt began to make changes in behavior and attitude slowly in 2009. Exhibit 4, at 12. The precipitating event that led to an apparent decision to change his ways was an overdose following an attempt to introduce and sell methamphetamine in prison. Exhibit 3, at 4; Exhibit 4, at 7. But while Betancourt reported that he stopped using drugs in 2009, he then chose to marry a woman two years later who was a drug user and criminal. Exhibit 3, at 5. While there is no report Betancourt ever continued his drug use in prison after he met and married this individual, Dr. Wentworth recognized that historically risk factors for Betancourt include a lack of healthy relationships and his continued associations with people who commit crimes and these were factors in her recommendations. Exhibit 4, at 13. The decision to enter this relationship showed Betancourt continued engaging in high-risk relationships, which pose a risk that Betancourt would relapse to the drug use lifestyle that helped trigger his criminal behavior. While Betancourt's current fiancé by all accounts is a more appropriate relationship, the Board is not required to

discount Betancourt's concerning choice in association in the very recent past given his risk factors. Given the absence of any mention of this relationship in Dr. Wentworth's report, it is apparent that Betancourt neglected to inform Dr. Wentworth of this relationship, which likely could have adversely affected the opinion as to risk.

Betancourt suggests the only weakness that Dr. Wentworth found is the fact that he has never lived or worked in the community. Petition, at 5. Even assuming that characterization is correct, that fact is still important to the Board's decisions regarding risk and release. First, as discussed previously, Dr. Wentworth never recommended Betancourt's outright release. Rather, Dr. Wentworth recommended transition through lower levels of custody so his "adjustment to re-entry issues can be monitored." Exhibit 4, at 13.

Second, in Division Two's recent decision in *In re Pugh*, \_\_\_ Wn. App. \_\_\_, 433 P.3d 872 (2019), the court held the Board lacks authority to grant release and then require transition through lower levels of custody. Instead, the Board "could have determined Pugh was not ready for release and ordered further programming and services to prepare him for release." *In re Pugh*, 433 P.3d at 876 (citing *In re McCarthy*, 134 Wn. App. 752, 758-759, 143 P.3d 599 (2006), *rev'd on other grounds by In re McCarthy*, 161 Wn.2d 234, 164 P.3d 1283 (2007) (under RCW 9.95.420 the sex offender

release statute – the ISRB has authority to determine that an inmate is not ready for release and can order further treatment to help rehabilitate the offender prior to release.). Unlike the offender in *Pugh*, here the Board did not order Betancourt’s release. Thus, he can transition through lower levels of custody as recommended by Dr. Wentworth and participate in sober support groups. Exhibit 3, at 2; Exhibit 4, at 13. It is well within the Board’s discretion to require demonstrated success through lower levels of custody before finding someone releasable, particularly with offenders such as Betancourt who entered prison as juveniles.

While Betancourt relies heavily on the *Brashear* decision, his reliance is misplaced. First, as argued in the pending motion for discretionary review, the court’s ruling in *Brashear* was wrongly decided. The Legislature gave the Board discretion to decide release, and the Washington Supreme Court’s case law recognizes the Board’s expertise in considering evaluations using methodologies that predict future criminal behavior, how to ensure public safety, and how to consider all relevant

information “when making all discretionary decisions regarding the ability for release and conditions of release.” RCW 9.94A.730(3), (4).<sup>3</sup>

The decision in *Brashear* improperly substitutes the Court’s view of the evidence for the Board’s view, and replaces the Board’s authority to exercise the discretion assigned to it by the statute. The Court of Appeals impermissibly narrow approach to determining risk also fails to allow for consideration of all relevant information.

The facts in *In re Pugh* \_\_\_ Wn. App. \_\_\_, 433 P.3d 872 (2019) illustrate this point. After the Board decided that Pugh was not likely to commit future crimes, Pugh engaged in behavior that caused the Board to reevaluate its decision. The Board held a new hearing, during which Pugh admitted it was difficult transferring to lower levels of custody and he “underestimated the amount of stress and worry that he was going to be going through.” *Id.* The Board determined, based upon the new evidence gathered as Pugh progressed through lower levels of custody, that Pugh posed a risk of re-offense. Rejecting the challenge to the Board’s decision,

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<sup>3</sup> The Legislature could have assigned authority to the judicial branch to make the release decision. *See* RCW 10.95.030 (new sentencing proceeding for juveniles convicted of aggravated murder). When it assigned the Board responsibility to determine whether certain juvenile offenders should be released, it presumably intends the Board to use its experience, expertise, practices, and procedures to make the decision. *See generally Morrissey v. Brewer*, 408 U.S. 471, 486, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (“granting and revocation of parole are matters traditionally handled by administrative officers.”).

the *Pugh* Court recognized that the Board correctly exercised its discretion to deny release in light of the evidence.

Here, the Board concluded based upon the totality of the evidence that Betancourt posed a risk of re-offense. Betancourt asks this Court to disregard this decision and act as the super Indeterminate Sentence Review Board, making its own assessments of risk and the likelihood of re-offense, something the Legislature very clearly determined are decisions to be made by the Board. *See* RCW 9.94A.730.

In denying release, the Board considered and very clearly relied on Betancourt's recent behaviors in prison, including criminal behavior, noted his marriage to a drug user, his gang affiliation and failure to participate in sober support groups. The Board did not abuse its discretion in denying Betancourt's release.

## **VI. CONCLUSION**

Respondent respectfully requests that the Court dismiss Betancourt's personal restraint petition with prejudice.

RESPECTFULLY SUBMITTED this 12th day of April, 2019.

ROBERT W. FERGUSON  
Attorney General  
s/ Mandy L. Rose  
\_\_\_\_\_  
MANDY L. ROSE, WSBA #38506  
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**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the RESPONSE OF INDETERMINATE SENTENCE REVIEW BOARD with the Clerk of the Court using the electronic filing system which will serve the following electronic filing participant:

Via email to:

JEFFREY ERWIN ELLIS  
jeffreyerwinellis@gmail.com

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

EXECUTED this 12th day of April, 2019, at Olympia, Washington.

s/ Katrina Toal  
KATRINA TOAL  
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Exhibit 1

AT 717

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

748174

STATE OF WASHINGTON,

Plaintiff,

v.

ADAM BETANCOURT,

Defendant.

SID# WA18563429

AGENCY: GCSO 97-07022

No. 97-1-00295-1

JUDGMENT AND SENTENCE (JS)

Prison

Clerk's action required, restraining order see §4.3

Clerk's action required, firearms rights revoked see §5.6

I. HEARING

- 1.1 A sentencing hearing was held present were:  
 Defendant: ADAM BETANCOURT  
 Defendant's Lawyer: Thomas Earl  
 (Deputy) Prosecuting Attorney: John Knodell

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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 14, 1997 by Plea

COUNT	CRIME with RCW	CRIME DATE
1	MURDER IN THE FIRST DEGREE, RCW 9A.32.030(1)(a) (CRIME CODE: 00124)	May 21, 1997
2	MURDER IN THE FIRST DEGREE, RCW 9A.32.030(1)(a) (CRIME CODE: 00124)	May 21, 1997

as charged in the Amended Information.

- A special verdict/finding for use of **firearm** was returned on Count(s) \_ RCW 9.94A.125, .310
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) \_ RCW 9.94A.125, .310
- A special verdict/finding of **sexual motivation** was returned on Count(s) \_ RCW 9.94A.127
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) \_\_, RCW 69.50.401 and RCW 69.50.435, taking 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, in a public transit vehicle, or in a 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.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person 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
- The offense in Count(s) \_\_\_\_\_ was committed in a county jail or state correctional facility. RCW 9.94A.310(4).
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- A special verdict/finding determining aggravating circumstances was returned on Count(s) , as follows: RCW 10.95.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

CURRENT OFFENSES ENCOMPASSING

- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

OTHER CURRENT OFFENSES USED IN CALCULATING OFFENDER SCORE

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J	TYPE OF CRIME
1 NO PRIOR FELONY CONVICTIONS KNOWN AT THIS TIME.					

- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

PRIOR CONVICTIONS ENCOMPASSING

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE(not including enhancements)	Plus Enhancement for Firearm (F), other deadly weapon (D) or VUCSA (V) in protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	0	XIV	240 - 320 months	N/A	240 - 320 months	Life Imprisonment
2	0	XIV	240 - 320 months	N/A	240 - 320 months	Life Imprisonment

- 2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence
- above  within  below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney  did  did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. 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.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [X] as follows: Prosecutor reserves recommendation. The defendant agrees to testify truthfully in all hearings pertaining to his co-defendants Donald Lambert, Melanie Hinkle and Marcus Wawers.

III. JUDGMENT

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

3.2 [ ]The Court DISMISSES Counts N/A [ ]The defendant is found NOT GUILTY of Counts N/A

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$To be determined at a later date. Restitution to:

JASS CODE	\$ Restitution to:		
RTN/RJN	\$ Restitution to:		
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	<u>\$500.00</u>	Victim assessment	RCW 7.68.035
CRC	<u>\$158.40</u>	Court costs, including	RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
		Criminal filing fee	<u>\$110.00</u> FRC
		Witness costs	\$ WFR

Sheriff service fees \$48.40 SFR/SFS/SFW/WRF  
 Jury demand fee \$ JFR  
 Other \$  
 PUB \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.030  
 WFR \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.030  
 FCM/MTH \$ \_\_\_\_\_ Fine RCW 9A.20.021;  
 \$ \_\_\_\_\_ VUCSA additional fine [ ] deferred due to indigency RCW 69.50.430  
 CDF/LDI/PCD \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_ RCW 9.94A.030  
 FCD/NTF/SAD/SDI  
 CLF \$100.00 Crime lab fee [x] deferred due to indigency RCW 43.43.690  
 EXT \$ Extradition costs RCW 9.94A.120  
 \$ Emergency response costs (Vehicular Assault,  
 Vehicular Homicide only, \$1000 maximum) RCW 38.52.430  
 \$ Other costs for: \_\_\_\_\_  
 \$658.40 TOTAL RCW 9.94A.145

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.142. A restitution hearing:  
 shall be set by the prosecutor  
 is scheduled for 1/6/98

RESTITUTION. Schedule attached, Appendix 4.1.  
 Restitution ordered above shall be paid jointly and severally (if adjudicated)

with:

NAME of other defendant	CAUSE NO.	(VICTIM NAME)	(AMOUNT)
-------------------------	-----------	---------------	----------

RJN  
:

The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

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.145

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

4.2 [ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

[X ] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant ADAM BETANCOURT shall not have contact with \_\_\_\_\_ (name, DOB), including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).  
**Domestic Violence Protection Order or Anti Harassment Order is attached as Appendix 4.3. [ ].**

4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

<u>300</u>	months on Count	<u>1</u>	months on Count
<u>300</u>	months on Count	<u>2</u>	months on Count
	months on Count		months on Count

Actual number of months of total confinement ordered is: 600

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts. see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

1 and 2

The sentence herein 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.400

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.120. 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: \_\_\_\_\_

4.7  COMMUNITY PLACEMENT AND  COMMUNITY CUSTODY is ordered for legal max. or for a period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), which ever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement offenses--serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense--RCW 9.94A.120(10). Use paragraph 4.8 to impose community custody following work ethic camp.]

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 service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The 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 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: \_\_\_\_\_
- 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: Defendant may be outside his home only during daylight hours

Other conditions may be imposed by the court or Department during community custody, or are set forth here: defendant shall pay all court-ordered legal financial obligations; \_\_\_\_\_

---

4.8  **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.7.

4.9 **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: \_\_\_\_\_

---

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.** 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. RCW 9.94A.145

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): AB

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

**5.6 FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

**Cross off if not applicable:**

**5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A/40 RCW, where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

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

5.8 OTHER: \_\_\_\_\_  
\_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: December 23, 1997.

  
\_\_\_\_\_  
EVAN E. SPERLINE, JUDGE

  
\_\_\_\_\_  
John Knodell, WSBA# 11284  
(Deputy) Prosecuting Attorney

\_\_\_\_\_  
Thomas Earl, WSBA# 10902  
Attorney for Defendant

\_\_\_\_\_  
ADAM BETANCOURT,  
Defendant

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:

97-1-00295-1

I, GORDON E. HARRIS, 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: December \_\_\_\_\_, 1997.

Clerk of said County and State,

by: \_\_\_\_\_,

Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA18563429 Date of Birth [REDACTED]  
(If no SID take fingerprint card for State Patrol)

FBI No. 641678EB5 Local ID No. 19587

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

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

Race:  Asian/Pacific Islander     Black/African-American     Caucasian  
 Native American     Other: \_\_\_\_\_

Ethnicity:  Hispanic     Non-Hispanic

Sex:  Male     Female

**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: *Elisa M. Pomroy*  
 Deputy Clerk. Dated: December 23, 1997

DEFENDANT'S SIGNATURE: *Adam B. Stewart*

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously

STATE OF WASHINGTON )  
 ) ss. WARRANT OF COMMITMENT  
 County of Grant )

THE STATE OF WASHINGTON, To the sheriff of Grant County and to the superintendent and officers in charge of the Washington State Correctional Institution at Shelton, Washington.

WHEREAS ADAM BETANCOURT has been duly convicted in the Superior Court of the State of Washington, for said county, of the crime(s) of

COUNT	CRIME with RCW	CRIME DATE
1	MURDER IN THE FIRST DEGREE, RCW 9A.32.030(1)(a) (CRIME CODE: 00124)	May 21, 1997
2	MURDER IN THE FIRST DEGREE, RCW 9A.32.030(1)(a) (CRIME CODE: 00124)	May 21, 1997

and judgment has been pronounced against said defendant, and the Court having decreed that the defendant be punished by classification, confinement and placement in such correctional facility under the supervision of the Department of Corrections, Adult Corrections Division, as said department shall deem appropriate, pursuant to RCW 72.13.120, all of which appears of record.

NOW, THIS IS TO COMMAND YOU, The said sheriff, that you take and deliver the defendant to the proper officers of said institution; and this is to command you, the superintendent and officers in charge of said institution, to receive the said defendant and to confine said defendant at hard labor in said institution as provided by law for the aforesaid term and until such costs are paid, secured, or disposed of as by law provided, and these presents are your authority for the same, HEREIN FAIL NOT.

WITNESS THE HONORABLE EVAN E. SPERLINE, Judge of Grant County Superior Court, and the seal thereof, this 23 day of December, 1997.

GORDON E. HARRIS  
 Clerk of the Superior Court

By: *Elina M. [Signature]*  
 Deputy Clerk

Exhibit 2

S

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 97-1-00295-1



07-572201

vs.

ORDER AMENDING  
JUDGMENT AND SENTENCE

ADAM \* BENTANCOURT,

Defendant.

I. MOTION

768174

1.1 Date: 12/3/12

1.2 Appearances. Plaintiff appeared by Douglas R. Mitchell (deputy) prosecuting attorney. The defendant appeared personally or waived his/her presence and notice of presentment of this order.

1.3 Purpose. To correct an error in Judgment and Sentence dated December 23, 1997, pursuant to Order Remanding for Amendment of Judgment and Sentence from the Court of Appeals, Division III, dated November 20, 2002.

II. ORDER

IT IS ORDERED:

2.1  **COMMUNITY PLACEMENT** is ordered as follows: Count ONE for 24 months; Count two for 24 months; Count \_\_\_\_\_ for \_\_\_\_\_ months; \*

**COMMUNITY CUSTODY** is ordered as follows:

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for a period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), which ever is longer and standard mandatory conditions are ordered.

[See RCW 9.94A for community placement offenses--serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense--RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

\* Community placement may be expanded to 45 months per count, a total of 90 months maximum, for earned early release.

Defendant shall serve a range from \_\_\_\_\_ to \_\_\_\_\_ months in community custody.

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 DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; (6) obey all municipal, county, state, tribal and federal laws; and (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with:

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

The defendant shall comply with the following crime-related prohibitions:

\_\_\_\_\_  
Other conditions may be imposed by the court or DOC during community custody, or are set forth here: defendant shall pay all court-ordered legal financial obligations;

2.2 That all other aspects of the Judgment and Sentence entered December 23, 1997, shall remain in full force and effect.

DATED: 12/3/12 *Evan E. Sperline*  
EVAN E. SPERLINE, Judge

Presented by:

*Douglas R. Mitchell*  
Douglas R. Mitchell, WSBA #22877  
Deputy Prosecuting Attorney

~~REVIEWED~~  
Approved for Entry:  
*[Signature]*  
Attorney for Defendant

Exhibit 3

## Swails, Jody A. (DOC)

---

**From:** Swails, Jody A. (DOC)  
**Sent:** Tuesday, July 24, 2018 4:52 PM  
**To:** Southwick, Dawnel M. (DOC); Lawrence, Ernest 'Ray' (DOC); 'Jeffrey Ellis'; Bedford, Marjorie; Bell, Kari A. (DOC); DOC EOSR; DOC MRP Coordinator; DOC Victim Services; Gibson, Catherine R. (DOC); Lewallen, Sheila R. (DOC); Lopez, Albert (DOC); Riley, Robin L. (DOC); Roberts, Rhonda D. (DOC); Sowers, Louis C. (DOC)  
**Subject:** JUVBRD Decision for #768174 BETANCOURT, Adam  
**Attachments:** BETANCOURT, Adam, #768174, AHCC 6-26-2018 .docx

Attached is the final Decision and Reasons from the LTJUVBRD hearing for the above.

Please make copies as needed. We will no longer be mailing a hard copy to the individual.

The Board requests that the assigned classification counselor or designee discuss the attached Decision and Reasons with the individual **immediately** and provide him with a copy of this decision at that time. The purpose of this is so the appropriate assessments and referrals can be made if necessary, as the decision may be upsetting to the inmate. Also, this information is put into OMNI and will result in an automatic notification of any change to the ERD going to the inmate within 24 hours via the kiosk. We want the inmate to be informed of the hearing decision before seeing it on the kiosk.

Please take special note of any programming the Board has recommended the inmate complete and ensure the appropriate referrals and/or transfers take place so this programming can occur.

If there are any questions or problems please advise. Thank you for your assistance.

Jody Swails, Correctional Records Technician  
Indeterminate Sentence Review Board  
Olympia, WA  
Phone: 360-407-2411  
[jaswails@doc1.wa.gov](mailto:jaswails@doc1.wa.gov)





STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**INDETERMINATE SENTENCE REVIEW BOARD**  
P.O. BOX 40907, OLYMPIA, WA 98504-0907

**DECISION AND REASONS**

---

NAME: BETANCOURT, Adam  
DOC #: 768174  
FACILITY: Airway Heights Corrections Center  
DATE OF HEARING: June 26, 2018  
TYPE OF HEARING: LT JUVBRD  
PANEL MEMBERS: Lori Ramsdell-Gilkey, Jeff Patnode, Kecia Rongen and Elyse Balmert  
FINAL DECISION DATE: July 17, 2018

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This matter came before the above named Board Members of the Indeterminate Sentence Review Board (ISRB or the Board) for a release hearing in accordance with RCW 9.94A.730. In preparation for the hearing, the Board reviewed Mr. Betancourt's ISRB file. Classification Counselor (CC) Ernest Lawrence provided a summary of programming, behavior and other relevant activities regarding Mr. Betancourt. Mr. Betancourt appeared in person and was not represented by an attorney as Mr. Ellis was unable to attend. The Board verified with Mr. Betancourt that it was his desire to proceed with the hearing as scheduled.

**CURRENT BOARD DECISION:**

Based on the burden of proof set out in RCW 9.94A.730 and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that Mr. Betancourt is more likely than not to commit any new criminal law violations if released on conditions. Consequently, the Board finds Mr. Betancourt not releasable. Mr. Betancourt can re-submit a petition for review in June of 2023.

**NEXT ACTION:**

Submit a petition for review to the Board in June of 2023.

**REASONS FOR DECISION:**

This was a deferred decision following a full Board discussion using a structured decision-making framework that takes into consideration: the statistical estimate of risk, criminal history, release history, ability to control behavior, responsivity to programming, demonstrated offender change, release planning, discordant information, and other case specific factors. Based on the requirements of RCW 9.94A.730 the Board finds Mr. Betancourt is more likely than not to commit a new crime if released. Mr. Betancourt is determined to be not releasable based on the following:

- **Has not participated in sober support groups as recommended**
- **Used drugs throughout the majority of his incarceration**
- **Introduced drugs into the facility in 2009 which could have resulted in criminal charges**
- **Has served less than ½ of the sentence imposed**
- **32 serious infractions with the last in 2009**
- **Continues to incur negative behavior observations**

**RECOMMENDATIONS:**

Mr. Betancourt should attend sober support groups, Bridges to Life, remain infraction free, reduce negative behavior observations, and participate in any other programming available to him.

**JURISDICTION:**

RCW 9.94A.730, enacted in 2014, allows offenders who were under the age of 18 when they committed their crime(s) and were sentenced as adults to petition the Board for consideration of early release consideration after serving no less than 20 years of total confinement. Mr. Betancourt's petition resulted in the hearing on this date.

Adam Betancourt is under the jurisdiction of the Board on a December 23, 1997, conviction of Murder in the First Degree, Counts I and II, in Grant County under Cause #97-1-00295-1. His time start is December 24, 1997. His minimum term was set at 300 months on **each count, to be served consecutively** for a total of 600 months, from a Sentencing Reform Act (SRA) range of 240 to 300 months. His maximum term is Life. Mr. Betancourt has served approximately 244 months in prison, plus 217 days of jail time credit.

**OFFENSE DESCRIPTION:**

According to file material, Mr. Betancourt, at his age of 16, participated in the murders of an elderly couple in Grant County, Washington. In the early morning hours of May 21, 1997, Adam Betancourt, Donald Lambert (age 15) and Marcus “David” Wawers (age 15), armed themselves and walked to the home of an elderly couple who were well known in the community. They stopped at an outbuilding and stole a few items, then proceeded to the residence. They all entered through an unlocked sliding door. Mr. Betancourt and Mr. Lambert entered the victims’ bedroom and found them both lying in bed. Mr. Betancourt and Mr. Lambert both began shooting at the victims. All three co-defendants then ran from the home.

Once outside, Mr. Betancourt and Mr. Lambert reloaded their guns, then exchanged them with each other. Now Mr. Betancourt was armed with a rifle and Mr. Lambert had the handgun. They observed someone walking inside the house and both boys fired at this figure, later to be identified as the female victim. The victim made it to the telephone in the kitchen and called her adult son. While she was on the phone with him, Mr. Betancourt shot her through the window. Within a short period all three co-defendants were arrested and charged, along with a minor female who had been aware of the planned offense.

**PRIOR RISK RELATED/ CRIMINAL CONDUCT:**

Mr. Betancourt incurred no juvenile convictions prior to the current offense. According to the pre-sentence report he quit school in the 9<sup>th</sup> grade. He began using alcohol, meth, and marijuana at age 13. He does have an admitted history of gang involvement (Sureno) since his early teens.

**PROGRESS/BEHAVIOR:**

CC Lawrence stated Mr. Betancourt has completed the following courses/programming: Redemption; GED; Horticulture; Vocational Writing; Human Relations; Mathematics for the Trade; Astronomy; Algebra; Biology of Drug use; African American Studies; Math Prep; Business; Understand Family Violence; Literature and Society; Job Seeking Skills; Small Business Management Entrepreneur; Chemical Dependency Intensive Out-patient Treatment; Advanced Skill Building; Thinking for a Change; Bee Keeping; Dog Handler; Life Skills Computing; and Homebuilders Carpentry. He is currently a Teacher's Assistant in the Homebuilders program. While in prison he has previously worked as a custodian, stock clerk, maintenance helper, welder, print press operator and food packer/handler.

Mr. Lawrence noted Mr. Betancourt is not a problem on the living unit. He is helpful to staff and communicates well with staff and other inmates.

Mr. Betancourt has incurred a total of 32 serious infractions during his incarceration. Several were for fighting. His last serious infraction was in 2009. This involved the use of drugs. He had swallowed two small balloons, one with methamphetamine in it and the other with heroin. The balloons broke and he overdosed on the drugs. He admitted in today's hearing that he had planned on selling the drugs. He also stated that since that time he has not used drugs in any manner. He has nine positive behavior observation entries and 12 negative entries.

Mr. Betancourt stated after the overdose in 2009 he started to turn things around. He began distancing himself from the gang and was fully out of the gang by 2015. Prior to the overdose incident he was using drugs throughout much of his prison time. He stated he did not care about himself or anyone else and did what he wanted to. He completed Substance Abuse Treatment in 2016. Though sober support group participation was recommended, he has not participated in any sober support groups such as AA (Alcoholics Anonymous)/NA (Narcotics Anonymous) or

Celebrate Recovery since then. When asked why he had not done so he basically said he was busy with other programming.

Mr. Betancourt stated he met a woman who later became his wife through a fellow inmate. He indicated she was a drug user and a criminal just like him. They officially married in 2011 and he filed for divorce in 2014 or 2015 and it was final in 2016. He stated his wife was not happy with his decision to leave the gang and quit using drugs.

He is currently engaged to another woman he met in 2015 during this incarceration. He described her as a friend of an old cellmate. He stated she is law abiding and is employed as a phlebotomist. He stated he has disclosed all of his crimes and infractions to her. She has three daughters ages 20, 18, and 16. The 16 year old lives at home with her mother. Mr. Betancourt stated his first option would be to release to his fiancée. He stated he has a good relationship with her and her daughters. The Board advised Mr. Betancourt that we have seen few of these prison relationships work out once the inmate is released. The dynamics of the relationship changes and the adjustment is sometimes too much for either party to handle. He said that if he cannot live with his fiancée he does have a friend he can live with. He also stated his father and other family members are supportive of him.

The Board asked Mr. Betancourt what had changed since he came to prison and what has caused the change. He said he had a mentor inside who explained to him that his negative actions in prison were continuing to harm people. He said a Victim Awareness Class he took was instrumental, as well. He stated prior to that he did not consider what the victims or survivors might feel. He now feels deeply remorseful for what he did and the pain he caused the family members.

The Board asked Mr. Betancourt about a claim he had made of meeting with the victims' "grandson" while he was in prison. He described the incident of meeting a young man that he

apparently assumed was the grandson of his victims. He indicated at first they were friendly with each other until the other man discovered what Mr. Betancourt was in prison for.

The Board reviewed the Psychological Evaluation completed by Deborah Wentworth, PhD, this year. Several tests were conducted during an interview with Mr. Betancourt. The Hare Psychopathy Check List Revised (PCL-R) scored in the very low range for psychopathy and indicated his risk for reoffending is low. The VRAG-R predicts violence. Mr. Betancourt was described as a moderate risk for re-offense on this tool.

The Grant County Prosecutor's office submitted a letter stating their office recommended the original sentence of 600 months be adhered to and stated they oppose any reduction in this.

The Board also considered the numerous letters of concern, as well as many of letters of support that were submitted on Mr. Betancourt's behalf.

LRG:jas

July 10, 2018

July 17, 2018

July 24, 2018

cc: Institution  
Adam Betancourt  
File  
Jeffrey Ellis, Attorney



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**INDETERMINATE SENTENCE REVIEW BOARD**  
P.O. BOX 40907, OLYMPIA, WA 98504-0907

TO: Full Board

FROM: LRG (Jody)

RE: Betancourt, Adam DOC #768174

Panel recommends: Not releasable.

Next action: Submit a petition for review in June of 2023.

Agree	Disagree
<b>Lori Ramsdell-Gilkey 7/16/18</b> <b>Jeff Patnode 7/16/18</b> <b>Elyse Balmert 7/16/18</b> <b>Kecia Rongen 7/17/18</b>	

Exhibit 4

**WASHINGTON STATE DEPARTMENT OF CORRECTIONS**  
**PSYCHOLOGICAL EVALUATION**

**FOR THE**  
**INDETERMINATE SENTENCE REVIEW BOARD**

NAME:	Adam Betancourt	EXAMINER:	Deborah Wentworth, PhD		
DOC:	768174	EXAM DATES:	Jan. 24, 2018		
DOB:	██████████	REPORT DATE:	Jan 26, 2018: Amended for clarity 5/9/2018		
AGE:	37 years 1 month	ERD:	5/4/2041	RESIDES:	AHCC

**Reason for Referral**

Mr. Betancourt has been referred for a psychological evaluation by Chief Psychologist Dr. Lou Sowers on behalf of the Indeterminate Sentence Review Board (ISRB) which requires a fully-instrument supported evaluation to be used in Mr. Betancourt's upcoming .100 hearing to meet the requirements of ESSB 5064 before the Board. The purpose of this assessment is to provide a written evaluation of the current behavior and risks that may assist the Board in determining the potential for re-offense, violence risk, capacity to function in a less restrictive environment, and/or whether Mr. Betancourt's rehabilitation is complete and he may be considered appropriate for parole in terms of his risk to himself, DOC and the community.

**Dissemination of Information**

This psychological report provides information to be available to the Indeterminate Sentence Review Board, the End of Sentence Review Committee, risk management specialists, and care providers within DOC who have a need to know in order to effectively manage the inmate within the Department Of Corrections. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's written consent or unless otherwise authorized by law.

The data enclosed is part of a psychological evaluation and assessment performed for specific psychological and legal purposes and is intended to be used by persons specifically trained and qualified in psychological assessment techniques including but not limited to clinical interviews, psychological test instruments, psychological raw test data interpretation, meaningfulness of raw test data, and validity and reliability measures. Instruments employed are copyrighted by the publisher and protected by the ethical

guidelines of licensed psychologists and may not be released without the consent of the publisher, and/or the offender, or in response to a court order, other appropriate legal action, law or statute.

### **Consent**

Mr. Betancourt was advised of the purpose of this evaluation and departmental policy regarding information practices in plain language and in writing. I explained that I am not his treating therapist and that the information gathered from this interview would be gathered and reported to the Board for use in his hearing. His written consent to participate was obtained on DOC Form 13-386 and placed in his health care records. He repeated back to the examiner that he understood that his participation is voluntary and that he may ask questions or refuse to answer a question. He understands the limits of confidentiality. The inmate may request to review a copy of this evaluation. BEFORE receiving his copy, the inmate must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee. A treating psychologist or qualified psychological associate may review this report with the offender without giving him or her a copy of the report to keep in his or her possession. This report shall not be disclosed by the offender in a group treatment setting.

### **Description of Risk Assessment and limitations**

A Risk assessment involves a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred. This review is combined with assessment tools specifically for evaluation of past behavior and its impact on future behavior. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance. Mental Health professionals often over predict aggression and statements concerning an individual's potential for future risk become less valid over time and must be revisited periodically to consider dynamic or changeable factors. Recently, there are research based instruments that use structured professional judgment to review risk reducing or mitigating factors which are included in this report. Despite these limitations, it is possible to consider available current and historical clinical data to identify and form an opinion regarding risk of future violence and make recommendations on ways in which risk may be reduced.

Current literature in risk assessment best practices, shows that it is important to identify who the person was at the time of the incident crime; e.g., their age and developmental maturity. The importance of these factors are identified in the conclusion of one organizations presentation at the 2012 National Conference of State Legislators: "Findings by the Mac-Arthur Foundation's Research Network on Adolescent Development and Juvenile Justice show that adolescent brains do not fully develop until about age 25, and the immature, emotional and impulsive nature characteristic of adolescents makes them more susceptible to committing crimes. Studies also have shown that juveniles who commit crimes or engage in socially deviant behavior are not necessarily destined to be adult criminals." (Trends in Juvenile Justice State Legislation: June 2012 National Conference of State Legislators. P.3).

Research presented by Dr. Dahl from the University of Pittsburgh Departments of Psychiatry and Pediatrics (2008) elaborates on the more specific connections between these developmental processes and the multitude of ways they affect an individual's functioning. He writes that, "The capacities for competent self-control of behavior and emotions encompass a set of slow, gradual processes that continue to develop through the late teenage years and into the twenties. Such dramatic changes create challenges in the

integration of cognitive and emotional processes in ways that place demands on the functional neural circuits that are critical for mediating arousal, orientation, attention, and affect (e.g., limbic regions) as well as for regulating and integrating these drives in the generation of long-term, goal-directed behaviors (e.g., regions of prefrontal cortex).”

Dr. Dahl goes on to summarize what the research findings show as important areas of impact on an adolescent’s functional behavior. “These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions—in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings.”

The importance of these factors is also recognized/validated by our legal system. In a Committee Report and Recommendations made to the Joint Legislative Task Force on Juvenile Sentencing Reform (Dec. 2014) it was presented that “The Miller opinion was the third in a series of three major pronouncements addressing the issue of proportionality of criminal punishment for youthful offenders. In all three cases, the United States Supreme Court, relying on substantial and compelling brain science, as well as ‘emerging standards of decency’ concluded that children who commit crimes, even horrific crimes, must be sentenced in a manner that recognizes their youth, culpability and capacity to change.”

This current assessment reflects efforts to incorporate measures of static, maturational, and dynamic factors that the Board may want to consider in their decision making process. It is important to note that science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual; rather observations are offered based on what we have learned about behavior within large groups of people that we see as having similar characteristics and factors. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance.

### **Sources of Information**

#### **Interviews:**

Mr. Betancourt was interviewed and tested on January 24, 2018 in a private mental health office at Airway Heights Correctional Center for approximately 2 1/2 hours of face to face time. Additional time was spent reviewing the central file, administering tests, scoring instruments and preparing this report. There are no previous evaluations completed for Mr. Betancourt available at this time.

It should be noted that English is considered a second language for Mr. Betancourt. While his mother spoke both English and Spanish as a Texas, his father spoke only Spanish and Spanish was the primary language spoken at home. He began speaking English more frequently when he entered Kindergarten. He has a slight Spanish accent when speaking and feels proficient in English. This may have caused some barriers and lack of confidence in his abilities which will be described in more detail under “education.”

#### **Review of Records**

Review of DOC Central Files

Review of DOC Medical Files  
Review of DOC Electronic Files (OMNI)

**Psychological Tests Used:**

Bender-Gestalt  
Trails A & B  
Draw a Clock  
Rey 15 item Memory Test

**Risk Assessment Instruments Used:**

PCL-R, per embedded assessment in clinical interview (Psychopathy Check List-Revised)  
VRAG-R (Violence Risk Assessment Guide-Revised)  
SAPROF (Structured Assessment of Protective Factors)

**Criminal History/Offense Behavior:**

Quoted in most recent CCR Statement taken from Criminal History Summary dated 06/26/1998:

Betancourt and his two codefendants, in the early morning hours of 05/21/1997, entered the victims' residence and while the victims lay in bed, Betancourt and one of his codefendants began firing .22 caliber rounds at them. After they had expelled all of the .22 caliber rounds from their firearms, they ran outside, exchanged guns, and reloaded. Betancourt was outside the bedroom window when he saw someone get up from the bed and go toward the bedroom door. He fired another shot through the bedroom window at the figure. He then saw the person exit the hallway, heading towards the kitchen, and fired a shot through the window next to the sliding glass door while his codefendant fired more shots towards the victim. They then went to the southwest corner of the house where they could see the female victim trying to use the telephone. Betancourt's codefendant fired nine more shots from his firearm and Betancourt fired a single round. The female victim was later found dead with the telephone handset in her hand. The male victim was discovered semi-conscious by police responders but later died at the hospital.

There are no records of prior arrests.

**Relevant Personal History:**

**Developmental History:** *Positive parental influence is a behavioral control that inhibits anti-social behavior and is a source of pro-social modeling.*

Mr. Betancourt was the fourth child and first son born to married parents in Quincey, WA. Either before or shortly after his birth his parents separated and divorced. He has three older sisters. He has no direct knowledge about his mother's pregnancy with him, but he believes he may have been developmentally delayed. His three older sisters used to laugh at him and tease him that he was "adopted, dumb, didn't walk or talk until he was three years old etc." He grew up believing he was stupid. This may have been childhood picking upon a younger brother and had no real basis in fact, but he is not sure. His sisters have more recently said he was a normal kid.

Throughout his early childhood and through middle school, Mr. Betancourt was being very badly beaten by his mother's next husband. He states that his stepfather was a raging alcoholic and would begin beating him as soon as his mother left for work. She was also physically abused as were his sisters. He states that he was always angry and felt very alone. His mother and sisters had a tight connection with each other. His sisters would sometimes laugh when he was beaten. He states that his mother knew of the abuse, but was in denial about how bad it was for him. He recalled one time where he woke up at a neighbor's house two days after a particularly bad incident and didn't know how he had gotten there. Mr. Betancourt's family life was characterized by poverty and few resources or activities outside of surviving.

Mr. Betancourt found inclusion in team sports and joined every team that he could to avoid going home. He found a few protective coaches and teachers who tried to help him. He enjoyed team sports because he was recognized for his skills, contributed to the team and the team felt like a family. His wrestling coach was a particularly helpful mentor because he believed he was not dumb, stupid or worthless. He had one English teacher who would take a small group of kids to movies or high school basketball games to broaden their horizons beyond the limitations of their poverty and circumstances.

He states that a teacher found him working afterschool with the school janitor and placed a hand on his back, saying it was time to go home. She noticed his painful wince and pulled up his shirt and saw evidence of his mistreatment. She reported it to the principal the police were called, and his parents called. The authorities told his mother she had to make a choice to kick her husband out and protect her child or send her child away. According to Mr. Betancourt, his mother elected to send her son to live with his biological father. (She explained later that they were living in her husband's home and couldn't afford to live elsewhere.)

His disinterested father was more attentive to his new family and, again, Mr. Betancourt felt left out again. He had to return to his mother's house when his father began abusing him as well.

**Education:** *Overall academic achievement is related to stability and a crime free lifestyle.*

He began kindergarten and first grade where he began to learn and use English primarily. He states he was held back in first grade because he could not read or speak English and never caught up with his age-mates. He states that he never fit in or felt like he belonged at home or at school. Mr. Betancourt turned to anger and fighting to solve his problems at school. He was suspended for fighting every year of junior high and high school. He began turning to alcohol, marijuana and gang membership to belong somewhere which eventually resulted in the instant offense.

He left school in the 11<sup>th</sup> grade and earned a GED while incarcerated. He states that he didn't really read and write until he taught himself in prison. This information is supported by his entry testing done in Feb. 1998 when his IQ was assessed as average, but he had third grade reading and math functioning and his language mechanics were assessed at second grade level.

**Work:** *Employment is a primary socialization structure in our culture. Lack of consistent employment reflects a higher risk for or return to criminal behavior. A history of poor job performance and attitude signifies a dis-regard for pro-social reinforcement.*

Mr. Betancourt has no employment history in the community given his age at the time of his arrest.

He has acquired several marketable skills while in prison which include carpentry, home building, custodial, food handling and kitchen skills.

**Military:** None due to his age at the time of his arrest.

**Medical:** There do not appear to be any medical conditions that might impact his placement in camp, work release, or in the community. Please see his medical record for further information.

**Substance Abuse:** *A history of substance abuse is a high risk factor for criminal behavior. Substance abuse erodes significant pro-social bonds that contribute to an increased criminal risk to recidivate. It may facilitate or instigate criminal behavior.*

Mr. Betancourt began using alcohol and marijuana on an almost daily basis to belong to his gang associates and be viewed as a tough guy. He used alcohol on the day of the instant offense, but does not believe he was drunk at the time of the offense. He continued to use these substances while incarcerated until he had a serious medical incident in 2009 when he ingested drug-filled balloons which "exploded in his stomach" and he had to be resuscitated at the hospital. This incident caused him to seriously consider the direction he was headed and he turned his life around and gave up all substance abuse, serious infractions, and gang activity. He has completed several chemical dependency treatments to include Biology of Drug use, SA INT OUT, and CD on 12/2016.

**Finances: Savings/Spending:** *Financial Stability and self-sufficiency are pro-social. Poor money management are considered stressors which may be indicative of anti-social attitudes or precipitators of inappropriate ways to obtain money.*

Mr. Betancourt has almost \$600.00 in mandatory savings, \$50.00 in spending. He sends money home to his finance to combine with some of her savings for a release fund of about \$800.00 He states that his aunt has about \$600.00 saved for him and his father has about \$1,000.00 saved for his release for transportation and housing needs. He manages his needs on a small personal budget and will have adequate funds for a successful transition to the community.

### **Current Functioning/Behavior**

#### **Program Participation:**

It appears that Mr. Betancourt has participated in almost every program available to him. These include: Thinking4Change (teaching assistant for this course), understanding family violence, literature and society, teacher aide, custodian I, II, III; carpentry-vocational, astronomy, horticulture, vocational writing, human relationships, mathematics for trades, business, food service, packagers & handlers, advanced skill building, redemption, SA INT OUT, small business entrepreneur, job seeking skills, African-American studies.

He has certificates for the following:

Victim Awareness education program, employment safety program, food program hazard analysis critical point training, reintegration program, personal beliefs in reintegration, group therapy, excellent apologizing skills, really listening, outstanding achievement in reintegration programming, and others. Please see the most recent custody facility plan for further details.

**Infractions:**

Since his incarceration in December of 1997, he has received a total of 50 infractions. Of these 44 are serious with the last serious infraction occurring on 11/3/2009 (test results not reported until 2010). He has incurred six general infractions since 2010. The last four general infractions were for the new Stand for court policy. Mr. Betancourt has managed to better self-regulate his behavior over the last seven years. His desistance began when he turned 29 years of age which is noted in Dr. Dahl's developmental timetable for achievement of maturity levels.

**Peer Relationships/Community Support:** *A satisfying family or marital relationship indicates pro-social relationships and ties that are negatively correlated with criminal risk. Uncaring, negative, or hostile relationships with relatives who have contact indicate poor social and problem solving skills and a lack of pro-social modeling. A lack of pro-social companions means a diminished opportunity to observe pro-social models and no reinforcement for pro-social behaviors. The presence of criminal acquaintances and/or friends is associated with an opportunity for pro-criminal modeling which is considered a major risk factor.*

Mr. Betancourt functions very well with other offenders and staff as noted by his programming as a teacher's aide. His performance reviews are consistently positive. He has one former cell mate who is functioning very well in the community over the last many years and is on his visit list. This man has now married with a family and works as a journeyman electrician. He is supportive and reinforces Mr. Betancourt's positive, pro-social behavior.

Mr. Betancourt has reconciled with family members, most significantly his father. The family credits Mr. Betancourt's reform as guiding them to more honest and transparent relationships with each other.

Mr. Betancourt is currently engaged to be married to a registered nurse. He met her through his pro-social friend mentioned above. This relationship developed slowly because she has three children and didn't want a problematic relationship. He states that he has fully disclosed his criminal history to her. They will wait to marry until he is released so that their marriage can begin when he can fully participate in the marriage and family. He states that he has become very close to her 16 year old daughter. This family visits almost every weekend.

**Criminogenic Thinking/Orientation/Judgment/Insight/motivation:** *A criminal value orientation is strongly associated with future criminal behavior, antisocial personality disorder, and psychopathic tendencies. Poor attitude and sentiments about the conviction, sentence, and/or supervision tend to indicate antisocial values. A lifestyle, predicated on sensation seeking, and general acceptance of criminal orientation, is associated with poor social and behavioral controls in the future.*

Mr. Betancourt states that he decided to turn his life around and become pro-social following two major events. One occurred in 2009 when he ingested drugs which exploded in his stomach and he required resuscitation to survive. He knew he had to change his direction away from drugs when he realized how much his gang activity and drug activity was controlling his life. He states he has now completely turned away from all drug activity and started a combatting gang violence program at MCC. He states that he is occasionally harassed by gang members but is practiced at saying, "You stay on your side and I'll stay on my side," and is left alone. Further evidence of his seriousness of purpose is that he does not communicate with two of his nieces because their husbands are gang members. He draws a clear boundary between himself and them.

The second event occurred when he was in the IMU at some point and encountered the grandson of his victims. The two men talked about being from the same small town and the other man mentioned a crime that had occurred many years ago when his family members had been killed. Mr. Betancourt realized that the man was talking about his crime and states, "It broke me." He told the other man that it was him and he regretted taking their lives. The other man stated that he couldn't forgive him, but didn't see him as a killer at that time. Mr. Betancourt again stated his sorrow and that he understood not being forgiven. This gave Mr. Betancourt an unforgettable window into the impact of his actions on others for many years.

**Strengths/Weaknesses:**

Mr. Betancourt has matured and learned skills of self-regulation during his time in prison through cognitive-behavioral programming and natural maturation. His behavior and relationships have improved and are positive. He has several marketable skills which should enable him to find work. He is engaged to be married to a professional career woman with whom he has been transparent. They plan to marry when he is released. He has a solid extended family support system which he and they have managed to maintain over long distance and long term. He is pleasant and cooperative and receives positive supervisory reviews. He appears to be a strong and healthy young man. His faith is a source of strength and stability. He regularly participates in team sports and has quiet leisurely activities as well to keep him busy. He has succeeded in paths to good time recovery and is continuing in that process.

His weaknesses include never having lived or worked in the community as an adult. He has also not had adult relationships with family or friends as a free adult.

**Goals and Plans for the Future:**

Mr. Betancourt would like to release to his fiancée's address if possible. He would like to obtain work building homes and doing carpentry. If necessary, he states he would take any job available to become financially independent as soon as possible. He would like to give back to the community by volunteering his skills in the community to projects such as Habitat for Humanity. He would like to reunite with family and build pro-social relationships. He states that he would like to work with at-risk youth so that he might prevent even one person from getting into trouble like he did.

**Leisure and Recreation:** *An excess of idle time or discretionary time presents an added dimension of risk. Recent, regular involvement in a group of pro-social individuals is considered risk reductive. Hobbies and other leisure activities that are service oriented are also ameliorating to risk.*

Mr. Betancourt plays handball and basketball with other offenders, although he has back out of basketball more recently because he believes it was getting to competitive, so he exercises more in the yard. He meditates for an hour each morning, reads his Bible, and keeps a daily journal. He maintains almost daily contact with his extended family. He also enjoys watercolor painting.

**Clinical Interview: Mental Status Examination**

Mr. Betancourt presents on time for his appointment. He is a 37 year old white man standing about 5' 10" tall with a muscular build, weighing about 180 pounds. He is clean and neatly groomed with closely trimmed hair and beard. He wears eyeglasses during this interview. He is fully oriented on all spheres. He is pleasant and cooperative and quickly establishes rapport with good eye contact and attention. His speech is normal in rate, tone, and volume. He expresses emotion congruent with the content of his

language and with a normal range of feeling. His vocabulary and sentence structure reveal an above average level of intelligence. His speech is organized and forward thinking and he does not appear to be attending to internal stimuli. His attention and memory appear to function normally. He denies having suicidal, self-harm, or harm-to-others thoughts.

He reports his sleep and appetite are normal. His energy level is good and he attends yard and gym. There is no sign of a thought disorder or delusional thinking. His insight and judgment appear to be very good as to his crime and responsibilities.

### **Psychological Test Findings:**

*It is important to note that this individual was evaluated in a prison setting under conditions that may be less than ideal for psychological testing. Therefore, any results from the test scores should be used only as one part of case formulation about the examinee. The psychologist chooses tests depending upon the information needed to complete the clinical and risk assessment. The battery of tests selected and the opinions regarding risk status are based on the training, experience, skill, judgment, and expertise of this licensed psychologist and not on any particular test, historical information, or record.*

### **Cognitive Functioning:**

Mr. Betancourt was administered the Bender-Gestalt test as a simple introduction to assessments and to ascertain any inclination to skew results in a negative or more sick fashion. It is also a good screener for perceptual difficulties. His reproductions indicated a willingness to cooperate and give reasonable effort with this evaluation process. He performed within normal limits on the Bender-Gestalt, Trails A & B, and Draw a Clock which indicates that he functions adequately for the purposes of this evaluation. Previous testing records indicate that Mr. Betancourt functions at the average level of cognitive function.

### **Risk Assessment:**

*A central feature of this evaluation is to render an opinion regarding Mr. Betancourt's risk for future dangerousness in terms of criminal recidivism, violence and/or sexual re-offense. Assessing any individual's risk for engaging in future violent behavior is an inherently difficult task, as the scientific literature attests. This is particularly the case where the information is either incomplete or deliberately concealed. Mental health professionals can make use of a large and growing body of empirical literature for identifying risk-elevating factors.*

*Because risk-elevating factors,-particularly the dynamic factors-change over time with or without intervention, risk assessment updates are necessary to insure accuracy and guard against decision-making based on outdated information.*

<b>Year</b>	<b>Test</b>	<b>Results</b>
	<b>Clinical Assessment</b>	
1/2018	PCL-R	Very low, Level 1 of 5. No evidence of psychopathy or antisocial personality disorder.
	<b>Forensic Risk Assessment</b>	
1/2018	VRAG-R	Bin 6 of 9. Moderate risk to reoffend. On average, 34% reoffended within 5 years and 62% reoffended within 12 years.

**The Hare Psychopathy Check List-Revised (PCL-R)** is currently the gold standard of predicting future risk by using levels of psychopathy as the major predictor. The PCL-R "provides a dimensional score that represents the extent to which a given individual is judged to match the 'prototype psychopath.'" The higher the score, the closer the match, and the confidence that the individual has psychopathic tendencies. The lower the score, the less likely the individual has a personality disorder that might reflect an added risk of re-offending. It is also considered dynamic and reflects changes in risk levels prior to and subsequent to treatment. Therefore, it is recommended to re-administer periodically.

Mr. Betancourt scored in the very low (non-psychopath) range for psychopathy. His risk for reoffending is low based upon the absence of psychopathy indicators and antisocial personality disorder is unlikely.

#### **VRAG-R**

The VRAG-R is a well researched 12-item actuarial scale designed to predict violent recidivism. This includes the identification of potential sexual offenses previously assessed separately with a related instrument the Sex Offender Risk Appraisal Guide (SORAG). Scores on the VRAG-R are largely based upon Static information related to major life events (marital status, age at index crime, elementary school maladjustment, criminal history, etc.) at, or prior to, the time of the offender's Index offense in 1997. As such, scores generated by this instrument are unlikely to change significantly when re-administered over time. Also note that the recent revisions of the VRAG to the VRAG-R, the SORAG for sex offenders was combined with the VRAG to obtain one useful instrument. The PCL-R is no longer required to score the VRAG-R which employs only the Facet 4 questions that address antisociality.

Mr. Betancourt's score places him in Bin 6 of nine equally distributed bins which compare his score with a norm group of offenders. Offenders with similar scores on average recidivated at 34% within five years and 60% on average within 12 years. His score places him at the 60th centile. This could be described as a moderate risk to reoffend.

## Protective or Risk Reducing Factors:

Because Risk Factors tend to over-represent the negative factors in risk management, and poorly reflect factors that may mitigate risk, the SAPROF (Structured Assessment of Protective Factors) was developed in Holland in 2004, was published in the United States in 2012, is a structured clinical judgment instrument based upon what research has hypothesized to be relevant factors that may reduce or protect from future risk behaviors. Items on the SAPROF are scored as absent, possible, or present based on information from the past six months and the current plans regarding the near future. The dynamically based SAPROF score is combined with a risk score and the result is thought to present a more accurate picture of the current function of the subject and is considered valid for the next 12 months, providing that the context stays the same. The developers state that the combined score adds to the predictive power of risk-only tools. Mr. Betancourt scored in the moderate-high range of protective factors. These were evenly distributed between internal (historical and dynamic factors), motivational (be a positive member of society), and external factors (voluntary and imposed support systems.)

Other significant mitigating factors that indicate possible reduction in risk include: increasing age, decreased frequency of institutional misbehavior, and criminogenic-related cognitive treatment also apply to Mr. Betancourt.

Taking into consideration Mr. Betancourt's very low score on the PCL-R, his moderate score on the VRAG-R and the moderate-high score on protective factors which are dynamically based, the result is on a more probable than not combined score of low level of risk to reoffend violently. This is projected to be a more balanced representation of his current risk level based upon both static and dynamic factors.

## Summary:

*The risk estimates made in this assessment are based on an anamnestic model (a formulation that takes the offender's clinical and social history, and individual behavioral risk patterns into account), not on tests alone. It is a violation of the Ethical Guidelines Psychologists to base risk decisions solely on test results. The anamnestic model of the offender's behavior is constructed on the basis of the offender's past behavior, current behavior, test results, available collateral information, and presentation on clinical interview.*

Current literature in Risk Assessment Best Practices asks questions such as: Who the person "is" in terms of gender, age, and developmental growth currently as well as at the time of the Instant Crime; What the person "has done" in terms of their criminal activities; What the person "has" in terms of psychiatric conditions that might increase or decrease risk; and What has been "done to" the person in terms of abuse, neglect, or familial actions. These questions are used as a format for understanding a person's level of risk.

The question of who a person "is," can be reviewed from perspective of past & current functioning.

While nothing can excuse the tragic loss of life; awareness of the factors affecting the inmate's behavior might help one evaluate how he could be a part of such activities and whether similar current conditions exist that could influence behaviors if sentencing was modified. As elaborated on above Mr. Betancourt was approximately 16 1/2 years old when he committed these crimes. Information presented earlier in this report suggests that Mr. Betancourt would have been chronologically and emotionally in the middle of completing important developmental processes. He appeared to be lacking key

developmental/environmental supports that often protect an individual from bad choices/behaviors during these vulnerable times. Factors shown to decrease chances of engaging in risky behavior include presence of a loving & supporting adult relationship, connection to positive peer groups/influences, and sense of academic success. His childhood had been abusive and chaotic. His family of origin was abusive and dangerous at times for him, including suffering concussions and periods of unconsciousness at the hands of his stepfather. He found it difficult to form attachments which continued to influence his lack of warmth and trust in others. Also important to this review was the examination of the inmate's records while in prison which are also elaborated on above. Mr. Betancourt reported that over the years when he was first imprisoned, he was angry, alone, and figured he would never get out. His behavior reflected these beliefs and involved frequent verbal defiance of authority, refusing to comply, and drug infractions.

Again, the research finds that individuals in these child and youth situations are going to be more at risk for negative behaviors. Although not excusing any delinquent behaviors, Dahl (2008) reminds us of the strong influence these biological/neurological processes can have: "These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions—in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings."

The question of who the inmate is currently, recognizes that he is now 37 years old and has experienced growth and maturation over time. Evidence in his records validate Mr. Betancourt's report of having made significant changes in many areas including: elimination of violent & destructive behaviors; disconnection from negative & anti-social peer influences; increasing presence of positive peer relations; and in establishment of daily structure that includes employment, education, and coping activities. He has also participated in cognitive-behaviorally based programming and all other programming available to him.

Significant changes in behavior/attitude reportedly began slowly occurring 2009. He has not had any serious infractions, assaults, or drug violations since 2009 over the last nine years. He began making these changes before the possibility of release existed. Whether the changes are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

If based primarily on criminal & infraction history, Mr. Betancourt would be considered to be in the low-moderate range for risk of reoffending after release. However, overall risk assessment may benefit from taking into consideration of dynamic factors such as nine years with no serious infraction and the lack of current biological/neurological development risk factors that were present as an adolescent and young adult. Under these parameters, and accounting for the results of the SAPROF, the risk of reoffending would best be seen as in the low to low-moderate range. Whether the changes/factors are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

The question of what a person "has," can be defined by the diagnosis of any mental health disorders that could increase/decrease one's risk for recidivism or violence. These could include major mental disorders (e.g., Mood, Anxiety, or Psychotic Disorders), Personality disorders (Antisocial Personality Disorders, etc.),

and/or Substance Abuse disorders. This individual has not met the criteria for a personality disorder. Current testing verified that he has no clinical concerns at this time.

A last question, asking what has been "done to" the person, is consistent with the findings of the National Research Council's Panel on the Understanding and Control of Violent Behavior. They concluded that whether or not the person was raised in a pathological family environment and whether the individual was physically abused can correlate as risk factors for future violence. Mr. Betancourt's history informs that as a young child he was repeatedly severely beaten. Intervention by law enforcement and educators were not successful. He continued experiencing abuse and neglect from his stepfather and his mother choosing not to protect him, but sent him to his neglectful father. He felt very angry, disconnected and unaccepted by family & appropriate peers. He expressed disregard for social limits and rules; associating primarily with peers having negative influence on him; and participating in illegal activities. See Dahlbeck, 2014 for a more thorough treatment of this issue.

Overall, the results of this evaluation suggest that Mr. Betancourt is at "low" risk to reoffend violently in the community as measured by the instruments and clinical evaluation done on this date. Measures utilizing primarily static factors place him at a low to low-moderate risk. Records documenting improved functioning and maturation over time (combined with results from the SAPROF) suggest that, for this particular individual, the overall risk level could be viewed as more in the "low" range. Taking into account maturational and dynamic risk factors is consistent with the legal and clinical findings elaborated on earlier in this report. Whether these risk estimations & factors are sufficient to justify changes in sentencing (or a release to less restrictive levels), however, is not a scientific/clinical question and is respectfully deferred to the Board.

### **Recommendations:**

*The current assessment reflects efforts to incorporate measures of static and dynamic factors that the Board may want to consider in their decision making process. It is important to note that science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual; rather observations are offered based on what we have learned about behavior within large groups of people that we see as having similar characteristics and factors. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance.*

Mr. Betancourt became involved with criminal and inappropriate behavioral at a very early age. Research is clear that his neurological & biological mechanisms would have been underdeveloped; and would have been inadequate at a time that he would be more susceptible to negative outside influences and re-enforcers. Risk for problems was heightened by the lack of healthy associations/relationships; the lack of positive peer influences from school or siblings; and by the use of drugs/alcohol and persons committing criminal activities. Based upon this history, the following recommendations are proffered.

Mr. Betancourt may be a reasonable candidate for transitioning to a less restrictive setting at this time. It would be beneficial to work his way through lower custody levels and work release so that his adjustment to re-entry issues can be monitored. Decisions regarding Mr. Betancourt's placement in a Camp setting should be based on medical considerations. Mr. Betancourt's rule breaking is considerably less than earlier in his incarceration and there is no behavioral indicator of escape risk.

Mr. Betancourt is less likely to engage in criminal activity in the presence of strong family and positive peer connections. Efforts should be made to insure adequate access and support of family members and positive peer activities; and to assist with relationship issues that often occur during major transitions.

Mr. Betancourt is less likely to engage in criminal activity in the presence of participation in regular employment which provides financial self-sufficiency and limits unstructured time is recommended. The structure of meaningful work will be important to his successful transition to the community. He has several marketable skills which will enable him to succeed. Useful employment that provides financial resources, structures time as well as pro-social contacts and opportunities is highly recommended.

Mr. Betancourt is less likely to engage in criminal activity in the presence of mandatory ongoing external supervision and monitoring to be required by the legal system as well as various support systems. If released to the community, this structure could include regularly scheduled appointments with his community custody officer.

Mr. Betancourt is less likely to engage in criminal activity in the presence of continued requirements to abstain from alcohol or other drugs. He has completed chemical dependency treatment. He is used to having external constraints beginning as an adolescent in prison, and the presence of continued constraints might provide ongoing awareness appropriate to reinforce the internal commitment to abstinence already verbalized by the inmate. Participation in AA or NA meetings may help him make the transition to the community and foster positive and proactive relationships.

In the community, Mr. Betancourt should be closely monitored for abuse of substances, including random urinalysis screening for all common substances of abuse, especially alcohol and drugs since this is indicated in his history. Strategically, some urinalyses and breathalyzer screening should be done the day following a previously tested monitoring, just to make sure that celebration of a clean test has not taken place. Any indication of his abusing alcohol should precipitate his being evaluated for need for treatment services and for following the treatment recommendations from that evaluation.

With the submission of this report, my evaluation of Mr. Betancourt is complete. Please do not hesitate to contact me if there are any questions.

*Deborah Wentworth, PhD*

Deborah Wentworth, PhD  
Psychologist 4, Evaluator for the  
Indeterminate Sentence Review Board

Exhibit 5

## Swails, Jody A. (DOC)

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**From:** Rongen, Kecia L. (DOC)  
**Sent:** Tuesday, May 08, 2018 8:59 AM  
**To:** Swails, Jody A. (DOC)  
**Cc:** Patnode, Jeffrey A. (DOC); Balmert, Elyse M. (DOC); Ramsdell-Gilkey, Lori M. (DOC); Riley, Robin L. (DOC); Lewallen, Sheila R. (DOC)  
**Subject:** FW: Betancourt, Adam #768174

Hi Jody-please postpone Mr. Betancourt's hearing. Please put him on the next available docket.

This email should be placed in his file. Robin, we will need to send the updated psych out when it is received in compliance with 9.95.422. Thank you.

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**From:** Rongen, Kecia L. (DOC)  
**Sent:** Tuesday, May 08, 2018 8:55 AM  
**To:** Sowers, Louis C. (DOC) <lcsowers@DOC1.WA.GOV>  
**Subject:** Betancourt, Adam #768174

Good morning! The Board received Mr. Betancourt's psychological evaluation dated January 26, 2018. There is a few discrepancies in the report that the Board feels is necessary to get clarified and to **postpone Mr. Betancourt's hearing** until the updated psychological is received. Here are the issues:

- Pg. 5 of 14 under Education it lists Mr. Bentacourt's IQ as average. On page 9 of 14 under Cognitive Functioning it indicates that "Previous testing records indicate that Mr. Bentacourt functions at the higher end of average level of cognitive function." Which one is it?
- Pg. 7 of 14 under the last paragraph it describes an incident that Mr. Bentacourt had in IMU and allegedly met the grandson of his victims. We have received information that did not occur with any family member of the victims as none of them have been in prison. I realize this particular issue may be a question for the Board to Mr. Bentacourt but just an FYI.
- Pg. 10 of 14 under the VRAG-R heading it states, at the end of the second sentence that the index offense occurred in 1975 which of course is not accurate since this is a Juvenile Board.
- Pg. 12 of 14 under the fourth paragraph it indicates that Mr. Betancourt is in the "low-moderate range" based on criminal and infraction history as well as after considering the SAPROF. However then on pg. 13 of 14 under the first full paragraph it states that Mr. Betancourt is "low" risk. This seems contradictory.
- On page 13 of 14, the third paragraph appears to be from a different offender's psychological evaluation as the name Ms. Farrell is in it.

Thank you for your attention to this matter. Kecia

Chair, Kecia Rongen, M.A.  
(360) 407-2400  
Kecia.rongen@doc.wa.gov



Exhibit 6

NO. 36555-7-III

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

In re the Personal Restraint Petition of:

ADAM BETANCOURT,

Petitioner.

DECLARATION OF  
ROBIN RILEY

I, ROBIN RILEY, make the following declaration:

1. I am an Executive Assistant for the Department of Corrections (DOC) at the Indeterminate Sentence Review Board (ISRB) office in Lacey, Washington. I have knowledge of the facts stated herein and am competent to testify.

2. The ISRB maintains a Board file for each offender under the ISRB's jurisdiction. This file contains information on an offender's sentence structure and documents relevant to his history with the ISRB. As an Executive Assistant, I am a custodian of records kept by the ISRB in the ordinary course of business.

3. Upon request of the Attorney General's Office, I provided correct copies of several documents from the Board file of offender Adam Betancourt, DOC No. 768174, to be used as exhibits. These documents include the following:

Exhibit 1: Judgment and Sentence, *State v. Betancourt*, Grant County Cause No. 97-1-00295-1

Exhibit 2: Order Amending Judgment and Sentence, *State v. Betancourt*, Grant County Cause No. 97-1-00295-1

Exhibit 3: Decision and Reasons, dated July 17, 2018

Exhibit 4: Washington DOC Psychological Evaluation, dated January 26, 2018

Exhibit 5: Email Communication, dated May 8, 2018

I declare under the penalty of perjury of the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 11th day of April 2019, at Lacey, Washington.

  
ROBIN RILEY

**CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE**

**April 12, 2019 - 10:59 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36555-7  
**Appellate Court Case Title:** Personal Restraint Petition of Adam Betancourt  
**Superior Court Case Number:** 97-1-00295-1

**The following documents have been uploaded:**

- 365557\_Personal\_Restraint\_Petition\_20190412105808D3390182\_1171.pdf  
This File Contains:  
Personal Restraint Petition - Response to PRP/PSP  
*The Original File Name was Final\_Response.pdf*

**A copy of the uploaded files will be sent to:**

- ellis\_jeff@hotmail.com
- jeffreyerwinellis@gmail.com
- timothy@atg.wa.gov

**Comments:**

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Sender Name: Katrina Toal - Email: katrinat@atg.wa.gov

**Filing on Behalf of:** Mandy Lynn Rose - Email: mandyr@atg.wa.gov (Alternate Email: )

Address:  
Attorney General's Office, Corrections Division  
PO Box 40116  
Olympia, WA, 98504-0116  
Phone: (360) 586-1445

**Note: The Filing Id is 20190412105808D3390182**