

NO. 71418-0-I

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

STATE OF WASHINGTON,

Respondent,

V.

JOHN E. BETTYS,

Appellant,

**ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY**

The Honorable David R. Needy, Judge

2014 OCT 20 11:11:02
STATE OF WASHINGTON
DAVID R. NEEDY

REPLY BRIEF OF APPELLANT

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A. ARGUMENTS IN REPLY TO STATE'S RESPONSE

1.(a) DOES THE TRIAL COURT HAVE DISCRETIONARY POWER UNDER RCW 9.94A.535 TO ENTER THE SENTENCE THE TRIAL COURT IMPOSED?

The State's response does ask this court to over-turn the long history of well settled case-law decisions, both the Appellant Court and Supreme Court, without even informing this court that State's position in the argument is contrary to the established case-law.

"The legislative intent of the SRA exceptional sentence provision was to authorize the court to tailor the sentence, as to both the length and type of punishment imposed, to the facts of the case, recognizing that not all individual cases fit the predetermined structuring of the SRA." State V. Davis, 146 Wa. App. 714, 192 P.2d 29, review denied 166 Wn.2d 1033, 217 P.3d 782 (2009).

Therefore, as previously recognized by the legislature, not all of the cases will fit into the predetermined structure or guidelines of the Sentence Reform Act(SRA), and RCW 9.94A.535 was created solely to address those special circumstances. The trial court "has all but unbridled discretion in fashioning the **structure and length** of the exceptional sentence!" State V. France, 178 Wa. App. 463, 308 P.3d 812 (2013). The State's response argument asked for a finding that this discretionary power to sentence under RCW 9.94A.535 now be removed from the trial court, without the State's attorney providing any type of supporting arguments for ignoring the long standing case-law under the removal of discretionary power that legislature granted through the wording of RCW 9.94A.535 statute. The trial court's choice to of exercised this discretionary power is not improper, and must stand.

Contrary to the State's response, the trial court was advised fully on the legislative grant of discretionary power under RCW 9.94A.535, which allows the trial court to tailor the sentence to the circumstances of the case, by world re-noun attorneys "Charles Swift" & "Cathrine McDonald" of seattle. APPENDIX-B.

The trial court recognized the Appellant is being sentenced on remand, after reversal of the jury verdict, and would be returned to the Department of Corrections(DOC) with merely fourteen months left of the sixty month statutory maximum sentence allowed under a class-C felony. The trial court determined that under the normal application of the SRA's guidelines, including RCW 9.94A.507, this Appellant is likely to be denied the opportunity to obtain sex offender's treatment in DOC's custody, unless the sentence imposed is tailored to meet those special circumstances. APPENDIX-A.

Washington Courts previously examined the SRA's chapter 9.94A RCW, both in statutory language and legislative history to determine whether the trial court had authority to sentence a defendant to the treatment program as an exceptional community supervision condition, and determined that the legislature intended the SRA's exceptional sentence provision RCW 9.94A.535 is to authorize courts to tailor a sentence, as to both the length and type of punishment. APPENDIX-B.

Thereby, the State's response improperly represents that the SRA guidelines only allowed the trial court to sentence under RCW 9.94A-507, as clearly the SRA permitted the trial court to sentence under RCW 9.94A.535, where trial court finds circumstances warrant such a departure from normal imposed guidelines, as it found in this case. see 11/26/13 RP 27 Line 7 (declared exceptional sentence). APPEDIX-F.

This court should decline the State's invitation to over-rule the long standing case-law decisions and legislative intent history granting trial court's discretionary powers, and find the court's choice to sentence under RCW 9.94A.535 is proper.

- 1.(b) DOES THE TRIAL COURT'S DISCRETIONARY POWER TO ENTER AN EXCEPTIONAL 'TAILORED' SENTENCE ALSO EXTEND TO MODIFYING THE FINAL JUDGMENT UPON A MOTION MADE BY A NON-PARTY TO THE CASE?

The court had the discretionary authority to impose the exceptional 'tailored' sentence under RCW 9.94A.535, therefore it leaves the reviewing court to determine if the trial court had the authority to modify the final judgment on December 17, 2013. The original issue presented involved the trial court modifying the final judgment after returning Appellant to the Department of Corrections, and State's response only argued that the sentence could not legally be entered under RCW 9.94A.535 provisions, thereby State's attorney must agree the trial court lacked authority to modify the sentence, if it was correctly entered under RCW 9.94A.535 statutory authority.

This State's response briefing claimed that the Department of Correction's motion was properly filed before the trial court, in compliance with RCW 9.94A.589(7), however, the propriety of this motion has already been addressed in prior case-law decisions, and it was found: "Because the Department of Corrections is not a party to the original criminal action, it could not bring the motion in a Superior Court!" In Re Sentence of Chatman, 59 Wa. App. 285, 796 P.2d 755 (1990); In Re Post-Sentence Review of Childers, 135 Wa. App. 37, 143 P.3d 831 (2006). Therefore, the motion was improperly brought to the trial court by the non-party to the criminal action.

"Moreover, it is not required in any event to bring a motion to comply with RCW 9.94A.589(7)" In Re Post-Sentence Review of Childers, 135 Wa. App. 37, 143 P.3d 831 (2006).

Therefore, the trial court allowing the non-party to bring the motion to modify the final judgment is an abuse of the discretion, and the actual modification of the RCW 9.94A.535 sentence after it is final on the record, exceeded the trial court's authority under the SRA to sentence. The State's response argument failed to show a sufficient basis that the trial court lack authority to sentence in compliance with RCW 9.94A.535 standards, and long settled case-law decisions establish that the trial court must uphold the importance of finality in the final judgment, which prohibits this conduct of the trial court re-sentencing or extending confinement after this sentence was entered November 26, 2013 originally, as discussed in Appellant's opening brief, under issue number one.

The trial court was required to inform the Department of Correction that the court could not hear any motion of a non-party, then it should have advised the non-party to raise the issue to the Court of Appeals, under statutory provision RCW 9.94A.589(7), which is DOC's authority to appeal any 'legal error' it believed existed in the final judgment. This proper process of the law was not followed in this case, and Appellant is prejudiced by the rights violated. The trial court should never have taken a position to modify the final judgment's terms, based solely upon the argument the DOC could not start treatment by an established release date of January 1, 2014, under the exceptionally entered sentence. "Modification of a judgment is not appropriate under the SRA merely because it appears, wholly in retrospect, that another

decision might have been more preferable!" State V. Shove, 113 Wn.2d at 88, 776 P.2d 132 (1989).

The State's response briefing asks this court extend the right to file motions in the criminal proceedings to the Department of Corrections, as the State appears to believe DOC is a party to the criminal proceedings through application of the sentence. Appellant does not believe that the reviewing court should extend such authority to the Department of Corrections, as such would required that finality never attach in a criminal proceeding, and legislature has provided the Department of Corrections sufficient means under there RCW 9.94A.589(7) to address any legal errors in the sentence, and thereby the reviewing court should uphold the case-law cited herein showing the Department of Corrections is not a party to the criminal Superior Court proceedings, for any purpose. APPEDIX-F.

"Department of Corrections is not authorized to either correct or ignore a final judgment!" Dress V. Department of Corrections, 168 Wa. App. 319, 279 P.3d 375 (2013). The trial court should have ordered the judgment enforced and followed, until the non-party sought proper review before the Court of Appeals, even if such would release this Appellant. This December 17, 2013 order extending the term Appellant is held in-custody and confinement for the State's benifit, to then allow Appellant to see the Indeterminate Sentence Review Board(ISRB) is a violation of Appellant's "double jeopardy" rights. "Double Jeopardy still continues to prohibit increasing any correctly entered sentence!" State V. Hardesty, 129 Wn.2d 315, 915 P.2d 1080 (1996); United States V. DeFranscesco, 449 US 117, 101 S.Ct. 426 (1980).

The State's response failed to establish the trial court's acts on December 17, 2013 in modifying the final judgment did not violate the 'double jeopardy' right of Appellant, where it is clear the court order extended confinement from January 1, 2014 release date that was established in the final judgment November 26, 2013, as a exceptional 'tailored' sentence under RCW 9.94A.535 discretionary power of this trial court. The Appellant was deprived of the release, therefore the Appellant was prejudiced by the trial court's increasing the sentence, upon motion of the non-party, and is entitled to immediate release of the illegal confinement caused by the court's choice to violate this Appellant's constitutional rights in the sentencing process.

"Upon the Department of Corrections post-sentence review petition, we review the sentence courts decisions solely for legal error" see Bercier V. Department of Corrections, 178 Wa. App. 147 , 313 P.3d 491 (2013); RAP 16.18(a); RCW 9.94A.589(7). The Appellant was prejudiced by the trial court hearing the non-party motion of DOC, and increasing Appellants terms of confinement, where such increase was based upon a non-legal error in the sentnece, as this court would not have made the increase merely for DOC's needing more time. APPEDIX-F Pages 33-56.

The State's position the trial court lacked authority to enter an exceptional sentence under RCW 9.94A.535 is without merit, as the long settled case-law ensures the trial court has authority in ever case it sentences to enter an exceptional tailored sentence, structured to the needs of the case before the trial court for sentencing, and that very discretionary power was exercised in this instance. Therefore Appellant must be provided proper relief from the illegal increase in sentence.

2.(a) DOES LEGISLATIVE HISTORY AND INTENT REQUIRE
EXCEPTIONAL 'TAILORED' SENTENCES TREATED AS
"DETERMINATE" SENTENCES ONLY?

The State's response failed to address the question of whether RCW 9.94A.535 contains a clearly worded command that required those exceptional 'tailored' sentences solely treated as a **determinate** or fixed sentence term. The Appellant's 'opening brief' addressed this question fully, therefore, the State's lack of response should now be viewed and treated as concession to the issue. APPENDIX-G

The wording of RCW 9.94A.535 is clear in stating that exceptional sentences shall be **determinate** only. The wording of the legislature is clear, and this would include any exceptional 'minimum term' sentence imposed under RCW 9.94A.507(3), where legislature specifically stated such exceptional minimum term was under RCW 9.94A.535 as basis for the court's grant of authority under RCW 9.94A.507 standards. Therefore, a clear legislative intent that all exceptional sentences issued will be under the terms of RCW 9.94A.535 is settled in the statutory history, and every exceptional tailored sentence imposed under the Sentencing Reform Act(SRA of 1981) chapter 9.94A RCW's guidelines, is clearly a **determinate**, fixed sentence, avoiding any possible confusion that the State's arguments might have invited into this review. APPEDIX-H

"The court should assume the legislature means exactly what it says, plain words do not require constuction!" Twitchell V. Kerrigan, 175 Wn. App. 454, 306 P.3d 1025 (2013)(citing City of Kent V. Jenkins, 99 Wn. App. 287, 992 P.2d 1045 (2000)). "Where the legislature omits language from a statute intentionally or inadvertently, this court will not read in a statute the language that it believes was omitted!" State V. Moses, 145 Wn.2d 370, 37 P.3d 1215 (2002)

The legislature specifically omitted wording from RCW 9.94A.535 in the 2005 Senate Bill 5477, and since the State's response is now inviting this court to put those words back into the statute, then this court must decline the State's request to intentionally ignore legislative intent. The court's duty rest in upholding the currently worded statute, where it requires all exceptional tailored sentences treated as **detrminate** terms. This court should therefore provide the Appellant relief from the illegal and/or unconstitutional restraint, where the Appellant is being held improperly under RCW 9.94A.507 in the ISRB's custody and control, past his **determinate** release date of June 26, 2013 and/or January 1, 2014 trial court established.

The legislature recognized the United States Supreme Court's ruling in Blakley V. Washington, 542 US 296, 124 S.Ct. 2531 (2004), while removing the wording from RCW 9.94A.535 in the 2005 Senate's Bill 5477, where the case law actually required exceptional sentences subjected only to the authority of the jury or trial court.

The ISRB is neither the jury or trial court, therefore, the State's position that the ISRB can be granted authority over this exceptional tailored sentence is without merit, unless this court is going to over turn the clearly established and long settled case law history prohibiting such ISRB authority over exceptional tailored sentences, and legislative's stated intent in RCW 9.94A.535 terms.

The relief sought should be granted to Appellant, where this governmental mismanagement of the sentence in this case has been clearly shown, and is not allowed by the history of the SRA.

The sentence under RCW 9.94A.535 must be treated as **determinate** only, therefore the ISRB cannot have control of the sentnece.

2.(b) WHY ARE THE TERMS OF RCW 9.94A.535 IN CONFLICT
WITH THE TERMS OF RCW 9.94A.712 GUIDELINES THE
LEGISLATURE INTENDED?

The State's response claimed in a 'bare assertion' that a trial court's RCW 9.94A.535 exceptional tailored sentence "optional term", which allowed conditional application of RCW 9.94A.712, can somehow operate without current compliance with the special criteria a trial court imposed under the tailored provisions of the exceptional type RCW 9.94A.535 sentence. The State's response argument here has little to no merit again, as the trial court had the authority to impose the tailored exceptional sentence, tailored to the needs of this specific case facts and circumstances, and exercised such authority. Therefore, the State and DOC cannot ignore the final judgment special criteria the trial court chose to impose. APPENDIX-A; APPEDIX-F Page 27;

The RCW 9.94A.535 sentence being **determinate** or fixed term gives the Appellant on-third "goodtime credit"; and sets a fixed release date based upon that "goodtime credit". However, the **indeterminate** sentence or non-fixed term under RCW 9.94A.712 sentence leaves "goodtime" to a discretionary decision of the Indeterminate Sentence Review Board, and the early release date is not fixed, being based upon discretionary decision of the ISRB and DOC staffing. APPENDIX-G

The Appellant's sentence reads: "**so long as the DOC is providing sex offender's treatment in custody, then this is** a RCW 9.94A.712 sentence, and the minimum term is 60 months and the maximum term is 60 months". The State's response reads this provisional condition to broadly, claiming this applies authomatically, without criteria being complied with by the State's agencies. The sentence terms are clearly worded to give the ISRB authority over Appellant only if the

Department of Corrections is providing current sex offender treatment to the Appellant while in custody, which does not mean provide this treatment for a few weeks, then stop the treatment. The wording of the judgment removes ISRB authority anytime Appellant is in custody and not being provided sex offender's treatment. APPEDIX-A.

Therefore, the ISRB did not have authority over Appellant during the December 17, 2013 sentence modifications, nor during the ISRB's January 15, 2014 RCW 9.94A.420 hearing, where the ISRB extended this Appellant's sentence to the "statutory maximum" term of 60 months in total confinement, ignoring the fact the sentence was entered under trial court's discretionary authority of RCW 9.94A.535 **determinate** sentence statutory requirements. The State's response asked that this court farther Appellant's constitutional rights violations, under the federal fourteenth amendment protections to proper application of the statutory law, where state's response brief seeks approval from this court for the ISRB's illegal and unconstitutional conduct, without a clear current compliance with the terms and wording of RWC 9.94A.535, or the judgment provisions the trial court tailored into the sentence of Appellant under the final judgment entered on record.

The Legislature recognized the distinct separation of powers in RCW 9.94A.535 and RCW 9.94A.507(3), where they approved trial court's use of exceptional minimum terms under RCW 9.94A,507(3), but stated those minimum terms would be under RCW 9.94A.535 specifically, and it is clear that is the legislative intent the two statutes cannot now be harmonized into one application, where they require two differnt and non-compatible standards of sentnece, **determinate and indeterminate.**

The trial court recognized this very issue at the time of this sentencing, and "tailored" the RCW 9.94A.535 exceptional sentence to allow application of RCW 9.94A.712 in only one limited circumstance, where the trial court set specific criteria that was required for the ISRB's authority to vest under RCW 9.94A.712, ensuring that if that is being currently provided, then the sentence is solely under that RCW 9.94A.712 provision, otherwise the sentence remains under RCW 9.94A.535, which required Appellant's immediate release to community custody as a **determinate** sentence provides a fixed release date based on good time.

The State's mere bare assertions are not sufficient to command a judicial review, without some proof the Appellant is currently being provided the required treatment while held in custody, and State's response is silent on this matter, therefore relief should be provided.

3.(a) DOES TRIAL COURT'S FINDINGS OF FACTUAL BASIS UNDER ALFORD PLEA PROHIBIT APPELLANT CHALLENGING COURT'S FACTUAL BASIS ON APPEAL?

The State's response contends the Appellant acknowledged fact in the plea agreement that are adequate to support guilt of a greater or more serious crime than convicted, therefore the Appellant is precluded from seeking review of the trial court's findings of factual basis for the alford plea somehow. The State's response arguments appear to be without merits, and State response presented no case law on point to support such a claim or position, however the plea stated:

"Instead of making a statement, I agree the court may review the police reports and/or statement of probable cause supplied by the prosecutor to establish a factual basis for the plea and the factual basis of the greater offense" APPEDIX-E.

The State's reliance upon some 'boiler plate wording included in the case law paragraph is misplaced, as such statements would be contrary to the basis of the alford's plea, as Appellant maintained complete innocence while accepting the bargained terms. The State's reliance upon boiler plate wording is not accepted by the court's record of the acceptance of this plea, where trial court stated:

"To me, that means that you're not admitting having committed this particular offense but you believe that if you went to trial you could be found guilty of this or even a more serious charge and a more serious penalty and based on the circumstances you want to take advantage of the prosecutor's offer!"
9/26/13 RP 5 APPENDIX-C.

"We hold a defendant can plead guilty to amended charges for which there is no factual basis, but only if the record established the defendant did so knowingly and voluntarily, and there at least exists a factual basis for the original charge, thereby establishing the factual basis for the plea as a whole!" State V. Zhao, 157 Wn.2d 188, 204, 137 P.3d 835, 843 (2006). "A defendant considering the alford plea undertakes a risk-benefit analysis. After considering the quantity and quality of the evidence against him, and acknowledging the likelihood of the conviction if he goes to trial, he agrees to plead guilty despite his protestations of innocence to take advantage of the plea bargain!" In Re PRP of Clements, 125 Wn. App. 643, 106 P.3d 244 (2005); State V. D.T.M., 78 Wn. App. 216, 896 P.2d 108 (1995).

"In an alford plea, the defendant does not admit guilt, but does concede a jury would likely convict him based on the strength of the State's evidence. North Carolina V. Alford, 400 US 25, 37, 91 S.Ct. 160 (1970).

The State response alleged the Appellant is prohibited from a challenge to the trial court's findings of factual basis on appeal, in the alford plea case. This claim is without merit, because this trial court must establish the entire factual record in the alford plea, and the court's factual findings can be challenged.

"With an alford plea, however, the trial court must establish an entirely independent factual basis for the plea which substitutes for an admission of guilt!" State V. D.T.M., 78 Wn. App. at 220, 896 P.2d 108 (1995); State V. Scott, 150 Wn. App. 281, 207 P.3d 459 (2009).

"Because the defendant professes innocence the trial court must be particularly careful to establish the factual basis for the plea!" State V. Spencer, 152 Wn. App. 698, 218 P.3d 924 (2009).

The Appellant is seeking the review of the factual basis finding on the element of "sexual contact," required in both the original and amended charge. The two charges both require the touch be for solely sexual gratification, which is an ultimate fact of the elements of "sexual contact." The Appellant contends the trial court could not establish the required factual basis of the element in light of the records considered by the trial court, and that State Washington's Administrative Codes(WAC) 388-15-009(3) statute prohibits the finding under the circumstances knowingly presented in this case.

3.(b) DOES THE RECORD ESTABLISH FACTUAL BASIS FOR THE SEXUAL CONTACT ELEMENTS, WHEN THE CHILD'S LIVE TESTIMONY CLAIMED THE TOUCH IS NON-SEXUAL?

The State's response makes bare assertions the 'probable cause' allegations were considered by the court, and establish factually a basis for this "sexual contact" element. The State's response goes on in bare assertion that the record transmitted on review, exceeds the record considered by the trial court at the alford plea acceptance.

The record established the trial court considered all of these items transmitted on review. The trial court based this factual basis on both the "Reports in the File" and "Court's Knowledge of the Prior Jury Trial," as stated by the Hon. David R. Needy:

"Based on the ah reports in the file and court's prior prior knowledge, having conducted a jury trial on the case, I will find a factual basis to find you guilty!"
9/26/13 RP 6 APPENDIX-C

The trial court did not enter any actual findings of facts that support the elements of the original or amended charges. The trial court 's record does not identify any specific report or any specific knowledge of the jury trial the court relied upon to find the factual basis for the "sexual contact" element. Therefore, the entire record of this case, including the jury trial, are under review on appeal of the court's finding of factual basis. The trial court excluded some evidence listed in 'probable cause' during the trial proceedings, and such excluded evidence included: (1) ER 404(b) exclusions of Appellant's past crimes; (2) Witness Stanton ferrel's statement in the 'probable cause' allegations; (3) Several 'hearsay' statements child never talked of before the court; (4) Evidence another sexual abused the child.

Therefore, the court's finding of factual basis must exclude the inadmissible evidence, as an alford plea relies upon State's admissible evidence being sufficient. APPEDIX-H.

The State's response does nothing to dispute the child's live in trial testimony under oath that the touch charged over clothing, is for the sole purpose of checking a pull-up diaper. This is a far reach to a charge involving the element of "sexual contact!" The records clearly establish the Appellant is a "**related adult**" with a parentally approved **care or custody** role over the child daily.

The trial court never claimed the court considered 'probable cause' documents at the plea hearing. The State's response claimed 'probable cause' allegations never proven by trial are more reliable than testimony given under oath tested by cross-examination, when the court is trying to establish a factual basis for "sexual contact". The State's response does not attempt to establish how "sexual contact" would be established by the 'probable cause' report. The Appellant's belief is in the light best to the state it contradicts the required element of "sexual contact" being established: (1) The touch is solely over clothing. see Page 1 of 14 of probable cause. (2) The touch is by an adult, related by the marriage of the parents. Page 1 of 14. (3) It shows the adult had parentally approved **care or custody** of the child, at the time of the touch. Page 9 of 14; 11 of 14; 12 of 14. (4) This Appellant encouraged the child to tell other adults about the touch if the child felt it was wrong, not hide or keep it secret. Page 3 of 14. (5) The child recanted the statements in the 'probable cause' 9/14/09, after the forensic interviews. Page 13 of 14. (6) The child's story of the touch changed completely under oath in trial, where he and Bettys' were not sitting on a couch, Bettys did not talk to him, and cartoons were not on the television, he was playing video games with another of his adult uncles "Mike Bettys" while being baby-sat overnight at Bettys home by Appellant and his wife, and while Appellant washed dishes they took a break from video games, at which time Appellant touched child's clothing to check his pull-up diaper, per trial testimony. This is the recantation of any inference to "sexual contact", where the child told that the touch was for the non-sexual purpose of a pull-up diaper being checked, then Appellant supposedly returned to washing the dishes.

The expert witness Dr. John C. Yuille, with 40+ years experience in child sexual abuse case was asked to review both the statements in the '**probable cause**' and '**child forensic interview**' conducted by the State's investigator "nicole Flacco" of the prosecutor's office, and his expert professional opinion is in a report the trial court had in the files of the case stating:

"This interview was adequate. In particular, the interviewer generally avoided nod suggestive questions. The child did not disclose any sexual abuse in the interview. The purpose of the touch outside the clothing was not apparent and no attempt was made to clarify the nature of the touching." APPENDIX-D

"In Summary, an adequate interview revealed no allegation of sexual interference with the child. APPENDIX-D

The only time the child ever told of the purpose for the touch is during the live under oath trial testimony, where he clearly stated it was to check his pull-up diaper he wore under his clothing. The trial court would have to ignore long settled case law history to turn this into a criminal act, especially one with "sexual contact" element. see State V. Powell, 62 Wn. App. 914, 816 P.2d 86 (1991); State V. Veliz, 76 Wn. App. 775, 775 P.2d 189 (1995), and there progeny. The Appellant extensively briefed these case in the "Opening Brief", and State's own response does nothing to distigush this case from those holdings.

The trial court should not reach an element of sexual contact in a case showing that the child victim recanted the alleged sexual intent or purpose under oath in live testimony, especially where the records established Appellant is a **related adult caretaker** of the child under parental approval on a daily basis. WAC 388-15-009(3) should have now been applied, even if the trial court ignored the long settled cases.

The Appellant asks that the reviewing court find the factually established basis of "sexual contact" element of the original and amended charge be reversed with a finding of insufficient evidence to meet the required element, based upon the child's live in trial testimonial recantation of any sexual intent or purpose for a touch outside his clothing, by the related adult caretaker, the Appellant.

The probable cause report does established each fact necessary to find the child was in the paid care of Appellant, a related adult, who is showing to drive the child to school, keep the child after a return from school, baby-sit the child overnight, and provide baths, discipline, food, to the child as needed. This simple is not a case of sexual abuse of a child, as Dr. John C. Yullie stated in his report, this reviewing could should grant relief.

4.(a) DOES THE DEFENDANT AGREE TO PRIOR CONVICTIONS
WHEN AGREEING WITH THE ULTIMATE SENTENCE RANGE?

The State's response alleging Appellant made affirmative agree-
-ment to the criminal history. The fact is Appellant unknowingly or improperly agreeing to a miscalculated offender score in error does not prohibit correction under review.

"Whether the defendant is being sentenced for the first or the fifth time, he is being sentenced, and the sentence court must compute his criminal history at that moment!" State V. Amos, 147 Wn.App. 217, 195 P.3d 564 (2008).

"Moreover, it is the proper roll of the sentencing court, not the prosecutor to calculate the offender score!" State V. Amos, 147 Wn.App. 217, 195 P.3d 564 (2008).

Thereby, the offender score calculation is subject to review in appeal, to determine is the score is properly calculated, and State's position is without merit.

4.(b) DOES THE VESTED RIGHT PROHIBIT INCLUSION OF WASHED JUVENILE CONVICTION, WHEN APPELLANT ENJOYED VESTING OF THE WASH-OUT STATUS PRIOR TO THE CHANGE IN LAW?

The court in State V. Varga, 151 Wn.2d 179, 193, 86 P.3d 139 (2004), addressed the similar question herein presented, finding that Mr. Varga's enjoyment of the wash-out had not vested prior to the change in the law. The court based this decision on the facts that Mr. Varga did not demonstrate how the change in the law did change the legal effects of the prior conviction in Varga's case, therefore Mr. Varga was not entitled to enjoy wash-out as vested right or contractual right, prior to the change in the law. This Appellant has found that every case previously considered on the vested right under the wash-out, the reviewing court was presented no facts establishing the enjoyment of the right vesting, that is not the case herein this review.

"A retroactive law violates due process when it deprives an individual of a vested right!" State V. Shultz, 138 Wn.2d 683, 980 P.2d 1265 (1999)(citing State V. Hennings, 129 Wn.2d 512, 919 P.2d 580 (1996)).

"A statute is not retroactive merely because it relates to prior facts or transactions, where it does not change the legal effect!" State V. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997); State V. Randle, 47 Wn.App. 232, 734 P.2d 51 (1987).

"It is retroactive because some of the requisites for its actions are drawn from a time antecedent to its passage or because it fixes the status of a person for purposes of its operation!" State V. Scheffel, 82 Wn.2d 872, 514 P.2d 1052 (1973); State V. Williams, 111 Wn.2d at 636, 759 P.2d 436 (1988).

"Thus, the critical inquiry is whether the prospective 2002 SRA amendments to RCW 9.94A.525 and RCW 9.94A.030 alter the legal consequences of Varga's previously washed-out conviction!" State V. Randle, 47 Wn.App. 232, 734 P.2d 51 (1987).

The Appellant's prior convictions have been washed-out under a holding of the reviewing court in COA# 50285-9-I, therefore vested as washed-out under the prior judgment, as State's response willingly admits. The question before this court is whether the washed-out crimes being now included into the criminal history change a legal consequences under the prior crime. The Appellant shows the courts that if the State's revival of the criminal history inclusion of the washed-out "Indecent Liberties" is allowed, the legal consequences under the sex offense are changed. The Appellant has enjoyed this crime wash-out, whereby the appellant did not have to register as a sex offender, once the crime was removed from his criminal history, and if the crime is returned to the criminal history, then Appellant will again be required to register under that offense. Therefore, it is clear that the legal consequences under the "Indecent Liberties" crime does change, if the 2002 amended version of criminal history is allowed to apply retroactively to revive the washed-out crime under Appellant current criminal history calculations.

Additionally, it was understood by the Appellant that this crime would never be included in the calculation of an adult offender score at the time the prior plea agreement was entered into by the parties, and now the State has included it into an adult offender score, that is a clear violation of the plea contract agreements, and this would make the plea contract void, because it is no longer consistent with the understanding Appellant had when making the agreements.

Should this court allow the withdrawal of a 1988 plea contract because the legislature retroactively effected the knowledge that a agreement was made under, or simply uphold the vested right.

Simply, do we allow the withdrawal of prior plea agreements, as the knowledge of the defendant has been changed by the amendments to RCW 9.94A.525 and RCW 9.94A.030 in 2002, or do we find that vested rights doctrine prohibits revival of the juvenile crime, where its shown that the legal consequences have changed by revival of those prior sex crimes of "indecent Liberties" in 2002 law amendments.

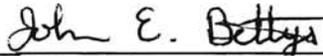
The plea agreement was accepted under the knowledge that those crimes committed prior to age fifteen would never be included into an adult offender score, and therefore would not follow Appellant for life, stigmatizing the Appellant in his adult years, and inclusion in the current 2013 case, almost 26 years later, the State's legislature modified the laws to change that knowledge element. However, since a wash-out occurred before the changes, this court should continue that vested right, and apply prospective the 2002 amendments.

B. CONCLUSIONS

For the reasons stated above, and in the Opening Brief of the Appellant, this Court should provide remand of necessary relief.

DATED This 15th day of October, 2014.

Respectfully Submitted,



John E. Bettys, Pro Se

APPENDIX A

2013 NOV 26 PM 1:36

**Superior Court of Washington
County of Skagit**

State of Washington, Plaintiff,

vs.

JOHN EDWARD BETTYS,
Defendant.

SID: WA15110978

DOB: 09/12/1974

Agency No: APD 09-A05618

No. 10-1-00159-9

Felony Judgment and Sentence – (FJS)

Prison

exceptional RCW 9.94A.712 and RCW 9.94A.535

Prison Confinement (Sex Offense and Kidnapping
of a Minor)

Clerk's Action Required, para 2.1, 4.1, 4.3a,
4.3b, 5.2, 5.3, 5.5 and 5.7

Defendant Used Motor Vehicle

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon plea, on 9/26/2013:
Child Molestation in the Third Degree - RCW 9A.44.089 - Class C Felony, Count I; DOV: 12/01/2008 – 7/12/2009

as charged in the Third Amended Information.

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

Additional current offenses are attached in Appendix 2.1a.

The defendant is a sex offender subject to an exceptional indeterminate sentence under RCW 9.94A.712 and RCW 9.94A.535 and under conditions as set forth at page 4-5.

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

The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____ RCW 9.94A.839.

The offense was predatory as to Count _____ RCW 9.94A.836.

The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (09/2012))*

ORIGINAL

- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____ RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- 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.
- The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- For the crime(s) charged in Count _____ **domestic violence** was pled and proved. RCW 10.99.020.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang-related felony** offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang member** or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A._____.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- For the crime(s) charged in Count _____, **domestic violence** was pled and proved. RCW 10.99.020.
- In Count _____ the defendant had (number of) _____ passenger(s) under the age of 16 in the vehicle. RCW 9.94A.533
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (County & State)</i>	<i>DV*</i> <i>Yes</i>
1.				
2.				

* DV: Domestic Violence was pled and proved.

Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or J Adult, Juv</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1	Burglary	3/20/89	6/20/89	Skagit, WA	J	B	
2	Indecent Libs	6/1/88	6/20/89	Skagit, WA	J	B	
3	Burglary 2°	4/20/90	6/5/90	Skagit, WA	J	B	
4	TMVWOP (washed)	4/30/90	6/5/90	Skagit, WA	J	C	
5	Theft 2°/TMVWOP (washed)	1/16/91	1/17/91	Idaho	J	F	
6	Malicious Injury (washed) (misd.)	1/16/91	1/17/91	Idaho	J	F	
7	Rape Child 1°	1/1/90	9/23/90	Skagit, WA	A	A	
8	Rape Child 1°	1/1/90	9/23/93	Skagit, WA	A	A	

* DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
1	9+	III	60 months		60 months	5 yrs/\$10,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement w/firearm, 9.94A.533(12), (P16) Passenger(s) under age 16.

Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 [x] Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence: The exceptional sentence is set forth at p. 4. - P.S.

The defendant shall receive sex offender treatment.

The basis for the exceptional sentence is that the best interests of the community and the defendant are served in that treatment will help alleviate the potential for recidivism.

The weight of the current evaluation and prior circumstances in sentencing in the 2002 cause number cause the court concern that offenses will continue to occur if treatment is not imposed.

2.5 Legal Financial Obligations/Restitution. 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. (RCW 10.01.160) The court finds:

That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

(Name of Agency) _____'s cost for its emergency response are reasonable. RCW 38.02.430.

III. Judgment

3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Counts _____. The defendant is found NOT GUILTY.

IV. Sentence and Order

It is ordered:

4.1 Confinement and Community Custody.

The court sentences the defendant as follows:

Confinement. RCW 9.94A.712 and 9.94A.535 and **Community Custody.** A term of total confinement and community custody in the custody of the Department of Corrections (DOC):

So long as the Department of Corrections is providing sex offender treatment to the defendant in custody, then this is a RCW 9.94A.712 sentence and the minimum term is 60 months and the maximum term is 60 months.

If the Department fails to commence sex offender treatment by January 1, 2014, then the defendant shall be immediately released from prison and placed on to community custody for the balance of the sixty month prison term. The defendant will immediately (within 30 days) enroll in sex offender treatment with a certified sexual offense treatment provider. The defendant will comply with any and all treatment recommendations and comply with the conditions of Appendix F. Failure to comply with any of these conditions of community custody will result in a hearing before the trial court. The court retains the authority to return the defendant to prison for the balance of the 60 month term or any other terms the court deems appropriate.

While on 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 restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody;

(6) not own, use, or possess firearms or ammunition (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) for sex offenses, submit to electronic monitoring if imposed by DOC and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

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

[xx] Follow conditions of Appendix F.

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

Credit for Time Served. The defendant shall receive credit for time on this matter – to be credited from February 20, 2010.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court: *IF not already calculated under the prior judgment:*

<u>JASS CODE</u>			
PCV	\$ 500.00	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$200	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD NTF/SAD/SDI	\$ _____	Drug enforcement fund to SCIDEU	RCW 9.94A.760
CLF	\$ _____	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ 100	DNA collection fee	RCW 43.43.7541
FPV	\$ _____	Specialized forest products	RCW 76.48.140
PPI	\$ _____	Trafficking/ Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.) RCW 9A.40.100, 9A.88.120, 9.68A.105	
	\$ _____	Other fines or costs for: _____	
DEF	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide, DUI (vehicle, plane, boat), \$2,500 maximum) RCW 38.52.430	

Agency Name: _____
Agency Address: _____

\$ _____ Total RCW 9.94A.760

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

Restitution. Schedule attached. Appendix 4.3

the above total does not include all restitution which may be set by later order of the court.

An agreed restitution order may be entered. RCW 9.94A.753.

A restitution hearing shall be set by the prosecutor if restitution is sought.

A restitution hearing is scheduled for _____.

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

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

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.482.)

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

4.3b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754. This provision does not apply if it is established that the WSP lab already has a sample from a qualifying offense. RCW 10.73.160.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

The defendant shall not have contact with _____ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within _____ (distance) of:
 _____ (name of protected person(s))'s home/ residence work place school (other location(s)) _____

other location: _____, or
until _____ (which does not exceed the maximum statutory sentence).

Sexual Assault Protection

[xx] A separate ~~Domestic Violence No-Contact Order or Antiharassment No-Contact Order~~ is filed concurrent with this Judgment and Sentence.

4.6 Other: _____

4.7 **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: _____

4.8 **FORFEITURE OF FIREARMS.** The firearm(s) involved in this case, _____, is (are) forfeited in accordance with the law.

V. Notices and Signatures

5.1 **Collateral Attack on Judgment.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **Community Custody Violation.**

If you violate any condition or requirement of this sentence you may be sanctioned up to 60 days of confinement per violation. RCW 9.94A.634

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

5.6 **Sex and Kidnapping Offender Registration.** RCW 9A.44.128, 9A.44.130, 10.01.200.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents or Returning Washington Residents, If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody, but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State: If you change your residence within a county, you must provide by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of state you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

- i) before arriving at a school or institution of higher education to attend classes;
- ii) before starting work at an institution of higher education; or
- iii) after any termination of enrollment or employment at a school or institution of higher education.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stayed during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make you subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(6).

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

Conditions (Check all that apply)

Conviction – Complete for DUI or physical control convictions BAC _____ <input type="checkbox"/> No Test <input type="checkbox"/> Refusal <input type="checkbox"/> Drug related <input type="checkbox"/> Mental Health		<input type="checkbox"/> Passenger under age 16
Complete when imposing discretionary ignition interlock requirements <input type="checkbox"/> Discretionary period ____ year(s) ____ months in addition to DOL _____ required		Conviction recommendation (for RCW 46.20.342 only) <input type="checkbox"/> Recommend non-extension
Vehicle information (You must check either yes or no for all fields)		
Commerical Vehicle <input type="checkbox"/> Yes <input type="checkbox"/> No	16 passenger <input type="checkbox"/> Yes <input type="checkbox"/> No	HazMat <input type="checkbox"/> Yes <input type="checkbox"/> No

5.8 Other: _____

Done in Open Court and in the presence of the defendant this date: 11-26-13

David Needy
Judge

Rosemary H. Kaholokula
Deputy Prosecuting Attorney
Rosemary H. Kaholokula, WSBA #25026

Catherine McDonald
Attorney for Defendant
Catherine McDonald, WSBA #24002

John Edward Bettys
Defendant
John Edward Bettys

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: John Edward Bettys

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: 10-1-00159-9

Interpreter signature/Print name: _____

VI. Identification of the Defendant

SID No. WA15110978
 (If no SID complete a separate Applicant card (form FD-258) for State Patrol)

Date of Birth 09/12/1974

FBI No. 240067TA5

Local ID No. SO 20159

Alias name, DOB: UNK

DOC No. 711306

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male
 Native American Other: _____ Non-Hispanic Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, Wm Churchill Dated: 11/26/2013

Defendant's signature: [Signature]

Defendant's current address: _____

Officer Initials	Badge/ID#	DNA	FINGERPRINTS	Date
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ASm U111 _____ L 11-26-13

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



SUPERIOR COURT OF WASHINGTON
COUNTY OF SKAGIT

STATE OF WASHINGTON, Plaintiff, vs.

No. 10-1-00159-9

JOHN EDWARD BETTYS, Defendant.
SID: WA15110978 If no SID, use DOB:
09/12/1974

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON TO: The Sheriff of Skagit County(Jail), and to the proper offices of the Department of Corrections.

The Defendant's charges are disposed of as follows:

Child Molestation in the Third Degree - RCW 9A.44.089 - Class C Felony, Count I; DOV: 12/01/2008 - 7/12/2009
GUILTY PLEA

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

Count	Confinement	Work Release / EHM / Work Crew
1	60 months	
2		
3		

Defendant is ordered to report to Jail Alternatives (North end of Jail) within 10 days of the date of this order and commence sentence by: /jail schedule. DOC: IMMEDIATE

Defendant shall receive day(s) credit for time served. Credit to be determined. Credit since Feb 20, 2010.

If eligible and approved by the Skagit County Jail a portion of your sentence may be served through a Program other than total confinement. The application process can take several weeks and may require paperwork and actions on your part. Violation of any Program rules may result in your arrest and your option to participate in Programs may be revoked. Any remaining time left to be served may be converted to straight jail time. You may also be subject to a probation violation hearing, which may result in additional penalties.

I have read the above and agree to abide by the terms as set forth by the Skagit County Jail.

Defendant: _____ Approved; Attorney for Defendant: *C. Donnell*

LEGAL FINANCIAL OBLIGATIONS

Defendant must pay all ordered fines, fee and restitution to the Superior Court Clerk's Office. Contact a Collections Clerk at 360-419-3448 within 10 days of sentencing for amount ordered and acceptable methods of payment. Payments are to begin within 30 days from sentencing, unless otherwise arranged with the Collections Clerk.

NOW, THEREFORE, YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for confinement and placement as ordered in the Judgment and Sentence and noted above.

DATED: 11/26/13

Nancy K. Scott, Clerk

By: *[Signature]*
JUDGE/COURT COMMISSIONER
CLERK
OF THE SUPERIOR COURT
WASHINGTON
SKAGIT COUNTY

JAIL CERTIFICATION OF COMPLETION:

I CERTIFY that the above-named defendant COMPLETED his jail sentence:

Date: _____ Officer: _____

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

STATE OF WASHINGTON)	Cause No.: 10-1-00159-9
)	
)	
)	
Plaintiff)	JUDGEMENT AND SENTENCE (FELONY)
v.)	APPENDIX F
BETTYS, John Edward)	ADDITIONAL CONDITIONS OF SENTENCE
Defendant)	
)	
DOC No. 711306)	

CRIME RELATED PROHIBITIONS:

1. Obey all laws. *No new crim law violation.*
2. ~~Have no direct or indirect contact with MIF, the victim of this offense, for life.~~
3. Have no contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer. *or court upon motion by defendant.*
4. Do not seek employment or volunteer positions which place you in contact with or control over minor children.
5. Do not frequent areas where minor children are known to congregate, such as, but not limited to schools, parks, playgrounds, daycare, as defined by the supervising Community Corrections Officer.
6. Do not date women or form relationships with families who have minor children, unless approved in advance by the supervising Community Corrections Officer and/or therapist, *except for his wife Marissa*
7. Do not remain overnight in a residence where minor children live or are spending the night. *Betty*

REC

- 8. ~~Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.~~
- 9. Enter in to ~~and successfully complete~~ a sex offender treatment program with a certified provider as approved by your Community Corrections Officer.
- 10. Do not possess or consume ^{unlawful} controlled substances unless you have a legally issued prescription.
- 11. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
- 12. Participate in ^{urinalysis} ~~urinalysis~~, breathalyzer, and polygraph examinations as directed by the supervising Community Corrections Officer.
- 13. Report to and be available for contact with the assigned Community Corrections Officer as directed.
- 14. Pay supervision fees as determined by the Department of Corrections.
- 15. Defendant shall not own, use or possess a firearm or ammunition. (~~RCW 9A.120(13)~~)
- 16. Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.
- 17. Comply with all Conditions, Requirements, and Instructions as set forth by the Department of Corrections ~~and in Island County Judgment and Sentences 03-1-00226-4.~~
- 18. ~~Pay the costs of crime-related counseling and medical treatment required by the victim.~~

11-26-13
DATE

Dave Needy
JUDGE, SKAGIT COUNTY SUPERIOR COURT

010

11/27/13
02:15

SKAGIT COUNTY JAIL
Jail Log:

Page: 524
1

Event Number: 987872
Name ID: 15310 SEXUAL ASLT ORDER -+

Active

Last: BETTYS First: JOHN Mid: EDWAR
Addr: INCARCERATED DOC-LIFE Phone: () -
City: ANACORTES ST: WA Zip: 98221 DOB: 09/12/74

Time/Date of Event: 02:12:20 11/27/13 Treatment Date:
Type of event: JTC JAIL TIME CERTIFICATION
Quantity: 0.00
Officer: KELLEY L
Booking Number: 186989
Description:
(See below)

=====

Description:

SKAGIT COUNTY JAIL
600 SOUTH THIRD ROOM 100
MOUNT VERNON, WA 98273
(360)336-9448

JAIL TIME CERTIFICATION

Court: Cause # 10-1-00159-9

Charge(s): CHILD MOLESTATION IN THE THIRD DEGREE - COUNT I

Date of Arrest: 02/20/10

Date(s) Returned to custody: N/A

Date(s) Released on bail or recognizance: N/A

Date Released to DOC: 12/03/13

Days served in Skagit County Jail: CREDIT TO BE GIVEN FROM 02/20/10 PER COURT ORDER. 1381 DAYS.

Certified days of Earned Early Release time: 461 DAYS

Total days credited: 1842 DAYS.

APPENDIX B

1 4. Sex Offender Treatment.

2 5. Order for Immediate Release.

3 **II. STANDANRD RANGE**

4 On September 13, 2013, John Bettys pled guilty of one count of Child Molestation in the
5 Third Degree. The range for this offense is 60 months in custody.

6 **III. BASIS FOR RECOMMENDATION**

7 John Bettys is a 39 year old man before the Court being sentenced on this charge. He
8 has been in custody in county jails and in state prisons since February 20, 2010 on this case.
9 That places him at just over 45 months in custody, calculated, as are all sentences, from the time
10 an individual is book into custody on a case, not from the time of sentencing. Mr. Bettys was
11 originally found guilty at a jury trial on May 11, 2011, of one count Child Molestation in the
12 First Degree, and being found not guilty on a second count of the same. He was sentenced to
13 Life in Prison as a Second Strike Sex Offender. The conviction was appealed, overturned, and
14 remanded for a new trial due to errors under RCW 10.58.090. Mr. Bettys was re-charged, and a
15 plea agreement was reached, with a plea being entered on September 13, 2013, as indicated
16 above, to a lesser charges.

17 Mr. Bettys offense falls within the Indeterminate Sentencing Review Board (ISRB). As
18 an ISRB offense the statutory maximum sentence of 60 months must be imposed. Mr. Bettys is
19 eligible to receive good time credit for his time in custody. However, because the offense is an
20 ISRB offense, the awarding of good time is not mandatory but is discretionary on the part of the
21 ISRB. In the event that Mr. Bettys does receive good time credit and is released from custody
22 prior to the 60 month maximum term, then the remainder of his sentence is mandatorily
23 converted to Community Custody.

24 **A. The court should affirmatively order that Mr Bettys participate in sex offender
25 treatment as part of any period of his sentence served in community custody.**

26 Under the current sentencing guidelines, the court could impose conditions of release,
27 including attendance in a sex offender treatment program as part of an ISRB sentence. Mr.
28 Bettys offense was committed in December 1, 2008 – July 15, 2009, preceding the modification

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(206) 441-3377**

1 of the SRA in August 2010, permitting the imposition of affirmative conditions. Under the
2 sentencing guidelines in place in July 2009, the court would have lacked the power to mandate
3 affirmative conditions of release, and instead was limited to mandating that the accused follow
4 recommendations of treatment providers and community custody officers.

5 Mr. Bettys nevertheless believes the court can and should mandate his participation in a
6 Sex Offender Treatment Program (SOTP) as part of his sentence for any time served in
7 Community Custody. The court's power to mandate the sentence when not explicitly mandated
8 in the guidelines stems from RCW 9.94A.535 which permits the court to vary from the
9 guidelines in exceptional cases. RCW 9.94A.535 lists a series of suggested basis for deviation,
10 both upwards and downward, from the standard guidelines. However, it explicitly provides that
11 this list is not exclusive and is illustrative only, and that other situations may be applicable. In
12 our case, Mr. Bettys meets this criterion. As the court is aware, due to miscalculations in his
13 offender scorer necessitating release prior to the start and completion to SOTP in custody, Mr.
14 Bettys did not receive sex offender treatment in conjunction with his previous offenses for which
15 he was sentenced in 2002. In this present case, due to the time already spent in pre-trial
16 confinement, there is again insufficient time for Mr. Bettys to enroll or complete in-custody
17 SOTP. The only possibility for Mr. Bettys to receive sex offender treatment is while in
18 community custody. Mr. Bettys mandatory receipt of sex offender treatment is clearly in his and
19 the community's best interest, justifying an exceptional sentence under RCW 9.94A.535.

20 This court has the power under RCW 9.94A.535 to award mandatory participation in
21 treatment as part of community custody. *In re Postsentence Review of Smith*, 139 Wn. App. 600,
22 603 (Wash. Ct. App. 2007), the trial court imposed a sentence tailored to Smith's particular case,
23 which is precisely the type of action that several Washington Courts courts agreed was intended
24 by the SRA's exceptional sentence provisions. Smith cited as an example that in *State v.*
25 *Bernhard*, 108 Wn.2d 527, 741 P.2d 1 (1987), *overruled in part on other grounds by State v.*
26 *Shove*, 113 Wn.2d 83, 776 P.2d 132 (1989), the trial court sentenced the defendant to an in-
27 patient drug treatment facility rather than a work-release facility as recommended by the State.
28 The State appealed the sentence, arguing that the trial court could not sentence the defendant to

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1 participate in treatment as part of a standard-range community supervision sentence, and the
2 Washington Supreme Court agreed. But the court went on to examine the Sentencing Reform
3 Act of 1981's (SRA), chapter 9.94A RCW, statutory language and legislative history to
4 determine whether the trial court had authority to sentence the defendant to treatment as an
5 exceptional community supervision condition. The court concluded that the legislature intended
6 that the SRA's exceptional sentence provision was intended to authorize courts to tailor the
7 sentence—as to both the length and the type of punishment imposed—to the facts of the case,
8 recognizing that not all individual cases fit the predetermined structuring grid. Therefore, the
9 court concluded that the SRA authorized the trial court's exceptional sentence outside the
10 standard range of community supervision conditions. See RCW 9.94A.535, (stating that "A
11 sentence outside the standard sentence range shall be a determinate sentence."); and *Smith*, at
12 604.

13 Conversion of Mr. Bettys sentence from an indeterminate sentence to a determinate
14 sentence of 60 month confinement makes Mr. Bettys eligible for immediate release into
15 community custody rather than having to have his release vetted by the ISRB. A determinate
16 sentence in this case is in the public and Mr. Bettys interest. Mr. Bettys has completed a sexual
17 deviancy evaluation which concluded that he is an excellent candidate for treatment.
18 Unfortunately, Mr. Bettys will be unable to complete SOTP while in custody as he only has 14 -
19 15 months of time left to serve on a 60 month sentence, and therefore does not have the required
20 18 months remaining in custody required for commencement of SOTP while at DOC.

21 Upon release from custody, Mr. Bettys should be ordered to immediately enroll in a
22 SOTP and comply with the requirements of the program. Mr. Bettys has identified a program
23 locally which he can attend. He is eligible to enroll immediately, thus maximizing the SOTP
24 time he is compelled to do, and providing for more safeguards to the community. The evaluation
25 identified Mr. Bettys and his condition as treatable, and Mr. Bettys is amenable to treatment.
26 Any delay in his release will jeopardize his ability to receive SOTP in Community Custody.

27 Mr. Bettys has a release plan set in place. His sister, Kathy, has arranged for him to live
28 on her property and had set up independent living for him in a trailer. Although Mr. Bettys will

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1 only be eligible for community custody for 14 – 15 months, he has a strong motivation to to
2 complete SOTP beyond what the court may order. Mr. Bettys has a young son with whom he
3 has established a relationship with while he has been in custody. He would like to keep up his
4 contact with his son once released. In order to do this, Mr. Bettys understands that not only will
5 his contact need to be supervised, but also that he will need to complete the requisite SOTP
6 treatment in order for him to continue with visitation. Accordingly, Mr. Bettys requests the court
7 order him to obtain and complete SOTP treatment during community custody and that the court
8 find that such order makes his sentence determinate.

9 **B. Appendix F**

10 The defense would request alternative language, corrections, and language being stricken
11 on Appendix F, Additional Conditions of Sentence. This is outlined after having received the
12 State's memo indicating deletions and amendments to Appendix F datd November 25. Item 1
13 should read have no new criminal law violations. Obey all laws is too vague. Item 4 is too
14 onerous to have to receive approval from SOTP provider, CPS (who is not even involved), and
15 the CC Officer in order to have visits with his son, which he has already been doing up to this
16 point. Item 7 and 8 are not workable, as Mr. Bettys is currently married and has a child. The
17 prohibition in 7 and 8 effectively prohibit him from seeing/being with his wife and child, neither
18 of whom are his crime victims in this case. Item 10 should only read that he should start SOTP.
19 He will be unable to complete it in the statutory maximum amount of time left for the crime for
20 which he plead. Item 13 – a urinalysis is not testing for anything that is remotely crime related
21 and should not be ordered.¹ Item 17 RCW 9.94A.120(13) appears to have been repealed. Item
22 18 should be stricken, even with the correction to the correct county. Referring to a document
23 that was declared invalid is improper.

24
25
26 ¹ Generally, as part of any sentence, the sentencing judge may impose and enforce crime-related prohibitions and
27 affirmative conditions. RCW 9.94A.505(8). A crime-related prohibition is "an order of a court prohibiting conduct
28 that directly relates to the circumstances of the crime for which the offender has been convicted" RCW
9.94A.030(13). Crime-related prohibitions may extend for a period of time not to exceed the statutory maximum for
the defendant's crime. *State v. Armendariz*, 160 Wn.2d 106, 118-19, 156 P.3d 201 (2007). *State v. Cayenne*, 165
Wn.2d 10 (2008).

DEFENDANT'S PRE-SENTENCE REPORT

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IV. CONCLUSION

Mr. Bettys asks the Court to follow the agreed recommendation of 60 months with credit for time served since incarceration on February 20, 2010, order him to attend and complete the SOTP while on community custody, making this a determinate sentence, and have the court sign an order for immediate release, placing him in Community Custody/Supervision for the designated time after release to complete sex offender treatment. Mr. Bettys asks the court to consider the similarity in the 2002 re-sentencing on his prior offenses which prevented him from having treatment while in custody or under DOC supervision, and would encourage the court to allow for the maximum amount of treatment possible this time while under DOC supervision.

Based on his economic situation, Mr. Bettys requests that this Court find that he is indigent and waive all non-mandatory financial assessments pursuant to *State v. Hayes*, 56 Wn. App. 451 (1989), and *State v. Earls*, 51 Wn. App. 192 (1988).

Dated this 25th day of November, 2013.

/s/ Catherine McDonlad
Catherine McDonald, WSBA # 24002
Charles Swift, WSBA # 41671
Counsel for John E. Bettys

APPENDIX C

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SUPERIOR COURT OF WASHINGTON
COUNTY OF SKAGIT

STATE OF WASHINGTON, <p style="text-align: right;">Plaintiff,</p> v. JOHN E. BETTYS, <p style="text-align: right;">Defendant.</p>	NO. 10-1-00159-9 TRANSCRIPT OF JOHN BETTYS GUILTY PLEA HEARING OF SEPTEMBER 26, 2013
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TRANSCRIPT OF JOHN BETTYS GUILTY PLEA HEARING OF SEPTEMBER 26, 2013 TRANSCRIBED FROM AUDIO RECORDING OF PROCEEDINGS PROVIDED BY THE SKAGIT COUNTY CLERK

Court is now in session, the Honorable Judge Needy is presiding.

Pedersen: Good afternoon your honor. This is Erik Pedersen for the State of Washington and calling the case of John Bettys, case #10-1-159-9. This is the date that we had set for sentencing in this particular case.

Bailiff: (Inaudible) your honor, sorry

Pedersen: That's not

Bailiff: (Inaudible)

Needy: (Inaudible)

TAPPING.....

Bailiff: That one I think is dead.

TAPPING.....

Bailiff: Frustrating (inaudible) downstairs, do you want me to go down and check?

Needy: (Inaudible) having the record (inaudible)

1 Pedersen: Shall we
2 Bailiff: (Inaudible)
3 Pedersen: Shall we
4 Needy: We (inaudible) to talk but
5 Bailiff: I'll call (inaudible)
6 Pedersen: Shall we move to another court room, possibly?
7 Needy: No. I think she's right, I think he's not coming thru the headset but it is
8 comingthru the
9 Bailiff: That's right.
10 Needy: The recording so she'll be able to (inaudible). Maybe I can talk about
11 something and ah hopefully it is being recorded. Also, it will give her a
12 downcheck. The court reporters have asked that I enter orders allowing both of
13 our 2 court reporters to be paid for the hearings that they have provided transcripts
14 for Mr. Bettys, um, May 29th,
15 May 29th, May 2nd, May 8th.
16 Long pause, sirens in background.
17 Needy: She's calling.
18 Long pause.
19 Needy: So, we may begin the hearing again. We are recording.
20 Pedersen: Hold this for a second. Your honor, this is Erik Pedersen, calling the State of
21 Washington vs. John Bettys, case # 10-1-159-9. This is on today for a sentencing
22 hearing, um, post of the entry of the guilty plea which I believe occurred on
23 September 11th of this year. Ah, there was a decision rendered by the Court of
24 Appeals in the State v. Peltier, ah, it's a decision out of Division 1 and the case
25 number on that is 68942-8-I. Ah, based on my review of that case it was
26 abundantly clear that the statute of limitations had run esset in two charges and no
27 waiver by Mr. Bettys would have been in effective as to, ah, except allowing the
28

1 court to accept the plea as to those two charges. I approached defense counsel
2 about the situation and offered an alternative proposal with respect to ah change of
3 plea in this case and ah that my understanding that Mr. Bettys has accepted that.
4 So, at this point I'm asking the court to accept the joint motion to withdraw the
5 plea of guilty that was entered herein and um allow Mr. Bettys to withdraw the
6 guilty plea and we, thereafter we would propose the court allow Mr. Bettys to plead
7 guilty to Child Molestation in the Third Degree and to have the statement of plea of
8 guilty and amended information as to those charges.

9 Needy: Just for the record it was September 13 that the prior guilty plea was taken.

10 Um. Now Mr. Swift (inaudible) speak on behalf of the defendant.

11 Swift: I'll speak on behalf of, ah, we substantially agreed. The only difference is in the
12 Peltier case reviewed that it deprives the court, not of jurisdiction or the ability to
13 hear a plea but simply the ability to enter a sentence. However, we do agree that,
14 ah, the ability to enter a sentence was a material term of the deal, the pre-trial
15 agreement that was entered into this case. That under the circumstances, the
16 State, the Court's inability, ah provides the State the ability to withdraw from the
17 plea agreement at this point in time. And that certainly was what the case law
18 was under Peltier that went forth, so we agree that the State, we jointly agree to
19 dismiss the plea. Also, we have agreed and will agree to ah enter a plea of guilty
20 to the child molestation in the third degree which requires no amendments of the
21 statute of limitations to enter the plea to.

22 Needy: Bettys, this is somewhat unusual, I assume you understand what's going on?

23 Bettys: Yes I do your honor.

24 Needy: Are you agreeing with your attorneys and the State and to ask the court to
25 withdraw your prior entered guilty plea?

26 Bettys: Yes your honor, I believe it would be in the interest of justice.
27
28

1 Needy: Based on the agreement of the parties, the authority of the court under the
2 circumstances the court will withdraw the prior guilty pleas on two of the charges
3 of Communicating With a Minor for Immoral Purposes, Count 1 and Assault in
4 the Second Degree, Count 2. Are we ready to move forward with an entry of a
5 plea to the Third Amended Information?
6 Pedersen: I believe so your honor.
7 Needy: Bettys, have you and your attorneys received a Third Amended Information?
8 Bettys: Yes I have your honor.
9 Needy: Do you have any questions about the charge in that cause?
10 Bettys: Ah, no your honor.
11 Needy: (Inaudible) You, have you read this statement on plea of guilty?
12 Bettys: Yes I have your honor.
13 Needy: Do you have any questions about any of the information in the guilty plea form?
14 Bettys: No your honor.
15 Needy: You're aware of the rights once again that you give up by pleading guilty instead
16 of going to trial?
17 Bettys: Yes your honor.
18 Needy: You know the standard sentencing range and/or maximum penalty for this
19 charge?
20 Bettys: Yes your honor.
21 Needy: In this case, the standard range and the maximum penalty are one and the same,
22 60 months or 5 years. Do you understand that?
23 Bettys: Yes your honor.
24 Needy: And up to a \$10,000 fine. By pleading guilty to a felony you give up your right to
25 own or possess a firearm until that right is reinstated by a separate court order.
26 Are you aware of that?
27 Bettys: Yes your honor.
28

1 Needy: Are there registration requirements with this charge?
2 Swift: Yes.
3 Needy: Are you aware of those?
4 Bettys: Yes your honor.
5 Pedersen: And your honor we filed those registration documents at the last entry of the
6 guilty plea. I have the same registration of the crime that would apply so we
7 would ask the court to adopt that prior findings, of the finding pleadings.
8 Needy: Do you have any objection to simply adopting the prior entered registration
9 requirement?
10 Bettys: No your honor.
11 Needy: And do you know what the parties are going to be recommending at your
12 sentencing hearing?
13 Bettys: Um, not completely but I do understand it it is being discussed at this point.
14 Needy: And, just to be clear, from my understanding is that despite recommendations that
15 even court ordered your ultimate status of community or placement of DOC will
16 be up to the review board not necessarily any of us in this court room. Do you
17 understand that?
18 Bettys: I do understand that.
19 Needy: But the range is 60, can't be greater than 60 and ah, everyone seems to be agreed
20 on the recommendation.
21 Bettys: Yes your honor.
22 Needy: Whatever authority that may hold. And this is also being done on an Alford Plea?
23 Bettys: Yes your honor.
24 Needy: To me, that means that you're not admitting having committed this particular
25 offense but you do believe that if you went to trial you could be found guilty of
26 this or even a more serious charge and a more serious penalty and based on the
27
28

1 circumstances you want to take advantage of the prosecutor's offer. Is all that
2 correct?

3 Bettys: That is correct your honor.

4 Needy: You understand if I accept your plea, even though an alford plea then it's treated
5 like any other guilty plea and the only thing remaining for the court is to enter
6 judgment and sentence?

7 Bettys: Yes your honor.

8 Needy: Are you entering this arrangement based on your own decision and your own
9 choice?

10 Bettys: Yes your honor.

11 Needy: And you're allowing the court to rely on the information and the reports that have
12 been filed as a basis, factual basis, for the finding of guilt in this case.

13 Bettys: Yes.

14 Needy: Based on the ah reports in this file and the court's prior knowledge, having
15 conducted a jury trial on this case I will find a factual basis to find you guilty of
16 the third amended information charge Child Molestation in the Third degree, and
17 so find you guilty at this time and I will make find that your plea is knowingly
18 and voluntarily entered.

19 Bettys: Thank you your honor.

20 Needy: What is the plan regarding sentencing. We already have a presentence report
21 from the prior charges.

22 Pedersen: Your honor, um, I understand that given the nature of the charge here defense will
23 be requesting a continuance of sentencing to get an evaluation of Mr. Bettys and
24 the state is not opposed to that request. We will provide the additional
25 information with the change to the charge to the Department of Corrections
26 should they chose to amend the presentence report. I will also take the time to
27 make sure the Department of Corrections is aware and may provide further
28

1 guidance and information to the court about whether or not Mr. Bettys um, would
2 be able to get treatment at any point during his prison sentence or whether not and
3 what they could do in terms of treating him in the community depending on the
4 outcome of the evaluation which we understand defense may be getting.

5 McDonald: Your honor, we're gonna suggest sometime the week of October 21st,um the 24th
6 would put it 4 weeks out which is a Thursday, um, 4 weeks from today, the 21st is
7 a Monday (inaudible) before then we have a trial on the 17th and 18th and Mr.
8 Swift is out of town at hearings on the 15th and 16th the week before. So, I don't
9 know what your schedule looks like but

10 Needy: I don't either. The administrator's office is the one that would have to tell you,
11 um, but we can certainly put it on for that day and then subject to availability or
12 not

13 Pedersen: Melissa

14 Needy: and move it around.

15 Pedersen: October twenty

16 McDonald: Fourth,

17 Pedersen: Fourth , potentially.

18 McDonald: Would be a Thursday.

19 Pedersen: What about the 23rd? The Wednesday (inaudible)

20 McDonald: That would be fine too.

21 Needy: Either day is fine.

22 McDonald: Yeah.

23 Needy: October 23rd is fine.

24 Pedersen: I'm gonna see if we can have Ms. Beaton come in here. Norm, I've added the
25 provision with respect to the transcripts on the, on this order.
26
27
28

1 McDonald: And your honor one additional thing um, we would ask that um, if there are any
2 funds that need to be um expended to do the evaluation that that be paid for at
3 public expense.

4 Needy: I don't know where those funds come from.

5 McDonald: Okay.

6 Needy: I

7 McDonald: We don't either, that why we're

8 Needy: We're looking at October 23rd or the 24th but we decided Wednesday might be
9 better.

10 Beaton: That's fine, yeah have a calendar that week.

11 Needy: Oh, I'm on the criminal calendar so I (inaudible)

12 McDonald: There you go. So,

13 Pedersen: So

14 McDonald: So we

15 Pedersen: may propose the 23rd at 1:30?

16 Needy: That would be the best (inaudible)

17 McDonald: (inaudible)

18 Needy: 3:00 it would have to be if it's on Wednesday unless you want to do it Wednesday
19 morning during part of the regular calendar or

20 McDonald: Wednesday morning is fine too.

21 Pedersen: Okay. 9:30 on the 23rd then?

22 McDonald: 9:30.

23 Swift: Ah, we'll research it your honor and submit by separate motion without necessary
24 for a hearing. We'll either have authority for it or we won't.

25 McDonald: For the

26 Swift: The the funds.

27
28

1 Needy: I, I'm not opposed if but they're not Superior Court funds and their not assigned
2 counsel funds and are probably not from

3 Swift: How about

4 Needy: use DOC funds.

5 Swift: Give us an expert witness fund? Or expert funding? I mean it's an expert.

6 Needy: Except we're not having an offending trial anymore, this post sentencing

7 Swift: Well

8 Needy: services. (Inaudible) basis.

9 McDonald: (Inaudible)

10 Pedersen: It appears that it might be considered expert services.

11 McDonald: (inaudible) guilty (inaudible) transcript.

12

13 Needy: You're opening a potentially dangerous door there. People required to pay, the
14 unfortunate part of our system has always been in the past that many people have
15 been denied the opportunity for community based treatment because they couldn't
16 afford it. If there's now going to be a precedence that all innocent people are
17 entitled to free 2 year sex offender treatment program in the community, that
18 would be a tremendous amount of money.

19 McDonald: Well, we're not, I don't think we're asking for the treatment to be paid for, just
20 the evaluation which he would be getting at no cost at the Department of
21 Corrections. I don't know if um if they would require, I mean I know for
22 example, drug and alcohol evaluations individuals have to pay for those.

23 Needy: Well those are the (inaudible) called pre-sentencing service of the evaluation
24 might be far more eligible than the post-sentence treatment phase.

25 Swift: Well, that's all we're asking for, is funding for the evaluation your honor. Not for
26 the (inaudible).

27 McDonald: It would be nice, but we don't think
28

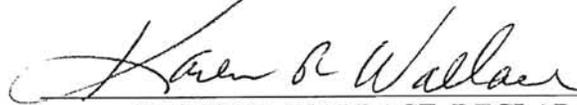
1 Needy: I'll sign an order for what ever funds that might come out of I would be happy to
2 have um
3 McDonald: Okay.
4 Needy: this available for me to order this (inaudible).
5 McDonald: Great.
6 Needy: Do you have a service provider already (inaudible)
7 McDonald: We do not but we will certainly find one in the next day or so, and I'm sure, um,
8 Letty can give us some guidance in that respect too.
9 Needy: She might have some guidance for you on the funding availability also.
10 McDonald: That's fine.
11 Needy: also.
12
13 McDonald: And if, um, um, madam bailiff do you have a blank order at all?
14 Needy: Ask the clerk if
15 McDonald: Clerk. There we go.
16 ??: (Inaudible)
17 McDonald: Do you have a blank order?
18 Needy: (Inaudible) court reporter (Inaudible)
19 McDonald: Thank you so much.
20 Needy: I'm going to leave the sentencing memorandum as a prior brief sentence report in
21 the file for future reference.
22 Long pause.
23 Pedersen: Your honor. If we're just talking an order for funds I don't have a problem with
24 that being provided ex-parte and the court taking that signing that later off the
25 record.
26 Needy: (Inaudible) good to go?
27 Pedersen: Thank you. (Inaudible)
28

1 McDonald: What does that say?
2 Needy: Mr. Pedersen, I'm going to change this to October 23rd (Inaudible)
3 ???Inaudible
4 McDonald: So Erik, does it need that?
5 Needy: (Inaudible)
6 ???(Inaudible)
7 Needy: Alright, there will be a recess
8 McDonald: Thank you your honor.
9 Needy: (Inaudible). Thank you all.
10 Bailiff: All rise please.
11
12

13 I, Karen R. Wallace, declare as follows:

14 The preceding transcript is a true and correct copy, to the best of my abilities of a
15 proceedings held in Skagit County Superior Court in the State of Washington v. John E. Bettys,
16 case number 10-1-00159-9 on September 26, 2013, transcribed from the electronic copy of the
proceedings provided by the Skagit County Clerk.

17 . Executed at Mount Vernon, Washington this 29th day of September, 2014.

18 
19 _____
KAREN R. WALLACE, DECLARANT

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27
28

APPENDIX D

**YUILLE & DAYLEN
PSYCHOLOGICAL CONSULTANTS**



Ganges P.O. Box 600
Salt Spring Island, British Columbia, V8K 2W2
Canada

Tel: (250) 537-2061

Fax: (250) 537-2062

May 10, 2010

Re: State v Bettys

Reasons for Report

Ms. Catherine McDonald, attorney for the accused, requested that I examine a set of materials and provide an opinion on the interview of the complainant in this case.

Materials Reviewed

In preparation for this report I reviewed the following materials:

1. A copy of the affidavit of probable cause;
2. A DVD and a transcript of an interview of the complainant (7/16/09);
3. A copy of the Anacortes Polis report;

Before I provide my evaluation of the allegations in this case, I offer some background information relevant to cases of this type. The next section provides an outline of the general principles that should guide an investigative interview of a child. The subsequent section outlines some general principles dealing with children's memory and statement credibility.

General Considerations when Interviewing Children

An investigative interview with a child requires special skill and training. Children are particularly susceptible to the effects of leading questions and to

suggestion, an interviewer must be trained to employ an appropriate form of questioning with children. In addition, the interviewer must have knowledge of the memory, language and expressive abilities of children of different ages. The greatest problem for police officers that do this type of interview has been the lack of availability of appropriate training. Perhaps the biggest problem for social workers, medical doctors and psychologists who conduct such interviews is that they have been trained as clinicians rather than as investigators. As a consequence, the use of leading questions in a clinical style interview often characterizes their interviews of children. The clinical style is not appropriate for an investigative interview. It is important to emphasize that a person cannot function as both therapist and investigator in the same case. The following discussion provides an outline of the factors that must be considered in conducting a proper investigative interview with a child.

Our awareness of the problem of sexual abuse has grown rapidly in the past fifteen years. One consequence of this rapid change is that many professionals have been faced with the task of interviewing children without sufficient training. Recently government agencies and professional organizations have been working to develop standardized training procedures for those who have the responsibility of interviewing children. The results of these efforts have been some emerging standards with respect to how the investigative interview of the child must be conducted.

As a researcher and practitioner in the area of victim and witness interviews I have been involved in the development of interview standards. The procedure I have developed, called the Step-Wise Interview, attempts to maximize the information obtained from the child while minimizing the contamination of the child's memory. Training in the Step-Wise Interview has been provided to professionals in every province in Canada. The Step-Wise Interview has been adopted as the standard for interviewing in England and Wales. The procedure is also employed in a number of states in the U.S.A. (e.g., Colorado, New York, Pennsylvania, Texas and Wisconsin) and has been adopted for investigations by the U.S. army.

The Step-Wise Interview has been developed to avoid the following problems frequently found in interviews with children:

- 1) Interviewers too often use leading questions, to which children are particularly susceptible;
- 2) Interviewers do not allow children to take their time and to describe events in their own words;
- 3) Interviewers are usually not trained investigators, and, as a consequence, they do not obtain enough information to validate the child's account;
- 4) Interviewers often have only one hypothesis in the interview setting and this hypothesis "blinds" the interviewer to obtaining all the relevant information from the child;

- 5) Interviewers may use language, which is inappropriate for children (particularly with preschool age children).

The Step-Wise Interview employs open-ended questions, avoids leading the child, allows the child to set the pace of the interview and to describe events in his or her own words, and attempts to obtain as much information as possible to evaluate alternative hypotheses about the child's allegations. During the course of the interview the susceptibility of the child to suggestion and to leading questions is checked. The procedures employed in the interview are adjusted to fit the needs of children of different ages.

An essential component of the interview is some form of recording. The preference is to have the interview recorded on videotape; however, if video equipment is not available an audiotape will suffice. Recording the interview is essential to determine the effectiveness of the interview technique. Also, it is only possible to evaluate the value of the interview if a verbatim record is available. Recording also should reduce the number of times a child has to be interviewed.

The Step-Wise Interview has been designed to provide a consistent framework for obtaining the child's evidence throughout the investigative process. Thus, the same interview technique can be employed in the investigative interview, in preparing the child for court and in questioning the child in court.

A revised version of the interview called The Step-Wise Guidelines: The New Generation was developed toward the end of 2008 (see Yuille, J.C., Cooper, & H.F. Herve (in press) The Step-Wise Guidelines for child interviews: The new generation. In M. Casonato & Pfafflin (Eds.), Handbook of pedosexuality and forensic science).

My Qualifications

I am Professor Emeritus in the Department of Psychology, University of British Columbia. I have been conducting research in the general area of human memory for over 40 years. This work has included a number of studies on children's memory. My research has been supported by grants from the National Science and Engineering Research Council of Canada, the Social Sciences and Humanities Research Council of Canada, the Ministry of Justice of Canada, the Solicitor General of Canada, the Ministry of Social Services and Housing of British Columbia, the Ministry of the Attorney General of British Columbia and NATO. During the past 30 years my work has focused on the role of memory in the forensic context. I have published more than 110 articles and chapters and eight books and monographs. I have given or co-authored more than 210 conference presentations and invited addresses.

I have provided training to police, child protection workers, prosecutors and judges in the Step-Wise Interview and the SA procedures. I have conducted more than 170 such workshops. I have interviewed and/or assessed children's evidence in more than 1000 cases of alleged sexual or physical abuse, some of which involved multiple victims. I am a registered psychologist with the College of Psychologists of British Columbia (registration number 753).

I have testified as an expert in all levels of family, civil and criminal court and in provincial and royal commissions. I have been qualified as an expert in courts in Newfoundland, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta, British Columbia and the Yukon Territory. I have also testified in several states in the United States (e.g., Florida, Illinois, New York, Oregon, and Washington).

An Evaluation of the Interview of Micah Ferrell-Cichester

The opinions offered in this report are based on my understanding of the relevant psychological literature, my professional training and experiences, and the information available to me at this time (listed above). Because I have not personally met with the complainant, I have not had the advantage of observing non-verbal cues and behavioral signs that might inform my opinion. Also, I have not had an opportunity to put my own questions to the complainant. The reader should be aware of these constraints on my opinion. I reserve the right to alter the opinions offered in this report upon the receipt and consideration of any new, relevant data that may later become available.

On July 12, 2009, Laurie Ferrell, mother of Micah Ferrell-Cichester (DOB 3/24/04), reported that her son had grabbed her 'crotch' area. When asked about this the boy reportedly said that his uncle, the accused, had touched him in that spot a long time ago. This was reported to the police and resulted in an interview of the boy. Apparently the recording apparatus failed during that interview and a second interview was conducted on July 16, 2009. This report focuses on the latter interview.

The interview began with some rapport building questions. No attempt was made by the interviewer to informally assess the child. Rapport building was followed by a review of the interview rules, including dealing with truth and lies. The latter phase of the interview was done using cards depicting children telling the truth and lying. The interviewer used her tone of voice to communicate the 'correct' answers to the child. Consequently, this was not an objective assessment of the child's understanding of truth and lies.

The child was very reluctant to talk about the 'secret' reason that he was there. Eventually, he said that John had touched him two times. He said that the accused touched him on the outside of his clothing in the 'crotch' area. He described the touching as warm and soft. The interview ended with the interviewer doing some informal cognitive assessment using crayons.

This interview was adequate. In particular, the interviewer generally avoided leading and suggestive questions. The child did not disclose any sexual abuse in the interview. The purpose of the touching outside of the clothing was not apparent and no attempt was made to clarify the nature of the touching.

In summary, an adequate interview revealed no allegation of sexual interference with the child.

John C. Yuille, Ph.D., R. Psych.

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SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
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ms

September 29, 2010

Skagit County Clerk's Office
Skagit County Superior Court
205 - W. Kincaid, Rm 103
Mount Vernon, WA 98273

Re: State v. John Bettys 10-1-00159-9

Hearing date: October 1, 2010, 1:30 p.m.

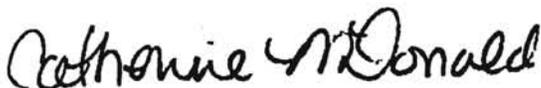
Dear Judge Needy:

On April 2, 2010, the court authorized funds at public expense for Dr. John Yuille to do a forensic evaluation of the police reports, child's forensic interview, and legal filings in the above case to assist in clarifying possible defenses in this case. Dr. Yuille's report was completed on May 6, 2010. A copy of his report is attached to this letter.

6
In the hearing scheduled for October 1, 2010, the defense and State have submitted the child's forensic interview as part of the evidence to be considered in the Knapstad Motion. The State has also provided a copy of the interview as part of their evidence in the Child Hearsay motion. The defense is providing the Court with a copy of Dr. Yuille's evaluation of the forensic interview as supplemental information for the Court to consider in review of the forensic interview.

This letter and report have been filed with the Skagit County Clerk's Office, and a copy of this letter has been mailed to the Skagit County Prosecutor's Office. The State was provided a copy of this report by Dr. Yuille on June 3, 2010. It has not been re-submitted to the Prosecutor with this correspondence.

Sincerely,



Catherine McDonald
Attorney for John Bettys

APPENDIX E

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SKAGIT COUNTY, WA

2013 SEP 26 PM 2:23

**Superior Court of Washington
For Skagit County**

State of Washington

Plaintiff

vs.

JOHN E. BETTYS,

Defendant

No. 10-1-00159-9

**Statement of Defendant on Plea of
Guilty to Sex Offense
(Felony)
(STTDFG)**

- 10
1. My true name is John Edward Bettys.
 2. My age is 39.
 3. The last level of education I completed was 2 years College
 4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
 - (b) I am charged with:

COUNT 1: CHILD MOLESTATION IN THE THIRD DEGREE.

The elements are: RCW 9A.44.089

Count 1: Between December 1, 2008 and July 12, 2009, in Skagit County Washington, the defendant had sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**
 - (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
 - (b) The right to remain silent before and during trial, and the right to refuse to testify against

myself;

- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	9+	60 months		36 months (subject to RCW 9.94A.	5 years &/or \$10,000

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

The parties agree to the following criminal history and calculation of offender score:

<u>Indecent Liberties</u>	<u>3/20/89</u>	<u>Sent 6/20/89</u>	<u>Skagit, WA Juv. 3 pts</u>
<u>Burglary 2nd</u>	<u>3/20/90</u>	<u>Sent 6/20/90</u>	<u>Skagit, WA, Juv. 1/2 pt</u>
<u>Burglary 2nd</u>	<u>4/20/89</u>	<u>Sent 6/20/89</u>	<u>Skagit, WA Juv. 1/2 pt</u>
<u>Rape of a Child 1st</u>	<u>1/1/90-2/18/93</u>	<u>Sent 9/23/93, 12/19/02</u>	<u>Skagit, WA Adult 3 pts</u>
<u>Rape of a Child 1st</u>	<u>1/1/90-2/18/93</u>	<u>Sent 9/23/93, 12/19/02</u>	<u>Skagit, WA Adult 3 pts</u>

The two counts of Rape of a Child 1st involve different victims.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines, fees, assessments, or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) ~~For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

~~For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.507: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree

Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, or if my crime is failure to register as a sex offender, and this is my second or subsequent conviction of that crime, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006: For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation: If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 30 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge:
Count 1: 60 months under RCW 9.94A.507(3) and community custody under RCW 9.94A.507(5) "for any period of time the person is released from total confinement before the expiration of the maximum sentence."
Community custody conditions as recommended by the Department of Corrections in the PSI, no contact with victim, sex offender treatment while in prison and compliance with treatment upon release while on community custody, community custody to include a condition of no contact with minor children (subject to determination of treatment provider with respect to contact with his minor son), court costs, assessments and restitution.

[] The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so (except as provided in paragraph 6(f)). I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
 - (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
 - (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Government assistance may be suspended during any period of confinement.
- (m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.
- (n) I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay a \$100.00 DNA collection fee.
- (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

Notification Relating to Specific Crimes: If any of the following paragraphs *DO NOT APPLY*, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that *DO APPLY*.

~~_____ (p) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~

_____ (q) **Special sex offender sentencing alternative:** In addition to other eligibility requirements under RCW 9.94A.670, *to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.*

For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a

prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of the minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after July 1, 2005; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- ~~_____ (r) If this is a crime of domestic violence, the court may order me to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~
- _____ (s) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- ~~_____ (t) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.~~
- ~~_____ (u) If I am pleading guilty to felony driving under the influence of intoxicating liquor, or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor, or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked, or denied. Following the period of suspension, revocation, or denial, I must comply with the Department of Licensing ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.~~
- ~~_____ (v) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall~~

be served in total confinement, and shall run consecutively to all other sentencing provisions.

- ~~(w) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, or vehicular assault while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.~~
- ~~(x) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[p].~~
- ~~(y) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~
- ~~(z) I may be required to register as a felony firearm offender under RCW 9A.41. _____. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.~~
- ~~(aa) The offense(s) I am pleading guilty to include a deadly weapon, firearm or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.~~
- ~~(bb) For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.~~
- ~~(cc) If I am pleading guilty to patronizing a prostitute or commercial sexual abuse of a minor, a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime related geographical restrictions on me, unless the court finds they are not feasible. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.~~

7. I plead guilty to:

COUNT 1: CHILD MOLESTATION IN THE THIRD DEGREE.

in the Third Amended Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

This guilty plea is made pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), State v. Newton, 87 Wn.2d 363, 552 P.2d 682 (1976), State v. Zhao, 157 Wn. 2d 188, 193, 137 P.3d 835, 837 (2006) and In Re Pers. Restraint of Barr, 102 Wn.2d 265, 684 P.2d 712 (1984). Pursuant to this case law, I agree there is a factual basis for the plea to a more serious charge based upon the reading of the declaration for determination of probable cause filed with the court February 19, 2010. I know and understand the evidence that could be used to attempt to convict me on the originally charged offenses (having reviewed the discovery and heard testimony in a prior trial), the elements of the originally charged offense, the elements of the amended charge, that the evidence did not support the amended charge and, that the sanctions or consequences of the amended charges were less onerous to him than the sanctions or consequences of the original charge. With all of this in mind, I make an informed, knowing and intelligent choice to freely and voluntarily enter a plea of guilty to the amended charge.

[XX] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea and for the factual basis for the greater offenses.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.



John E. Betty, Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.



Erik Pedersen, Prosecuting Attorney
WSBA# 20015



Catherine McDonald, Defendant's Lawyer
WSBA# 24002

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and

the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret, in the _____ language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 9-26-13

Dave Needy
Judge

APPENDIX F

TABLE OF HEARINGS

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

State of Washington,) Skagit County Cause
) No. 10-1-00159-9
Plaintiff,)
) Court of Appeals
) No. 71418-0-I
vs.)
))
))
John Bettys,)
))
Defendant.)

VERBATIM REPORT OF PROCEEDINGS

THE HONORABLE DAVID R. NEEDY
Department IV
Skagit County Courthouse
Mount Vernon, Washington 98273

APPEARANCES:

For the Plaintiff: **ERIK PEDERSEN**
Deputy Prosecuting Attorney
ROSEMARY KAHOLOKULA
Chief Deputy Prosecuting Attorney
Skagit County Prosecutor's Office
605 S. Third Street - Courthouse Annex
Mount Vernon, WA 98273

For the Defendant: **CHARLES SWIFT**
CATHERINE McDONALD
Swift & McDonald, P.S.
1809 Seventh Avenue, Suite 1108
Seattle, WA 98101

DATE: September 13, November 26,
and December 17, 2013

REPORTED BY: **JENNIFER CHRISTINE SCHROEDER,**
RPR, WA CCR #2221, CA CCR #10176,
OFFICIAL REPORTER

1 MOUNT VERNON, WASHINGTON

2 SEPTEMBER 13, 2013

3 1:55 P.M.

4 * * *

5
6 THE COURT: Be seated please.

7 MR. PEDERSEN: Calling the case of John Bettys,
8 10-1-159-9. Mr. Bettys is present represented by Ms.
9 McDonald. This is Erik Pedersen for the State on this case.
10 We are proposing Mr. Bettys be permitted in enter a change
11 of plea to an amended information, which I've handed
12 forward, a felony, Communication With a Minor For Immoral
13 Purposes, which is a Class C Felony, a felony offense
14 because he does have a prior felony sexual offense
15 conviction Count II charge of Assault 2nd Degree based upon
16 an incident which had not been charged previously and had
17 been discussed between counsel and I for an incident
18 involving an alleged victim on a different date. The date
19 and timeframe between September 1st of 2008 and
20 September 30th of 2008.

21 The statement of Defendant on Plea of Guilty, which
22 we're going to be handing forward shortly addresses both
23 issues in the statute of limitations as to that particular
24 act and also my understanding will be a plea pursuant to
25 State vs. Alford, State vs. Zhao, and State vs. Newton where

1 he acknowledges the possibility of a jury finding him guilty
2 of the greater offense and is taking advantage of the
3 State's recommendation and is willing to enter a change of
4 plea to these two particular charges.

5 THE COURT: What is the allegation in Count 2?

6 MR. PEDERSEN: The allegation in Count 2 is assaulting
7 another with a noxious substance.

8 MS. McDONALD: Can I briefly address that. That's
9 something that came up during the child witness interview. At
10 that time Mr. Bettys ended up, I think, pouring a quart of motor
11 oil over a child's head.

12 THE COURT: I hadn't heard about that or at least don't
13 remember hearing about that.

14 MS. McDONALD: It wasn't brought up at the last trial.
15 It was brought up at the child's witness interview.

16 THE COURT: You caught me off guard.

17 MR. PEDERSEN: It was something that was aware of by --
18 Ms. Dyer was aware of that, having sat through that interview.
19 It's not something that came up during the trial.

20 MS. McDONALD: Do you want me here or up there?

21 THE COURT: Wherever you are comfortable. I do need a
22 statement on criminal history and a guilty plea form if we have
23 those.

24 MR. PEDERSEN: Your Honor, it's a little different in
25 this particular case than what has been provided on the guilty

1 plea form is actually our statement of criminal history on the
2 plea form itself under that subsection. And it's agreed between
3 the parties. I figured that was easier than having a separate
4 form. And also because there is an agreement it kind of landed
5 itself to being put on that form.

6 THE COURT: Tell me your full name?

7 THE DEFENDANT: John Edward Bettys.

8 THE COURT: Date of birth?

9 THE DEFENDANT: 9-12-74.

10 THE COURT: You and your attorney have received a second
11 amended information; is that correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you have any questions about those charges
14 as they now stand?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: And you have had a chance to look at the
17 criminal history listed in the guilty plea form?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: To the best of your knowledge is it correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you read this statement on plea of
22 guilty?

23 THE DEFENDANT: Yes, I have, Your Honor.

24 THE COURT: Do you have any questions about any of the
25 information that's in here?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Do you understand the rights you are waiving
3 or giving up by pleading guilty instead of going to trial?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you know the standard sentencing range and
6 maximum penalty for each of the charges?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you know what is going to be recommended
9 by the attorneys --

10 I assume this is an agreed recommendation?

11 MR. PEDERSEN: Yes.

12 MS. McDONALD: Yes.

13 THE COURT: By the attorneys at your sentencing hearing?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand I do not have to follow
16 those recommendations?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: By pleading guilty to a felony you give up
19 your right to own or possess a firearm until that right is
20 specifically reinstated. Are you aware of that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: There are no registration requirements; is
23 that correct?

24 MR. PEDERSEN: No register effective --

25 THE COURT: To Count I register?

1 MR. PEDERSEN: Correct.

2 THE COURT: Have you talked to your attorney about the
3 registration requirements?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I know you are familiar with those from your
6 prior conviction. I assume they are similar or the same?

7 THE DEFENDANT: Yes.

8 MR. PEDERSEN: I have to apologize the guilty plea form
9 does reference an offender registration attachment. I have not
10 actually seen that or given that to counsel. If the Court could
11 give me five minutes tops I can get it so we have that to present
12 to the Court.

13 THE COURT: Or we can add to it during the course. Do
14 you want that here now before we go forward?

15 MR. PEDERSEN: I think it's preferable -- it is
16 referenced in Section 12, and has been explained to Mr. Bettys.

17 THE COURT: Okay. Let's take a brief recess then.

18 **(OFF THE RECORD)**

19 THE COURT: I believe we were talking about the
20 registration requirements and the State has a specific
21 requirement. Have you had a chance to look over them, Mr.
22 Bettys?

23 THE DEFENDANT: Yes.

24 THE COURT: Any questions about those?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: This is a plea on both. Both Counts are
2 Alford pleas; is that correct?

3 MS. McDONALD: Yes, Your Honor.

4 THE COURT: Mr. Bettys, to me Alford pleas are meaning
5 you are not admitting committing these particular acts, but you
6 believe if you went to trial you could be found guilty of these
7 or even more serious crimes. You would like to take advantage of
8 the State's offer so you are entering this arrangement; is that
9 correct?

10 THE DEFENDANT: That is correct.

11 THE COURT: Anything to add from either side about the
12 Alford Plea?

13 MR. PEDERSEN: No, Your Honor. I think the detailed
14 language from State v. Zhao is in the plea form.

15 THE COURT: If I accept these pleas they are treated then
16 just like any other guilty pleas, and the only thing left to
17 sentence you for is these charges. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you entering this of your own choice?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And the Court is allowed to rely on the
22 reports in the file. You have a fairly separate set of findings
23 then for --

24 MR. PEDERSEN: No.

25 THE COURT: Based on the information in the report?

1 MR. PEDERSEN: Correct.

2 THE COURT: Based on that information in the file and the
3 reports provided I will find the basis for each of the two
4 counts, Count 1, Communication With a Minor For Immoral Purposes
5 and Count 2, Assault in the 2nd Degree by Poison or Other
6 Destructive or Noxious Substance and find you guilty of those two
7 charges, Mr. Bettys, and make a finding that your plea is
8 knowingly and voluntarily entered.

9 MS. McDONALD: Your Honor, my client has also signed a
10 defendant's acknowledgment of advise of rights.

11 THE COURT: We normally don't use that. Those are the
12 same rights contained in the guilty plea form. If you would like
13 it entered we can certainly do that.

14 MS. McDONALD: That's a fine belt and suspenders.

15 THE COURT: Good point.

16 MR. PEDERSEN: We pre-approved time with the Court
17 Administrator's office on the 26th of December for the sentencing
18 because we need a PSI. We hope to get it done earlier. The
19 person who is going to write that is on vacation next week.

20 THE COURT: Okay. So a rather short turn around. I've
21 been told they will likely be able to accommodate that.

22 MS. McDONALD: We've all put it in our schedule. I
23 believe Melissa put it in the schedule.

24 THE COURT: Okay. I've read the recommendations. Does
25 that involve credit for time served, or will there be additional

1 time?

2 MR. PEDERSEN: There is a sentence of 51 months. That's
3 the low end of the range, a 5-07 offense requires the Department
4 of Corrections to place a risk assessment and evaluate whether or
5 not to detain him up to the statutory maximum. So if they
6 determine that full credit for time served is adequate and don't
7 want to have him do anything additional in way of treatment, my
8 understanding is he could theoretically be released once he gets
9 to the Department of Corrections. That's going to be a
10 supervision determination by the Department of Corrections.

11 THE COURT: So it will be sent back for processing at the
12 very least?

13 MR. PEDERSEN: Yes.

14 THE COURT: Anything else today?

15 MS. McDONALD: No, Your Honor.

16 THE COURT: Alright. We will be at recess. Thank you.

17

18 (MATTERS ON THIS CASE ENDING FOR THE DAY)

19

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1 NOVEMBER 26, 2013

2 9:30 A.M.

3 * * *

4 MS. KAHOLOKULA: This is State v. Bettys 10-1-159-9 on for
5 sentencing. Mr. Bettys previously pled guilty to Child
6 Molestation in the 3rd Degree. Mr. Bettys filed on his own a
7 letter to the Court, which I received a copy of a motion to
8 prevent wrongful disclosure supplemental sentence report. I
9 responded to those items in my own sentencing memorandum.
10 Subsequent to that I received defense counsel's sentencing
11 memorandum. And I believe Mr. Pederson is going to address the
12 issues related to prior conviction, which I think is separate
13 from today's sentencing hearing.

14 I guess other than -- I don't want to reiterate what I've
15 already put in my sentencing memo, but I guess I will respond
16 orally as best I can to the defense memoranda. And I'm a little
17 bit unclear, and ready to be corrected at any point if I'm
18 misunderstanding, but it sounds like defense is asking that the
19 indeterminate sentence be made a determinate sentence. Am I
20 correct on that?

21 MR. SWIFT: Yes.

22 MS. KAHOLOKULA: And that a part of the determinate
23 sentence treatment be imposed. In going through their memoranda
24 on page 2, down at the bottom, it says that Mr. Bettys' offense
25 was committed December 1st, 2008 through July 15th, 2009,

1 proceeding the modification of the SRA on August 2010 permitting
2 the imposition of affirmative conditions under the sentencing
3 guidelines in place. At the time of Mr. Bettys' offense the
4 Court would have lost the power to mandate affirmative conditions
5 of relief. I guess I'm confused by that assertion. The RCW has
6 long permitted the Court to impose the affirmative condition of
7 treatment related to the criminal conviction. Currently we're
8 looking at RCW 505, prior to that is -- excuse me, RCW 9.94A.505,
9 prior to that it was codified as 9.94A.712. And under (8) was
10 enforced at the time of the commission of the offense the State
11 said as part of any sentence the Court may impose and enforce
12 crime related prohibitions and affirmative conditions as part of
13 the chapter. So I'm not aware of any issue where the Court would
14 not be permitted to impose treatment. And certainly what the
15 parties have agreed to is that treatment should be imposed.

16 The sentencing memoranda goes on to talk about that
17 treatment should be made part of time in custody and not --
18 community custody out in the community and not as part of
19 treatment in prison, indicating that there's insufficient time
20 for Mr. Bettys to enroll or complete in-custody sexual offender
21 treatment. And Mr. Pederson had actually handled this part of
22 it. But my understanding is that the Department had indicated
23 that there needed to be 12 to 18 months left on the prison term
24 in order for him to receive in prison treatment. He's got
25 approximately 14 to 15 months left in prison so it seems that he

1 could, in fact, complete a treatment program in prison.

2 THE COURT: Is that timeframe that you just quoted based
3 on credit for good time or not?

4 MS. KAHOLOKULA: The 12 to 18 months in prison?

5 THE COURT: Yes, the amount of time you believe he has
6 left to serve is that based on actual calculating good time, or
7 is that just based on the 60 minus what he served?

8 MS. KAHOLOKULA: 60 minus what he served.

9 THE COURT: Is he not going to get any credit for good
10 time as part of the calculation when you go through processing at
11 DOC?

12 MS. KAHOLOKULA: I think that's up to the Department to
13 decide what, if any, good time they are going to calculate into
14 the sentence. They have it within their jurisdiction to hold him
15 for up to 60 months, the maximum term. And I don't think that
16 the Court, to kind of jump ahead, is able to say: Department you
17 must give him this good time, and you must release him now.

18 THE COURT: I'm not even going there yet. What I'm
19 saying is if he's entitled to 15 percent good time as a sex
20 offender then our case numbers -- because I hear your argument
21 saying hey there is still time for treatment in prison based on
22 your numbers, but those aren't DOC numbers. And I don't think
23 any of us know how DOC -- they won't preview for us how their
24 calculations are going to fall. They may have him with two
25 months left, or they may have him with 15 months left. Anything

1 under 12 they are going to say no treatment. Would we all agree
2 on that?

3 MS. KAHOLOKULA: I think that's correct.

4 THE COURT: So we're sitting here without knowing what
5 they are actually going to do. And I think the defense has
6 requested, if I understand it, judge declare an exceptional
7 sentence if you have to, but let's get into treatment.

8 MS. KAHOLOKULA: I think that's accurate, and I think
9 that the problem is that -- and I guess I have to say that I
10 don't know that we have a particular dog in the fight other than
11 to clarify what we understand the law to be. And I don't think
12 the Court has authority to declare an exceptional sentence
13 requiring Mr. Bettys' release. I think the Court can only
14 declare an exceptional sentence as is authorized by statute. And
15 under 505, prior 712, the Court's only option is to declare an
16 exceptional down as to the minimum term. So in other words, the
17 Court gets to declare an exceptional down 45 months, but the
18 Department would still have the option of holding him to the
19 maximum term.

20 THE COURT: The only dog I have in the fight, if I could
21 use that terminology, which is probably a good one, is that I
22 believe the community is better served if before he's off of
23 supervision and out of the Department of Corrections' authority
24 if he has received treatment. Because otherwise we are just
25 setting him and our community up for another similar case,

1 especially in light of reading the evaluation that I read. And I
2 think that's in all of our best interest. Because the difference
3 between ten years in prison and treatment, let's keep the
4 community safe for ten years, but we're dealing with a matter of
5 a few months. And I don't know how we get there. And I'm just
6 tipping my hand early. I also want to see him get treatment. If
7 I believed that the Department of Corrections was going to
8 provide that for him in custody or at least get him well on his
9 way and he could follow up and complete it in the community is
10 one thing. But my 30 years of dealing with the Department of
11 Corrections gives me absolutely no faith that they will do
12 anything other than pass the buck. And Mr. Bettys, just like
13 last time, where once again he denied the opportunity in custody
14 and then gets spit out into the community with no supervision
15 once the 60 months has expired, and my dog has lost the fight,
16 and I'm not willing to do that. What authority I have to avoid
17 that I'm not sure either. So I'm not sitting up here telling you
18 what I'm going to do because I'm not sure what I can do. But I
19 would think and hope that the Prosecutor in light of the
20 evaluation, the amount of time Mr. Bettys served in his criminal
21 history would also be motivated to believe that treatment is the
22 best possible chance of avoiding Mr. Bettys being back in the
23 Prosecutor's Office.

24 MS. KAHOLOKULA: We completely agree with you. I just
25 don't know how we get there.

1 THE COURT: So we're all in agreement?

2 MS. KAHOLOKULA: Yes. My concern would be if the Court
3 were to enter an order that is suggested by the defense would the
4 Department of Corrections? The Attorney General's Office then
5 appeal it and again run out the time before any treatment could
6 be had?

7 THE COURT: You're not planning on appealing. It's just
8 that you don't believe, perhaps, there's legal authority and
9 that's your responsibility?

10 MS. KAHOLOKULA: That would be correct.

11 THE COURT: We all understand each other. Go right
12 ahead.

13 MS. KAHOLOKULA: The only other thing I would note that
14 is of concern in terms of treatment is that if Mr. Bettys is
15 released I'm concerned about how he would pay for treatment. He's
16 asking the Court to find him to be indigent and to waive all of
17 his fines if he's out of custody rather than in the institution.
18 I don't know how that treatment would be paid for. And whether
19 he's in or out he's only got this finite amount of time left to
20 pursue treatment.

21 Let me just check my notes to see if there's anything else
22 I had a concern about regarding the memo. Just noting that also
23 in the Appendix F Mr. Bettys' counsel acknowledged that basically
24 we can't put in a condition of successfully completes treatment
25 because there probably won't be time for it.

1 Then the only other issues had to do with the Appendix F
2 itself, which might best be served to hold off on that until the
3 Court determines how I will structure the sentence.

4 Mr. Pedersen is telling me that the 12 to 18 came from a
5 conversation that he had with the Department of Corrections. He
6 put 18 in the PSI. And he's not sure if 12 is an absolute
7 minimum.

8 THE COURT: Do we all agree we don't have 18?

9 MR. PEDERSEN: That was one thing I asked for in the
10 answer in the reports they provided. They did not answer that
11 question.

12 MR. SWIFT: I'd like to speak now.

13 THE COURT: Go right ahead.

14 MR. SWIFT: 12 is a prayer. 12 has no basis. The PSI is
15 18 months. Everything I know about that program is 18 months.
16 Everything the Court knows about this program is 18 months. And
17 it's a prayer by the State to just say hey it's really not a
18 problem.

19 THE COURT: Let's start there and spend our time --

20 MR. SWIFT: The evidence is --

21 THE COURT: Do you believe the Court has to declare an
22 exceptional sentence?

23 MR. SWIFT: Yes, you do.

24 THE COURT: Do I have the authority to bore him release?

25 MR. SWIFT: Yes, I do. I believe you do because I look

1 at the change in the case law, and you do it by making the
2 explicit before 2010 you had to put forth something that said to
3 the lines of follow all recommendations, follow the parts for
4 community custody, follow the recommendations of the report. But
5 you could not specify exactly what you do and what you do in
6 time, now you can. There was a change in the statute. And so
7 when you specify, when you sit here and make and address some of
8 the concerns of the State, one of the concerns of the State was
9 how is he going to pay for it? I, Judge Needy, don't care how
10 he's going to pay for it.

11 What I'm telling you is if this man is placed in community
12 custody he will be in treatment, period. If he is not then he
13 cannot. I'm telling you, the Department of Corrections, you
14 can't put him in to community custody. It's not an option for
15 you, and that is exceptional. And I believe you have the power
16 to do that, but it's an exceptional sentence. I think as I set
17 out in part on this that you have the power to specify to DOC.

18 I think this is exactly the type of place where the
19 legislature gave you that power. Because, as Mr. Bettys pointed
20 out to me this morning the part on all these statutes, the
21 problem we are all having here is the written on the idea that
22 all of this is imposed at the front end, and we still have
23 50 months or 40 months to go. And in this case it's exceptional
24 because it's imposed in the back end. And that, just in the
25 situation, the legislature didn't want this to happen. They

1 didn't want it to happen. They gave a fail safe. They had a
2 fail safe, sometimes in special conditions. But they didn't say
3 that those were all of it. It's a fail safe that is a power to
4 the judge. He should only use the fail safe when the situation
5 is truly exceptional. And the case law says when he uses that
6 fail safe that we provided you to provide exceptional conditions
7 and exceptional requirements in it then it becomes a determinate
8 sentence if it was an indeterminate. And why would we want to do
9 that? What was the logic behind that? The logic was because
10 what the judge is doing in every one of those cases is usurping
11 the rule of DOC, Department of Corrections. What he's doing is
12 saying hey this is exactly what I want. Normally they say no.
13 And that's exceptional. But in this case, as this Court well
14 knows and points out, where we sit at we can't rely on the
15 Department of Corrections. And this judge and this Court sits in
16 the best position to ensure Mr. Bettys' interest at
17 rehabilitation and the community's interest that rehabilitation
18 exists. And I cannot think of how that statute would be better
19 worded or better set up for this situation to provide flexibility
20 and providing correction.

21 Now, hey, let's go on the part that the State suggested;
22 what if the Attorney General appeals and decides to harm Mr.
23 Bettys in Skagit County. Okay. What if they do? What did we
24 lose? What did we lose? Nothing. I believe this Court has the
25 power. Mr. Bettys believes the Court has the power. And in an

1 unusual part he's seeking from the Court to get more conditions
2 put on if for some reason his family can't raise the money. And
3 believe me, they have an interest in him going to treatment. They
4 can't raise the monies. He is indigent. They are getting money
5 selling property. If they can't raise the money he is going to
6 finish up his time. If he can raise the money because you put it
7 as an explicit, it's not followed to the best of your ability or
8 any part. It's every day that you are on community custody you
9 are in treatment. I lose authority over you at 14 months. But
10 every day that I have over you you go to treatment. That's it.
11 And that's the bottom line. So I award the sentence and direct
12 DOC that any time in community custody is being awarded in this
13 part and shall be in it.

14 Now, let's go on the part that the State -- let's go on the
15 next part. Let's say for some reason the State was right they
16 could do it in 12 months at DOC. You know what, DOC doesn't have
17 to release him. They didn't have to release him to community
18 custody. They just do treatment there. Mr. Bettys doesn't have
19 to pay for it, it's done by the State, great.

20 THE COURT: So you are suggesting the language that
21 allows either or?

22 MR. SWIFT: Yes, absolutely.

23 THE COURT: So we all agree he's going back to Shelton
24 for processing?

25 MR. SWIFT: Yes. But at that point they have to make a

1 determination. They have to make a determination. Because this
2 Court wants one thing. We want treatment. If they can't provide
3 treatment then he shall receive it in community custody. And it
4 makes it an exceptional sentence. I believe it is within the
5 Court's powers to do that on a determinate sentence.

6 THE COURT: When DOC holds him and doesn't comply?

7 MR. SWIFT: Then Mr. Bettys will have a remedy in habeas.

8 THE COURT: How long will that take?

9 MR. SWIFT: I would say on an emergency remedy on habeas
10 it's the best shot we got. Some part on me. There's this part
11 that I go. I completely understand how a prisoner gets lost in
12 the bureaucracy. I understand how that works. They do the easy
13 thing, okay. And the easy thing is to do nothing at most places,
14 the easy decision. In this bureaucracy on the part -- I wish this
15 Court could sit here and guarantee something. I'm in agreement
16 with the State on that part, guaranteed I don't know. But what I
17 do think is that we should do everything in our power to make it
18 happen, to make it heard what the will is of the judge sitting
19 here in Skagit County on behalf of the Skagit County people, on
20 behalf of Mr. Bettys' family and on behalf Mr. Bettys.

21 THE COURT: I don't think we have any disagreement.

22 MR. SWIFT: The way to do that is to order these parts.
23 If they don't then we look at it in the part that we lose
24 nothing, nothing. We potentially gain everything. Why would we
25 not do it? And I certainly believe you have a good faith basis

1 under the statute, which allows you to provide an exceptional.
2 You are not deviating from the 60 months custody that is mandated
3 by the State. You are simply doing something that he believe
4 makes it determinate on part.

5 THE COURT: I don't know if we can get to sentencing
6 before we deal with the pro se motions filed by Mr. Bettys
7 regarding criminal history.

8 MR. SWIFT: One point on the pro se motion, on the
9 criminal history I discussed that motion with Mr. Bettys. And
10 Mr. Bettys understands that in terms of his pretrial agreement,
11 that his pretrial agreement stipulated to a criminal history.
12 And it was a stipulated agreement on it without addressing the
13 merits of law underneath it. And that one of the things that the
14 State got -- we appealed this in the last case. Mr. Bettys was
15 correct. One of the things the State got as part of that was a
16 stipulated history as part of the deal. And my understanding
17 from Mr. Bettys is he wanted to continue with the deal. I
18 explained to Mr. Bettys that if he were to prevail on this motion
19 it would be within the State's right to withdraw from the deal at
20 that point because it was a material provision of it. Mr. Bettys
21 indicated that he did not want to withdraw from the deal. And,
22 therefore, I believe the motion is moot; is that correct, Mr.
23 Bettys?

24 THE DEFENDANT: Yes, Your Honor, I would withdraw that
25 motion.

1 THE COURT: I'm saying we lost a month of time for
2 potential treatment waiting for this. Let's not waste our time
3 --

4 MR. SWIFT: The only part that I would say that we gained
5 in that period of time, was I came up with a way for the Court to
6 do it. And that's the part -- but I understand that part. But we
7 withdraw that part of the motion.

8 The only other thing that I have to address is with regards
9 to the sex offender treatment. After researching the case law
10 that was provided by the government and then found additionally
11 by ourselves was the even more on point case that we agreed that
12 a redacted, to remove the normal privacy that one would in a sex
13 case, has to be part of the record. But we agreed only to the
14 extent that the Court actually utilized it. In other words, we
15 believe that in part the drive of the [unintelligible] is you
16 utilize it in your decision then the public has a right to know.
17 But if you believe, as the State has argued to you, that you are
18 powerless, there's nothing you can do, just give the 60 months
19 and walk out of here. That's their argument. You have no
20 powers. Then, quite frankly, the evaluation didn't play in your
21 decision at all. It can't. Because part of the Court is their
22 argument up front is not that we shouldn't do it. And our look
23 at the case law is that these records, the medical records and
24 stuff that would normally be protected are only disclosed when
25 the public's interest or right occurs because it influenced the

1 Court. If it didn't influence the Court then we would argue that
2 it should not be part of the record on this because it had no
3 bearing on your decision. Your decision had to be made on the
4 part that I have no power other than to do what I just did and
5 that's that. So that's our positions on this. I believe Mr.
6 Bettys has -- unless you have questions for me.

7 THE COURT: No. Is there anything you wish to say before
8 I impose sentence?

9 THE DEFENDANT: I believe I heard the Court to say,
10 pretty well even as I would, I believe we have been to the same
11 place in a prior case, the 2002 sentencing. I believe we were in
12 the same spot. I was returned to DOC for a lack of time to do
13 anything with treatment because of an error in that case. I would
14 hope at this time that we don't go back to the same mistake. I
15 had contact with ISRB already, and they tell me it will take them
16 a minimum of 120 days to get them up to speed to even make a
17 decision as to whether I would even be released to community
18 custody or not. So it would be another 11 months left before
19 they can even decide whether I would do treatment in there or be
20 released to community custody. They already made that very clear
21 in the letter to me, but that's under their provisions of the
22 statute under them. They have 120 days upon my return, since I'm
23 over my minimum term already, to come to determine whether I
24 would be released or whether some treatment might be able to be
25 provided is what they would do.

1 That concerns me because we have been here before. I had
2 no treatment then. And if I returned to DOC I can see clearly
3 that at this point I don't see there would be any treatment
4 provided again. I would hope the Court would use whatever power
5 is available today under these statutes for an exceptional
6 sentence, modifying sentences or what have you that had been
7 brought to the Court's attention to tailor an ability for me to
8 be in the community where I have located a treatment program
9 willing to accept me at this point. And I can at least get the
10 next 15 months at minimum in that program.

11 THE COURT: Do you know how far away you are from getting
12 that set up?

13 THE DEFENDANT: I figured within 30 days. I have two
14 broken feet currently. So being on disability should be fairly
15 automatic upon my release. I'm currently being treated at the
16 county jail and doing electroshock therapy every morning. I'm
17 seeing an orthopedic surgeon here in Mount Vernon because I
18 slipped and fell on the way to court here at our jail and broke
19 my foot or re-broke my foot, I should say. It was broke
20 previously at DOC, and I re-broke it here, and we're treating
21 that.

22 THE COURT: So your family has or has not been in touch
23 with an actual treatment provider?

24 THE DEFENDANT: Well, we have, Dr. Boyd, we have been in
25 touch with him, and he is willing to accept me in the treatment

1 they have here in Skagit County on Fridays. He said I would be
2 able to attend his groups, do monthly payments on that. So he
3 made very clear that I'm acceptable to his group. And he's
4 willing to have me accepted into the group here in Skagit County.

5 THE COURT: Is he a Certified Sex Offender?

6 THE DEFENDANT: Yes, he is. He is also the one who did
7 the SSOSA evaluation before the Court.

8 MS. McDONALD: Your Honor, I've confirmed that as well.

9 THE COURT: Do we know if expenses are even
10 potentially --

11 THE DEFENDANT: If disability is absolutely approved I
12 know they are definitely available. I'll be getting 6, \$700 a
13 month disability. At minimum until the foot heals I'll be on 3,
14 \$400 a month through DSHS. I've been on it before when I broke
15 my other foot four years prior. So there will be funding
16 available to me within approximately 30 to 45 days of release.
17 If not I have some items left I can take to the pawn shop and pay
18 for the treatment. I want the treatment.

19 MR. SWIFT: It's about \$4,000.

20 THE COURT: I assumed that. Alright. We're getting
21 close to the end of our time. Anything else you want to say?

22 THE DEFENDANT: No, Your Honor. All I would ask is that
23 the Court try whatever is available to the Court to make this
24 happen here today to get this established so I can get into these
25 groups as soon as possible.

1 MS. KAHOLOKULA: Your Honor, regarding the sexual
2 behavior evaluation I would ask to file that with the Court.
3 It's been redacted. We just need to remove the names, the
4 family, relationships. And the Court has already clearly stated
5 on the record that you relied on it. That's a basis for
6 treatment. I think it does need to be filed with the Court. The
7 only other observation that we would make is that having had a
8 DOC evaluation it would seem it would speed up the ability for
9 DOC to do something.

10 MS. McDONALD: And, Your Honor, we have had an
11 opportunity to go through the redactions. We agree on the
12 redactions that are in place.

13 THE COURT: Clearly for the benefit of Mr. Bettys the
14 only way we get to an exceptional sentence is the Court putting a
15 great deal of weight not only on this evaluation but also on the
16 prior unique circumstances that resulted in him about to receive
17 treatment at the Department of Corrections only to be resentenced
18 to a shorter period of time disqualifies him from that treatment
19 back in 2002, which results in another sex offense being charged
20 in our community, which I believe will continue to happen if Mr.
21 Bettys is not yet in necessary treatment. You are in a very
22 unique box, as pointed out by Mr. Swift. We are at the end of
23 sentence rather than the beginning. I believe Mr. Bettys has
24 served approximately 45 and a half months of a maximum 60-month
25 penalty at this point in time. I realize that there is an

1 indeterminate sentence meaning that the Court is really powerless
2 under the normal sentencing guidelines to do anything other than
3 impose a sentence of 60 months. And any release time would then
4 be served on community custody. I believe that option will fall
5 short of treatment in custody and treatment out of custody based
6 on the timeframe before this Court.

7 So I will declare an exceptional sentence and require that
8 the Department of Corrections is only legally authorized to keep
9 Mr. Bettys in custody if they will be providing sex offender
10 treatment to him in the Department of Corrections that otherwise
11 needs to be immediately released to community custody under the
12 conditions that he will be participating in a Certified Sexual
13 Offender Treatment Program. Should that not happen in community
14 custody it would be revoked and he would immediately be placed
15 back in the Department of Corrections to simply serve out the
16 balance of any sentence time left.

17 Standard legal financial obligations will be imposed. I
18 don't believe there's a claim for restitution, but if there is we
19 probably dealt with it. He is entitled to credit for time served,
20 whatever DOC decides that is or isn't. This sentence is
21 specifically imposed to serve the best interest of our community
22 and the best interest of Mr. Bettys to get an opportunity to
23 receive treatment to avoid further potential sex offenses. I see
24 and find no better way to do that. To release him from custody
25 with no supervision and no treatment is absolutely reckless in

1 this Court's mind and borderline criminal both to him and the
2 community we are trying to serve. Any other findings or rulings
3 that I need or can make?

4 MS. KAHOLOKULA: We need to talk about Appendix F, I
5 suppose.

6 THE COURT: I believe the State has conceded to some of
7 these concerns. Can we narrow that down to any potential
8 disagreement?

9 MS. KAHOLOKULA: The defendant wanted different language
10 for item one, no new criminal law violations; that would be fine.

11 THE COURT: Okay.

12 MS. KAHOLOKULA: Number 2, we agreed to strike.

13 Number 4, defense is opposed.

14 THE COURT: Seek employment or volunteer.

15 THE DEFENDANT: No, I believe it was CPS with my son,
16 Harley.

17 THE COURT: Which date is the presentence you are looking
18 at? I have one received October 21st, and one received in
19 September.

20 MS. KAHOLOKULA: This is October 21st.

21 MR. SWIFT: I think that may be one of the ones.

22 MS. McDONALD: I think the one that said no contact
23 unless there was approval by a community corrections officer and
24 UPF, unless that got modified.

25 MR. SWIFT: It got modified. There is no number 4.

1 THE COURT: There is a 4. It says do not seek
2 employment --

3 MS. KAHOLOKULA: Does Your Honor have something else at
4 10:00?

5 THE COURT: Yes.

6 MS. KAHOLOKULA: Maybe we can --

7 MS. McDONALD: Put that together. Because I think we are
8 on the same page.

9 MS. KAHOLOKULA: Actually I'll need some time anyway to
10 put together the exceptional J & S. Maybe Mr. Bettys can go
11 back. Counsel and ourselves can work on the judgment. And then
12 maybe we can get a time to go visit Mr. Bettys later today, if
13 that's acceptable. If it is would Mr. Bettys be willing to waive
14 his presence to present the J & S to the Court?

15 THE DEFENDANT: I would waive my presence for that.
16 Would the State be willing to state the credit for time served
17 1375 days current, if they calculate that from the February 20th,
18 2010 to current?

19 MS. KAHOLOKULA: He's getting credit for time served
20 since that February date.

21 THE DEFENDANT: That would be acceptable then.

22 MS. KAHOLOKULA: And I guess my only other question as
23 far as the Judgment & Sentence is I'm not clear if the Court is
24 sentencing under 7-12, or are you imposing an indeterminate
25 sentence?

1 THE DEFENDANT: I believe we were under 535.

2 THE COURT: I don't think the question was to you, Mr.
3 Bettys. I think it was to me. And I don't know that it's
4 actually -- I'm not sure I'm under anything other than blind
5 authority under the exceptional sentence. As I've already
6 stated, I don't think I fall squarely under either one of those.

7 MR. SWIFT: Your Honor, the case law we provided to you
8 states that where you add the conditions that you just did as an
9 exceptional sentence but the courts have repeatedly found in
10 upholding judges in doing this is it's their authority there, and
11 it then becomes a determinate sentence that the benefits, you
12 know --

13 THE COURT: So my exceptional sentence is taking it from
14 indeterminate to determinate?

15 MR. SWIFT: That's exactly it. That's what the courts
16 said repeatedly is that it takes it to determinate; that you have
17 sentenced him to 60 months. You have told them the next two
18 parts that they can hold him if they provide him sex offender
19 treatment to 60 months. And then you have told them that if they
20 can't that they have to release him into community custody
21 because under the determinate sentence they have to give him
22 credit for the 15 percent, and these are the conditions, if he
23 can do it, which are all things you can do.

24 MS. KAHOLOKULA: Hold on. I think that actually
25 indeterminate because you are also wanting to have the Department

1 maintain authority in case treatment on the outside doesn't work
2 then you wanting him to go back in, which would not work if it
3 were a determinate sentence.

4 THE COURT: Let's see if we can come up with something
5 creative that meets everyone's needs on that. I would be a little
6 surprised if the Attorney General jumped in and appealed this
7 because I would think DOC's easy answer is let's kick him, but I
8 could be wrong about that and certainly have been in the past in
9 trying to get their actions and motivations.

10 MS. KAHOLOKULA: Finally, Your Honor -- and I'm sorry to
11 interrupt.

12 THE COURT: Go ahead.

13 MS. KAHOLOKULA: I would like to ask for a sexual assault
14 protection order. We can go ahead and enter that at this point.
15 I believe it would expire two years from his release date. So
16 February 1st of 2017. Does that sound right?

17 MS. McDONALD: Well, February 20th.

18 MS. KAHOLOKULA: February 20th, 2017. Then an order
19 sealing since the protective party is a minor.

20 THE COURT: Granted on both. The Court will find that
21 the minor's right to privacy outweighs the public's need to know.
22 And I accept the redacted version of the evaluation, and that
23 will be filed also.

24 THE COURT: Mr. Bettys, you do have the right not only to
25 be present at your sentencing hearing, but the right to be

1 present when that Judgment & Sentence is signed and entered. We
2 are, because of the unique circumstances, trying to craft that
3 document. And I would ask if you were willing to waive your
4 actual presence when I sign it when the final form of the
5 documents has been given to you for your review and your
6 signature. And if so approved I would sign without you being
7 present. If there are any issues or disagreements on that
8 document when presented to you we will reconvene and put those
9 issues on the record. Is that acceptable?

10 THE DEFENDANT: I will gladly waive my presence.

11 THE COURT: Alright. The Court will accept your waiver
12 of presence, assuming we get an agreed document?

13 MS. KAHOLOKULA: Is the Court available later today in
14 case there's an issue?

15 THE COURT: Yes, anytime. Excuse me. Any objection to
16 him being fingerprinted here and the clerk witnessing of that on
17 this document before we do all of the language?

18 MR. SWIFT: No, no objection. Yes, sir.

19 THE COURT: Thank you. I've signed the Sexual Assault
20 Protection Order and the order sealing the same.

21 Mr. Bettys, if I don't see you again, work hard on your
22 treatment, and hopefully the next time you and I see each other
23 will be in the community and not under these circumstances.

24 THE DEFENDANT: Thank you, Your Honor.

25 **(PROCEEDINGS ENDING FOR THE DAY IN THIS MATTER).**

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DECEMBER 17, 2013

10:00 A.M.

* * *

(Mr. Bettys, Rhonda Larsen, Deputy Attorney General, and Jeff Landon with the Department of Corrections all present telephonically)

THE COURT: Hello. Who is there?

THE DEFENDANT: It's Mr. Bettys.

THE COURT: Mr. Bettys.

MS. LARSEN: AG, Rhonda Larsen.

THE COURT: Alright. Good morning.

MR. LANDON: Jeff Landon with the Sex Offender Treatment Program.

THE COURT: I'm sorry. Who was the last one?

MS. LARSEN: Jeff Landon from the Sex Offender Treatment Program from the Department of Corrections.

THE COURT: Thank you. Are you all three in the same location or in different locations?

MS. LARSEN: We're all in different locations.

THE COURT: Okay. At any time that you can't hear something let us know.

Ms. Kaholokula, if you could call the case for the record.

MS. KAHOLOKULA: Your Honor, this is State versus

1 Bettys, 10-1-159-9.

2 THE COURT: This telephone conference picks up up here on
3 the bench or the bar --

4 MS. McDONALD: Would you prefer if we move?

5 THE COURT: Well, I don't know if they will have any
6 trouble hearing.

7 MR. SWIFT: Why don't we approach.

→ 8 THE COURT: The matter is on for, I guess, status this
9 morning. I don't know who wants to begin. You folks had some
10 conversations I wasn't a part of. So if you want to hear from
11 the Department of Corrections on their motion to have the Court
12 amend its Judgment & Sentence.

13 MS. KAHOLOKULA: That would be fine if the Department
14 wants to go first.

15 THE COURT: Ms. Larsen, did you want to lead us off
16 please.

17 MS. LARSEN: Yes, Your Honor. First of all, I wanted to
18 just go through some description of the process in the statute
19 just for the record. I understand the Court is aware of this. The
20 DOC's function is to determine when to release an offender from
21 prison. In determining when to release an offender sentenced
22 under 9.94A.507, which is the statute that Mr. Bettys was
23 sentenced under is as follows: First under that statute the
24 Court fixes the minimum term. Then under RCW 9.95.420 the end of
25 sentence review committee reviews the offender before the

1 expiration of the term. After the Indeterminate Sentence Review
2 the Board receives the results of the end of sentence review
3 process, the board conducts a hearing to determine whether it is
4 more likely than not that the offender will commit another sex
5 offense if released with conditions. Then if the board does not
6 order the offender to be released the board must establish a new
7 minimum term under RCW 9.95.011. And separate from the related
8 part of this process is early release. Although the Court fixes
9 a minimum term the offender is eligible for early release before
10 that minimum term expires. But the board can release a prison
11 inmate from prison prior to the expiration of the minimum term
12 only for reasons listed in the early release statute, which is
13 RCW 9.94A.728. That statute applies to an offender sentence
14 under the 9.94A.507 because 995.070 states as such.

15 So as far as case law, the early release statute has been
16 held to leave no room for the inherent authority of superior
17 court to release an offender. As the Washington Supreme Court
18 stated in 2009 in In Re Mattson, that's M-A-T-T-S-O-N, 166 Wn.2d.
19 730, quote: "The decision regarding an inmate's releasability is
20 left to the discretion of the agency. The SRA prescribes the
21 authority to sentence in felony cases. The SRA limits the trial
22 court sentencing authority to that expressly found in the
23 statute." And if this were not true the judiciary would be able
24 to intrude on to the realm of the legislative power, violation of
25 separation of power.

1 So in this case the timeline is at issue for Mr. Bettys to
2 be admitted into the Sex Offender Treatment Program. So I would
3 like to go through the steps that need to occur before that can
4 happen so give the Court perspective.

5 I have on the line, as you know, Mr. Jeff Landon, who is
6 the director of the Sex Offender Treatment Program at the
7 Department of Corrections. He will be able to give you
8 perspective from the DOC treatment staff on the process. But
9 before he does I want to inform the Court of where they stand in
10 regard to the board's process. First, the board has asked for a
11 rushed review by an Indeterminate Sentence Review Committee. And
12 that committee is working on that at this time and is hoping to
13 finish that at the end of the week. The offender is located at
14 the institution Clallam Bay. And that institution, luckily, is
15 the only one in the state that allows video parole hearings.
16 Because of that he would be able to receive a hearing sooner than
17 if he were located in another institution. So it is important
18 that he remain at Clallam Bay at this time in order for him to
19 receive a quick parole hearing from the board.

20 The board's the next available time the board can have a
21 parole hearing for him would be no sooner than January 15th. And
22 once that happens the board's decision at best would come out no
23 earlier than January 22nd. So if that were to establish -- if the
24 board were to decide that Mr. Bettys was not releasable at that
25 time, and it established a new minimum term that would actually

1 be his maximum expiration date, which is February 2015. If that
2 happens then the Department Sex Offender Treatment Program would
3 possibly be able to have Mr. Bettys finish the entire program
4 because it would give the full year for Mr. Bettys to participate
5 in that program. If that were to happen then he would be eligible
6 for being admitted into the program. So there are all of these
7 little working parts that have to happen before he is able to get
8 into the treatment program in the institution. It is still
9 possible that he can. And DOC is working very hard to go as
10 quickly as they can. But it is not possible to do that, you
11 know, by January 1st. So I wanted to give Mr. Landon a chance, as
12 well, to explain some of the steps that have to occur for an
13 offender to be admitted and in this case, whether Mr. Bettys is
14 eligible due to factors that Mr. Landon investigated.

15 So, Mr. Landon, do you want to speak?

→ 16 MR. LANDON: Yeah, I can speak to I did have an
17 opportunity to screen Mr. Bettys last week at the request of Ms.
18 Larsen. And I assessed him on a couple of criteria that was
19 basically to determine the amenability to the Sex Offender
20 Treatment Program. The result of that training was that he met
21 the amenability criteria. [He acknowledged having committed a
22 past offense.] [He's willing to come to treatment.] [He's willing
23 to follow the rules and engage in the process.] At this point, as
24 Ms. Larsen mentioned, his ERD, as listed in our system, is June
25 20th of 2013.

1 Our procedure for the Sex Offender Treatment Program, like
2 many other programs in the Department, require a minimum length
3 of time depending on the program in order to participate. We
4 prioritize treatment participants based on sort of a matrix of
5 criteria, one being their risk level. And in this case for Mr.
6 Bettys we did a Static 99R risk assessment on in Bettys. And he
7 scored a 7, which is a high risk category for sexual re-offense.
8 (So he would be placed on the highest priority for treatment
9 entrance.)

10 We also look at other criteria like the sentence structure.
11 And then a big one is the time to the release. We are not able to
12 accept people who are past their ERD, or we don't have enough
13 time to complete two ERDs. In this case, we only discovered Mr.
14 Bettys' situation within the last, I believe, ten days due to his
15 change of sentence from life without parole, which would have
16 previously made him ineligible for treatment per policy. But
17 with his new Judgment & Sentence, again, we left time to admit
18 him to treatment based on his ERD. So did I answer the questions,
19 Ms. Larsen, that you were looking for?

20 MS. LARSEN: Yes, I wanted to also know if you were able
21 to determine if in the best case scenario the board were able to
22 issue a decision by January 22nd that did push his minimum term
23 to his maximum term resulting in an ERD of his maximum term and,
24 therefore, allowing him to be eligible to enroll, how soon would
25 he be able to start the Sex Offender Treatment Program, assuming

1 he would have to be transferred from Clallam Bay to another
2 institution that had such a program?

3 MR. LANDON: Yes. So I think it's important to sort of
4 state clearly that my amenability screenings are certainly a
5 significant step in the progress towards entrance to treatment.
6 He's currently identified as close custody so I can't exactly
7 state when that would happen. He would need to be reviewed by the
8 classification committee, and I can't speak for them.

9 What I can say really is that if his custody level --
10 because there are custody level criteria for entrance to the
11 program. A person who is able to approach the program, the sex
12 offender treatment program needs to score a medium or MI3, which
13 is a long-term minimum custody level. So at this very moment I'm
14 not sure where that process is with him in his custody. I think a
15 classification person would be the best person to testify as to,
16 you know, whether or not his classification or his custody level
17 might change and decrease.

18 So I realize I'm not really answering the question
19 specifically because I really can't. If his custody level were
20 to make him otherwise eligible he could essentially be entered
21 into the program as soon as transportation is able to get him
22 relocated.

23 MS. LARSEN: Okay. Thank you.

24 MR. SWIFT: I have a couple questions.

25 THE COURT: When you are done, Ms. Larsen, I'm going to

1 make some comments and then turn it over to the attorneys here.
2 So go ahead and finish any comments you wish to make.

3 MS. LARSEN: Thank you, Your Honor. So I am requesting
4 that the Court strike the clause in the Judgment & Sentence that
5 states that the Department has to release Mr. Bettys by
6 January 1st, 2014. If it is not able to by then to have him
7 enrolled in the treatment program I would reiterate that the
8 statute -- the sentence reformat does not authorize such a clause
9 in the Judgment & Sentence. So the clause is essentially forcing
10 the hand of the institution. And the institution's function is
11 when to release. So that's why we are asking for the Court to
12 strike that.

13 THE COURT: One question before I make my comments. Mr.
14 Landon, does the evaluation that was provided here in Skagit
15 County, and part of our filing, have any weight at all in your
16 system?

17 MR. LANDON: Your Honor, I haven't had the opportunity to
18 review that evaluation. I spoke briefly with Mr. Bettys, and he
19 provided minimal information regarding that evaluation. So I
20 wouldn't really be able to, you know, answer that question. But,
21 again, he's scoring for the highest priority for our treatment
22 program based on his actual risk assessment. So really at this
23 point in regards to the question about when he would be entered
24 into treatment it's a matter of us working with classifications
25 to determine, you know, where if he would be eligible for reduced

1 custody level. I just can't make that determination
2 independently.

3 THE COURT: Alright. I know at least Ms. Larsen is
4 probably aware of the history here. I'm going to make a short
5 record relating that history just so everyone understands. This
6 is a very unique situation, and I don't want you to think that me
7 personally or Skagit County is unaware of statutory construction
8 and how sentences are designed to be carried out. Mr. Bettys
9 instead of being sentenced at the start of the process has been
10 sentenced at the end of the process in this case. And we are all
11 aware that there are probably only 12 to 13 months left in his
12 maximum statutory sentence. We're also very aware that Mr.
13 Bettys was in your custody for a significant period of time back
14 in the late '90's or mid '90's and early 2000. And by no fault
15 of the Department of Corrections, once again, faced a
16 resentencing process, which eliminated him from the treatment
17 program that he would have completed prior to being released from
18 the Department of Corrections under normal circumstances. Once
19 again, we find that under not normal circumstances. And I
20 realize that the Department of Corrections is not designed for
21 swift and nimble reactions to unusual circumstances. But you
22 have all of your board hearings. You have all of your
23 committees. And you have all of your proper structure under both
24 statute and regulations. (But what we have is a community that is
25 expecting and hoping for the best possible outcome for community

1 safety here in Skagit County. And we have a system that is not
2 designed to meet that need. And that need specifically is
3 treatment for Mr. Bettys.

4 And we recognize that because of the tight time constraints
5 at the time of sentencing that Mr. Bettys in all likelihood by
6 the time he got through the Department of Corrections screening
7 and process without some unusual language in the Judgment &
8 Sentence he would probably just sit, and then be evaluated at the
9 time or he would no longer be eligible for treatment because
10 there wouldn't be enough time left on his statutory maximum
11 sentence. So we placed in the language if you could not be swift
12 and nimble basically we were ordering his release so the
13 treatment program that had been established here in the community
14 could be carried out while he was still on community custody
15 supervision thereby attempting to assure the best possible
16 outcome for community safety.

17 The evaluation done prior to sentencing here indicated that
18 Mr. Bettys not only was eligible for treatment but would be
19 accepted into a treatment program. And in all likelihood there
20 would be family funding available to make sure that that
21 treatment were completed. Obviously if Mr. Bettys didn't
22 participate in the community based treatment he would be sent
23 back to DOC for the maximum sentence. But we all agreed that Mr.
24 Bettys simply sitting in a cell in our jail or your Department of
25 Corrections and not receiving treatment and then being released

1 into the community with no supervision and no treatment was the
2 worse possible outcome. So despite the Court and the attorneys'
3 knowledge of the statutory construction in place we crafted an
4 exceptional sentence; in my opinion more to get your attention
5 then to actually believe we actually had the authority to carry
6 it out. So at the very least this conversation would occur and
7 everyone could put in their best efforts, despite restrictions,
8 perhaps, under your regulations and requirements to try to assure
9 the best possible opportunity for Mr. Bettys to get treatment.

10 So as I indicated, I believe Ms. Larsen is already aware of
11 that. We've expended funds here for the evaluation prior to
12 sentencing. We've done everything we possibly could at this end.
13 And it sounds like you are making great efforts, but we have no
14 actual guaranteed outcome that Mr. Bettys will receive treatment
15 in the Department of Corrections.

16 Having said that, I'll hear either from Ms. Kaholokula
17 first, if you wish, or Mr. Swift.

18 MS. KAHOLOKULA: I'll be very brief. I think I expressed
19 my thoughts on the sentencing at the sentencing hearing. And the
20 State is, of course, in agreement that treatment needs to occur.
21 I'll tell the Court at this point my current concern is that if
22 the Attorney General decides to appeal the judgment that a stay
23 will be entered on the provision releasing him, and that he will
24 definitely not receive treatment either in custody or out of
25 custody. And I think that would be the worst of all worlds.

1 That's all I have.

2 THE COURT: I would fully expect Ms. Larsen or her office
3 to appeal a sentence that under their mind is not a legal and
4 proper sentence. But I would agree with the State's concerns.

5 So Mr. Swift.

6 MR. SWIFT: I have a couple questions first for, I
7 believe, the head of treatment.

8 THE COURT: Mr. Landon?

9 MR. SWIFT: Mr. Landon.

10 MR. LANDON: Yes, sir.

11 MR. SWIFT: Presuming that Mr. Bettys will quickly, all
12 these things happen, how long does he have to have remaining on
13 his sentence to complete treatment?

14 MR. LANDON: We generally like to allow 12 months for
15 treatment. It's not a firm number of months per se. It's really
16 based on the individual needs. But given his high risk we like
17 between 10 and 12 months to provide that treatment.

18 MR. SWIFT: The other question was to confirm that the
19 screening board will complete this week; is that correct?

20 THE COURT: Parole?

21 MR. SWIFT: The parole. Not for you.

22 MR. LANDON: Correct.

23 MS. LARSEN: Are you asking me?

24 MR. SWIFT: Yes.

25 MS. LARSEN: The completion of the interview committee,

1 yes that's something that will be done by next week. And the
2 parole hearing, the 420 hearing, would occur January 15th if
3 everything works as hoped.

4 MR. SWIFT: Your Honor, based on that I have a suggestion
5 on part. And I don't necessarily believe that your sentence is
6 illegal. In fact, I think under the argument you made that you
7 have the exceptional powers. I do think one thing, however, was
8 in error when we argued, and that was an understanding of timing.
9 And I hit that based on our belief when setting up the
10 January 1st that there was a minimum period of a year. That was
11 our belief when that was set up. I'm hearing Mr. Landon say it
12 could be as little as ten months, and that he would be flexible
13 in that period.

14 Based on that what I would suggest, because I think it
15 keeps the system moving without necessarily -- and I share the
16 State's opinion -- (I think I would win on appeal, but I would
17 lose. I think I could uphold your sentence. I would think I
18 would win. But if I understand the State's position that if
19 everything freezes, and you're sentence is found to be legal, we
20 didn't win anything, and Mr. Bettys didn't win anything. So my
21 suggestion is that I would suggest that we move this, our hearing
22 date, for 1 January to a period of 15 February. This complies
23 with what we thought, you know, more puts into the part that
24 there can be treatment during this period of time, if the State
25 then chooses and we find our place. Because at that point the

1 State can then chose, if they are not going to provide by 15
2 February, based on the timeframes that they have they are simply
3 not going to provide, and they have run out of time. And it's
4 worth appealing and fighting for to try to get some treatment. If
5 they are not going to do that, or if they have provided treatment
6 then the issue is moot and we are done. And I think it keeps it
7 in a position where the case stays with the priority, but does
8 not require immediate action by the State at this point which
9 would freeze everything.

10 THE COURT: If I understood Ms. Larsen's best case
11 scenario there would be a parole board ruling by January 22nd; is
12 that correct?

13 MS. LARSEN: That's correct, Your Honor.

14 THE COURT: How soon after that would there be a likely
15 hearing, or does anyone know when a likely hearing would be made
16 as far as the exception into treatment. Mr. Landon, maybe you
17 are in the best position.

18 MR. LANDON: Typically, how this would work, Your Honor,
19 obviously in the interest of time? Would request that the Board
20 make an ERD available in regard to their determination. And if
21 they were to add additional time or expense I would be made
22 immediately aware of that. I would also need to work with my
23 counterpart and classifications regarding those other issues that
24 I mentioned. So, you know, best case scenario if he were custody
25 eligible, you know, transfers can happen pretty quickly. Again,

1 I don't want to speak for anybody else, but it can happen within,
2 well, acceptance of -- formal acceptance can happen rather
3 quickly. Transportation may take a few weeks depending on their
4 circumstances. But it can generally happen fairly quickly. It's
5 just we need to have a classification agreement, and we also need
6 to have that time allowance in order to accept him.

7 MS. LARSEN: And classification may be made prior to
8 January 22nd, do you believe?

9 MR. LANDON: It is possible. But without knowing the
10 circumstances and not being an expert in that area I'm not saying
11 that it would.

12 THE COURT: My preference would be --

13 THE DEFENDANT: Your Honor --

14 THE COURT: Hold on, Mr. Bettys..

15 My preference would be that we set a February 1st date
16 rather than February 15th. And if we're still assuming that a
17 decision is made that Mr. Bettys is held to the maximum we still
18 have a year and two months, and then that would allow additional
19 time for transportation and all of those issues. I would like to
20 keep track of this. So, again, we're just talking about
21 suggestions at this point without rulings. I'll hear from Mr.
22 Bettys, and then we'll come back to the attorneys.

23 THE DEFENDANT: Your Honor, one of the problems I'm
24 running into is they've got me held at the Washington Corrections
25 Center instead of Clallam Bay still to this day. I have not left

1 the transportation center because of so much confusion that has
2 been caused in this whole mess. We are not sure where I'm going.
3 There's no classification being done here on me currently. I
4 don't even have a true classification counselor until I've either
5 returned to Clallam Bay or returned to Monroe. I'm in transit.

6 THE COURT: Are you in Shelton?

7 THE DEFENDANT: Yes, I'm in Shelton and have been held
8 here for the last two and a half weeks.

9 MS. LARSEN: That was so we could have him here for this
10 hearing.

11 THE COURT: So he's leaving right after this?

12 MS. LARSEN: Yes, that's correct. That was where he was
13 headed. He would have been sent there but for this hearing.

14 THE DEFENDANT: Okay. Your Honor, the second part of
15 this is they decided to take all of my earned time away. I plan
16 to appeal that, which is going tie everything up. Because most
17 of that earned time was accredited by an agency the board does
18 not have jurisdiction over, the Skagit County Jail. They credited
19 all my earned time from being in jail, which is the majority of
20 my earned time. So either way we are going to end up, if they
21 take my sentence away, we're going to end up without treatment in
22 the end.

23 Second, postponing this in my opinion is ridiculous because
24 the program that I'm planning to enter into is over 18 months
25 long. I'm already under that program. I'm going to have to have

1 to pay privately and continue past being on community custody as
2 we stand today. So it seems ridiculous to continue holding me.

3 THE COURT: Well, Mr. Landon just said there's a 10- to
4 12-month program. Are you saying you wouldn't voluntarily
5 participate in that program?

6 THE DEFENDANT: Well, Your Honor, I would voluntarily
7 absolutely go into that program because that is what is required
8 of me. But I don't believe they will accept my participation
9 when I filed a case against the board for taking earned time that
10 they have no jurisdiction over. The earned time is issued by the
11 jail. The board has jurisdiction over DOC earned time. And I
12 believe with the board being so new and just re-enacted that it
13 needs to be challenged if they do take the county jail earned
14 time because each agency has the right to credit earned time.

15 THE COURT: Does a maximum sentence of February 2015 in
16 your opinion take away from you earned time to get to that point?

17 THE DEFENDANT: No. What the board will do is take all
18 of my earned time. I'm already over my ERD by five months. I've
19 earned time accredited to me June of last year.

20 THE COURT: June 20th, 2013, this year. I understand
21 that, Mr. Bettys. My question is: Do you believe that your
22 maximum does not extend until February of 2015?

23 THE DEFENDANT: No, Your Honor. I believe it does
24 extend until that. I believe that is my maximum. But I believe
25 if the board removes earned time that they had no jurisdiction

1 over I will have to appeal, which will likely block me from
2 taking treatment inside of DOC. I'm not sure, but I believe DOC
3 cannot treat somebody who is under appeal.

4 THE COURT: I'm trying to establish, Mr. Bettys, if you
5 think they will take your earned time what will be your new
6 maximum sentence?

7 THE DEFENDANT: Well, if they take my earned time it
8 would be February of 2015. If they don't take my earned time I
9 should be released right now because I'm over my early release.
10 I earned the time. I behaved and stayed out of trouble. I
11 didn't cause a problem. I deserve to actually earn that credit.

12 THE COURT: So that's my first question to you, Mr.
13 Bettys, is do you not believe your maximum sentence is February
14 of 2015? I thought when we had you here in court that you wanted
15 treatment. You didn't particularly -- obviously you prefer to be
16 in the community, but you were happy to participate in treatment
17 in the Department of Corrections also, and we were all of the
18 mind that we wanted to get treatment to you before you were
19 simply set out in the community with no supervision.

20 THE DEFENDANT: Absolutely, Your Honor. I agree
21 100 percent with that, and I still want the treatment.

22 THE COURT: But now you're saying --

23 THE DEFENDANT: I would also like to obtain my earned
24 time if at all possible. I know what these people are telling me
25 here today is there's no way we can do both unless we use the

1 exceptional sentence portion.

2 THE COURT: Well, the exceptional sentence simply
3 requires them to get you into treatment or to release you. But
4 if you were going to be in treatment in custody my understanding
5 was they would have you until February of 2015 for an appropriate
6 length in the treatment program to try to assure that that was
7 successful. Now I hear you saying after all the efforts from
8 your attorney the State and the Court to try to craft this
9 sentence in a way to get you treatment that you're going to put
10 up the road block. If the treatment is in custody.

11 THE DEFENDANT: No, Your Honor. I would not deliberately
12 put up a road block, but I believe I would have to appeal if they
13 take the county jail earned time. I have no problem with the
14 taking of the treatment, and I dang well want the treatment. And
15 I'm trying everything I can at my end to do all the paperwork I
16 can do down here to get to that treatment program. One of the
17 concerns I have is I've been kicked out of the treatment facility
18 prior, never to return. And I'm kind of concerned that I may not
19 get to return. But I'm going to sit here until the treatment on
20 the streets becomes unavailable. And that's what I'm concerned
21 about.

22 THE COURT: Alright. Anyone else want to comment?

23 Mr. Landon, I think you were cut off.

24 MR. LANDON: What I was saying is that Mr. Bettys'
25 assertion that he's not eligible to participate in the treatment

1 under appeal is not entirely accurate. The policy is up to the
2 director's discretion. And generally the reason we had language
3 regarding the appeal is more specific to folks who are denying
4 their offense or who are appealing their conviction or their
5 guilt. So we generally won't put those folks in treatment
6 because they have to talk about their offense while in treatment.
7 That's not a good situation, nor is it ethical to put them into a
8 treatment program if they are asserting they are innocent. And
9 so his assertion is applicable in this case. We do have people
10 who on occasion appeal their sentences or certain conditions
11 within the sentence who are participating in treatment.

12 MS. LARSEN: May I speak, Your Honor?

13 THE COURT: Yes.

→ 14 MS. LARSEN: This is Rhonda Larsen again. I would be the
15 Assistant Attorney General who would be responsible for
16 responding to a personal restraint petition if Mr. Bettys did
17 file one that challenges the taking of his early release credits
18 that he earned in jail. When I receive those I don't contact
19 anyone at the Sex Offender Treatment program and say please stop
20 processing he's filed a personal restraint petition on this. Mr.
21 Landon was correct, it's a completely separate type of appeal
22 that Mr. Bettys is speaking of here. And that appeal does not
23 impact the treatment. It does not impact what the DOC's
24 programming is for an offender.

25 THE COURT: And in all likelihood would that process take

1 longer than February 2015 under normal circumstances?

2 MS. LARSEN: Under normal circumstance it would, Your
3 Honor.

4 THE COURT: Ms. Kaholokula, would you like to comment on
5 any of those issues or on Mr. Swift's recommendation that we
6 amend the Judgement & Sentence to a February date?

7 MS. KAHOLOKULA: I have a question for Ms. Larsen. If
8 the portion of the J&S that we're talking about, if you have it
9 in front of you, it's at 4.1. Do you have that in front of you?

10 MS. LARSEN: Yeah, let me get to the right page.

11 MS. KAHOLOKULA: Page 4.

12 MR. LANDON: Okay.

13 MS. KAHOLOKULA: The second paragraph from the bottom, if
14 the Department fails to commence Sex Offender Treatment. If the
15 only thing that is changed in this J & S is that date from
16 January 1st to February either 1st or 15th is that sufficient for
17 you to move ahead, or is that something that you would appeal in
18 the J & S nonetheless?

19 MS. LARSEN: My timeline for filing a post-sentence
20 petition is sufficient for us to go through this and to see what
21 happens. So what I'm saying is there's enough -- if the Court
22 were to do what you're proposing it would give some breathing
23 room, and I would hold off on appeal at this point to see what
24 happens. If something were to happen on February 1st that was not
25 acceptable then I would be able to continue, or I would be able

1 to file the petition after that point.

2 MS. KAHOLOKULA: Thank you. I don't have any or
3 questions or comments.

4 MR. SWIFT: No questions or comments. The acts, I
5 believe, are self explicatory.

6 THE COURT: I just want to thank Ms. Larsen here on the
7 record for her cooperation knowing that we are all fudging a
8 little bit here with both the laws and timeframe. I very much
9 appreciate your extra effort in trying to assist what we have
10 been trying do all along. And I am inclined to place February 1st
11 in the amended Judgment & Sentence subject to review on or before
12 that date with the possibility of further amendment if we're
13 close. But I just want to keep track, and I want to try to give
14 Mr. Bettys every opportunity to have a full year in that
15 treatment program, if that's where this ultimately ends up. And
16 Mr. Bettys I appreciate your need and/or desire to appeal if you
17 earn lose your earned early release time. But I'm confident that
18 that process also is not swift and nimble and would probably not
19 be completed by the time you were completing treatment and being
20 released in any event.

21 So I will, unless there's an objection, amend the Judgment
22 & Sentence in that paragraph, that's referenced under 4.1 by Ms.
23 Kaholokula, change January to February. And that at this point
24 in time will be the only amendment subject to further review.
25 Anyone have any comments regarding that ruling?

1 MR. SWIFT: No, Your Honor.

2 MS. McDONALD: Your Honor, I'm assuming that you'll be
3 striking the January 3rd Court date scheduled?

4 THE COURT: Yes, and I will strike the January 3rd court
5 date also.

6 Alright. Thank you very much for all of you being
7 available.

8 Mr. Landon, if there's anyone or an entity that we need to
9 send the evaluation that was completed here in Skagit County and
10 is on file too I would be happy to facilitate this forwarding or
11 sending of that record if it would carry any weight or in any way
12 speed up the process.

13 MR. LANDON: Thank you, Your Honor. In fact, it would be
14 very helpful if we were to receive that documentation. It helps
15 us when folks actually do enter treatment and expedite the
16 initial process to get that treatment moving with the current
17 evaluation.

18 THE COURT: So who should it go to?

19 MR. LANDON: It could come directly to me.

20 THE COURT: Does one of the parties or anyone have your
21 address? Could you give us that mailing address?

22 MS. KAHOLOKULA: I could scan it and email it.

23 THE COURT: How about an email address?

24 MR. LANDON: Yeah, J, M as in Michael, Landon,
25 L-A-N-D-O-N, at DOC, the number one, dot WA, dot GOV.

1 THE COURT: Thank you very much. With that we have
2 another court calendar that's scheduled to start at 9:30. I'm
3 going to recess this hearing unless there's any further comment.

4 MS. KAHOLOKULA: I'm going to be filling out an order at
5 this point. I'll ask Mr. Swift to sign off on it.

6 THE COURT: Mr. Bettys, we are entering an order amending
7 your Judgment & Sentence. I assume you give approval for your
8 attorneys to sign off on that? With you being on the phone just
9 indicate telephonically the process?

10 THE DEFENDANT: Yes, Your Honor, I'll have the attorneys
11 sign it.

12 THE COURT: Thank you very much. We're ending the phone
13 call.

14 Counsel, I'll be available at the Court Administrator's
15 office when you're ready, and I'll sign it there.

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17 **(PROCEEDINGS ENDING FOR THE DAY IN THIS MATTER)**
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STATE OF WASHINGTON)
) ss: C E R T I F I C A T E
COUNTY OF SKAGIT)

I, JENNIFER CHRISTINE SCHROEDER, Official Court Reporter in and for the County of Skagit do hereby certify;

That the foregoing is a true and correct transcript of the proceedings held on September 13, November 26 and December 17, 2013.

Witness my hand on this 2nd day of June, 2014.


JENNIFER CHRISTINE SCHROEDER,

WA CCR #2221, CA CCR #10176, RPR,

Official Court Reporter

APPENDIX G

Approved by the Governor April 15, 2005.
 Filed in Office of Secretary of State April 15, 2005.

CHAPTER 68

[Senate Bill 5477]

SENTENCING REFORM ACT

AN ACT Relating to sentencing outside the standard sentence range; amending RCW 9.94A.530 and 9.94A.535; adding a new section to chapter 9.94A RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision.

Sec. 2. RCW 9.94A.530 and 2002 c 290 s 18 are each amended to read as follows:

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for ~~((those offenses enumerated))~~ other adjustments as specified in RCW 9.94A.533 ~~((4) that were committed in a state correctional facility or county jail))~~ shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to section 4 of this act. Acknowledgement includes not objecting to information stated in the presentence reports. Where

the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in section 4 of this act.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in section 4 of this act. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.535(2) (d), (e), (g), and (h).

Sec. 3. RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of section 4 of this act.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence ~~((unless it is imposed on an offender sentenced under RCW 9.94A.712. An exceptional sentence imposed on an offender sentenced under RCW 9.94A.712 shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW)).~~

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

~~((The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.))~~

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered By A Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in section 4 of this act.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance (~~due to extreme youth, advanced age, disability, or ill health~~).

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

~~(i) ((The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.~~

~~(j) The defendant's prior unseored misdemeanor or prior unseored foreign eriminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.~~

~~(k))~~ The offense resulted in the pregnancy of a child victim of rape.

~~((H))~~ (j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

~~((m))~~ (k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

~~((n))~~ (l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

NEW SECTION. Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(3) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y), shall be presented to the jury during the trial of the alleged crime, unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a

separate proceeding if the evidence supporting the aggravating fact is not part of the *res geste* of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(4) If the court conducts a separate proceeding to determine the existence of aggravating circumstances, the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(5) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

NEW SECTION. Sec. 5. (1) The sentencing guidelines commission shall review the sentencing reform act as it relates to the sentencing grid, all provisions providing for exceptional sentences both above and below the standard sentencing ranges, and judicial discretion in sentencing. As part of its review, the commission shall:

(a) Study the relevant provisions of the sentencing reform act, including the provisions in this act;

(b) Consider how to restore the judicial discretion which has been limited as a result of the *Blakely* decision;

(c) Consider the use of advisory sentencing guidelines for all or any group of crimes;

(d) Draft proposed legislation that seeks to address the limitations placed on judicial discretion in sentencing as a result of the *Blakely* decision; and

(e) Determine the fiscal impact of any proposed legislation.

(2) The commission shall submit its findings and proposed legislation to the legislature no later than December 1, 2005.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 14, 2005.

Passed by the House April 12, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

APPENDIX H



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40000, OLYMPIA, WA 98540-0000

DECISION AND REASONS

NAME:	BETTYS, John
DOC #:	711306
FACILITY:	Clallam Bay Corrections Center - CBCC
TYPE OF HEARING:	.420 Hearing via videoconference
HEARING DATE:	January 15, 2014
PANEL MEMBERS:	LD & KR
FINAL DECISION DATE:	January 16, 2014

This matter came before Lynne De Lano and Kecia Rongen, who are members of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a release hearing in accordance with the provisions of RCW 9.95.420. Mr. Bettys appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor Tabatha Bernier, CCIII Kurt Grubb and Mr. Bettys.

BOARD DECISION:

This was a Deferred Decision. Based on the burden of proof set out in RCW 9.95.420 and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that Mr. Bettys is more likely than not to commit a sex offense if released on conditions. Consequently, the Board finds Mr. Bettys not releasable and extends Mr. Bettys' to his maximum expiration date of February 19, 2015, to enable him to participate in DOC's Sex Offender Treatment Program (SOTP).

NEXT ACTION:

Schedule a Cashaw-like hearing in October, 2014.

JURISDICTION:

John Bettys is under the jurisdiction of the Board on a July 20, 2011 conviction in Skagit County; Cause #10-1-00159-9 for Child Molestation in the Third Degree. The time start is July 20, 2011. The minimum term was set at 60 months from a Sentencing Reform Act (SRA) range of 60 months. The maximum term is five years. Mr. Bettys has served approximately 29 months in prison and 516 days of jail time.

NATURE OF INDEX OFFENSE(S):

According to file materials, in July, 2009, Mr. Bettys, at his age of 34, sexually molested a known 5 year old male. The victim was the step-son of Mr. Bettys' nephew. The victim revealed that Mr. Bettys had touched his penis with his hand outside of his clothing. The victim's grandmother reported the incident to his step-father and police were contacted. In an interview with police, the victim disclosed two incidents of sexual contact by Mr. Bettys. The victim later recanted his allegations, however, Mr. Bettys' polygraph results suggested he was being deceptive. Mr. Bettys was initially found guilty in a jury trial of Child Molestation in the First Degree, however, that sentence was successfully appealed by Mr. Bettys and he was recently resentenced on Child Molestation in the Third Degree after reaching a plea agreement with the sentencing court and prosecutor.

PRIOR CRIMINAL CONDUCT:

File materials indicate that as a juvenile, Mr. Bettys was convicted of Indecent Liberties and Burglary in the Second Degree in Skagit County in 1989. At his age of 14, Mr. Bettys had been sexually assaulting his 12 year old niece. Mr. Bettys admitted to touching the victim since she was 6 years old. During the course of the investigation, the victim's younger sister, aged 7, reported she had also been molested by Mr. Bettys, although he was not charged for that sexual contact. The Burglary charge seems to be an unrelated incident that involved Mr. Bettys entering someone's home and taking their property.

As a juvenile, Mr. Bettys was also convicted of Burglary in the Second Degree and Taking a Motor Vehicle Without Owner's Permission (TMVWOP) in June, 1990. In January, 1991, Mr. Bettys was convicted of Theft in the Second Degree, TMVWOP and Malicious injury.

As an adult, Mr. Bettys was convicted in September, 1993 of Rape of a Child in the First Degree in Spokane County, although at today's hearing, Mr. Bettys told the Board this conviction was not out of Spokane County. At his age of 19, Mr. Bettys sexually abused his 11 year old nephew. The victim reported the abuse began at his age of 6 or 7 and that Mr. Bettys had been having the victim perform fellatio and Mr. Bettys performing fellatio on the victim. File materials indicate Mr. Bettys disclosed he had also been sexually abusing the victim's younger 7 year old brother in the same manner. Mr. Bettys was sentenced to 136 months in prison and 24 months on community supervision. One of the victims in this cause is the step-father to the victim in the index offense.

HISTORY/COMMENTS:

This was Mr. Bettys' first hearing before the Board.

File materials indicate Mr. Bettys had several sexually related infractions (sexual harassment and obscene materials) during his previous incarceration and information indicated he was pressuring other inmates for sexual favors. Mr. Bettys also reported during his sexual history evaluation of being in a sexualized environment and reported three unadjudicated offenses that occurred between his ages of 13 to 15. He also reported a long history of viewing pornography and having deviant fantasies regarding minors.

According to his Classification Counselor, Mr. Bettys has not incurred any serious infractions during this current incarceration and has worked at two different jobs within the institution. She also reported Mr. Bettys just began a Life Skills class. It is noted that Mr. Bettys served most of his sentence in jail during his legal appeals and did not have access to other

programming during that time. Mr. Bettys told the Board he'd had regular visits with his wife and 6 year old son while in the county jail.

EVIDENCE CONSIDERED:

In preparation for Mr. Bettys' hearing and its decision in this case, the Board completed a review of Mr. Bettys' Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: the End of Sentence Review Committee's (ESRC) Report(s) dated December 27, 2013. The ESRC recommended Mr. Bettys be considered a Level III sex offender for community notification purposes and assessed him as a High/Moderate and Moderate risk to reoffend sexually on two different actuarial instruments. The Board also considered the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-Sentence Investigation report; the Sexual Behavior Evaluation (SSOSA) dated October 30, 2013 by Daniel R. Boyce, M.A. The Board also considered all the documents and correspondence sent by Mr. Bettys, the most recent packet received on January 15, 2014. The Board also considered the testimony of the witnesses listed above.

REASONS:

Mr. Bettys described his index offense as merely poking the victim in his crotch area to check his 'pull-ups' and denied there was any sexual motivation or contact in the index offense. His description minimized any culpability for the offense. Mr. Bettys, however, did acknowledge to the Board that he has a sexual attraction to minor children and stated when he was in the community he tried to avoid contact with minors because of this attraction, however, the fact that he was providing childcare to the index victim is contrary to his claim. The Board also notes Mr. Bettys and his wife were raising their son in his home when this offense was committed.

While Mr. Bettys readily told the Board he was very interested in and willing to take sex offender treatment, he stated his preference is to participate in treatment in the community.

Mr. Bettys then cited various legal challenges he's filed and his Alford plea that he believed would restrict his acceptance into and ability to participate in DOC's SOTP. His testimony and the numerous written communications he submitted to the Board causes the Board to question his actual willingness to participate in treatment, especially if it's not on his terms.

Because of the limited amount of time remaining on his sentence, the Board was faced with an outcome of extending Mr. Bettys to his maximum term in order to enable him to enter into and complete sex offender treatment, although under this circumstance, his release to the community *would* be without the benefit of supervision and the chance to participate in the community phase of SOTP. The other option was to find Mr. Bettys releasable and depend on his participation in sex offender treatment in the community during the approximate year he would be under supervision. Mr. Bettys has previously managed to avoid participation in treatment and the Board did not have confidence that he would actually follow the orders of the court for such treatment or continue to find ways to avoid treatment.

Mr. Bettys now has three convictions for sexual offenses and has been assessed by the ESRC as a Moderate/High risk to sexually reoffend. He is an untreated sex offender. He minimizes his behaviors and appears to avoid any accountability for his offenses. Because of these facts, the Board believes him more likely than not to sexually reoffend and therefore does not meet the statutory criteria for release. The Board confirmed after his hearing that Mr. Bettys will be accepted into and can begin treatment at the SOTP, which, if he puts forth sufficient effort, will help him mitigate his risk to sexually reoffend.

LD:is

January 15, 2014

cc: Institution
John Bettys
File

DECLARATION OF MAILING

GR 3.1

I, John Bettys on the below date, placed in the U.S. Mail, postage prepaid, 2 envelope(s) addressed to the below listed individual(s):

Court of Appeals Div I
600 University St.
Seattle WA, 98101

Erik Pedersen, Skagit DPA
605 South Third St.
Mount Vernon, WA
98273

2014 OCT 20 PM 11:02
COURT OF APPEALS DIV I
STATE OF WASHINGTON

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Reply Brief of Appellant
2. Decl. of mailing
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 15th day of October, 2014, at Connell WA.

Signature John Bettys