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SUPREME COURT  
STATE OF WASHINGTON  
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Case #: 1033061

Supreme Court No. \_\_\_\_\_

Court of Appeals No. 57512-4-II

IN THE SUPREME COURT  
IN AND FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

RAYMOND JAY FEMLING,  
Petitioner.

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PETITIONER'S MOTION FOR DISCRETIONARY REVIEW  
ON REVIEW FROM CLARK COUNTY SUPERIOR COURT

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7-26-24:  
Treated as a  
petition for  
review.  
*Supreme Court  
Clerk's Office*

Sean M. Downs, WSBA #39856  
Attorney for Petitioner  
GRECCO DOWNS, PLLC  
701 Columbia St. #109  
Vancouver, WA 98660  
(360) 707-7040  
sean@greccodowns.com

A. IDENTITY OF THE PETITIONER

Raymond Femling, Petitioner, by and through attorney Sean M. Downs, asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

Petitioner is seeking review of the court of appeals decision reclassifying the direct appeal of the denial of his CrR 7.8 motion to correct sentence as a personal restraint petition (“PRP”) and subsequently dismissing his PRP. A copy of the court of appeals decision and subsequent denial of motion for reconsideration is attached as “Appendix A”.

C. ISSUES PRESENTED FOR REVIEW

1. Whether Mr. Femling was improperly sentenced to a Class C felony offense for Bail Jumping pursuant to an Unlawful Possession of Controlled Substance charge.

2. Whether the underlying information for Bail Jumping pursuant to an Unlawful Possession of Controlled Substance charge was constitutionally deficient.

#### D. SUMMARY OF FACTS

Mr. Femling was charged with bail jumping on a class c felony for missing a required pretrial court date on March 13, 2008. CP 1. The underlying class c felony that Femling was charged with at the time was one count of unlawful possession of a controlled substance (“UPCS”) under RCW 69.50.4013(1) in cause number 07-1-01628-7. CP 1, 47-58.<sup>1</sup> The 07-1-01628-7 offense was ultimately vacated and dismissed, pursuant to *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). CP 60-62.

Mr. Femling entered a plea of guilty and was sentenced in the instant case on May 22, 2009. 10-35. After *State v. Blake*, *supra*, was published, Mr. Femling motioned the superior court under CrR 7.8 to vacate and dismiss his conviction for bail

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<sup>1</sup> The verbatim report of proceedings have been attached as “Appendix B” and the clerk’s papers have been attached as “Appendix C” for ease of reference.

jumping or, in the alternative, to correct his judgment to properly reflect that the bail jumping offense should have been punished as a misdemeanor. CP 35. The superior court denied Mr. Femling's motions. CP 88-89.

The court of appeals reclassified Mr. Femling's direct appeal as a PRP and dismissed the PRP as untimely. Specifically, the court of appeals found that the judgment and sentence was not invalid on its face. Petitioner filed a motion for reconsideration, which was denied on June 26, 2024.

This motion for discretionary review follows.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Mr. Femling was erroneously convicted of a class C felony instead of a misdemeanor for the offense of bail jumping.

Former RCW 9A.76.170 (2001) defined the offense of bail jumping as follows:

Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of

sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

RCW 9A.76.170(1). Under Washington law, to be convicted of bail jumping, the defendant must be charged with a particular underlying crime. *State v. Williams*, 162 Wn.2d 177, 185, 170 P.3d 30, 34 (2007) (abrogated on other grounds by *State v. Bergstrom*, 199 Wn.2d 23, 502 P.3d 837 (2022)). The penalty classification of the underlying charge determines the penalty classification of the bail jumping offense. *State v. Coucil*, 170 Wn.2d 704, 708, 711, 245 P.3d 222 (2010) (abrogated on other grounds by *Bergstrom, supra*). In *State v. Miller*, 156 Wn.2d 23, 123 P.3d 827 (2005), the court concluded the express language of RCW 9A.76.170(1) set forth all of the essential elements of bail jumping. The court distinguished the singular crime of bail jumping from the various levels of penalties found in the third part of the statute. *Id.* The class of offense and punishment for bail jumping is defined in the bail jumping statute as follows:

Bail jumping is:

- (a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;
- (b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;
- (c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony;
- (d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

RCW 9A.76.170(3).

In Washington, unconstitutional statutes are void *ab initio* (to be treated as invalid from the outset) and have no legal effect. “If a statute is unconstitutional, it is and has always been a legal nullity.” *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952); *State v. Paniagua*, 22 Wn. App. 2d 350, 354, 511 P.3d 113, 116, review denied, 200 Wn.2d 1018, 520 P.3d 970 (2022). Accordingly, “[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been

passed.” *Id.* (quoting *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886)). Thus, when a criminal defendant pleads guilty to violating a statute that is found unconstitutional, the judgment and sentence is void. *See Kahler v. Squire*, 49 Wn.2d 911, 299 P.2d 570 (1956).

Washington’s strict liability drug possession statute is unconstitutional. *Blake*, 197 Wn.2d at 186. Accordingly, RCW 69.50.4013(1)—the portion of the simple drug possession statute creating this crime—violates the due process clauses of the state and federal constitutions and is void. *Id.* at 195. Since the possession of controlled substance statute is unconstitutional, it has and has always been a legal nullity. *Brotherhood of Friends*, 41 Wn.2d at 143. Possession of controlled substance was not a class C offense; it simply was not an offense at all and never has been an offense.

Since possession of controlled substance was not an offense, the punishment for bail jumping with possession of controlled substance listed as the underlying offense remains

undefined. Bail jumping cannot be a class C felony in the instant case because Mr. Femling was not charged with a class B or class C felony. *See* RCW 9A.76.170(3)(c).<sup>2</sup> “Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.” RCW 9A.20.010(2)(a). Therefore, since punishment for bail jumping with possession of controlled substance listed as the underlying offense is undefined, the punishment will be considered a misdemeanor under the classification and designation of crimes statute. Mr. Femling therefore should have been convicted of a misdemeanor offense under RCW 9A.76.170(3)(d).

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<sup>2</sup> In *State v. Hagen*, No. 56432-7-II, 2022 WL 17820159 (Wash. Ct. App. Dec. 20, 2022) (unpublished opinion cited for persuasive value only, pursuant to GR 14.1), the trial court concluded that the State could still charge the defendant with misdemeanor bail jumping because the conditions of release that applied to the drug possession charge also applied to a charge of using drug paraphernalia, a misdemeanor.



The court of appeals claimed that the appellant did not provide authority for reclassification of an offense being an appropriate remedy. This is contrary to the actual record, as appellant provided analogous supplemental authorities to the court of appeal on December 14, 2023, as follows:

- *State v. Sleeper*, 21 Wn. App. 2d 1053 (2022)  
(unpublished opinion cited for persuasive value only, pursuant to GR 14.1). In *Sleeper*, the State failed to prove predicate offenses that would raise a gross misdemeanor violation of protection order to a Class C felony. The court remanded to reduce the felony convictions to misdemeanor convictions.
- *State v. Robinson*, 8 Wn. App. 2d 629, 439 P.3d 710 (2019) (similar to the above).

The above authorities show that reclassification of an offense is indeed a possible remedy. Division II chose to ignore this authority and instead sidestepped the substantive issue in this case.

The court of appeals has not issued an opinion as to whether a conviction to felony bail jumping pursuant to a UPCS charge constitutes a felony offense, a misdemeanor offense, or if it is not an offense at all. Given the court of appeals' reliance on *State v. Paniagua*, 22 Wn. App. 2d 350, 356, 511 P.3d 113 (2022), it appears that the court of appeals believes that this would constitute a criminal offense, but it is not stated whatsoever whether the offense is a felony or a misdemeanor. The crux of the court of appeals ruling is procedural instead of substantive – namely, that the motion is time barred because it is not facially invalid.

Contrary to the court of appeals ruling, there is a long line of cases that indicate that when a court exercises power that it does not have, then the sentence is facially invalid. For purposes of the exception to the time limit for facially invalid judgments, a judgment is “invalid” if the trial court exercised power that it did not have, most typically by imposing a sentence not authorized by law. *In re Pers. Restraint of Flippo*,

187 Wn.2d 106, 110, 385 P.3d 128 (2016); *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014); *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 593, 316 P.3d 1007 (2014); *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 136, 267 P.3d 324 (2011). For example, a sentence is facially invalid if it exceeds the duration allowed by statute. *In re Pers. Restraint of McWilliams*, 182 Wn.2d 213, 215 n.2, 340 P.3d 223 (2014); *In re Pers. Restraint of West*, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005); *In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 176, 196 P.3d 670 (2008). In the instant case, the underlying superior court sentence was imposed when it did not have authority to impose a felony sentence (only a misdemeanor sentence). This makes the sentence imposed facially invalid, which is an exception to the one-year time bar rule. In Mr. Femling's case, he was sentenced to 366 days in custody whereas the simple misdemeanor statute only authorizes sentences up to 90 days in confinement. *See* RCW 9A.20.021. The judgment and sentence also classified this as a Class C felony offense instead of a

simple misdemeanor. Mr. Femling is prejudiced by the fact that he has another felony on his record that will negatively affect his ability to gain employment and housing in the future, and it has negatively affected his offender score and he is currently incarcerated for a longer amount of time in prison on his current offense due to the error.

Different court of appeals divisions have addressed the issue of whether bail jumping requires a constitutional predicate offense such as UPCS. *See State v. Paniagua*, 22 Wn. App. 2d 350, 511 P.3d 113 (2022); *State v. Garcia*, \_\_ Wn. App. 2d \_\_, 550 P.3d 527 (2024). However, neither of these cases addressed the issue of the proper sentence to impose based on a conviction of bail jumping pursuant to a UPCS charge. The courts did not address the issue and the parties in those matters did not address the issue. *See* Opening Briefing of *Paniagua* and *Garcia*, attached as Appendix D and E, respectively. The question of how to classify this offense remains unresolved and Division II refused to answer the question posed.

Given the foregoing, Mr. Femling should have been convicted of a misdemeanor offense of bail jumping. The superior court and then the court of appeals erred in denying Mr. Femling the relief of correction of his sentence. Accordingly, this matter must be remanded back to the superior court to correct Mr. Femling's erroneous judgment.

- i. The Court of Appeals decision is in conflict with a decision of the supreme court and court of appeals, pursuant to RAP 13.4(b)(1)-(2).

The Supreme Court will accept review if the lower court's decision conflicts with a Supreme Court decision or a published Court of Appeals decision. RAP 13.4(b)(1), (2). In the instant case, the court of appeals ignored numerous cases discussing the invalidity of a sentence when a court exceeds its authority at sentencing. *See In re Pers. Restraint of Flippo*, 187 Wn.2d 106, 110, 385 P.3d 128 (2016); *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014); *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 593, 316 P.3d 1007 (2014); *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 136, 267

P.3d 324 (2011); *In re Pers. Restraint of McWilliams*, 182 Wn.2d 213, 215 n.2, 340 P.3d 223 (2014); *In re Pers. Restraint of West*, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005); *In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 176, 196 P.3d 670 (2008).

The court of appeals opinion is in direct conflict with that authority. Accordingly, this court should accept review.

ii. This matter involves a significant question of law under the Constitution of the State of Washington or the United States, pursuant to RAP 13.4(b)(3).

Even if this court finds that the conviction of bail jumping should not be disturbed, Mr. Femling’s sentence was nonetheless affected by the ruling in *Blake*. Under the statutory exemption for “significant change[s] in the law,” RCW 10.73.100(6), a significant change in the law occurs if an intervening appellate opinion effectively overturns a prior appellate decision that was originally determinative of a material issue. *In re Pers. Restraint of Colbert*, 186 Wn.2d 614, 619, 80 P.3d 504 (2016); *In re Pers. Restraint of Domingo*, 155 Wn.2d 356, 366, 119 P.3d 816 (2005); *In re Pers. Restraint of*

*Lavery*, 154 Wn.2d 249, 258, 111 P.3d 837 (2005). A petitioner may assert this exemption even if they could have raised the change in law in a previous petition but failed to do so, and even if the change occurred before the one-year time limit expired. *In re Pers. Restraint of Greening*, 141 Wn.2d 687, 698, 9 P.3d 206 (2000). The change must affect a materially determinative issue in the petition. *In re Pers. Restraint of Turay*, 153 Wn.2d 44, 83, 101 P.3d 854 (2004); *Greening*, 141 Wn.2d at 697.

In determining whether an appellate decision applies retroactively to final judgments for purposes of RCW 10.73.100(6), the Washington Supreme Court follows the analysis set forth in *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). *See Colbert*, 186 Wn.2d at 623-26; *In re Pers. Restraint of Yung-Cheng Tsai*, 183 Wn.2d 91, 100, 351 P.3d 138 (2015). Under the *Teague* analysis, if an appellate decision established a “new” rule of law it applies retroactively to previously final decisions if it announced a

substantive rule that places certain behavior beyond criminal law-making authority to proscribe, or if it announced a watershed rule of criminal procedure implied in the concept of ordered liberty. *Teague*, 489 U.S. at 311; *Colbert*, 186 Wn.2d at 624. It should also be noted that a decision claimed to be a change in the law may be “retroactive” if the decision involves the interpretation of a statute, under the principle that construction of a statute by the state Supreme Court is deemed to relate back to the effective date of the statute. *Colbert*, 186 Wn.2d at 620.

In the instant case, the interpretation by our Supreme Court of the possession of controlled substance statute to be void means that the controlled substance statute was void at its inception. Unconstitutional statutes are void *ab initio* and have no legal effect. “If a statute is unconstitutional, it is and has always been a legal nullity.” *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952). Accordingly, “[a]n unconstitutional act is not a law; it confers



no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Id.* (quoting *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886)). The *Blake* controlled substance charge directly affected Mr. Femling’s sentence as the sentencing court relied on that unconstitutional charge in imposing its sentence (*i.e.* the court sentenced Mr. Femling to a felony instead of a misdemeanor). This was material to Mr. Femling’s sentence. *Blake* is to be applied retroactively, it is material to Mr. Femling’s sentence, and Mr. Femling is therefore not time barred from relief.

iii. This matter is an issue of substantial public interest that should be determined by the supreme court, pursuant to RAP 13.4(b)(3).

Convictions to bail jumping pursuant to an unconstitutional UPCS conviction affects numerous individuals, considering how many UPCS convictions there are over the last forty-plus years of the UPCS statute. Clarity as to whether a conviction is a felony or misdemeanor is necessary,

as no court of appeals decision has dealt with this issue (including the instant case). The Supreme Court's *Blake* decision has had sweeping effects, impacting "up to 250,000 individuals." Washington State Judicial Branch, 2023-25 *Biennial Budget State v. Blake Public Defense Response*.<sup>3</sup> The court of appeals' decision here will affect a not-insignificant portion of those offenders.

2. The underlying offense of possession of controlled substance was void and the information was therefore constitutionally deficient.<sup>4</sup>

The essential elements of bail jumping are that the defendant (1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance;

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<sup>3</sup> See <  
[https://www.courts.wa.gov/content/Financial%20Services/documents/2023\\_2025/Combined%20Branch%20PDF/72%20AE%20Blake%20Response%20Combined.pdf](https://www.courts.wa.gov/content/Financial%20Services/documents/2023_2025/Combined%20Branch%20PDF/72%20AE%20Blake%20Response%20Combined.pdf)> (last accessed August 10, 2023).

<sup>4</sup> The petitioner largely is relying on the above argument for this court to accept review. The petitioner is not abandoning any other issues on appeal, but will include the briefing here to preclude any potential arguments from the State about abandonment.

and (3) knowingly failed to appear as required. *See Bergstrom, supra*. An information must contain all essential elements of a crime to give the accused proper notice of the crime charged so that he can prepare an adequate defense. *Williams*, 162 Wn.2d at 183; *State v. Kjorsvik*, 117 Wn. 2d 93, 101, 812, P.2d 86 (1991) to satisfy this requirement. The information must allege every element of the charged offense and the facts supporting the elements.

A constitutionally deficient information is subject to dismissal for failure to state an offense by omitting allegations of the essential elements constituting the offense charged. *Leach*, 113 Wn.2d at 686-87. Washington law is clear that an essential element of the crime of bail jumping is notice of the underlying offense and its absence from the information renders it constitutionally deficient. *State v. Marin*, 150 Wn. App. 434, 443-44, 208 P.3d 1184, 1189 (2009).

Likewise, in the instant case, although a piece of paper with the word “information” written on it was filed, no actual

“information” was filed with the court. Essential to an “information” as understood under the court rules and statutes are that it contain an allegation of criminal activity. *See generally* RCW 10.37.050, 052, 054, 056; CrR 2.1. While a litany of deficiencies in a document purporting to be an information may be excused, the absence of an allegation of criminal activity is not one of those exceptions. RCW 10.37.056, CrR 2.1(a)(1).

In the instant case, the information listed a charge of possession of controlled substance as the underlying offense. This offense does not exist. The information therefore was deficient by failing to provide proper notice of the underlying offense. The remedy for which is vacation and dismissal of the bail jumping conviction.

F. CONCLUSION

Given the foregoing, Mr. Femling respectfully requests that the supreme court accept review of this matter.

DATED this July 26, 2024.

This document contains 3,328 words.

Respectfully submitted,

s/ Sean M. Downs

Sean M. Downs, WSBA #39856

Attorney for Petitioner

GRECCO DOWNS, PLLC

701 Columbia St. #109

Vancouver, WA 98660

(360) 707-7040

sean@greccodowns.com

CERTIFICATE OF SERVICE

I, Sean M. Downs, a person over 18 years of age, declare under penalty of perjury under the laws of the State of Washington that on July 26, 2024 I electronically filed the MOTION FOR DISCRETIONARY REVIEW with the clerk of the court using the electronic filing system, which will send a copy to the following electronic participant: Lauren Boyd <lauren.boyd@clark.wa.gov>, attorney for Respondent.

s/ Sean M. Downs

Sean M. Downs, WSBA #39856

Attorney for Petitioner

GRECCO DOWNS, PLLC

701 Columbia St. #109  
Vancouver, WA 98660  
(360) 707-7040  
sean@greccodowns.com

# APPENDIX A

May 29, 2024

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND J. FEMLING,

Appellant.

No. 57512-4-II

UNPUBLISHED OPINION

CHE, J. — Raymond Jay Femling appeals the trial court’s denial of his CrR 7.8 motion to vacate his felony bail jumping conviction. In 2008, Femling did not attend a court date related to his charge for unlawful possession of a controlled substance (UPCS), which resulted in a felony bail jumping charge and conviction. In 2021, the trial court vacated Femling’s conviction for UPCS pursuant to *State v. Blake*.<sup>1</sup> Femling then moved under CrR 7.8 to vacate his conviction for bail jumping or, in the alternative, to reclassify his felony bail jumping conviction as a misdemeanor. After a show cause hearing, where the State did not assert the motion was untimely, the trial court denied Femling’s motion.

For the first time on appeal, the State argues that Femling’s motion should have been transferred to this court as a personal restraint petition (PRP). The State asks us to convert this appeal to a PRP and dismiss it as time barred. Femling argues that his motion is timely because

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<sup>1</sup> 197 Wn.2d 170, 481 P.3d 521 (2021). *Blake* held convictions under former RCW 69.50.4013, Washington’s strict liability drug possession statute, were unconstitutional. 197 Wn.2d at 174.



his judgment and sentence for felony bail jumping is facially invalid and, in the alternative, that the time bar does not apply because the *Blake* decision is a fundamental change in the law material to his judgment for felony bail jumping. Femling raises additional claims in a statement of additional grounds (SAG).

We hold (1) Femling's judgment and sentence is not facially invalid, (2) *Blake* is not material to Femling's bail jumping conviction under former RCW 10.73.100(6), so the time bar exception for a significant retroactive change in law material to a conviction or sentence does not apply, (3) Femling's CrR 7.8 motion was therefore an untimely collateral attack on his judgment and sentence, and (4) the trial court should have transferred the untimely motion to this court for consideration as a PRP.

We vacate the trial court's order denying Femling's CrR 7.8 motion, and in this unique case, we exercise our discretion to convert Femling's appeal to a PRP, and we dismiss it as time barred.

## FACTS

In 2007, the State charged Femling with UPCS and Femling subsequently entered drug court based on the charge. The drug court contract required Femling to attend all drug court dates. In 2008, Femling failed to appear at a required drug court date and the State charged Femling with class C felony bail jumping. In 2009, Femling pleaded guilty to class C felony bail jumping and the trial court sentenced him.<sup>2</sup> In 2021, the trial court vacated Femling's conviction for UPCS pursuant to *Blake*.

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<sup>2</sup> It appears that on the same date, the trial court also entered a guilty finding for Femling's UPCS.

In 2022, thirteen years later, Femling moved under CrR 7.8 to vacate his conviction for felony bail jumping or, in the alternative, to correct his judgment and sentence to reflect that the felony bail jumping offense should have been punished as a misdemeanor because it was predicated on a void offense. The State did not assert that the motion was time barred. The trial court held a show cause hearing to determine whether Femling's bail jumping conviction should be vacated or, alternatively, whether he should be resentenced. The trial court denied Femling's motion.

Femling appeals the trial court's denial of his CrR 7.8 motion. In his SAG, Femling argues that the classification of his bail jumping conviction as a felony violated his due process rights under the Fifth and Fourteenth Amendments.

## ANALYSIS

### I. CrR 7.8 MOTION

For the first time, the State argues that Femling's CrR 7.8 motion is time-barred. The State argues that we should convert Femling's appeal to a PRP and dismiss it as time barred. Femling argues that the State did not file a cross-appeal to argue timeliness, that it waived its right to argue timeliness by not raising it at the trial court level, and that even if it did not waive it, the CrR 7.8 motion is timely because Femling's judgment is facially invalid and the *Blake* decision is a fundamental change in the law material to his felony bail jumping conviction. We agree with the State.

#### A. *Legal Principles*

CrR 7.8 governs collateral attacks filed at the trial court level. *State v. Molnar*, 198 Wn.2d 500, 508, 497 P.3d 858 (2021). A trial court must transfer a CrR 7.8 motion to this court

for consideration as a PRP “unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that they are entitled to relief or (ii) resolution of the motion will require a factual hearing.” CrR 7.8(c)(2). Thus, the trial court must transfer a CrR 7.8 motion to the Court of Appeals without reaching the merits if it determines that the motion is untimely. *Molnar*, 198 Wn.2d at 509.

A CrR 7.8 motion that collaterally attacks a judgment and sentence must be brought no more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction, unless one of the exceptions to the time bar in RCW 10.73.100 applies. CrR 7.8(b)(5); RCW 10.73.090(1). A judgment becomes final on the last of the following dates: the date it is filed with the clerk of the trial court, the date an appellate court issues its mandate disposing of a timely direct appeal from the conviction, or the date the United States Supreme Court denies a timely petition for certiorari for review. RCW 10.73.090(3)(a)-(c).

The time bar of RCW 10.73.090 is a *mandatory* statutory limitation period that cannot be waived. *In re Pers. Restraint of Fowler*, 9 Wn. App. 2d 158, 167, 442 P.3d 647 (2019), *rev’d on other grounds*, 197 Wn.2d 46, 479 P.3d 1164 (2021). However, there are some exceptions to the time bar, including when there is a significant retroactive change in the law that is material to the petitioner’s conviction or sentence. Former RCW 10.73.100(6).

B. *Femling's CrR 7.8 Motion is Time-Barred and Should Have Been Transferred to This Court*

As a preliminary matter, the State is not required to file a cross-appeal to raise the issue of timeliness because the statutory limitation period of RCW 10.73.090 is not waivable. *See Fowler*, 9 Wn. App. 2d at 167. We therefore consider the timeliness of Femling's motion.

The trial court entered Femling's judgment and sentence for felony bail jumping in 2009. Femling filed his CrR 7.8 motion in 2022, more than one year after his judgment and sentence became final. CP at 35. Thus, Femling's CrR 7.8 motion is untimely unless his judgment and sentence is facially invalid, the trial court lacked jurisdiction, or one of the exceptions to the time bar in RCW 10.73.100 applies.

Femling claims his motion is not time-barred because it is facially invalid under RCW 10.73.090. Specifically, he argues that the unconstitutionality of Washington's former felony UPCS statute invalidates his felony bail jumping conviction because his underlying crime has always been a legal nullity. Femling contends this rendered the classification of his bail jumping conviction undefined, such that his conviction should be dismissed. We disagree.

Here, Femling was not convicted of a nonexistent crime because bail jumping is still a crime in existence today. *See* RCW 9A.76.170; *see also In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 857-58, 100 P.3d 801 (2004) (A judgment and sentence is invalid on its face when a defendant is convicted of a nonexistent crime.).

Under former RCW 9A.76.170(3)(c), bail jumping<sup>3</sup> is “[a] class C felony if the person was held for, charged with, or convicted of a class B or class C felony.” Former RCW 9A.76.170(3)(c) does not require Femling to be found guilty of or to later be found guilty of the underlying class C felony (UPCS) charge for his bail jumping charge to be a class C felony. Instead, Femling’s bail jumping classification only requires that Femling be “held for, charged with, *or* convicted of a class B or class C felony,” which he was at the time he failed to appear for his drug court date. Former RCW 9A.76.170(3)(c) (emphasis added). We reject the contention that the later determination that the underlying crime was a “nullity” means that it could not support a bail jumping conviction when it was a crime at the time the defendant failed to appear.

In *State v. Paniagua*, Division Three held that the defendant’s felony bail jumping conviction, which was predicated on a pre-*Blake* UPCS conviction, was not facially invalid, even though the underlying UPCS offense was later found to violate due process. 22 Wn. App. 2d 350, 356, 511 P.3d 113 (2022). The court reasoned that former RCW 9A.76.170 (2001) did not require the accused to have later been found guilty of a pending charge at the time of release on bail, only that the accused be under charges at the time of the failure to appear; thus the court concluded “a predicate crime does not constitute an element of bail jumping.” *Id.*

The court found the issue of whether the underlying charge of a bail jumping allegation must be valid, sufficiently analogous to the charge of escape because “our courts have rejected

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<sup>3</sup> A person is guilty of bail jumping if they “[are] released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and [ ]fail[] to appear or fail[] to surrender for service of sentence as required.” Former RCW 9A.76.170(1).

arguments that the invalidity of the underlying conviction is a defense to the crime of escape.” *Id.* at 357-58 (quoting *State v. Downing*, 122 Wn. App. 185, 193, 93 P.3d 900 (2004)). The court adhered to the universal rule that a statute’s unconstitutionality under which a defendant is convicted or charged does not justify escape from imprisonment; it did not discern any reason to distinguish a charge for escape from one for bail jumping in this context. *Id.* at 358. Likewise, here, Femling’s felony bail jumping conviction is not facially invalid just because Femling’s pre-*Blake* UPCS conviction was later found unconstitutional and was vacated.

Femling claims that *Paniagua* is distinguishable because it “did not address whether the classification of the offense or punishment imposed was invalid.” Reply Br. of Appellant at 11. We find the underlying rationale of *Paniagua* persuasive here. As we discussed above, bail jumping’s classification and penalty is based on the classification of the underlying crime the defendant is “held for, charged with, *or* convicted of” when they have failed to meet the requirement to personally appear before a court once released by court order or admitted to bail. Former RCW 9A.76.170(1), (3)(a)-(d) (emphasis added); *see also State v. Coucil*, 151 Wn. App. 131, 133, 210 P.3d 1058 (2009) (“Bail jumping is classified according to when it occurs.”). Dismissal of the underlying crime to a bail jumping charge does not invalidate the bail jumping conviction. *Downing*, 122 Wn. App. at 192-93. We find these additional authorities persuasive. For these reasons, Femling’s bail jumping classification and resulting punishment does not make his judgment and sentence facially invalid.

Alternatively, Femling argues that his bail jumping conviction should be classified only as a misdemeanor under RCW 9A.20.010(2)(a), which provides that when an act is prohibited by a statute and no penalty is imposed for the violation of said statute, “the committing of such act

shall be a misdemeanor.” Br. of Appellant at 6. Femling provides no citations to support his argument that the court has authority to reclassify a crime from a felony to a misdemeanor more than a decade after the fact. *In re Pers. Restraint of Campbell*, 27 Wn. App. 2d 251, 264, 533 P.3d 144 (2023) (“If a party provides no citation in support of a proposition, we may assume that counsel, after diligently searching, has found none”); *see also* RAP 10.3(a)(6). We too are aware of no authority that would allow reclassification as a remedy.

Femling also argues that the information charging him with felony bail jumping was constitutionally deficient because his UPCS offense is void. Because Femling’s argument relies on the false premise that the nullity of an underlying offense invalidates the information for bail jumping, it fails. *See Paniagua*, 22 Wn. App. 2d at 356. Thus, we hold that Femling’s judgment and sentence is not facially invalid.

Next, Femling argues that his CrR 7.8 motion is not time-barred under the exception found in former RCW 10.73.100(6)—that there has been a significant change in the law, whether procedural or substantive, that is material to his conviction—because *Blake* is a significant retroactive change in the law that is material to his bail jumping conviction. We disagree.

Regardless of whether *Blake* is a significant retroactive change in law, *Blake* is not material to Femling’s bail jumping conviction. *Blake* invalidated only convictions under the former UPCS statute, not convictions for bail jumping. It did not change the law regarding bail jumping. Furthermore, as discussed above, the trial court did not convict Femling of a nonexistent crime. We hold that *Blake* is not material to Femling’s bail jumping conviction, so the time bar exception for a significant retroactive change in law material to a conviction or sentence does not apply to Femling.

Because Femling filed his CrR 7.8 motion more than one year after his judgment and sentence became final, his judgment and sentence is facially valid and was rendered by a court of competent jurisdiction; and no exception to the time bar applies, the trial court should have transferred Femling's CrR 7.8 motion to this court as a PRP.

Rather than remand this matter as we normally would, we exercise our discretion to convert Femling's appeal to a PRP<sup>4</sup> and dismiss it as time barred based on the unique circumstances presented. *See Molnar*, 198 Wn.2d at 511-12 (Where procedural and substantive missteps that were made in the case presented unique circumstances, the Supreme Court declined to reverse the Court of Appeals because the defendant's motion for resentencing was clearly an untimely collateral attack.). Here, the trial court held a full show cause hearing wherein Femling was represented by counsel, and the timeliness issue was raised in the State's appellate briefing. Furthermore, Femling has counsel on appeal but has not withdrawn his CrR 7.8 motion or appeal despite the State's time bar argument. We decline to remand this matter and instead convert Femling's motion to a PRP and dismiss it as time barred for the reasons above.

### CONCLUSION

We vacate the trial court's order denying Femling's CrR 7.8 motion, convert Femling's appeal to a PRP, and dismiss it as time barred.

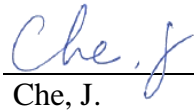
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<sup>4</sup> We do not consider Femling's SAG. *See* RAP 10.10 (We do not consider a SAG filed in a PRP).



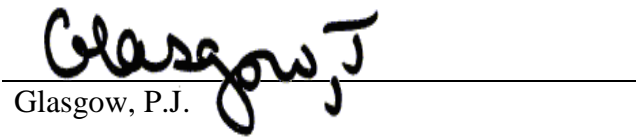
No. 57512-4-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

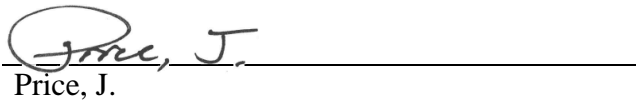
  
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Che, J.

We concur:

  
\_\_\_\_\_

Glasgow, P.J.

  
\_\_\_\_\_

Price, J.

June 26, 2024

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND J. FEMLING,

Appellant.

No. 57512-4-II

**ORDER GRANTING MOTION TO  
EXTEND TIME AND  
DENYING MOTION FOR  
RECONSIDERATION**

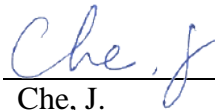
On June 18, 2024, appellant Raymond J. Femling filed a motion for extension of time to file a motion for reconsideration. The court grants the motion, extending appellant's filing deadline to June 21, 2024.

On June 21, 2024, appellant filed a motion for reconsideration. Upon consideration, the court denies appellant's motion for reconsideration. Accordingly, it is

**SO ORDERED**

**PANEL:** Jj. Glasgow, Price, Che

**FOR THE COURT:**

  
\_\_\_\_\_  
Che, J.

# APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
Division II  
State of Washington  
IN AND FOR THE COUNTY OF CLARK  
2/10/2023 9:10 AM

STATE OF WASHINGTON, )  
)  
Plaintiff, )  
)  
V. ) No. 08-1-01301-4  
)  
RAYMOND JAY FEMLING, ) COA No. 57512-4-II  
)  
Defendant. )

VERBATIM REPORT OF PROCEEDINGS  
Before the Honorable Jennifer Snider  
October 19, 2022  
Vol. I - Pages 1-15

## APPEARANCES:

## FOR THE PLAINTIFF:

LAUREN BOYD  
Clark County Prosecuting Attorney's Office  
1013 Franklin Street  
Vancouver, WA 98660  
Lauren.boyd@clark.wa.gov

## FOR THE DEFENDANT:

SEAN DOWNS  
Grecco Downs  
701 Columbia Street  
Suite 109  
Vancouver, WA 98660  
Sean@greccodowns.com

Audio Recording Transcribed By:  
Trina Michael, CET-1390

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1 SEATTLE, WASHINGTON, FRIDAY, OCTOBER 21, 2022

2 (Call to Order of the Court.)

3 THE CLERK: All rise. Court is now in  
4 session. Honorable Jennifer Snider presiding.

5 THE COURT: Thank you. You can be  
6 seated.

7 Okay. Good afternoon. We're here 08-1-01301-4,  
8 State of Washington versus Raymond Jay Femling, one of  
9 his cases that we've been talking about for a while. I  
10 received documentation from both parties; I read it.

11 So, Mr. Downs, you kind of started off with the  
12 motion to vacate and dismiss, or, alternatively, to  
13 resentence, so I'll let you go first.

14 MR. DOWNS: Your Honor, may it please  
15 the Court. Just so the Court is aware, Mr. Femling is on  
16 speakerphone with me, just so he can hear what's going on  
17 with the hearing.

18 THE COURT: Okay.

19 MR. DOWNS: I don't expect him to need  
20 to address the Court at all.

21 THE COURT: Thank you.

22 MR. DOWNS: So the -- the first part  
23 of the motion was in regards to vacating, dismissing the  
24 bail jumping charge. Basically, distinguishing it from  
25 *Paniagua* and the unpublished case of Stacey (phonetic).

***Argument by Mr. Downs***

1 I'm not really going to spend too much time on that. I  
2 just want to make sure that that issue is preserved for a  
3 potential appeal.

4 I think the more interesting, the more compelling  
5 argument is in regards to whether Mr. Femling is allowed  
6 to be punished with the conviction of this as a felony,  
7 or if it defaults to being a misdemeanor offense. So as  
8 indicated in *Paniagua* and other cases, there are three  
9 elements of bail jumping.

10 So Count 1: The accused was held for, charges with,  
11 or convicted of a crime.

12 Count 2: The accused possessed knowledge of the  
13 requirement of subsequent personal appearance.

14 And -- sorry, I meant subsection 3: An accused  
15 failed to appear as required.

16 So the class of offense is not an element of the  
17 bail jumping offense. The State does not need to prove  
18 at trial, they don't need to prove in a plea that someone  
19 was charged with a particular type of offense, whether it  
20 was a Class A felony, a Class B felony, Class C felony,  
21 what have you. That is the punishment portion of a bail  
22 jumping statute.

23 So the punishment portion, that clause comes later  
24 in a case that bail jumping is Class A felony. If the  
25 person is charged with murder -- in this case, they're

***Argument by Mr. Downs***

1       alleging a Class C felony, if the person is held for,  
2       charged with, or convicted of a Class B or C felony, or a  
3       misdemeanor if the person a is held for, charged with, or  
4       convicted of a gross misdemeanor or misdemeanor.

5               So since the PCS statute is unconstitutional, it has  
6       always been a legal nullity. That's *State ex rel. Evans*  
7       *v. Brotherhood of Friends* that's cited in *Paniagua*. It  
8       means that PCS has never been an offense. It's been a  
9       Class C offense. It's never been an offence, and before  
10      the legislature has changed the statute, has never been  
11      an offense. So, therefore, the punish clause is  
12      undefined for possession of controlled substance.

13             So there's a statute that addresses an undefined  
14      punishment for an offense. I had a typo in my briefing.  
15      It's actually RCW 9A.20.010. I accidentally put 020.

16             So under subsection (2)(a), it indicates, "Whenever  
17      the performance of any act is prohibited by any statute,  
18      and no penalty for the violation of such statute is  
19      imposed, the committing of such act shall be a  
20      misdemeanor."

21             So here, we don't have a punishment that is defined,  
22      because PCS is not a felony. It's not a misdemeanor. So  
23      the Court, obviously, according to *Paniagua*, is allowed  
24      to order someone back to court. If they fail to appear,  
25      that can be charged and punished, convicted of bail

***Argument by Mr. Downs***



1       jumping. But the question is, what is the punishment?  
2       It can't be as a Class C felony, because that PCS statute  
3       does not exist. It must default to RCW 9A.20.010,  
4       subsection (2)(a). It must be a misdemeanor.

5               So, therefore, Mr. Femling was punished to  
6       unjustifiably as a Class C felony instead of a  
7       misdemeanor. It's an invalid sentence. It's -- anytime  
8       a judgement -- any time a trial court exercises power  
9       that it doesn't have, most typically by imposing a  
10      sentence not authorized by law, the judgment is invalid.  
11      So we don't have a time bar here, because the court  
12      imposed an invalid sentence.

13              Therefore, this Court can properly resentence or  
14      correct the judgment and sentence in Mr. Femling's case,  
15      which means that he must be sentenced as a misdemeanor.  
16      He's already got time served. It would essentially be  
17      almost miniscurl [sic] at this point in time. 90-days  
18      imposed (indiscernible) credit if the Court wants to.

19              But the main point, is that he needs to be  
20      resentenced or have his judgment and sentence corrected  
21      to indicate that this is a misdemeanor offense and not a  
22      felony offense. And then, obviously, it has effects for  
23      his subsequent cases, 2010 matters and 2014 matters.  
24      Since this bail jumping is not a felony, it wouldn't  
25      count in that criminal history. But that's a subsequent

***Argument by Mr. Downs***

1 issue for those cases.

2 So for the 2008 case, we're asking the Court to  
3 correct that erroneous invalid judgment, and correct it  
4 to indicate that this was a misdemeanor. Thank you.

5 THE COURT: All right. Thank you.

6 Ms. Boyd?

7 MS. BOYD: Thank you, Your Honor.

8 I'll be brief, because I think the case law is clear, and  
9 my brief was very clear, that the defense -- well, first  
10 of all, the defense request to completely invalidate the  
11 conviction for bail jumping is contrary to the law that I  
12 cited in my briefing. I don't think the Court has any  
13 authority today to do that.

14 Defense's argument about reclassifying the offense  
15 is similarly unbased in any sort of law or legal  
16 authority, Your Honor. There is -- the State is unaware  
17 of no -- is aware of no case law that would allow the  
18 Court to do such a thing.

19 I do agree that the case law that we have cited and  
20 that's cited by Mr. Downs in his briefing, indicates that  
21 the allegation of bail jumping does not need to be  
22 supported by -- I'm sorry. The underlying allegation  
23 within which the bail jumping occurred does not need to  
24 be supported by valid conviction. That's why the Court  
25 should not be vacating the conviction today.

***Argument by Ms. Boyd***

1           But listening to Mr. Downs argument, Your Honor, I  
2       looked up the Washington pattern jury instruction.  
3       The -- whether the defendant was charged with a  
4       misdemeanor or gross misdemeanor or Class C felony is one  
5       of elements of the offense. The State does have a prove,  
6       had we gone to trial, the classification of the crime the  
7       defendant was ordered to appear on.

8           The -- that, in the comments, is supported by  
9       *State v. Williams*, which is 162 Wn. 2d. 177. It's a 2007  
10      case. That case talks about the defense -- defendant  
11      being allowed to waive that element so that the jury does  
12      not need to hear that the defendant would be charged with  
13      a Class A felony, for example. So it is one of the  
14      elements of the offense.

15          From the State's perspective, it's illogical to not  
16      vacate and then the reclassify if the bail jump is still  
17      a valid conviction on its face, because the Court had  
18      authority, at the time, to order the defendant to return  
19      to court, then the all subsequent actions of the bail  
20      jumping conviction would be still valid, including the  
21      classification of the offense.

22          So the State would ask that the defendant [sic] deny  
23      the motion.

24          I believe that defense is also requesting to be  
25      resentenced. He has six additional points, Your Honor,

***Argument by Ms. Boyd***

1 based on subsequent convictions. So he was sentenced on  
2 this bail jumping with an offender score of four. If he  
3 resentenced, even taking away those PCS convictions, his  
4 new offender score would be seven. So I'm assuming that  
5 he's not then asking to be resentenced on the bail jump  
6 conviction, should the Court not reclassify or not  
7 vacate.

8 THE COURT: Mr. Downs?

9 MR. DOWNS: We're not asking for  
10 resentencing if this Court finds that this is a felony  
11 offense. We're only asking the Court to correct the  
12 judgement and sentence, or to resentence if this Court  
13 finds it's a misdemeanor offense.

14 So under the second portion of our argument, we're  
15 not looking to invalidate the conviction. That is not  
16 necessary for purposes of correcting the sentence.

17 THE COURT: Okay. So, Ms. Boyd, the  
18 need that the State would have to prove the element of  
19 underlying. Read that to me, again, please.

20 MS. BOYD: I can just read right from  
21 the WPIC, Your Honor.

22 THE COURT: Okay.

23 MS. BOYD: The WPIC requires four  
24 elements. That on or about a specific date, the  
25 defendant failed to appear, that the defendant was being

***Rebuttal by Mr. Downs***

1       held for or charged with or had been convicted of -- but  
2       in this case, it was -- was "charged with" a crime that  
3       is -- and options under the WPIC are a Class A felony, a  
4       Class B or C felony, or a gross misdemeanor or  
5       misdemeanor that would affect to the classification.

6               This does -- and then that the defendant did fail to  
7       appear, and that these acts occurred in State of  
8       Washington, Your Honor.

9               This does not change the court's analysis on the  
10       vacate, because the State still does not need to prove  
11       that the underlying offense was valid or that the  
12       defendant was convicted of the underlying offense.  
13       That's what all the briefing is about. But the  
14       classification of the crime that the defendant was held  
15       under at the time still is relevant.

16               So at that time, defendant was --

17                       THE COURT: And the classification  
18       that the defendant was held under at the time that we're  
19       talking about was a nonexistent crime.

20                       MS. BOYD: Correct, but it was  
21       classified as a Class C felony, and the court had the  
22       authority to order the defendant to return to court,  
23       pursuant to being charged under a felony, Your Honor. I  
24       don't think that this changes the court's analysis.

25               I think the logical argument would be if the crime

1 is nonexistent, then -- then this conviction should be  
2 vacated. But that has specifically been ruled upon by  
3 both Division III and Division II, Your Honor. Although,  
4 Division II's unpublished and is just persuasive to this  
5 Court.

6 Division III is published, and that has been  
7 specifically ruled on, as the conviction for bail jumping  
8 does not -- is not vacated by this Court.

9 THE COURT: All right.

10 Mr. Downs, anything else you'd like to say?

11 MR. DOWNS: I'm just wanting to note  
12 real briefly, *State v. Downing*, *State v. Paniagua*, just  
13 indicates that the elements are, the accused was held  
14 for, charged with, or convicted of a crime. The WPIC may  
15 go beyond that. But the -- the point is that once we get  
16 to the punishment phase that an individual's convicted,  
17 there has to be a defined statute that an individual --  
18 or a defined crime that an individual is charged with.

19 And here, we don't have a defined crime. Therefore,  
20 the punishment cause is undefined. So that's the -- the  
21 main point here.

22 THE COURT: Okay. Well, I hate to say  
23 that I am to going reserve on this or take it under  
24 advisement, but I got this brief at one o'clock today, as  
25 I was downstairs this morning. I want to reread

1       *Paniagua*, and I also want to reread a case that came out  
2       yesterday, *Rahnert*, R-a-h-n-e-r-t, published Division II.  
3       Has to do with a point on community custody related to  
4       the vacation of a Blake conviction. In other words, the  
5       adding of a point to the offender score when something  
6       did not exist. I think they're kind of tied together.

7               But I want to reread those cases, and I'll get you  
8       an answer as quickly as I can. I'm in trial Monday,  
9       Tuesday, but down on Wednesday next week. So I should be  
10      able to get it out next week.

11               MS. BOYD: And, Your Honor, I have  
12      only briefly skimmed the case that came out yesterday.  
13      My argument -- unless the Court would like to hear  
14      further argument after both Mr. Downs and I are fully  
15      briefed on that case -- would be that a community custody  
16      point is different than a bail jumping conviction. The  
17      defendant would never have been placed on community --  
18      community custody, pursuant to an invalid conviction.

19               Here, the bail jumping convictions hinges not on the  
20      defendant's conviction for PCS, but on the court's  
21      authority to regularly administer justice and order that  
22      the defendant return back to court.

23               So from the State's perspective, those are slightly  
24      different issues.

25               THE COURT: All right. Thank you.

***Statement by the Court***

1           Anything else you wanted to say, Mr. Downs, just  
2           before we break?

3                       MR. DOWNS: No, Your Honor. Thank  
4           you.

5                       THE COURT: All right. Thank you. I  
6           will get you a decision. We'll send it out via e-mail.

7                       And I believe we have a hearing scheduled already.  
8           I thought we had a hearing scheduled on the 14 cause  
9           number, but maybe we don't.

10                      MS. BOYD: We do, Your Honor. It is  
11           scheduled for November 18th, I believe. Yes,  
12           November 18th.

13                      MR. DOWNS: Yes.

14                      MS. BOYD: If this Court does not  
15           vacate or reclassify the bail jumping conviction, then  
16           Mr. Femling's two other cases, both from 2010, have no  
17           need to resentenced, either. So it would just be that  
18           2014 case.

19                      If this court does vacate or reclassified this  
20           convictions, then we will need to add those two 2010  
21           cases to that November 18th date, please.

22                      THE COURT: Okay. Understood.

23                      All right. Thank you very much, Counsel. I'll  
24           reread your materials and get you that answer next week.  
25           Appreciate the time.

***Statement by the Court***



1 MS. BOYD: Thank you.

2 THE COURT: Thank you.

3 MR. DOWNS: Thank you.

4 THE COURT: Okay. Thanks, Evelyn

5 (phonetic).

6 UNIDENTIFIED SPEAKER: Yeah.

7 (End of recording.)

8

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*Statement by the Court*

## C E R T I F I C A T E

I, Trina Michael, certify that the foregoing transcript is a full, true and accurate transcription of the proceedings and testimony taken in the matter of the above-entitled cause.

That the foregoing was transcribed from audio recording. The foregoing was transcribed to the best of my ability, taking into consideration poor sound quality, simultaneous speaking, background noise, quality of second-party telephone, audio, video recordings.

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my signature on the 27th day of January, 2023.



Trina Michael, CET-1390

Certification Exp. 10/1/24

## **B&A LITIGATION SERVICES**

**February 10, 2023 - 9:10 AM**

### **Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 57512-4  
**Appellate Court Case Title:** State of Washington, Respondent v Raymond J. Femling, Appellant  
**Superior Court Case Number:** 08-1-01301-4

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# APPENDIX C

2  
C

IN THE COURT OF APPEALS, DIVISION II-  
OF THE STATE OF WASHINGTON

**FILED**

FEB 15 2023

Scott G. Weber, Clerk, Clark Co

4:30

STATE OF WASHINGTON,  
Respondent,

vs.

RAYMOND JAY FEMLING  
Appellant,

Court of Appeals  
Cause No. 57512-4-II

Clark County  
Cause No. 08-1-01301-4

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19	Motion Hearing, 10/19/2022	1	0-000087
16	Motion To Vacate And Dismiss, 9/8/2022	52	0-000035
21	Notice Of Appeal To Court Of Appeals, 10/21/2022	4	0-000090
8	Statement Of Defendant On Plea Of Guilt, 5/22/2009	10	0-000010

**FILED**

AUG 21 2008

Sherry W Parker Clerk Clark Co

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

STATE OF WASHINGTON

Plaintiff

v

RAYMOND J FEMLING

Defendant

**INFORMATION**

No 08-1 01301-4

COMES NOW the Prosecuting Attorney for Clark County Washington and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows to wit

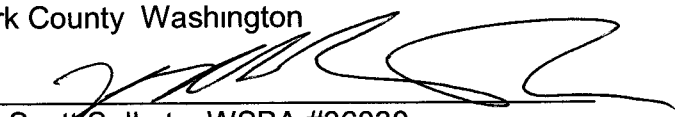
**COUNT 01 - BAIL JUMPING ON CLASS B OR C FELONY - 9A 76 170(1),(3)(c)**

That he RAYMOND J FEMLING in the County of Clark State of Washington on or about March 13 2008 having been charged with Possession of a Controlled Substance - Methamphetamine a Class C felony Clark County Cause No 07-1 01628-7 and having previously been released from custody by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before the Superior Court of Clark County did fail to appear as required for Drug Court contrary to Revised Code of Washington 9A 76 170(1) (3)(c)

ARTHUR D CURTIS  
Prosecuting Attorney in and for  
Clark County Washington

Date August 7 2008

BY

  
Scott S Ikata WSBA #36030  
Deputy Prosecuting Attorney

<b>DEFENDANT RAYMOND J FEMLING</b>			
<b>RACE</b> W	<b>SEX</b> M	<b>DOB</b> 2/4/1983	
<b>DOL</b> FEMLIRJ170CD WA		<b>SID</b> WA19500164	
<b>HGT</b> 600	<b>WGT</b> 175	<b>EYES</b> BLU	<b>HAIR</b> BRO
<b>WA DOC</b>		<b>FBI</b> 77679CC5	
<b>LAST KNOWN ADDRESS(ES)</b>			
HOME - 20209 279TH ST BATTLE GROUND WA 98684			

INFORMATION 1  
jmc

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WASHINGTON 98666 5000  
(360) 397 2261

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**FILED**

**AUG 25 2008**

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
RAYMOND J FEMLING,  
Defendant.

MOTION AND AFFIDAVIT FOR  
ORDER AUTHORIZING ISSUANCE OF  
WARRANT OF ARREST

No. 08-1-01301-4

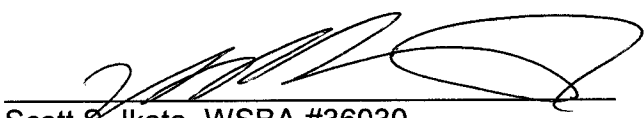
COMES NOW the Plaintiff, State of Washington, by and through the Prosecuting Attorney for Clark County, represented by his Deputy, Scott S. Ikata, and the Plaintiff having filed an Information in the above-entitled cause charging RAYMOND J FEMLING, with the following crime(s):

Count	Crime Date	Crime	RCW
01	March 13, 2008	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)

does respectfully move the Court for an Order authorizing the issuance of a warrant for the arrest and detention of the above-named Defendant until the Defendant can be brought before the Court to answer the Information, or until further Order of the Court, or until release of the Defendant on such conditions as may be set by the Court.

This Motion is based upon the following Affidavit and upon Criminal Rule 2.2(a).

DATED this 21 day of August, 2008.

  
Scott S. Ikata, WSBA #36030  
Deputy Prosecuting Attorney

MOTION AND AFFIDAVIT - 1  
jmc

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

2 KK



1  
2 STATE OF WASHINGTON )  
3 : ss  
4 COUNTY OF CLARK )

5 I, Scott S. Ikata, being first duly sworn, do hereby depose and state:

6 Your affiant is a Deputy Prosecuting Attorney for the Clark County Prosecuting  
7 Attorney's Office and in such official capacity your affiant is familiar with the file and court  
8 records regarding Clark County Superior Court Cause No. 07-1-01628-7, State v. Raymond  
9 J. Femling.

10 The file notes and court record sets forth probable cause that RAYMOND J FEMLING, has  
11 committed the following crime(s):

Count	Crime Date	Crime	RCW
01	March 13, 2008	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)

14 in Clark County, Washington. The records indicate the following:

15 The defendant, RAYMOND J. FEMLING, was charged by Information on September  
16 19, 2007 with the crimes of Possession of a Controlled Substance – Methamphetamine and  
17 Theft in the Third Degree, under Clark County Cause No. 07-1-01628-7.

18 The defendant appeared personally before the court on September 18, 2007 for first  
19 appearance. Defense Attorney Clark was appointed as counsel for the defendant and the  
20 matter was set over to September 28, 2007 for arraignment.

21 On September 28, 2007 the defendant appeared before the court and pled Not  
22 Guilty. Trial was set for November 19, 2007. Defendant was scheduled for informal Drug  
23 Court screening on October 5, 2007.

24 On October 5, 2007 the defendant appeared before the court and was screened for  
25 Drug Court off the docket. The matter was set over to October 12, 2007 for opting in to Drug  
26 Court.

On October 12, 2007 the defendant appeared personally before the court and was accepted into the Drug Court program. The defendant signed a Drug Court contract requiring him to appear at all scheduled court hearings or as otherwise ordered by the judge. A copy of the contract is attached hereto and incorporated herein by reference.

On March 6, 2008 the defendant appeared for a Drug Court review hearing. The matter was set over for review on March 13, 2008 and the defendant signed an Order to Appear in Drug Court. A copy of the Order is attached hereto and incorporated herein by reference.

On March 13, 2008 your affiant was personally present in court when the case was called and the defendant failed to appear. A bench warrant was authorized and issued on March 14, 2008.

Due to Defendant's failure to appear on March 13, 2008 this office has filed an Information charging the defendant with Bail Jumping, under the above-captioned cause number.

I have attempted to ascertain the Defendant's address by causing a member of the Prosecuting Attorney's staff to conduct a check of the following databases: the District Court Information System (DISCIS), which has been renamed Judicial Information System (JIS), the Department of Licenses (DOL) and the Department of Corrections (FORS). The last known addresses of the Defendant as ascertained by these checks are listed below in the description section of this affidavit and warrant. This information is also being forwarded to law enforcement to effect service of the warrant.

Your affiant respectfully requests that bail be set in the amount of **\$NO BAIL** in this matter.

The defendant is described as follows:

<b>DEFENDANT: RAYMOND J FEMLING</b>			
<b>RACE: W</b>	<b>SEX: M</b>	<b>DOB: 2/4/1983</b>	
<b>DOL: FEMLIRJ170CD WA</b>		<b>SID: WA19500164</b>	
<b>HGT: 600</b>	<b>WGT: 175</b>	<b>EYES: BLU</b>	<b>HAIR: BRO</b>

MOTION AND AFFIDAVIT - 3  
jmc

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)


1 **WA DOC:**

**FBI: 77679CC5**

2 **LAST KNOWN ADDRESS(ES):**

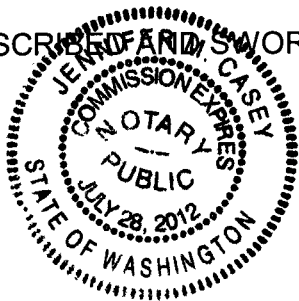
3 HOME - 20209 279TH ST, BATTLE GROUND WA 98684

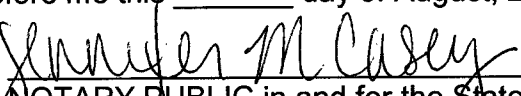
4 Further, your affiant saith not.

5   
Scott S. Ikata, WSBA #36030

6 Deputy Prosecuting Attorney

7 SUBSCRIBED AND SWORN to before me this 21 day of August, 2008.



9   
NOTARY PUBLIC in and for the State of  
10 Washington, residing at Vancouver.  
11 My commission expires July 28, 2012

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Raymond L. Fleming  
Defendant

NO.

07-1-01628-7

DRUG COURT CONTRACT

In consideration of being accepted into the Clark County Superior Court Drug Court Program (DC) I agree to the following terms while I am in the Program:

1. **OBEY LAWS/REPORT POLICE CONTACT:** I will obey all laws and report any contact with law enforcement personnel to DC Probation Officers within 24 hours.
  2. **HEARINGS:** I will appear at all scheduled court hearings or as otherwise ordered by the judge.
  3. **DRUG COURT PROGRAM:** I understand that the Drug Court Program is a minimum of twelve (12) months but may be longer. I agree to be in the program until successful completion and graduate or until I am discharged (terminated/quit).
- NOTICE** – If a defendant has charges pending or is under investigation for criminal activity in any jurisdiction, this can be a basis for termination.
4. **DRUG COURT FEE:** I agree to pay a \$600 non refundable Drug Court Fee.
  5. **JUDGMENT & SENTENCE COSTS:** I understand that I will owe court costs, fines, Victim/Assessment fee, lab fee, drug fund contribution and restitution (if

1 applicable). These fees are either on my current Judgment and Sentence Order (PV  
2 case) or will be placed on my Judgment and Sentence Order upon successful  
completion or discharge from Drug Court.

3 6. **TREATMENT:** I will enter into and successfully complete all treatment deemed  
4 necessary by the court. I will abide by all rules/ regulations set by the treatment  
agency and all conditions and requirements ordered by the court.

5 7. **RELEASES:** I will sign all *Releases of Confidential Information* as deemed  
6 necessary by the treatment agency and Drug Court.

7 8. **SOCIAL/INTIMATE CONTACT:** I agree to not have any sexual, intimate, or  
8 social contact with any persons currently under DOC supervision or those with a  
9 felony conviction (excluding DC hearings, treatment or support meetings). Social  
contact can be allowed only with prior approval by the court.

10 9. **RANDOM URINE SAMPLES:** I agree to submit to witnessed urine, breath or  
11 other screening whenever requested to do so by the treatment program staff, the  
12 judge, or any Drug Court personnel within 1 hour of request.

13 10. **ALCOHOL/DRUGS:** I will not possess or use alcohol or drugs unless lawfully  
14 prescribed by a physician, in which case I will provide copies of the prescription at  
the next contact with my case manager and treatment provider.

15 11. **PRESCRIPTION MEDICATION USE:** I will request, whenever possible, that  
16 any medication prescribed by a licensed physician be non-narcotic and taken as  
17 prescribed. I will seek approval from the case manager and the treatment agency for  
18 any over-the-counter or prescribed medication prior to using such medication. Use  
of prescription drugs, other than psycho-tropic and antibiotics may impact my *clean*  
*time* and movement through my Drug Court phases.

19 12. **DOC CONDITIONS:** I agree to comply with all other conditions DOC may impose  
20 including curfew, home checks and non-association with certain people.

21 13. **RESIDENCE/TRAVEL/OVERNIGHTS:** I will reside in Clark County,  
22 Washington. Without first notifying and obtaining permission from DOC and/or the  
23 Court I will not: 1) change residences; 2) spend the night at any address other than  
the one that has been approved by the court; 3) travel out of county/state.

1 14. **SEARCH OF PERSON/HOME:** Upon request, I must submit to a search of my  
2 person, residence, vehicle or other personal property when asked by my DC probation  
3 officer or any law enforcement officer with Drug Court.

4 15. **FIREARMS:** I will not possess, use or own any firearm, nor will I reside where  
5 firearms are present, unless I have the court's permission.

6 16. **ASSOCIATIONS:** I will not associate with or be near convicted felons or those on  
7 DOC supervision, or any person using/possessing any controlled substance or alcohol

8 17. **EMPLOYMENT:** I agree to be employed, a student, or a full-time homemaker (as  
9 determined by the court) prior to Drug Court graduation.

10 In executing this contract, I the undersigned defendant understand that violation of  
11 this contract or any other Drug Court rule may result in sanction(s) and/or termination from  
12 the Drug Court Program. I further understand that I must meet all the Drug Court  
13 requirements prior to graduation from Drug Court.

14 My attorney has explained and we have fully discussed all of the above. I understand  
15 them and wish to enter into this Drug Court Contract. I have no further questions.

16 Raymond Fleming  
17 Defendant

Date: 10-12-07

18 I have read and discussed this Drug Court Contract with the defendant and believe  
19 the defendant is competent and fully understands the contract terms.

20 Supri  
21 Defense Attorney W.S.B. # 17476

Date: 10-12-07

22 Agreement to the terms of this contract and recommendations of the state.

23 \_\_\_\_\_  
24 Deputy Prosecuting Attorney, W.S.B. # \_\_\_\_\_

FILED

MAR 06 2008

Sherry W. Parker, Clerk, Clark Co.

## IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Raymond Femling

Defendant

NO.

07-1-01628-7

DRUG COURT SANCTION(S)

AND ORDER TO APPEAR IN DRUG COURT

Your next Drug Court review date is on 3/13/2008 at 10:30 a.m./2:00 p.m. at the Clark County Courthouse, 1200 Franklin Street, Vancouver, WA. **Failure to appear at this review or any other known review date may result in a warrant and additional criminal charges.**

You are ordered to receive the following Drug Court Sanction(s) X (grid letter).

☐ The defendant is remanded to custody, to be released/reviewed on \_\_\_\_\_.

☐ Appear in arraignment court at 8:45 a.m. on \_\_\_\_\_ and write a 1 page report.

☐ Perform \_\_\_\_\_ days of Community Service on the following date(s) \_\_\_\_\_.

You are to report to \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

☒ Perform 1 days of Work Crew on the following date(s) 3/8/2008 at 7 a.m.

☐ Attend \_\_\_\_\_ support meetings (AA/NA), \_\_\_\_\_ verified/turned-in (Wed) before the next review.

☐ Other: \_\_\_\_\_

*You are required to follow this Drug Court Reporting Schedule until changed by the court:*

	Court	UA's	PO check-in (Wed)	Curfew
<input type="checkbox"/> Phase 1:	weekly	2x/wk (silver)	weekly	9:00 pm
<input type="checkbox"/> Phase 2:	Bi-monthly	1x/wk (green)	Bi-monthly	10:00pm
<input type="checkbox"/> Phase 3:	monthly	2x/mth (orange)	monthly	negotiated

All conditions previously set apply, unless noted otherwise.

DATED this 6 day of March, 2008.

Raymond Femling  
Defendant

Dee M. Warlock  
SUPERIOR COURT JUDGE

10

FILED

MAY 22 2009

Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington  
for Clark

State of Washington

Plaintiff

vs.

Raymond J. Femling  
Defendant

No. 08-1-01301-4

Statement of Defendant on Plea of  
Guilty to Non-Sex Offense  
(STTDFG)

1. My true name is: Raymond J. Femling
2. My age is: 26 (DOB: 02/04/1983)
3. The last level of education I completed was 10<sup>th</sup>

4. I Have Been Informed and Fully Understand That

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
- (b) I am charged with: Bail Jump

The elements are: On or about 3/13/2008, having been charged with a Class "C" felony and having previously been released from custody by court order with the requirement to appear in Superior Court, did fail to appear.

5. I Understand I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been 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;

8  
AS



- (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) I am presumed innocent unless the charge is proven 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*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	4	12+ - 16 mos	—	12+ - 16 mos	—	5/10,000
2						
3						

\*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

- (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.
- (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. 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 crimes 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 supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances 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 crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned 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. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge: 12 months + 1 day  
prison to run concurrent with drug court case; pay  
standard court costs and fines  
☐ 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 there is a finding of substantial and compelling reasons not to do so. 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.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested 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 understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9A.040.
- (k) I understand that 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) Public assistance will be suspended during any period of imprisonment.
- (m) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.

**Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.**

- (n) 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 crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- (p) If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- (q) If this is a crime of domestic violence, I may be ordered 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.
- (r) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.
- (s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of at least one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court. As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before

the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

- (t) 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.
- (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b).
- (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- (w) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.
- (x) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(13).
- (y) 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 ignition interlock device requirements.

- (z) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. 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[n].
- (aa) 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.
- (bb) I understand that the offense(s) I am pleading guilty to include a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- (cc) I understand that 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.
- (dd) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- (ee) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- (ff) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count F Bail Jump

count \_\_\_\_\_

count \_\_\_\_\_

in the original 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: ON OR ABOUT 3/13/2008, I WAS RELEASED FROM CUSTODY TO PARTICIPATE IN THE SUPERIOR COURT DRUG COURT PROGRAM. I HAD PLEADED GUILTY TO A CLASS C FELONY. ON 3/13/2008, I FAILED TO APPEAR IN COURT AS INSTRUCTED BY THE COURT TO DO SO.

[ ] 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.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. 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.

Raymond Fennell  
Defendant

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

Mary H. Arden  
Defendant's Lawyer

Rebecca K. Ward  
Prosecuting Attorney

Rebecca K. Ward 33705  
Print Name WSBA No.

Mary H. Arden 14852  
Print Name WSBA No.

The foregoing statement was signed by the defendant 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.

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: 5/22/2009 Glenn Lewis  
Judge

# BAIL JUMPING WITH CLASS B OR C FELONY

(RCW 9A.76.170(2)(c))

CLASS C FELONY

NONVIOLENT

(If sexual motivation finding/verdict, use form on page III-13)

## A. OFFENDER SCORING (RCW 9.94A.525(7))

### ADULT HISTORY:

Enter number of felony convictions .....

3 x 1 = 3

### JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions .....

\_\_\_\_\_ x 1 = \_\_\_\_\_

Enter number of nonviolent felony dispositions .....

\_\_\_\_\_ x 1/2 = \_\_\_\_\_

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

Enter number of other felony convictions ..... 0.7-1-01628-7

1 x 1 = 1

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes),

+ 1 = \_\_\_\_\_

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

## II. SENTENCE RANGE

### A. OFFENDER SCORE:

STANDARD RANGE  
(LEVEL III)

0	1	2	3	4	5	6	7	8	9 or more
1 - 3 months	3 - 8 months	4 - 12 months	9 - 12 months	12+ - 16 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months	51 - 60* months

- A. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).
- B. In the case of multiple prior convictions for offenses committed before July 1, 1986, please reference RCW 9.94A.525(12)(ii) for purposes of computing the offender score.

•\*Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

## III. SENTENCING OPTIONS

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.
- B. If sentence is one year or less: one day of jail can be converted to one day of partial confinement or eight hours of community service (up to 240 hours) (RCW 9.94A.680).
- C. Partial confinement may be served in home detention (RCW 9.94A.030).
- D. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).
- E. If Drug Offender Sentencing Alternative (DOSA) eligible: see DOSA form for alternative sentence on page III-7 (RCW 9.94A.660).

- The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules



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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
RAYMOND JAY FEMLING,  
Defendant

No. 08-1-01301-4

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY


COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS-METH	CLARK/WA 04-1-00192-7	6/21/2003	1/19/2006	1
PCS-METH	CLARK/WA 07-1-00192-1	1/31/2007	2/21/2007	1
PCS-METH	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	
THEFT 3	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	

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

DATED this 22 day of May, 2009.

  
Defendant

  
Mary H. Arden, WSBA#14852  
Attorney for Defendant

  
REBEKAH K. WARD, WSBA #33705  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

FILED  
MAY 22 2009  
1:20  
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

No. 08-1-01301-4

MEMORANDUM OF DISPOSITION

v.  
Raymond J Femling  
Defendant.

CRIME(S): Bail Jump

☐ The defendant shall be released from custody today on the above-captioned case(s) only.

☐ The defendant is hereby remanded to custody: ☐ Hold without Bail ☐ Bail is set at \$ \_\_\_\_\_

☒ The defendant has been sentenced to confinement totaling 360 days/months, to be served as follows:

100 days credit for time served 158 days of additional total confinement  
\_\_\_\_\_ days of additional partial confinement on:

☐ work/educational release ☐ work crew ☐ community service

☐ Defendant shall report within 24 hours of this order/release from custody

☐ Defendant shall be screened while in custody.

(If found to be medically unfit for work crew, refer to original sentencing orders for instructions)

☐ The defendant is hereby Ordered to return to court on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

☒ The defendant shall report to the Department of Corrections within 24 hours of this order/release from custody.

☒ The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. Report to the CCSO within 24 hours to submit sample.

**FAILURE TO REPORT TO JAIL, WORK RELEASE OR WORK CREW MAY CONSTITUTE THE CRIME OF ESCAPE AND COULD SUBJECT THE DEFENDANT TO IMMEDIATE ARREST. FAILURE TO RETURN TO COURT AS ORDERED MAY CONSTITUTE THE CRIME OF BAIL JUMP.**

Other: To run concurrent w/07-1-01628-7

Dated this 22 day of May, 2009.

[Signature]  
Judge of the Superior Court

[Signature]  
Defendant

[Signature]  
Defense Atty WSBA#

[Signature]  
Dep Pros Atty WSBA# 33705

14852

9  
#5

FILED

MAY 22 2009

Sherry W. Parker, Clerk, Clark Co.

# Superior Court of Washington County of Clark

State of Washington, Plaintiff,

vs.

RAYMOND J FEMLING,  
Defendant.

SID: WA19500164

If no SID, use DOB: 2/4/1983

No. 08-1-01301-4 ✓

**Felony Judgment and Sentence (FJS)**
☒ Prison ☐ RCW 9.94A.712 Prison Confinement  
☐ Clerk's Action Required, para 4.5 (SDOSA),  
 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

08-9-03946-1

**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**

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court  **Finds:**

**2.1 Current Offenses:** The defendant is guilty of the following offenses, based upon

☒ guilty plea ☐ jury-verdict ☐ bench trial:

Count	Crime	RCW	Date of Crime
01	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)	3/13/2008

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

☐ Additional current offenses are attached in Appendix 2.1.

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

☐ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712**.

☐ 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.\_\_\_\_\_.

☐ 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.

☐ 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.

*Felony Judgment and Sentence (FJS)(Prison)*  
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

10  
AS

- ☐ 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.
- ☐ 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.
- ☐ 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.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime(s) charged in Count \_\_\_\_\_ involve(s) **domestic violence**. RCW 10.99.020.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- ☒ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

## 2.2 Criminal History (RCW 9.94A.525):

<b>Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>Date of Crime</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>
See attached criminal history					

- ☒ 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 following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- ☐ The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

### 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	4	III	12 MONTHS to 16 MONTHS		12 MONTHS to 16 MONTHS	5 YEARS \$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).

☐ 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 ☐ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

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

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

### 2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

## 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 defendant is found **Not Guilty** of Counts \_\_\_\_\_.

☐ The court **Dismisses** Counts \_\_\_\_\_.

## IV. Sentence and Order

### It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN

\$ \_\_\_\_\_ Restitution to

PCV \$ 500.00 Victim assessment RCW 7.68.035  
 \$ 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 \$ 200.00 FRC  
 Witness costs \$ WFR  
 Sheriff service fees \$ SFR/SFS/SFW/WRF  
 Jury demand fee \$ JFR  
 Extradition costs \$ EXT  
 Other \$  
 PUB \$ 800.00 Fees for court appointed attorney RCW 9.94A.760  
 \$ Trial per diem, if applicable  
 WFR \$ Court appointed defense expert and other defense costs RCW 9.94A.760  
 FCM/MTH \$ 500.00 Fine RCW 9A.20.021; ☐ VUCSA chapter 69.50 RCW, ☐ VUCSA additional  
 fine deferred due to indigency RCW 69.50.430  
 CDF/LDI/FCN \$ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760  
 NTF/SAD/SDI  
 CLF \$ Crime lab fee ☐ suspended due to indigency RCW 43.43.690  
 \$ 100.00 Felony DNA collection fee ☐ not imposed due to hardship RCW 43.43.7541  
 RTN/RJN \$ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000  
 maximum) RCW 38.52.430  
 \$ Other costs for:  
 \$ **Total** RCW 9.94A.760

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

☐ shall be set by the prosecutor.

☐ is scheduled for \_\_\_\_\_

☐ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

Name of other defendant      Cause Number      (Victim's name)      (Amount-\$)

RJN

☐ 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 as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to

the defendant showing the location of the Superior Court Clerk Collections Unit at 500 West 8<sup>th</sup> Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

- ☐ The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760.

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

- 4.1b** ☐ **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 \$ \_\_\_\_\_.

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

- ☐ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

- 4.3 No Contact:** The defendant shall not have contact with \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

- ☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

- 4.4 Other:** \_\_\_\_\_

- 4.5 Confinement Over One Year.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

366 days/months on Count 01

- ☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.  
☐ The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 366 days

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

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

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_ in either District Court or Superior Court unless otherwise specified herein: To run concurrent with Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01      minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 108 days

**4.6 Community Placement or Community Custody.** The court orders community placement or community custody as follows:

☐ **Community Placement:**

\_\_\_\_\_ days/months on Count 01

☐ **Community Custody** for count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

☐ **Community Custody:**

Count 01      for a range from \_\_\_\_\_ to \_\_\_\_\_ months

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at 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 in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court;



(8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ The defendant shall have no contact with: \_\_\_\_\_.

☐ The defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_.

☐ The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

☐ The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_.

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

☐ The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_.

☐ Other conditions: \_\_\_\_\_.

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

**4.7 ☐ Work Ethic Camp.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp. The court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

**4.8 Off - Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_.

## **V. Notices and Signatures**

**5.1 Collateral Attack on Judgment.** 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 Restitution Hearing.**

☐ I waive any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

**5.5 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

**5.6 Firearms.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The 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.

Cross off or delete if not applicable:

**5.7 Sex and Kidnapping Offender Registration.** RCW 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.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. 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 immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

**2. Offenders Who Leave the State and Return:** If you leave the 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 or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. 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 starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon 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 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 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):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

**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 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, 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. 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 may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. 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(7).

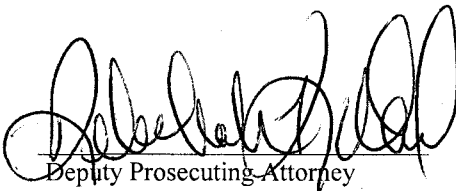
- 5.8 ☐ Count \_\_\_\_\_ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

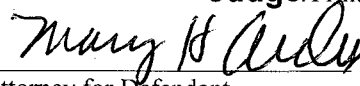
#### 5.10 Persistent Offense Notice

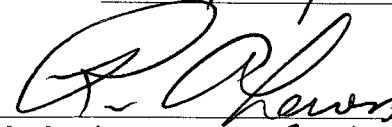
- ☐ The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.

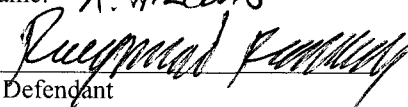
- ☐ The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

**Done** in Open Court and in the presence of the defendant this date: 5/22/09

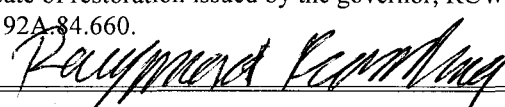
  
Deputy Prosecuting Attorney  
WSBA No. 33705  
Print Name: Rebekah K. Ward

  
Attorney for Defendant  
WSBA No. 14852  
Print Name: Mary H. Arden

  
Judge/Print Name: R. A. Lewis

  
Defendant  
Print Name: RAYMOND J FEMLING

**Voting Rights Statement:** I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9A.84.660.

Defendant's signature: 

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.

Interpreter signature/Print name: \_\_\_\_\_

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

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

## Identification of the Defendant

RAYMOND J FEMPLING

SID No: WA19500164

Date of Birth: 2/4/1983

(If no SID take fingerprint card for State Patrol)

FBI No. 77679CC5

Local ID No.

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

Other \_\_\_\_\_

Alias name, DOB:

Race: W

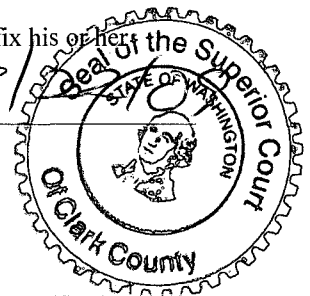
Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk, \_\_\_\_\_

Dated: \_\_\_\_\_



**The defendant's signature:** \_\_\_\_\_

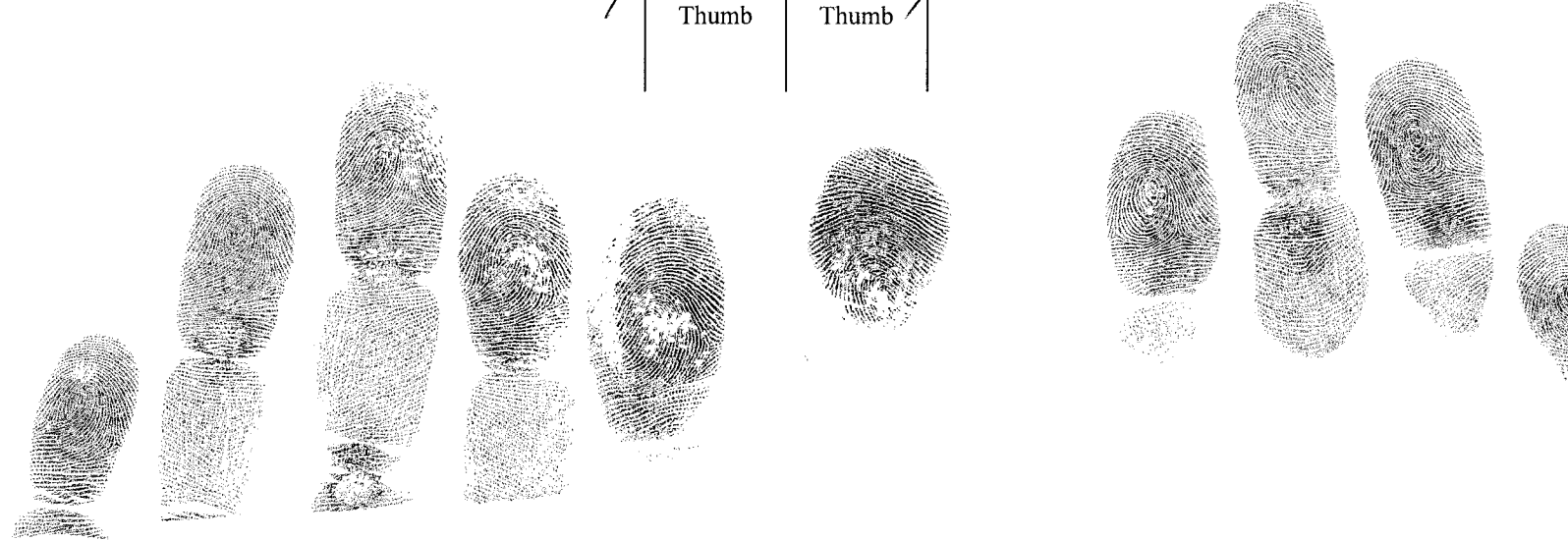
*Raymond J Fempling*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



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

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND JAY FEMLING,

Defendant

No. 08-1-01301-4

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS-METH	CLARK/WA 04-1-00192-7	6/21/2003	1/19/2006	1
PCS-METH	CLARK/WA 07-1-00192-1	1/31/2007	2/21/2007	1
PCS-METH	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	1
THEFT 3	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	

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

DATED this 22 day of May, 2009.

Raymond J. Femling  
Defendant

Mary H. Arden  
Mary H. Arden, WSBA#14852  
Attorney for Defendant

Rebekah K. Ward  
REBEKAH K. WARD, WSBA #33705  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK  
STATE OF WASHINGTON, Plaintiff,

v.

RAYMOND J FEMLING,  
Defendant.

SID: WA19500164  
DOB: 2/4/1983

NO. 08-1-01301-4

**WARRANT OF COMMITMENT TO STATE  
OF WASHINGTON DEPARTMENT OF  
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)	3/13/2008

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	BAIL JUMPING ON CLASS B OR C FELONY	366 Days Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 108 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein: To run concurrent with Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

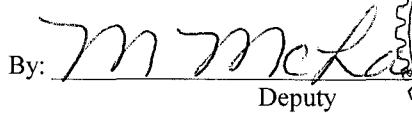
WITNESS, Honorable



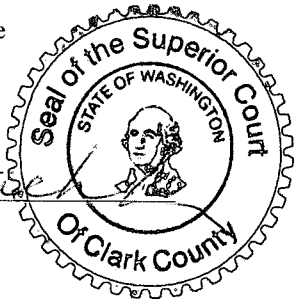
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 5-22-09

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court

By:



Deputy





Total pages: 52

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,	)	No. 08-1-01301-4
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION TO VACATE &
	)	DISMISS OR IN THE ALTERNATIVE TO
	)	RESENTENCE PURSUANT TO CrR 7.8
RAYMOND JAY FEMLING,	)	AND SUPPORTING MEMORANDUM OF
	)	AUTHORITIES
Defendant.	)	

**I. MOTION**

**COMES NOW** the above-named Defendant, by and through counsel, SEAN M. DOWNS, move this court for relief from the judgment and sentence imposed in the above-captioned case.

This motion is based on CrR 7.8, *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), the brief in support of this motion, and any evidence which may be adduced at the hearing on this motion.

**II. STATEMENT OF FACTS**

I, Sean M. Downs, declare under penalty of perjury pursuant to the laws of the State of Washington that I am the counsel of record for the above-named defendant, am over the age

1 of 18, and am competent to testify in a court of law. I submit the following facts on  
2 information and belief for purposes of this motion only:

3 Mr. Femling was charged with Bail Jumping on a Class C Felony for missing a  
4 required pretrial court date on March 13, 2008. *See* Appendix A (information, probable  
5 cause). The underlying Class C felony that Mr. Femling was charged with at the time was one  
6 count of Possession of a Controlled Substance under RCW 69.50.4013(1) in cause number  
7 07-1-01628-7. *See* Appendix B (07-1-01628-7 information). The 07-1-01628-7 offense was  
8 ultimately vacated and dismissed pursuant to *State v. Blake*. *See* Appendix C (07-1-01628-7  
9 vacation order). Mr. Femling entered a plea of guilty as charged in the instant case. *See*  
10 Appendix D (guilty plea, judgment and sentence).

### 11 **III. CrR 7.8 PROCEDURE**

12 The superior court shall transfer a CrR 7.8 motion filed by a defendant to the Court of  
13 Appeals for consideration as a personal restraint petition unless the court determines that the  
14 motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial  
15 showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual  
16 hearing. CrR 7.8(c)(2). A collateral attack on a judgment and sentence must be filed within  
17 one year after the judgment becomes final. RCW 10.73.090(1). A judgment becomes final on  
18 the date the appellate court issues its mandate from a direct appeal. RCW 10.73.090(3)(c). If  
19 the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a  
20 time and place for hearing and directing the adverse party to appear and show cause why the  
21 relief asked for should not be granted. CrR 7.8(c)(3).

22 If a superior court fails to show that it meaningfully engaged in a transfer analysis  
23 before transferring a postconviction motion to the Court of Appeals for consideration as a  
24

1 personal restraint petition, the Court of Appeals should consider remanding the motion to the  
2 superior court for that purpose. *In re Ruiz-Sanabria*, 184 Wn.2d 632, 638, 362 P.3d 758  
3 (2015) (citing RAP 16.8.1(c); CrR 7.8(c)(2)).

#### 4 **IV. ARGUMENT**

##### 5 **1. The defendant's collateral attack motion is timely to correct a void judgment.**

6  
7 The time limit specified in RCW 10.73.090 does not apply to a petition or motion where  
8 the statute that the defendant was convicted of violating was unconstitutional on its face. RCW  
9 10.73.100(2) (Collateral attack—When one year limit not applicable). “[T]he portion of the  
10 simple drug possession statute creating this crime—violates the due process clauses of the state  
11 and federal constitutions and is void.” *Blake, supra*.

12  
13 In Washington, unconstitutional statutes are void *ab initio* (to be treated as invalid from  
14 the outset) and have no legal effect. “If a statute is unconstitutional, it is and has always been a  
15 legal nullity.” *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787  
16 (1952). Accordingly, “[a]n unconstitutional act is not a law; it confers no rights; it imposes no  
17 duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as  
18 though it had never been passed.” *Id.* (quoting *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S.  
19 Ct. 1121, 30 L. Ed. 178 (1886)). Thus, when a criminal defendant pleads guilty to violating a  
20 statute that is found unconstitutional, the judgment and sentence is void. *See Kahler v. Squire*, 49  
21 Wn.2d 911, 299 P.2d 570 (1956). Likewise, where a defendant is convicted of a nonexistent  
22 crime, the judgment and sentence is invalid on its face. *In re Hinton*, 152 Wn.2d 853, 857-58,  
23 100 P.3d 801 (2004). A judgment and sentence based on conviction of a nonexistent crime  
24 entitles one to relief on collateral review. *Id.* “[A] constitutional defect renders a judgment void,  
25 and...judgments void for any reason should be subject to collateral attack.” *State v. Boyd*, 21 Wn.  
26  
27

1 App. 465, 478 (1978); accord *State v. Olivera-Avila*, 89 Wn. App. 313, 319 (1997) (guilty pleas  
2 obtained in violation of due process are void); *State v. Ponce*, 93 Wn.2d 533, 540 (1980)  
3 (constitutionally invalid conviction is void and subject to collateral attack).

4 Since the statute that the defendant was convicted of is void, the defendant's claim is not  
5 time barred.  
6

7 **2. In the alternative, the defendant's collateral attack motion is timely to correct an**  
8 **invalid judgment.**

9 For purposes of the exception to the time limit for facially invalid judgments, a judgment  
10 is "invalid" if the trial court exercised power that it did not have, most typically by imposing a  
11 sentence not authorized by law. *In re Pers. Restraint of Flippo*, 187 Wn.2d 106, 110, 385 P.3d  
12 128 (2016); *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). For  
13 example, a sentence is facially invalid if it exceeds the duration allowed by statute. *In re Pers.*  
14 *Restraint of McWilliams*, 182 Wn.2d 213, 215 n.2, 340 P.3d 223 (2014); *In re Pers. Restraint of*  
15 *West*, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005); *In re Pers. Restraint of Tobin*, 165 Wn.2d  
16 172, 176, 196 P.3d 670 (2008). Similarly, if the trial court included a prior or current conviction  
17 in the offender score that should not have been scored, the error may be challenged beyond the  
18 one-year time limit if the error affected the proper standard sentence range. *In re Pers. Restraint*  
19 *of Goodwin*, 146 Wn.2d 861, 866-68, 50 P.3d 618 (2002).  
20

21 The inquiry into whether a sentence is invalid on its "face" is not confined to the four  
22 corners of the judgment and sentence. Rather, documents outside the four corners of the  
23 judgment and sentence showing that the sentence imposed is erroneous may be consulted. *In re*  
24 *Pers. Restraint of Coats*, 173 Wn.2d 123, 128, 139-40, 267 P.3d 324 (2011), *In re Pers. Restraint*  
25 *of Carrier*, 173 Wn.2d 791, 799-800, 272 P.3d 209 (2012). For example, the Supreme Court in  
26 *Carrier* determined that a persistent offender sentence was facially invalid because it was based  
27

1 in part on a prior conviction that had been dismissed, as revealed by the dismissal document.  
2 *Carrier*, 173 Wn.2d at 800, 818. The matters consulted, however, must be ones that show that  
3 the trial court exceeded its authority. *Id.* at 800.

4 If the petitioner demonstrates facial error, they still must establish that they were actually  
5 and substantially prejudiced by constitutional error or that the judgment and sentence suffers  
6 from a fundamental defect resulting in a complete miscarriage of justice. *In re Pers. Restraint of*  
7 *Yates*, 180 Wn.2d 33, 41, 321 P.3d 1195 (2014); *Finstad*, 177 Wn.2d at 506; *Carrier*, 173 Wn.2d  
8 at 818. An unlawful sentence can be a fundamental defect, as, for example, when the sentence is  
9 longer than lawfully allowed. *Carrier*, 173 Wn.2d at 818. In determining whether a facial  
10 sentencing error is prejudicial, the court looks to the practical effects resulting from the error.  
11 *Yates*, 180 Wn.2d at 41.

12  
13  
14 In the instant case, Mr. Femling's offender score was invalid, resulting in a sentence  
15 longer than that authorized by law. Mr. Femling was actually and substantially prejudiced by the  
16 invalid sentence because he served prison time with an invalid offender score of 4, instead of  
17 local jail time at an offender score of 0. Further, as described below, the offense of bail jumping  
18 when the underlying offense is not a crime, results in punishment for bail jumping as a  
19 misdemeanor offense.

20  
21 **3. The bail jumping charge should be vacated as it was predicated on a void offense.**

22 The charge of bail jumping where the sole legal basis for any purported obligation to  
23 appear in court derives from the void non-charge of innocent conduct (possession of a controlled  
24 substance.) Analysis of the bail jumping statute reflects that the bail jumping conviction is  
25 voidable. The superior court had no authority to compel court appearances on the part of the  
26 alleged defendant under this cause. A court's authority to require future court appearances in a  
27

1 criminal case derives from either from it having made a finding of probable cause that a crime  
2 has been committed by the alleged defendant, or that an “information” has been filed. Since the  
3 so-called possession of controlled substance charge is void, neither occurred. Therefore, there  
4 were no court dates for which the alleged defendant was obliged to attend that he may have  
5 missed. CrR 2.1, 2.2, 3.2.1.  
6

7 In the instant case the so-called finding of probable cause was that the defendant was  
8 believed on a more likely than not basis to have committed the innocent, non-criminal conduct of  
9 possession of a controlled substance. Any such finding is void, a nullity signifying nothing,  
10 pursuant to *Blake*. If a statute is unconstitutional, it is and has always been a legal nullity.  
11 Therefore, an alleged requirement of appearing in court for which the authority derives from a  
12 void statute is likewise void.  
13

14 Likewise, although a piece of paper with the word “information” written on it was filed,  
15 no actual “information” was filed with the court. Essential to an “information” as understood  
16 under the court rules and statutes are that it contain an allegation of criminal activity. *See*  
17 generally RCW 10.37.050, 052, 054, 056; CrR 2.1. While a litany of deficiencies in a document  
18 purporting to be an information may be excused, the absence of an allegation of criminal activity  
19 is not one of those exceptions. RCW 10.37.056; CrR 2.1(a)(1).  
20

21 Moreover, subsection two of the bail jumping statute defines the crime of bail jumping  
22 and classifies the level of its commission in terms of the severity of the most serious offense that  
23 purports to give rise to an alleged defendant’s obligation to appear in court. Under the  
24 circumstances of this case, the purported offense that purports to give rise to any obligation to  
25 appear at future court dates is void, a virtual nullity.  
26  
27

1 Unlike the circumstances of *State v. Downing*, 122 Wn. App. 185, 93 P.3d 900 (2004),  
2 the predicate so-called offense for the bail jumping charge is void, not voidable (in *Downing*, due  
3 to a double jeopardy). Therefore, the present circumstance is readily distinguishable from those  
4 matters where the predicate offense was a criminal charge that was reversed and/or dismissed  
5 subsequent to the non-appearance finding of double jeopardy. A finding of double jeopardy is  
6 dependent upon a showing of previous jeopardy from another case.  
7

8 Likewise, in *State v. Hall*, 104 Wn.2d 486, 491, 706 P.2d 1074 (1985), the predicate  
9 offense was challenged for an alleged breach of a plea negotiation in obtaining it. The nullity of  
10 the predicate in this matter, is not dependent on external or case-specific information. This is  
11 why at *Blake* initiated re-sentencing(s), the so-called prior convictions of possession of a  
12 controlled substance are removed from the offender score regardless of whether they have been  
13 formally vacated. Vacating a void so-called conviction is a matter of bookkeeping and not a  
14 prerequisite to nullify the void so-called conviction.  
15

16 Defense anticipates the State to rely upon the Court of Appeals Division III opinion in  
17 *State v. Paniagua*, (38274-5-III, published 6/9/22). However, the relevant portions of the  
18 Paniagua decision are non-controlling unpersuasive dicta as to vacating the bail jumping  
19 conviction. In *Paniagua*, the issue presented to the court was whether a prior bail jumping charge  
20 in which the predicate offense was a *Blake*-subject possession of controlled substance charge,  
21 could be counted in the defendant's offender score for a subsequent conviction. *Id* at p. 1. The  
22 bail jumping charge had not been vacated, nor had there been any motions or desire on  
23 appellant's part to do so. "... he does not seek to vacate his 2011 bail jumping conviction. He  
24 only wishes to erase the conviction from his offender score." *Id* at p. 11 (emphasis added). As  
25 such, the bail jumping charge in question was a facially valid conviction.  
26  
27

1 This is entirely consistent with the defense position in the instant matter. As noted above,  
2 defense's position is that a bail jumping charge for which the predicate offense is a *Blake*-based  
3 possession of controlled substance charge, is a voidable, not void conviction and is therefore  
4 valid on its face. Upon determining that the bail-jumping conviction was valid on its face (*Id* at  
5 p. 6), the sole issue presented the *Paniagua* court was resolved. *State v. Ammons*, 105 Wn.2d 175  
6 (1986), RCW 9.94A.525(2)(c). A portion of an opinion, "is dicta when it is not necessary to the  
7 court's decision in a case. Dicta is not binding authority." *Protect the Peninsula's Future v. City*  
8 *of Port Angeles*, 175 Wn. App. 201, 215, 304 P.3d 914 (2013) (citations omitted). Dicta is, at  
9 best, persuasive authority with the persuasiveness of said authority exclusively reliant upon the  
10 strength of its reasoning. In that respect, defense stands by the arguments above, and refers the  
11 court thereto and expanded below. The crux of the dicta in *Paniagua* as it relates to whether a  
12 bail jumping charge is valid when the predicate alleged offense is a statute unconstitutionally  
13 seeks to criminalize innocent conduct is set forth at p. 7 of the decision: "Former RCW  
14 9A.76.170 does not require that, to be guilty of he crime, the accused must have later been found  
15 guilty of the pending charge at the time of release on bail, only that he be under charges at the  
16 time of the failure to appear". The fallacy in the analysis of the *Paniagua* court is that it mis-  
17 frames the question presented by erroneously equating the provability or even the sufficiency of  
18 the allegations with whether the defendant has been "charged" with "a crime" and by further  
19 failing to address what is meant by "charged with a crime". The question is not "is a bail jumping  
20 conviction valid if the defendant could not have been convicted of the predicate offense?". The  
21 proper question is one of whether a bail jumping conviction is valid if the defendant was not  
22 charged with a predicate crime.  
23  
24  
25  
26  
27



Under the statute in question, not only must a predicate crime be charged (whether or not it can be proven), but determination of the class of the bail jumping charge requires the court to determine the criminal classification of the predicate offense. The bail jumping statute specifies as follows:

(2) Bail jumping is:

- (a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;
- (b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;
- (c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony; or
- (d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

In the instant case, what is alleged to be the predicate “offense”, simply put, is not a crime and never was a crime. Erroneously calling “Possession of a Controlled Substance” a class C felony on an information doesn’t make Possession of a Controlled Substance a crime, much less a felony; any more than calling Disorderly Conduct a felony on a charging document would make any resultant bail jumping a class C felony. Pending his alleged commission of the bail jump in question, Mr. Femling was not “charged” with anything. One cannot be “charged” with a non-crime. One cannot be “charged” with innocent conduct. Further, the *Paniagua* court entirely failed to address whether the voidness/invalidity of the predicate alleged offense deprived the trial court of any authority to mandate a court appearance the failure of which to satisfy could constitute a crime.

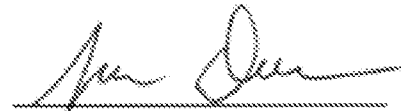
The voidness determination from the *Blake* decision as applied to the instant case means that at the time of the alleged bail jumping charge Mr. Femling was not charged with a crime, not that he was charged with a crime of which he may have been or was innocent. At most it can be said that the bail jumping statute when applied to these circumstances would create an offense

1 that is not identified as a class a B or C felony or even a gross misdemeanor. When a statute is  
2 described as constituting a criminal offense and does not prescribe a classification for that  
3 offense, it is deemed a simple misdemeanor. RCW 9A.20.020.

4  
5 **V. CONCLUSION**

6 Given the foregoing, the defendant respectfully requests this court to grant relief as  
7 described above and vacate and dismiss the conviction for Possession of Controlled  
8 Substance. In the alternative, the defense requests that this court correct the judgment and  
9 sentence to indicate that the above offense is a misdemeanor.

10  
11 Dated this 8<sup>th</sup> day of September, 2022. Signed in Vancouver, Washington.

12  
13 

14 Sean M. Downs, WSBA #39856  
15 Grecco Downs, PLLC  
16 Attorney for Defendant  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# APPENDIX A

**FILED**

AUG 21 2008

Sherry W Parker Clerk Clark Co

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

STATE OF WASHINGTON

**INFORMATION**

Plaintiff

v

RAYMOND J FEMLING

No 08-1 01301-4

Defendant

COMES NOW the Prosecuting Attorney for Clark County Washington and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows to wit

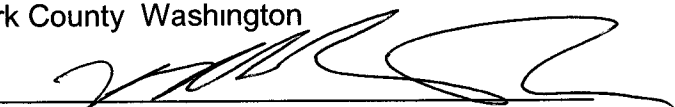
**COUNT 01 - BAIL JUMPING ON CLASS B OR C FELONY - 9A 76 170(1),(3)(c)**

That he RAYMOND J FEMLING in the County of Clark State of Washington on or about March 13 2008 having been charged with Possession of a Controlled Substance - Methamphetamine a Class C felony Clark County Cause No 07-1 01628-7 and having previously been released from custody by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before the Superior Court of Clark County did fail to appear as required for Drug Court contrary to Revised Code of Washington 9A 76 170(1) (3)(c)

ARTHUR D CURTIS  
Prosecuting Attorney in and for  
Clark County Washington

Date August 7 2008

BY

  
Scott S Ikata WSBA #36030  
Deputy Prosecuting Attorney

<b>DEFENDANT RAYMOND J FEMLING</b>			
<b>RACE</b> W	<b>SEX</b> M	<b>DOB</b> 2/4/1983	
<b>DOL</b> FEMLIRJ170CD WA		<b>SID</b> WA19500164	
<b>HGT</b> 600	<b>WGT</b> 175	<b>EYES</b> BLU	<b>HAIR</b> BRO
<b>WA DOC</b>		<b>FBI</b> 77679CC5	
<b>LAST KNOWN ADDRESS(ES)</b>			
HOME - 20209 279TH ST BATTLE GROUND WA 98684			

INFORMATION 1  
jmc

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WASHINGTON 98666 5000  
(360) 397 2261

8

FILED

AUG 25 2008

Sherry W. Parker, Clerk, Clark Co.

1  
2  
3  
4  
5  
6  
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF CLARK

9 STATE OF WASHINGTON,  
10 Plaintiff,  
11 v.  
12 RAYMOND J FEMLING,  
13 Defendant.

MOTION AND AFFIDAVIT FOR  
ORDER AUTHORIZING ISSUANCE OF  
WARRANT OF ARREST

No. 08-1-01301-4

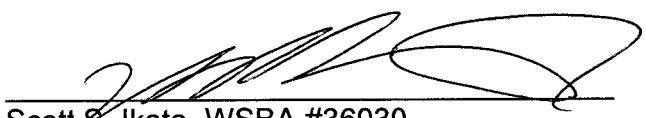
14 COMES NOW the Plaintiff, State of Washington, by and through the Prosecuting  
15 Attorney for Clark County, represented by his Deputy, Scott S. Ikata, and the Plaintiff having  
16 filed an Information in the above-entitled cause charging RAYMOND J FEMLING, with the  
17 following crime(s):

Count	Crime Date	Crime	RCW
01	March 13, 2008	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)

18  
19  
20 does respectfully move the Court for an Order authorizing the issuance of a warrant for the  
21 arrest and detention of the above-named Defendant until the Defendant can be brought  
22 before the Court to answer the Information, or until further Order of the Court, or until  
23 release of the Defendant on such conditions as may be set by the Court.

24 This Motion is based upon the following Affidavit and upon Criminal Rule 2.2(a).

25 DATED this 21 day of August, 2008.

26  
27   
Scott S. Ikata, WSBA #36030  
Deputy Prosecuting Attorney

28 MOTION AND AFFIDAVIT - 1  
jmc

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

2 KK

1 STATE OF WASHINGTON )  
2 : ss  
3 COUNTY OF CLARK )

4 I, Scott S. Ikata, being first duly sworn, do hereby depose and state:

5 Your affiant is a Deputy Prosecuting Attorney for the Clark County Prosecuting  
6 Attorney's Office and in such official capacity your affiant is familiar with the file and court  
7 records regarding Clark County Superior Court Cause No. 07-1-01628-7, State v. Raymond  
8 J. Femling.

9 The file notes and court record sets forth probable cause that RAYMOND J FEMLING, has  
10 committed the following crime(s):

Count	Crime Date	Crime	RCW
01	March 13, 2008	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)

14 in Clark County, Washington. The records indicate the following:

15 The defendant, RAYMOND J. FEMLING, was charged by Information on September  
16 19, 2007 with the crimes of Possession of a Controlled Substance – Methamphetamine and  
17 Theft in the Third Degree, under Clark County Cause No. 07-1-01628-7.

18 The defendant appeared personally before the court on September 18, 2007 for first  
19 appearance. Defense Attorney Clark was appointed as counsel for the defendant and the  
20 matter was set over to September 28, 2007 for arraignment.

21 On September 28, 2007 the defendant appeared before the court and pled Not  
22 Guilty. Trial was set for November 19, 2007. Defendant was scheduled for informal Drug  
23 Court screening on October 5, 2007.

24 On October 5, 2007 the defendant appeared before the court and was screened for  
25 Drug Court off the docket. The matter was set over to October 12, 2007 for opting in to Drug  
26 Court.

1 On October 12, 2007 the defendant appeared personally before the court and was  
2 accepted into the Drug Court program. The defendant signed a Drug Court contract  
3 requiring him to appear at all scheduled court hearings or as otherwise ordered by the  
4 judge. A copy of the contract is attached hereto and incorporated herein by reference.

5 On March 6, 2008 the defendant appeared for a Drug Court review hearing. The  
6 matter was set over for review on March 13, 2008 and the defendant signed an Order to  
7 Appear in Drug Court. A copy of the Order is attached hereto and incorporated herein by  
8 reference.

9 On March 13, 2008 your affiant was personally present in court when the case was  
10 called and the defendant failed to appear. A bench warrant was authorized and issued on  
11 March 14, 2008.

12 Due to Defendant's failure to appear on March 13, 2008 this office has filed an  
13 Information charging the defendant with Bail Jumping, under the above-captioned cause  
14 number.

15 I have attempted to ascertain the Defendant's address by causing a member of the  
16 Prosecuting Attorney's staff to conduct a check of the following databases: the District Court  
17 Information System (DISCIS), which has been renamed Judicial Information System (JIS),  
18 the Department of Licenses (DOL) and the Department of Corrections (FORS). The last  
19 known addresses of the Defendant as ascertained by these checks are listed below in the  
20 description section of this affidavit and warrant. This information is also being forwarded to  
21 law enforcement to effect service of the warrant.

22 Your affiant respectfully requests that bail be set in the amount of **\$NO BAIL** in this  
23 matter.

24 The defendant is described as follows:


<b>DEFENDANT: RAYMOND J FEMLING</b>			
<b>RACE: W</b>	<b>SEX: M</b>	<b>DOB: 2/4/1983</b>	
<b>DOL: FEMLIRJ170CD WA</b>		<b>SID: WA19500164</b>	
<b>HGT: 600</b>	<b>WGT: 175</b>	<b>EYES: BLU</b>	<b>HAIR: BRO</b>

28 MOTION AND AFFIDAVIT - 3  
jmc

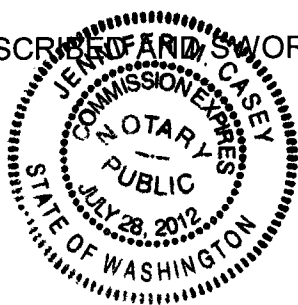
CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261 (OFFICE)  
(360) 397-2230 (FAX)

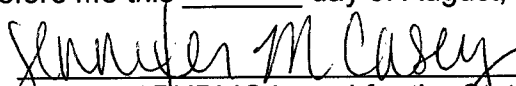
WA DOC:	FBI: 77679CC5
LAST KNOWN ADDRESS(ES):	
HOME - 20209 279TH ST, BATTLE GROUND WA 98684	

Further, your affiant saith not.

  
Scott S. Ikata, WSBA #36030  
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 21 day of August, 2008.



  
NOTARY PUBLIC in and for the State of  
Washington, residing at Vancouver.  
My commission expires July 28, 2012



IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Raymond L. Fleming  
Defendant

NO.

07-1-01628-7

DRUG COURT CONTRACT

In consideration of being accepted into the Clark County Superior Court Drug Court Program (DC) I agree to the following terms while I am in the Program:

1. **OBEY LAWS/REPORT POLICE CONTACT:** I will obey all laws and report any contact with law enforcement personnel to DC Probation Officers within 24 hours.
  2. **HEARINGS:** I will appear at all scheduled court hearings or as otherwise ordered by the judge.
  3. **DRUG COURT PROGRAM:** I understand that the Drug Court Program is a minimum of twelve (12) months but may be longer. I agree to be in the program until successful completion and graduate or until I am discharged (terminated/quit).
- NOTICE** – If a defendant has charges pending or is under investigation for criminal activity in any jurisdiction, this can be a basis for termination.
4. **DRUG COURT FEE:** I agree to pay a \$600 non refundable Drug Court Fee.
  5. **JUDGMENT & SENTENCE COSTS:** I understand that I will owe court costs, fines, Victim/Assessment fee, lab fee, drug fund contribution and restitution (if

1 applicable). These fees are either on my current Judgment and Sentence Order (PV  
2 case) or will be placed on my Judgment and Sentence Order upon successful  
completion or discharge from Drug Court.

3 6. **TREATMENT:** I will enter into and successfully complete all treatment deemed  
4 necessary by the court. I will abide by all rules/ regulations set by the treatment  
agency and all conditions and requirements ordered by the court.

5 7. **RELEASES:** I will sign all *Releases of Confidential Information* as deemed  
6 necessary by the treatment agency and Drug Court.

7 8. **SOCIAL/INTIMATE CONTACT:** I agree to not have any sexual, intimate, or  
8 social contact with any persons currently under DOC supervision or those with a  
9 felony conviction (excluding DC hearings, treatment or support meetings). Social  
contact can be allowed only with prior approval by the court.

10 9. **RANDOM URINE SAMPLES:** I agree to submit to witnessed urine, breath or  
11 other screening whenever requested to do so by the treatment program staff, the  
12 judge, or any Drug Court personnel within 1 hour of request.

13 10. **ALCOHOL/DRUGS:** I will not possess or use alcohol or drugs unless lawfully  
14 prescribed by a physician, in which case I will provide copies of the prescription at  
the next contact with my case manager and treatment provider.

15 11. **PRESCRIPTION MEDICATION USE:** I will request, whenever possible, that  
16 any medication prescribed by a licensed physician be non-narcotic and taken as  
17 prescribed. I will seek approval from the case manager and the treatment agency for  
18 any over-the-counter or prescribed medication prior to using such medication. Use  
of prescription drugs, other than psycho-tropic and antibiotics may impact my *clean*  
*time* and movement through my Drug Court phases.

19 12. **DOC CONDITIONS:** I agree to comply with all other conditions DOC may impose  
20 including curfew, home checks and non-association with certain people.

21 13. **RESIDENCE/TRAVEL/OVERNIGHTS:** I will reside in Clark County,  
22 Washington. Without first notifying and obtaining permission from DOC and/or the  
23 Court I will not: 1) change residences; 2) spend the night at any address other than  
the one that has been approved by the court; 3) travel out of county/state.



FILED

MAR 06 2008

Charity W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Raymond Femling

Defendant

NO. 07-1-01628-7

DRUG COURT SANCTION(S)  
AND ORDER TO APPEAR IN DRUG COURT

Your next Drug Court review date is on 3/13/2008 at 10:30 a.m./2:00 p.m. at the Clark County Courthouse, 1200 Franklin Street, Vancouver, WA. **Failure to appear at this review or any other known review date may result in a warrant and additional criminal charges.**

You are ordered to receive the following Drug Court Sanction(s) X (grid letter).

☐ The defendant is remanded to custody, to be released/reviewed on \_\_\_\_\_.

☐ Appear in arraignment court at 8:45 a.m. on \_\_\_\_\_ and write a 1 page report.

☐ Perform \_\_\_\_\_ days of Community Service on the following date(s) \_\_\_\_\_.

You are to report to \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

☒ Perform 1 days of Work Crew on the following date(s) 3/8/2008 at 7 a.m.

☐ Attend \_\_\_\_\_ support meetings (AA/NA), \_\_\_\_\_ verified/turned-in (Wed) before the next review.

☐ Other: \_\_\_\_\_

You are required to follow this Drug Court Reporting Schedule until changed by the court:

	Court	UA's	PO check-in (Wed)	Curfew
<input type="checkbox"/> Phase 1:	weekly	2x/wk (silver)	weekly	9:00 pm
<input type="checkbox"/> Phase 2:	Bi-monthly	1x/wk (green)	Bi-monthly	10:00pm
<input type="checkbox"/> Phase 3:	monthly	2x/mth (orange)	monthly	negotiated

All conditions previously set apply, unless noted otherwise.

DATED this 6 day of March, 2008

Defendant

SUPERIOR COURT JUDGE

# APPENDIX B

FILED

SEP 19 2007

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND JAY FEMLING

Defendant.

## INFORMATION

No. 07-1-01628-7

(VPD 07-18935)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.4013(1)**

That he, RAYMOND JAY FEMLING, in the County of Clark, State of Washington, on or about September 17, 2007, did unlawfully possess a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.4013(1).

And further, that at the time of the incident, the Defendant, RAYMOND JAY FEMLING, was serving a term of Community Placement as to invoke the provisions of RCW 9.94A.525(18).

**COUNT 02 - THEFT IN THE THIRD DEGREE - 9A.56.020(1)(a) /9A.56.050/9A.56.050(1)(a)**

That he, RAYMOND JAY FEMLING, in the County of Clark, State of Washington, on or about September 17, 2007, did wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services, to-wit: merchandise worth \$95.00, belonging to Sears; contrary to Revised Code of Washington 9A.56.050(1)(a) and 9A.56.020(1)(a).

ARTHUR D. CURTIS  
Prosecuting Attorney in and for  
Clark County, Washington

Date: September 19, 2007

BY: 

Kasey T. Vu, WSBA #31528  
Deputy Prosecuting Attorney

DEFENDANT: RAYMOND JAY FEMLING

RACE: W

SEX: M

DOB: 2/4/1983

DOL: FEMLIRJ170CD WA

SID: WA19500164

INFORMATION - 1  
KD

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261

3

HGT: 600	WGT: 190	EYES: BLU	HAIR: BRO
WA DOC: 891005		FBI: 77679CC5	
LAST KNOWN ADDRESS(ES):			
VPD FUND 1015			

INFORMATION - 2  
KD

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 397-2261

# APPENDIX C



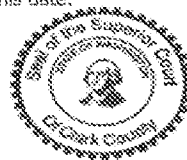
3  
VPD  
CCSO  
DOC  
WSP

I, Scott G. Weber, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this Document is a true and correct copy of the original now on file and of record in my office and as County Clerk I am the legal custodian thereof. Signed and sealed at Vancouver, Washington this date:  
This document contains 3 pages.

07-29-2021, 12:52

*F. Upton*

Deputy Clerk



FILED

2021 JUL 29 AM 11:44

SCOTT G. WEBER, CLERK  
CLARK COUNTY

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

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND JAY FEMLING,

Defendant

No. 07-1-01628-7

JOINT MOTION FOR ORDER VACATING  
CONVICTION AND ORDER VACATING  
(CrR 7.8(b))

CLERK'S ACTION REQUIRED

COMES NOW the State of Washington, by and through its attorney, Scott S. Ikata, Deputy Prosecuting Attorney, joined by RAYMOND JAY FEMLING, by and through his attorney, Sean M Downs. The parties now ask this Court to vacate RAYMOND JAY FEMLING's conviction for Possession of a Controlled Substance under RCW 69.50.4013(1) and Theft in the Third Degree under RCW 9A.56.020(1)(a)/9A.56.050(1)(a).

**FACTS AND LAW RELEVANT TO MOTION**

On May 22, 2009, the Superior Court entered a judgment finding RAYMOND JAY FEMLING guilty of Possession of a Controlled Substance under RCW 69.50.4013 and Theft in the Third Degree under RCW 9A.56.020(1)(a)/9A.56.050(1)(a), sentenced him to 366 days, and imposed a term of community custody and associated conditions. On February 25, 2021, the Washington Supreme Court held that RCW 69.50.4013(1) is unconstitutional and void because it criminalized "innocent and passive possession" of controlled substances. *State v. Blake*, No. 96873-0 (Feb. 25, 2021). Because judgments cannot be based on a "conviction of a nonexistent crime," judgments entered pursuant to RCW 69.50.4013(1) are also unconstitutional and void. *Id*; *In re Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004). Furthermore, "[w]hen a criminal conviction is invalidated...the State [is] obliged to refund [the]

JOINT MOTION FOR ORDER VACATING  
CONVICTION

Page 1

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(564) 397-2261 (OFFICE)  
(564) 397-2230 (FAX)

07-29-2021, 12:52

fees, court costs, and restitution” that the defendant has paid “as a consequence of[] the conviction.”

*Nelson v. Colorado*, ---U.S.---, 137 S. Ct. 1249, 1252, 197 L. Ed. 2d 611 (2017).

Under CrR 7.8(b)(4), parties can seek relief from a judgment when the “judgement is void.”

Parties can also seek relief under CrR 7.8(b)(5) for “[a]ny other reason justifying relief from the operation of the judgment.”

### MOTION

Pursuant to CrR 7.8(b)(4)-(5) and *State v. Blake*, the parties ask this Court to set aside, dismiss with prejudice, and vacate RAYMOND JAY FEMLING’s conviction for Possession of a Controlled Substance and Theft in the Third Degree.

RESPECTFULLY SUBMITTED this 21 day of July, 2021.

*Scott S. Ikata*

Scott S. Ikata, WSBA # 36030  
Deputy Prosecuting Attorney

*Sean M. Downs*

Sean M Downs, WSBA #39856  
Attorney for RAYMOND JAY FEMLING

### ORDER

THIS MATTER having come before the Court upon the joint motion and the Court now being fully advised of the procedural history and legal authority finds said motion should be sustained.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the unconstitutional conviction for Possession of a Controlled Substance and Theft in the Third Degree is hereby set aside, dismissed with prejudice, and vacated.

The defendant is released from all penalties and disabilities resulting from the conviction and the fact that the offender has been convicted of the offense shall not be included in the offender’s criminal history for purposes of determining a sentence in any subsequent conviction. RCW 9.94A.640(3)(a)

For all purposes, including applications for employment, the defendant may state that he has never been convicted of this offense. RCW 9.94A.640(3)(a)

JOINT MOTION FOR ORDER VACATING  
CONVICTION  
Page 2

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(564) 397-2261 (OFFICE)  
(564) 397-2230 (FAX)

07-29-2021, 12:52

1 This vacation order operates to limit dissemination of conviction information. It does not  
2 authorize deletion, expungement or destruction of this information.

3 The Clerk of the Court shall transmit a certified copy of this Order to the Washington State Patrol  
4 Identification Section, the Clark County Sheriff's Office/Vancouver Police Department, the associated  
5 Records Division, and the Washington State Department of Corrections, which agencies shall  
6 immediately update their records to reflect the vacation of the conviction of the offense listed herein. The  
7 Washington State Patrol shall transmit a copy of this Order to the Federal Bureau of Investigation. The  
8 Washington State Patrol or local law enforcement may not disseminate or disclose a conviction that has  
9 been vacated to any person, except to other criminal justice enforcement agencies.  
10

11 All legal financial obligations, fees, fines, costs, charges, assessments, or interest (LFOs)  
12 resulting solely from the conviction(s) vacated herein are vacated and stricken. All legal financial  
13 obligations assessed per case shall remain imposed where any other counts or convictions remain, to  
14 include misdemeanor offenses in a separate judgment.

15 The Clerk shall delete or cancel any unpaid balance thereon, including any interest. To the extent  
16 payment was received on these LFOs, it shall be refunded. The State of Washington shall determine the  
17 amount and method of any refund owed with all deliberate speed.


18 DONE IN OPEN COURT this 29 day of July, 2021.

19  
20   
JUDGE OF THE SUPERIOR COURT

21 Presented by:

22 

23 Scott S. Ikata, WSBA #-36030  
24 Deputy Prosecuting Attorney

25   
26 Sean M Downs, WSBA #39856  
27 Attorney for RAYMOND JAY FEMLING  
28

# APPENDIX D

10

FILED

MAY 22 2009

Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington  
for Clark

State of Washington

Plaintiff

vs.

Raymond J. Femling  
Defendant

No. 08-1-01301-4

Statement of Defendant on Plea of  
Guilty to Non-Sex Offense  
(STTDFG)

1. My true name is: Raymond J. Femling
2. My age is: 26 (DOB: 02/04/1983)
3. The last level of education I completed was 10<sup>th</sup>

4. I Have Been Informed and Fully Understand That

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with: Bail Jump

The elements are: On or about 3/13/2008, having been charged with a Class "C" felony and having previously been released from custody by court order with the requirement to appear in Superior Court, did fail to appear.

5. I Understand I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been 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;

8  
AS

- (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) I am presumed innocent unless the charge is proven 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*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	4	12+ - 16 mos	—	12+ - 16 mos	—	5 / \$10,000
2						
3						

\*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

- (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.
- (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. 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 crimes 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 supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances 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 crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned 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. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge: 12 months + 1 day  
prison to run concurrent with drug court case, pay  
standard court costs and fines  
☐ 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 there is a finding of substantial and compelling reasons not to do so. 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.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested 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 understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9A.04.040.
- (k) I understand that 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) Public assistance will be suspended during any period of imprisonment.
- (m) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.



**Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.**

- (n) 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 crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- (p) If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- (q) If this is a crime of domestic violence, I may be ordered 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.
- (r) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.
- (s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of at least one-half of the midpoint of the standard range.  
  
If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court. As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before

the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

- (t) 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.
- (u) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b).
- (v) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- (w) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.
- (x) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(13).
- (y) 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 ignition interlock device requirements.

- (z) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. 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[n].
- (aa) 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.
- (bb) I understand that the offense(s) I am pleading guilty to include a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- (cc) I understand that 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.
- (dd) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- (ee) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- (ff) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count I Bail Jump

count \_\_\_\_\_

count \_\_\_\_\_

in the original 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: ON OR ABOUT 3/13/2008, I WAS RELEASED FROM CUSTODY TO PARTICIPATE IN THE SUPERIOR COURT DRUG COURT PROGRAM. I HAD PLEADED GUILTY TO A CLASS C FELONY. ON 3/13/2008, I FAILED TO APPEAR IN COURT AS INSTRUCTED BY THE COURT TO DO SO.

[ ] 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.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. 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.

Raymond Fennell  
Defendant

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

Mary H. Arden  
Defendant's Lawyer

Rebecca K. Ward  
Prosecuting Attorney

Rebecca K. Ward 33105  
Print Name WSBA No.

Mary H. Arden 14852  
Print Name WSBA No.

The foregoing statement was signed by the defendant 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.

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: 5/22/2009 [Signature]  
Judge

# BAIL JUMPING WITH CLASS B OR C FELONY

(RCW 9A.76.170(2)(c))

CLASS C FELONY

NONVIOLENT

(If sexual motivation finding/verdict, use form on page III-13)

## A. OFFENDER SCORING (RCW 9.94A.525(7))

### ADULT HISTORY:

Enter number of felony convictions ..... 3 x 1 = 3

### JUVENILE HISTORY:

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

Enter number of nonviolent felony dispositions ..... x ½ = \_\_\_\_\_

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

Enter number of other felony convictions ..... 0.7-1-01628-7 x 1 = 1

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

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

## II. SENTENCE RANGE

A. OFFENDER SCORE:  
STANDARD RANGE  
(LEVEL III)

0	1	2	3	4	5	6	7	8	9 or more
1 - 3 months	3 - 8 months	4 - 12 months	9 - 12 months	12+ - 16 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months	51 - 60* months

- A. If a sentence is one year or less: community custody *may* be ordered for up to one year (See RCW 9.94A.545 for applicable situations).  
B. In the case of multiple prior convictions for offenses committed before July 1, 1986, please reference RCW 9.94A.525(12)(ii) for purposes of computing the offender score.

•\*Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

## III. SENTENCING OPTIONS

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.  
B. If sentence is one year or less: one day of jail can be converted to one day of partial confinement or eight hours of community service (up to 240 hours) (RCW 9.94A.680).  
C. Partial confinement may be served in home detention (RCW 9.94A.030).  
D. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).  
E. If Drug Offender Sentencing Alternative (DOSA) eligible: see DOSA form for alternative sentence on page III-7 (RCW 9.94A.660).

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

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

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND JAY FEMLING,

Defendant

No. 08-1-01301-4

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY


COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS-METH	CLARK/WA 04-1-00192-7	6/21/2003	1/19/2006	1
PCS-METH	CLARK/WA 07-1-00192-1	1/31/2007	2/21/2007	1
PCS-METH	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	
THEFT 3	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	

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

DATED this 22 day of May, 2009.

  
Defendant

  
Mary H. Arden, WSBA#14852  
Attorney for Defendant

  
REBEKAH K. WARD, WSBA #33705  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

FILED

MAY 22 2009

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington  
County of Clark**

**State of Washington,** Plaintiff,

vs.

RAYMOND J FEMLING,  
Defendant.

SID: WA19500164

If no SID, use DOB: 2/4/1983

No. 08-1-01301-4 ✓

**Felony Judgment and Sentence (FJS)**

☒ Prison ☐ RCW 9.94A.712 Prison Confinement  
☐ Clerk's Action Required, para 4.5 (SDOSA),  
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

09-9-03946-1

**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**

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court  **Finds:**

**2.1 Current Offenses:** The defendant is guilty of the following offenses, based upon

☒ guilty plea ☐ jury-verdict ☐ bench trial:

Count	Crime	RCW	Date of Crime
01	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)	3/13/2008

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

☐ Additional current offenses are attached in Appendix 2.1.

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

- ☐ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.712**.
- ☐ 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.\_\_\_\_.
- ☐ 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.
- ☐ 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.

*Felony Judgment and Sentence (FJS)(Prison)*  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

10  
AB

- ☐ 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.
- ☐ 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.
- ☐ 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.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime(s) charged in Count \_\_\_\_\_ involve(s) **domestic violence**. RCW 10.99.020.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- ☒ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

## 2.2 Criminal History (RCW 9.94A.525):

<b>Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>Date of Crime</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>
See attached criminal history					

- ☒ 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 following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- ☐ The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:



### 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	4	III	12 MONTHS to 16 MONTHS		12 MONTHS to 16 MONTHS	5 YEARS \$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).

☐ 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 ☐ Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

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

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

**2.5 Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

### 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 defendant is found **Not Guilty** of Counts \_\_\_\_\_.

☐ The court **Dismisses** Counts \_\_\_\_\_.

### IV. Sentence and Order

#### ***It is Ordered:***

4.1a The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN

\$ \_\_\_\_\_ Restitution to

Felony Judgment and Sentence (FJS)(Prison)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

PCV \$ 500.00 Victim assessment RCW 7.68.035  
 \$ 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 \$ 200.00 FRC  
 Witness costs \$ WFR  
 Sheriff service fees \$ SFR/SFS/SFW/WRF  
 Jury demand fee \$ JFR  
 Extradition costs \$ EXT  
 Other \$  
 PUB \$ 800.00 Fees for court appointed attorney RCW 9.94A.760  
 \$ Trial per diem, if applicable  
 WFR \$ Court appointed defense expert and other defense costs RCW 9.94A.760  
 FCM/MTH \$ 500.00 Fine RCW 9A.20.021; ☐ VUCSA chapter 69.50 RCW, ☐ VUCSA additional fine deferred due to indigency RCW 69.50.430  
 CDF/LDI/FCD \$ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760  
 NTF/SAD/SDI  
 CLF \$ Crime lab fee ☐ suspended due to indigency RCW 43.43.690  
 \$ 100.00 Felony DNA collection fee ☐ not imposed due to hardship RCW 43.43.7541  
 RTN/RJN \$ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430  
 \$ Other costs for:  
 \$ **Total** RCW 9.94A.760

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

☐ shall be set by the prosecutor.

☐ is scheduled for \_\_\_\_\_

☐ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

**Name** of other defendant **Cause Number** (Victim's name) (Amount-\$)

RJN

☐ 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 as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to

the defendant showing the location of the Superior Court Clerk Collections Unit at 500 West 8<sup>th</sup> Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

- ☐ The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760.

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

- 4.1b** ☐ **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 \$ \_\_\_\_\_.

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

- ☐ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

- 4.3 No Contact:** The defendant shall not have contact with \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

- ☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

- 4.4 Other:** \_\_\_\_\_

- 4.5 Confinement Over One Year.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

366 days/months on Count 01

- ☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

- ☐ The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 366 days

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

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

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_ in either District Court or Superior Court unless otherwise specified herein: To run concurrent with Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01      minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 108 days

**4.6 Community Placement or Community Custody.** The court orders community placement or community custody as follows:

☐ **Community Placement:**

\_\_\_\_\_ days/months on Count 01

☐ **Community Custody** for count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

☐ **Community Custody:**

Count 01      for a range from \_\_\_\_\_ to \_\_\_\_\_ months

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at 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 in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court;

(8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ The defendant shall have no contact with: \_\_\_\_\_.

☐ The defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_.

☐ The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

☐ The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_.

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

☐ The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_.

☐ Other conditions: \_\_\_\_\_.

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

**4.7 ☐ Work Ethic Camp.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp. The court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

**4.8 Off - Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_.

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** 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 Restitution Hearing.**

☐ I waive any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

**5.5 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

**5.6 Firearms.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The 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.

**Cross off or delete if not applicable:**

**5.7 Sex and Kidnapping Offender Registration.** RCW 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.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. 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 immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

**2. Offenders Who Leave the State and Return:** If you leave the 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 or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. 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 starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

**3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

**4. Additional Requirements Upon 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 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 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):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

**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 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, 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. 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 may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

**8. 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(7).

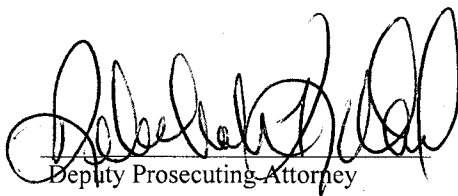
- 5.8 ☐ Count \_\_\_\_\_ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

#### 5.10 Persistent Offense Notice

- ☐ The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.

☐ The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

**Done** in Open Court and in the presence of the defendant this date: 5/22/09



Deputy Prosecuting Attorney

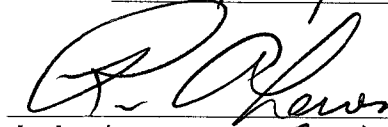
WSBA No. 33705

Print Name: Rebekah K. Ward

Attorney for Defendant

WSBA No. 14852

Print Name: Mary H. Arden

  
Judge/Print Name: R. A. Lewis

Defendant

Print Name:

RAYMOND J FEMLING

**Voting Rights Statement:** I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: Raymond J Femling

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.

Interpreter signature/Print name: \_\_\_\_\_

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

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk



## Identification of the Defendant

RAYMOND J FEMPLING

SID No: WA19500164

Date of Birth: 2/4/1983

(If no SID take fingerprint card for State Patrol)

FBI No. 77679CC5

Local ID No.

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

Other \_\_\_\_\_

Alias name, DOB:

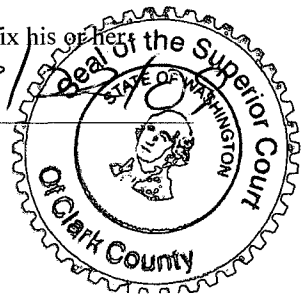
Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk, *[Signature]* Dated: *5/10/01*



**The defendant's signature:** *Raymond Fempling*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously

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

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND JAY FEMLING,

Defendant

No. 08-1-01301-4

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
PCS-METH	CLARK/WA 04-1-00192-7	6/21/2003	1/19/2006	1
PCS-METH	CLARK/WA 07-1-00192-1	1/31/2007	2/21/2007	1
PCS-METH	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	1
THEFT 3	CLARK/WA 07-1-01628-7	9/17/07	OTHER CURRENT OFFENSE	

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

DATED this 28 day of May, 2009.

Raymond J. Femling  
Defendant

Mary H. Arden  
Mary H. Arden, WSBA#14852  
Attorney for Defendant

Rebekah K. Ward  
REBEKAH K. WARD, WSBA #33705  
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY  
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY  
1013 FRANKLIN STREET  
PO BOX 5000  
VANCOUVER WA 98666-5000  
(360) 397-2261

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK  
STATE OF WASHINGTON, Plaintiff,

NO. 08-1-01301-4

v.

RAYMOND J FEMLING,  
Defendant.

SID: WA19500164  
DOB: 2/4/1983

**WARRANT OF COMMITMENT TO STATE  
OF WASHINGTON DEPARTMENT OF  
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	BAIL JUMPING ON CLASS B OR C FELONY	9A.76.170(1),(3)(c)	3/13/2008

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	BAIL JUMPING ON CLASS B OR C FELONY	366 Days Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 108 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein: To run concurrent with Clark County Case No. 07-1-01628-7 – Possession of a Controlled Substance – Methamphetamine and Theft 3.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable




JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

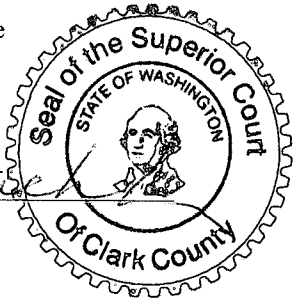
5-22-09

SHERRY W. PARKER, Clerk of the  
Clark County Superior Court

By:



Deputy



**FILED**

OCT 19 2022 4:30

Scott G. Weber, Clerk, Clark Co

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

**State of Washington vs. Raymond Jay Femling**

Plaintiff: State of Washington	Defendant: Raymond Jay Femling
Attorney: Lauren Boyd	Attorney: Sean Downs
Cause No: 08-1-01301-4	Hearing Type: Motion Hearing
Date: October 19, 2022	Reporter: CD/Video
Judge: Jennifer Snider	Clerk: M. Townsend

**PROCEEDINGS & DECISIONS**

Parties present:

- Sean Downs, Attorney for Defendant – Present via Zoom
- Raymond Femling, Defendant – Present via Zoom/speakerphone
- Lauren Boyd, Attorney for Plaintiff

**At Issue: Show Cause**

**The case is called for hearing at 1:31**

Parties are present as listed above and ready to proceed.

- Counsel Downs indicates Defendant is present on speakerphone.
- Counsel Downs presents motion.
- Counsel Boyd responds.
- Counsel Downs presents rebuttal.
- Court asks clarifying questions.
- Both counsels provide clarification.
- Court states they will take matter under advisement.
- **Court Rulings:**
  - **Court reserves on ruling at this time**
  - **Court shall issue their decision via email by Wednesday 10-26-22**

**E-FILED****10-21-2022, 12:05****Scott G. Weber, Clerk  
Clark County**

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

STATE OF WASHINGTON,  
Plaintiff,

vs.

RAYMOND JAY FEMLING,  
Defendant.

Case No. 08-1-01301-4

**COURT'S DECISION ON SHOW  
CAUSE**

This matter came before the court for the State to Show Cause why Mr. Femling's conviction for bail jumping should not be vacated and dismissed or alternatively why he should not be resentenced under CrR 7.8.

The court reviewed pleadings filed by Mr. Sean Downs on behalf of Mr. Femling and by DPA Ms. Lauren Boyd. The court heard argument from each attorney as well.

The court agrees with the reasoning set forth in *State v. Panigua*, 22 Wash.App. 2d, 350 (2022) and will not restate the decision here. The Motion to Vacate and Dismiss is DENIED.

Mr. Femling also requested that the court consider reclassifying the bail jump conviction to a misdemeanor. In making this request, Mr. Femling cites no authority. The court agrees with the State that if the decision in *State v. Blake* has any effect on a bail jump with underlying charges of simple possession, it would be to vacate and dismiss, not reclassify. For the reasons

DECISION

1 stated above, the court does not believe it does require vacation. The Motion to Reclassify the  
2 bail jump from a Class C Felony to a Misdemeanor is DENIED.

3 Dated this 21<sup>st</sup> day of October 2022.

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6 **Jennifer K.** Digitally signed by  
7 **Snider** Jennifer K. Snider  
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Judge Jennifer K. Snider

**E-FILED****10-21-2022, 12:19****Scott G. Weber, Clerk  
Clark County**

Total pages: 4

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

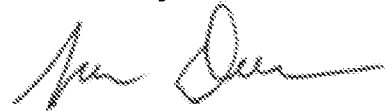
STATE OF WASHINGTON,	)	No. 08-1-01301-4
	)	
Plaintiff,	)	
	)	NOTICE OF APPEAL
vs.	)	
	)	
RAYMOND JAY FEMLING,	)	
	)	
Defendant.	)	

**TO: CLARK COUNTY SUPERIOR COURT CLERK  
CLARK COUNTY PROSECUTING ATTORNEY, PLAINTIFF  
DEPUTY PROSECUTING ATTORNEY, LAUREN BOYD**

The defendant, RAYMOND JAY FEMLING, by and through his undersigned attorney, seeks review by the designated appellate court of the denial of the defendant's CrR 7.8 motion entered in the above-entitled cause. A copy of the decision is attached to this document.

DATED this 21st day of October, 2022.

Presented by:



**Sean M. Downs, WSBA #39856  
Grecco Downs, PLLC  
Attorney for Defendant**

NOTICE OF APPEAL

- 1 -

**GRECCO DOWNS, PLLC**  
ATTORNEYS AT LAW  
701 COLUMBIA ST. #109  
VANCOUVER, WASHINGTON 98660  
P: 1-855-309-4529 F: 1-855-309-4530

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**DECLARATION OF SERVICE**

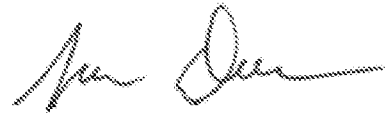
The undersigned, declares and says:

That I am over the age of eighteen years.

That I personally served the above Notice of Appeal on October 21, 2022 by email to  
Lauren Boyd, deputy prosecuting attorney, Clark County Prosecuting Attorney's Office at  
<Lauren.Boyd@clark.wa.gov>.

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

Executed at Vancouver, Washington on this 21st day of October, 2022.



Sean M. Downs

**E-FILED****10-21-2022, 12:05****Scott G. Weber, Clerk  
Clark County**

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

STATE OF WASHINGTON,  
Plaintiff,

vs.

RAYMOND JAY FEMLING,  
Defendant.

Case No. 08-1-01301-4

**COURT'S DECISION ON SHOW  
CAUSE**

This matter came before the court for the State to Show Cause why Mr. Femling's conviction for bail jumping should not be vacated and dismissed or alternatively why he should not be resentenced under CrR 7.8.

The court reviewed pleadings filed by Mr. Sean Downs on behalf of Mr. Femling and by DPA Ms. Lauren Boyd. The court heard argument from each attorney as well.

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DECISION

1 stated above, the court does not believe it does require vacation. The Motion to Reclassify the  
2 bail jump from a Class C Felony to a Misdemeanor is DENIED.

3 Dated this 21<sup>st</sup> day of October 2022.

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6 Jennifer K.  
7 Snider

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Jennifer K. Snider  
Date: 2022.10.21  
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8 Judge Jennifer K. Snider  
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Total pages: 2

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,	)	No. 08-1-01301-4
	)	
Plaintiff/Respondent,	)	DESIGNATION OF CLERK'S PAPERS
	)	
vs.	)	
	)	<b>**CLERK'S ACTION REQUIRED**</b>
RAYMOND JAY FEMLING,	)	
	)	
Defendant/Appellant.	)	

TO: THE CLERK OF THE COURT

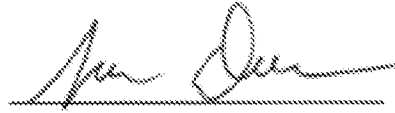
Please prepare and transmit to the Court of Appeals, Division II, the following clerk's papers regarding case #57512-4-II.

Sub	Docket Date	Docket Description
1	08/21/2008	INFORMATION
2	08/25/2008	AFFIDAVIT/DECLARATION PROB CAUSE
8	05/22/2009	STATEMENT OF DEFENDANT, PLEA GUILTY
9	05/22/2009	MEMORANDUM OF DISPOSITION
10	05/22/2009	FELONY JUDGMENT AND SENTENCE
16	09/08/2022	MOTION
19	10/19/2022	MOTION HEARING
20	10/21/2022	COURT'S DECISION ON SHOW CAUSE
21	10/21/2022	NOTICE OF APPEAL

A copy of this document is being filed with the Court of Appeals.

1  
2 Dated this 14 December 2022.

3 Respectfully submitted by:

4 

5 Sean M. Downs, WSBA #39856  
6 Grecco Downs, PLLC  
7 Attorney for Defendant/Appellant  
8 701 Columbia St. #109  
9 Vancouver, WA 98660  
10 P: 360-707-7040  
11 F: 855-309-4530  
12 Email: sean@greccodowns.com  
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# APPENDIX D

2021 WL 6335002 (Wash.App. Div. 3) (Appellate Brief)  
Court of Appeals of Washington, Division 3.

State of WASHINGTON, Respondent,  
v.  
Victor Alfonso PANIAGUA, Appellant.

No. 38274-5-III.  
September 27, 2021.

On Appeal from the Superior Court of the State of Washington for Franklin County

**Opening Brief of Appellant**









Kate L. Benward, Washington Appellate Project, 1511 Third Avenue, Suite 610, Seattle, WA 98101, (206) 587-2711, katebenward@washapp.org, wapofficemail@washapp.org, for appellant.

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**\*1 A. INTRODUCTION**

Victor Paniagua was convicted of felony bail jumping in 2015 after he failed to appear at an omnibus hearing on the State's charge of possession of a controlled substance. In 2021, the court included this prior bail jumping conviction in Mr. Paniagua's offender score.

However in *State v. Blake*,<sup>1</sup> the Supreme Court ruled that Washington does not have, and has never had, a valid statute prohibiting possession of a controlled substance. Where this predicate felony for conviction of bail jumping is void, Mr. Paniagua's conviction for bail jumping is facially invalid and it may not be included in his offender score.

**B. ASSIGNMENTS OF ERROR**

1. The court included a facially invalid conviction in Mr. Paniagua's offender score.
2. The trial court sentenced Mr. Paniagua on the incorrect offender score.

**\*2 C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

A prior conviction which is constitutionally invalid on its face may not be included in a defendant's offender score. For Mr. Paniagua's bail jumping conviction, the State had to prove he was held on, charged with, or convicted of a specific felony. In Mr. Paniagua's case, the specific felony he was charged with was the nonexistent crime of possession of a controlled substance. Because the predicate felony for Mr. Paniagua's bail jumping conviction is void, his conviction predicated on this underlying offense is facially invalid and it may not be included in his offender score.

**D. STATEMENT OF THE CASE**

The court sentenced Mr. Paniagua to a lengthy prison term in 2018. CP 21, 63. The court's calculation of Mr. Paniagua's offender score included two prior convictions for possession of a controlled substance, and a bail jumping conviction for failure to appear at an omnibus hearing for one of the charges of possession of a controlled substance. CP 23, \*3 63; 153; RP 3. After the Supreme Court decided *State v. Blake*, Mr. Paniagua moved for resentencing. CP 63. He argued the two possession of a controlled substance offenses and the bail jumping conviction predicated on one of these possession convictions were void and could not be included in his offender score.<sup>2</sup> CP 63-68; RP 5.



The prosecutor conceded the prior convictions for possession of a controlled substance offenses were void and could not be included in Mr. Paniagua's offender score. RP 3-4. However, the State maintained the bail jumping conviction was still valid and should be included in Mr. Paniagua's offender score even though it was predicated on the invalid unlawful possession of a controlled substance offense. RP 4.




\*4 The trial court ruled the possession of a controlled substance offenses were facially invalid after *Blake*. RP 8-9. The court found that even though this predicate offense for bail jumping was void, the bail jumping conviction was not facially invalid. RP 8. The court included the bail jumping conviction in Mr. Paniagua's offender score and sentenced him on an offender score of seven instead of six. CP 202.


## E. ARGUMENT


### **Mr. Paniagua's bail jumping conviction predicated on a void statute is facially invalid and cannot be used to calculate his offender score.**


A person must be held on, charged with, or convicted of a specific felony offense in order to be convicted of felony bail jumping. The predicate felony for Mr. Paniagua's bail jumping conviction was possession of a controlled substance, a void statute. Absent a valid predicate felony, Mr. Paniagua's bail jumping conviction is facially invalid and may not be included in his offender score.

#### ***\*5 a. The possession of a controlled statute is void and conviction for this offense cannot be used to elevate a person's offender score.***

In *State v. Blake*, the Supreme Court found that the simple possession statute,  [RCW 69.50.4013\(1\)](#), violated due process because it criminalized “wholly innocent and passive nonconduct on a strict liability basis.”  [197 Wn.2d at 193](#). “Valid strict liability crimes require that the defendant actually perform some conduct. Blake did not. Under the due process clauses of the state and federal constitutions, the legislature may not criminalize such nonconduct.”  [Id. at 195](#). Accordingly, the portion of the simple drug possession statute creating this crime violates the due process clauses of the state and federal constitutions and is void. *Id.*

*Blake* specifically noted its concern for the consequences of a felony conviction based on innocent conduct: “Washington's strict liability drug possession statute ... makes possession of a controlled substance a felony punishable by up to five years in prison, plus a hefty fine; leads to deprivation of \*6 numerous other rights and opportunities; and does all this without proof that the defendant even knew they possessed the substance.”  [Blake, 197 Wn.2d at 173](#).




Among the consequences of a felony conviction is increased punishment based on this prior felony conviction because the length of a person's sentence is determined in part by their prior felony convictions.  [RCW 9.94A.525](#).




“A prior conviction which has been previously determined to have been unconstitutionally obtained or which is constitutionally invalid on its face may not be considered” as part of a defendant's offender score.  [State v. Ammons, 105 Wn.2d 175, 187-88, 713 P.2d 719 \(1986\)](#). Because the statute criminalizing possession of a controlled substance is void, defendants whose offender score was calculated with a prior drug conviction are entitled to resentencing based on the correct offender score. [State v. Gouley, No. 54468-7-II, 2021 WL 4075814, at \\*9 \(Wash. Ct. App. Sept. 8, 2021\)](#).



**\*7 b. Mr. Paniagua's bailjumping conviction is facially invalid  
because it is predicated on charges brought under a void statute.**


The former bail jumping statute required proof of a predicate felony, which the State alleged in his case was possession of a controlled substance. Mr. Paniagua's bail jumping conviction predicated on this void statute is facially invalid, and may not be included in his offender score.

Generally, the State does not have the “affirmative burden” to prove the constitutionality of a prior conviction at sentencing.

 *Ammons*, 105 Wn.2d at 187. However, there are two exceptions to this general rule: (1) where a previous conviction has been determined to have been unconstitutionally obtained or (2) where the conviction is invalid on its face, such convictions shall not be considered in calculating the defendant's offender score.  *Id.* at 187-88. A conviction is constitutionally invalid on its face when, “without further elaboration [it] evidences infirmities of a constitutional magnitude.”  *Id.* at 188.

\*8 “To determine facial invalidity of a prior conviction, the sentencing court may review the judgment and sentence and any other document that qualifies as ‘the face of the conviction.’” *State v. Thompson*, 143 Wn. App. 861, 866, 181 P.3d 858 (2008). This has been interpreted to include those documents signed as part of a plea agreement. *Id.* at 867. Additional, “related documents” that may establish the facial invalidity of a conviction include the “charging instruments,” “statements of guilty pleas,” and “jury instructions.”  *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 858, 100 P.3d 801 (2004); see also  *State v. Phillips*, 94 Wn. App. 313, 317, 972 P.2d 932 (1999) (citing  *Ammons*, 105 Wn.2d at 187-89) (when considering the invalidity of a conviction “on its face” the court may consider “those documents signed as part of a plea agreement.”).

A judgment is invalid on its face when the documents relating to the plea agreement demonstrate the defendant pleaded guilty to a non-existent crime.  \*9 *Hinton*, 152 Wn.2d at 857 (citing  *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)). For example, in *Thompson*, the court examined the documents signed as part of the plea agreement which showed the charged offense “did not become a crime until nearly two years after the offense or offenses occurred.” *Id.* Where no statute criminalized the defendant's conduct at the time of the offense, the court found “the judgment and sentence invalid on its face.” *Id.*

The same reasoning compelled our Supreme Court to reverse in *Hinton*, where the petitioners were convicted of second degree felony murder predicated on assault, but “no statute established a crime of second degree felony murder based upon assault at the time the petitioners committed the acts for which they were convicted.”  152 Wn.2d at 857. The absence of a valid predicate offense rendered the judgment for the felony murder conviction facially invalid: “Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face.” *Id.*

\*10 Like in *Hinton* and *Thompson*, Mr. Paniagua's bail jumping conviction required proof of a predicate felony offense. However, this predicate felony offense did not exist at the time Mr. Paniagua missed his omnibus hearing. Mr. Paniagua was convicted of bail jumping in 2015 under the former version of the bail jumping statute that was amended in 2020.<sup>3</sup> CP 153. Under this statute, “Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before any court of this state, and who knowingly fails to appear as required is guilty of \*11 bail jumping.” Laws of 2001 ch. 264 § 3. Bail jumping was only a felony offense if the underlying charged crime was a felony. For example, bail jumping was a class C felony only if “the person was held for, charged with, or convicted of a class B or class C felony.” *Id.* If a person failed to appear at court hearing when they were held on, charged with, or convicted of a misdemeanor, they could only be convicted of a misdemeanor bail jumping, not a felony. *Id.*

The elements of a crime are those facts “that the prosecution must prove to sustain a conviction.” *State v. Gonzalez-Lopez*, 132 Wn. App. 622, 626, 132 P.3d 1128 (2006) (citing *State v. Miller*, 156 Wn.2d 23, 27, 123 P.3d 827 (2005)). Under the former statute, the State was required to prove, the accused “was held for, charged with, or convicted of a particular crime” to convict them of bail jumping. *State v. Pope*, 100 Wn. App. 624, 627, 999 P.2d 51 (2000). Indeed, because the particular underlying charge was an essential element of bail jumping, Washington courts required “the particular \*12 underlying crime” be charged in the Information. *State v. Williams*, 162 Wn.2d 177, 185-86, 170 P.3d 30 (2007); see also *State v. Green*, 101 Wn. App. 885, 890-91, 6 P.3d 53 (2000) (Information charging only the superior court cause number rather than naming the particular crime was deficient.); *Pope*, 100 Wn. App. at 629-30 (holding an information that merely stated the defendant failed to appear “regarding a felony matter” was deficient.).

Because bail jumping required a specific predicate offense as an element of the crime, a bail jumping conviction is facially invalid if the predicate felony is invalid. See *Hinton*, 152 Wn.2d at 857 (judgment for felony murder predicated on invalid predicate offense is nonexistent crime and facially invalid).

Mr. Paniagua's bail jumping conviction was only a felony offense because he was held, charged, or convicted of possession of a controlled substance, a void statute. RP 3; CP 153; Laws of 2001 ch. 264 § 3; *Blake*, 197 Wn.2d at 195. \*13 Indeed, the prosecutor did not dispute Mr. Paniagua's 2015 conviction for bail jumping was “based on the prior unlawful possession of a controlled substance” charge, but argued this “does not wipe away the conviction.” RP 3

The prosecutor cited to *State v. Downing*, claiming it stands for the proposition that “[t]he charge underlying the allegation of bail jumping need not be valid to support a bail jumping conviction.” RP 3. *Downing*, however, addressed a bail jumping conviction based on charges brought under a valid statute that were later dismissed, not charges brought under a void statute at issue here. 122 Wn. App. 185, 187, 93 P.3d 900 (2004).



In *Downing*, the defendant was charged with numerous counts of passing bad checks in district court and superior court. 122 Wn. App. at 187-88. One day before a scheduled superior court hearing, he pleaded guilty to the charges in district court. *Id.* at 188. The defendant failed to appear at the \*14 superior court hearing, and the State charged him with bail jumping. *Id.*


The superior court dismissed the check-related charges the defendant pleaded to in district court on double jeopardy grounds and by the prosecutor's motion to dismiss. 122 Wn. App. at 189. *Downing* then moved to dismiss the bail jumping charge on the basis that the underlying charges were dismissed. *Id.* The judge denied the motion and found *Downing* guilty of bail jumping. *Id.*

The Court of Appeals affirmed, finding “the fact that the court later dismissed the charges does not mean that it lacked jurisdiction to order *Downing* to appear and answer for those charges, even if his answer could have been that double jeopardy barred further prosecution.” *Id.* at 193.




*Downing* is inapplicable here, because the issue is not whether Mr. Paniagua had a legal defense to the valid charge of possession of controlled substance. Instead, the issue is that Mr. Paniagua was charged, held, or convicted under a statute that \*15 was invalid in 2015 just as it was in 2021, when *Blake* ruled it was unconstitutional and void. 197 Wn.2d at 195.

“If a statute is unconstitutional, it is and has always been a legal nullity.” *State ex rel. Evans v. Bhd. of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952). Indeed, “[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Id.* (internal citations omitted); see also *Hinton*, 152 Wn.2d at 859 (The court's construction of a statute in 2002 determined what the statute has meant since its enactment in 1976).

When Mr. Paniagua was convicted of bail jumping in 2015, the predicate underlying charge for this offense, possession of a controlled substance, was unconstitutional and void.  *Blake*, 197 Wn.2d at 195. Without a valid underlying felony, the State had no basis to charge or convict Mr. Paniagua with felony bail jumping. *See, e.g.*  *Pope*, 100 Wn. App. at 629 \*16 (specific underlying felony for bail jumping must be alleged in the Information).

Despite the undisputed invalidity of the predicate felony for Mr. Paniagua's bail jumping conviction, the sentencing court concluded, "there's been nothing brought to show that there's a facial invalidity with the -- with the conviction itself." RP 8. This is wrong. Just as in *Hinton*, where the invalid predicate felony invalidated the conviction, here too, the invalidity of the predicate felony for bail jumping makes it "not a conviction of a crime at all," and renders the judgment for this offense facially invalid.  *Hinton*, 152 Wn.2d at 857.

***c. Mr. Paniagua's judgment and sentence must be remanded for resentencing on the correct offender score.***

A person must be sentenced on the correct offender score; "a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice."  *In re Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618, 622 (2002). Because the predicate felony for Mr. Paniagua's \*17 conviction for bail jumping is void, his bail jumping conviction is facially invalid and may not be included in his offender score.  *Ammons*, 105 Wn.2d at 187-88. The trial court erroneously counted Mr. Paniagua's prior conviction for bail jumping as one point in his offender score, sentencing him with an offender score of seven, rather than six. RP 8; CP 202. Because the judgment for bail jumping is invalid on its face and should not have been included in his offender score, this court should reverse and remand for Mr. Paniagua to be sentenced on the correct offender score.  *Goodwin*, 146 Wn. 2d at 877.

## F. CONCLUSION

Mr. Paniagua's conviction for bail jumping is facially invalid and should not have been included in his offender score. This Court should reverse for Mr. Paniagua to be sentenced on the correct offender score.

This brief is proportionately spaced using 14-point Times New Roman font and contains 2,866 words (word count by Microsoft Word).

DATED this 27th day of September 2021.

\*18 Respectfully submitted,

<<signature>>



KATE L. BENWARD (WSBA 43651)

Washington Appellate Project (91052)

Attorneys for Appellant

Washington Appellate Project (91052)

### Footnotes

- 1  [State v. Blake](#), 197 Wn.2d 170, 481 P.3d 521 (2021).
- 2 Mr. Paniagua also argued this “in conjunction with” *State v. Gelinas*, which held district courts lack the authority to order a defendant to personally appear for any and all pretrial hearings and to issue arrest warrants for failing to appear. [State v. Gelinas](#), 15 Wn. App. 2d 484, 486, 478 P.3d 638 (2020); RP 5.
- 3 Mr. Paniagua would not have been convicted of a felony under the current, amended version of the bail jumping statute, not just because he was criminally charged under a void statute, but because in 2020, the legislature created a separate section for failure to appear for a court date other than trial when charged with a non-violent offense and downgraded the crime to either a gross misdemeanor or no crime at all.  [RCW 9A.76.170](#); 9A.76.190(1)(a), (b); *State v. Brake*, 15 Wn. App. 2d 740, 744, 476 P.3d 1094 (2021). For the new crime of failure to appear or surrender for a non-trial court date, the State must either prove that the defendant did not appear and did not move to quash the warrant within thirty days of its issuance or that the defendant had a prior warrant issued in the case for failing to appear. *Id.* (citing [RCW 9A.76.190\(1\)\(b\)\(i\)-\(ii\)](#)).

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# APPENDIX E

2024 WL 691482 (Wash.App. Div. 1) (Appellate Brief)  
Court of Appeals of Washington, Division 1.

STATE OF WASHINGTON, Respondent,  
v.  
Humberto GARCIA, Appellant.


No. 85818-1-I.  
January 31, 2024.

From the Superior Court of the State of Washington for Snohomish County






**Brief of Appellant**









Tiffinie B. MA, Washington Appellate Project, 1511 Third Avenue, Suite 610, Seattle, WA 98101, (206) 587-2711, for appellant.

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**\*1 A. INTRODUCTION**

Humberto Garcia did not attend two court dates in a prosecution for a charge under a void statute. Because the trial court had no power to order him to appear based on these non-existent crimes, his convictions for bail jumping are void. This violation of Mr. Garcia's constitutional rights will continue until all his convictions are vacated.



## B. ASSIGNMENT OF ERROR



The trial court erred in refusing to vacate Mr. Garcia's bail jumping convictions premised on a facially void drug possession charge.



## C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR




A void statute is a legal nullity. When the Supreme Court struck down the felony drug possession statute, it voided all actions taken in reliance on the statute. Accordingly, the prosecution never had the \*2 authority to charge Mr. Garcia with drug possession, and the trial court never had the authority to compel his appearance in a prosecution on that charge. As a result, his bail jumping convictions are also void.

## D. STATEMENT OF THE CASE

### 1. In *State v. Blake*, the Supreme Court finds Washington's felony drug possession statute unconstitutional and void.

For years, Washington stood alone as the only state in the nation to punish drug possession as a felony without requiring any proof the charged person knew they possessed drugs.  *State v. Blake*, 197 Wn.2d 170, 173-74, 176, 183, 481 P.3d 521 (2021); former RCW 69.50.4013(1); Laws of 2017, ch. 317, § 15. By criminalizing even unknowing possession, the statute reached innocent conduct.  *Blake*, 197 Wn.2d at 183-84.

Persons convicted under the statute faced “countless harsh collateral consequences affecting all \*3 aspects of their lives.”  *Blake*, 197 Wn.2d at 184-85. These consequences fell especially on “young men of color,” like Mr. Garcia, as such consequences often do.  *Id.* at 192.

Recognizing these problems, the Supreme Court struck down former RCW 69.50.4013(1) as unconstitutional.  *Id.* at 173. Because the strict liability felony criminalized “unknowing, and hence innocent,” passive conduct, enacting the statute was beyond the scope of the Legislature's police power.  *Id.* at 186. Accordingly, former RCW 69.50.4013(1) “violates the due process clauses of the state and federal constitutions and is void.”  *Blake*, 197 Wn.2d at 195.

### 2. Before *Blake*, the prosecution charges Mr. Garcia with bail jumping based on predicate charges of drug possession under RCW 69.50.4013(1).

In July 2017, the prosecution charged Mr. Garcia with possessing a controlled substance. CP 50. When \*4 Mr. Garcia did not attend two pretrial hearings, the prosecution added two counts of bail jumping in March 2018. CP 53.

Mr. Garcia proceeded to trial and was found guilty of all three charges. CP 56; RP 5-6. On March 28, 2018, the trial imposed a sentence of 12 months incarceration on the possession conviction and nine months for each bail jumping conviction, all to be run concurrently. CP 60; RP 14-15.

### 3. After *Blake*, despite facially void predicate charges, the trial court refuses to vacate Mr. Smith's bail jumping convictions.

On February 25, 2021, the Supreme Court decided [Blake](#), 197 Wn.2d at 195. *Blake* rendered former RCW 69.50.4013(1) unconstitutional and “void.” *Id.*

In July 2023, Mr. Garcia moved under CrR 7.8(b)(4) and (5) to vacate his convictions. CP 41-48. \*5 *Blake* made his possession conviction void on its face. CP 86. The bail jumping convictions are also void because *Blake* made former RCW 69.50.4013(1) a legal nullity, so the predicate possession charge was void from the beginning. *Id.*

The trial court vacated the possession conviction, but held the bail jumping convictions remained valid even after *Blake*. CP 4-7.

## E. ARGUMENT

### **The trial court erred in denying Mr. Garcia's motion to vacate his bail jumping convictions premised on a void felony drug possession charge.**

The Legislature never had authority to enact former RCW 69.50.4013(1), and both the prosecution and the trial court never had authority to bind Mr. Garcia based on charges under that statute. The drug possession charges were void from the start, and failing to appear in a prosecution based on those charges was \*6 a non-existent crime. Because *Blake* eliminated the predicate charge underlying both bail jumping convictions, this Court should reverse the trial court's order denying Mr. Garcia's motion to vacate.


#### ***a. After Blake, the felony offense of possessing a controlled substance is void, and courts must treat the statute as though it never existed.***

“If a statute is unconstitutional, it is and has always been a legal nullity.” [State ex rel. Evans v. Bhd. of Friends](#), 41 Wn.2d 133, 143, 247 P.2d 787 (1952). When a statute is stricken down because “the conduct it proscribed was beyond the power of the state to punish,” that conduct “was not, is not, and could never be a crime.” [In re N.G.](#), 115 N.E.3d 102, 118 (Ill. 2018).

Courts have deemed an “unconstitutional act” to be “as inoperative as though it had never been passed” since before Washington's statehood. [Norton v. Shelby Cty.](#), 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886). “An unconstitutional law is void, and is as no law. An offence created by it is not a crime.” [Ex parte Siebold](#), 100 U.S. 371, 376, 25 L. Ed. 717 (1879). When a person violates a law “repugnant to the constitution, the prosecution against him has nothing upon which to rest, and the entire proceeding against him is a nullity” [Ex parte Royall](#), 117 U.S. 241, 248, 6 S. Ct. 734, 29 L. Ed. 868 (1886) (emphasis added).



Accordingly, when the Supreme Court interprets a criminal statute such that a convicted person's conduct was “a nonexistent crime,” the conviction is void. [In re Pers. Restraint of Hinton](#), 152 Wn.2d 853, 860, 100 P.3d 801 (2004). Before *Hinton*, the Court held the felony murder statute did not allow second-degree assault to serve as a predicate offense. [In re Pers. Restraint of Andress](#), 147 Wn.2d 602, 616, 56 P.3d 981 (2002). *Andress* determined “what the [felony \*8 murder] statute has meant since its enactment.” [Hinton](#), 152 Wn.2d at 859-60 & n.2. Because the petitioners were found guilty of murder based on second-degree assault, they were “convicted of nonexistent crimes.” [Id.](#) at 860.





The holding that former RCW 69.50.4013(1) was beyond the Legislature's power to enact established the statute “has always been void under both the state and federal constitutions.” [State v. French](#), 21 Wn. App. 2d 891, 894, 508 P.3d 1036 (2022)

(emphasis added). Strict liability drug possession “was not, is not, and could never be a crime.”  *N.G.*, 115 N.E.3d at 118. After *Blake*, therefore, courts properly treat former RCW 69.50.4013(1) as if it never existed.

As the most obvious example, courts must vacate convictions obtained under the void possession statute. *E.g.*, \*9 *State v. A.L.R.H.*, 20 Wn. App. 2d 384, 500 P.3d 188 (2021); *Matter of Pleasant*, 21 Wn. App. 2d 320, 509 P.3d 295 (2022). Here, the trial court properly vacated Mr. Garcia's possession convictions. CP 16, 75.



Where a sentence rests on *prior* possession convictions, remand is necessary to recalculate the sentence without them. *E.g.*, *State v. Sullivan*, 18 Wn. App. 2d 225, 247, 491 P.3d 176 (2021); *State v. LaBounty*, 17 Wn. App. 2d 576, 581-82, 487 P.3d 221 (2021). A sentence based on an analogous out-of-state conviction also requires remand. *State v. Markovich*, 19 Wn. App. 2d 157, 174, 492 P.3d 206 (2021).

*Blake* established that courts not only “were never with lawful authority to enter judgment on a conviction” under former RCW 69.50.4013(1), but also never had “lawful authority to impose a sentence pursuant to such a conviction.”  *French*, 21 Wn. App. 2d at 897. If, for example, the trial court imposed a higher \*10 sentence because the crime was committed while on community custody, and the only basis for community custody was a conviction under  RCW 69.50.4013(1), remand for resentencing is required. *Id.*; accord *State v. Rahnert*, 24 Wn. App. 2d 34, 38, 518 P.3d 1054 (2022).

Most importantly, when a prior possession charge is an element of a later-charged offense, *Blake* requires courts to vacate a conviction of the later offense.  *In re Pers. Restraint of Gonzalez*, No. 38080-7-III, 2021 WL 4860031, at \*1 (Wash. Ct. App. Oct. 19, 2021) (unpub.)<sup>1</sup> (citing  *Hinton*, 152 Wn.2d at 860);  *Evans*, 41 Wn.2d at 143). For example, courts must vacate unlawful firearm possession convictions where the predicate felony was drug possession.  \*11 *Gonzalez*, 2021 WL 4860031, at \*1; *In re Pers. Restraint of Jones*, No. 83076-7-I, 2022 WL 1133164, at \*1 (Wash. Ct. App. Apr. 18, 2022) (unpub.).








*Blake* established clearly that former RCW 69.50.4013(1) is void. A charge under the former statute cannot furnish a basis for any future punishment, including a conviction for bail jumping.

***b. Because former RCW 69.50.4013(1) is a nullity, Mr. Garcia was not charged with a crime and cannot be guilty of bail jumping.***


“[I]t is a fundamental due process violation to convict and incarcerate a person for a crime without proof of all the elements of the crime.”  *Hinton*, 152 Wn.2d at 859. Punishing a person “for an offense which was not criminal at the time he committed it is unlawful and a miscarriage of justice.”  *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000).

\*12 To convict Mr. Garcia of bail jumping, the prosecution had to prove he was “admitted to bail” and failed to appear at a hearing where his presence was required. Former RCW 9A.76.170; see Laws of 2001, ch. 264, § 3(1).<sup>2</sup> The classification of the crime depended on the classification of the predicate charge or conviction. Laws of 2001, ch. 264, § 3(3). In short, the prosecution bore the burden of proving it charged Mr. Garcia with a crime. *State v. Anderson*, 3 Wn. App. 2d 67, 72, 413 P.3d 1065 (2018); WPIC 120.41.

Mr. Garcia's convictions of bail jumping were based on a charge under former RCW 69.50.4013(1), the felony drug possession statute. CP 56, 128. The trial court held these charges could support the bail \*13 jumping convictions even after *Blake* because the holding that the statute is void did not retroactively eliminate the court's authority to require Mr. Garcia to appear in the first place. CP 4-7. The trial court was wrong.

The Supreme Court held that former RCW 69.50.4013(1) is--and has always been-- void.  [Blake](#), 197 Wn.2d at 195;  [French](#), 21 Wn. App. 2d at 894. Any state action premised on the statute is “a legal nullity.”  [Evans](#), 41 Wn.2d at 143. Because the statute must be deemed never to have existed, any charges under it are also void, and failing to appear at a hearing based on a charge under the statute is a non-existent crime.  [Thompson](#), 141 Wn.2d at 719;  [Royall](#), 117 U.S. at 248. Mr. Garcia's convictions for bail jumping therefore deprived him of due process.  [Hinton](#), 152 Wn.2d at 859-60;  [Thompson](#), 141 Wn.2d at 719.




**\*14** This Court should not continue to hold that a bail jumping conviction may rest on a void drug possession charge. See [State v. Smith](#), No. 83875-0-I, 2023 WL 3721261 \*1 (Wash. Ct. App. May 30, 2023) (unpub.). This Court held in *Smith* that a constitutionally valid crime is not an element of bail jumping, following cases from other divisions of this Court. *Id.* at \*2; see [State v. Paniagua](#), 22 Wn. App. 2d 350, 356, 511 P.3d 113 (2022); [State v. Downing](#), 122 Wn. App. 185, 192, 93 P.3d 900 (2004).

The holdings in these cases is untenable because former RCW 69.50.4013(1) was void from the moment of its enactment, rendering all charges under the statute also void.  [Royall](#), 117 U.S. at 248. To hold this would not result in criminal defendants being “left to decide whether to comply with the court's order to appear based on the defendant's own assessment of the **\*15** validity of the underlying crime or criminal charge.” [Smith](#), 26 Wn. App. 2d at \*2. Rather, it would simply recognize the significant due process violation inherent in convicting a person for bail jumping when the underlying charge was unlawful in the first instance.

Contrary to the *Paniagua* court, convicting a person of a crime premised on a void statute does not “effectuate orderly administration of justice.” 22 Wn. App. 2d at 359. Instead, it deprives a person of their liberty based on a charge the prosecution had no authority to file and for which the court had no authority to bind the person. It is difficult to imagine a more fundamental due process violation.

Similarly, this Court's reliance on Division Two's opinion in *Downing* is also misplaced. There, the Court held the trial court could require Mr. Downing to **\*16** appear even if double jeopardy barred conviction of the predicate charges. 122 Wn. App. at 193.

*Downing* does not control this case--and should not have controlled Mr. Smith's case--because it did not address a statute deemed void since its enactment. Because former RCW 69.50.4013(1) is a legal nullity, the prosecution and the trial court lacked the authority to bind Mr. Garcia based on it. His failure to appear in a prosecution premised on void charges was not and is not a crime.

When “the State ha[s] no power to proscribe the conduct for which the petitioner was imprisoned, it [can]not constitutionally insist that he remain in jail.”  [Montgomery v. Louisiana](#), 577 U.S. 190, 202, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016) (quoting  [Desist v. United States](#), 394 U.S. 244, 261 n.2, 89 S. Ct. 1030, 22 L. Ed. 2d 248 (1969) (Harlan, J., dissenting)). This Court's **\*17** duty “to see that the law is carried out uniformly and justly” requires it to reverse Mr. Garcia's convictions for bail jumping.  [Hinton](#), 152 Wn.2d at 856.

## F. CONCLUSION

This Court should reverse the trial court's order on Mr. Garcia's [CrR 7.8\(b\)](#) motion and remand for vacation of the bail jumping convictions.

Per [RAP 18.17\(c\)\(2\)](#), the undersigned certifies this brief of appellant contains 2349 words.

DATED this 31<sup>st</sup> day of January, 2024.

<<signature>>

Tiffinie B. Ma, WSBA#51420

Washington Appellate Project - 91052

Email: wapofficemail@washapp.org

tiffinie@washapp.org

*Attorney for Humberto Garcia*

### Footnotes

- 1 All unpublished cases throughout the briefing are cited as persuasive authority pursuant to [GR 14.1](#).
- 2 The Legislature amended the bail jumping statute in 2020. Laws of 2020, ch. 19. Under the current statute, Mr. Garcia's failure to attend a pretrial hearing would be a gross misdemeanor at most, and might not be a crime at all. [RCW 9A.76.190](#).

# **GRECCO DOWNS, PLLC**

**July 26, 2024 - 4:51 PM**

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