

NO. 42786-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

KEVAN VANSYCKLE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Susan Serko, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>SUPPLEMENTAL ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Supplemental Assignment of Error</u>	1
B. <u>SUPPLEMENTAL STATEMENT OF THE CASE</u>	1
C. <u>SUPPLEMENTAL ARGUMENT</u>	2
THE TRIAL COURT ERRED WHEN IT FOUND – WITHOUT EVIDENCE – THAT VANSYCKLE HAD THE PRESENT OR FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Baldwin

63 Wn. App. 303, 818 P.2d 1116, 837 P.2d 646 (1991)..... 2, 3

State v. Bertrand

165 Wn. App. 393, 267 P.3d 511 (2011)..... 2, 3, 4

State v. Ford

137 Wn.2d 472, 973 P.2d 452 (1999)..... 2

State v. Grayson

154 Wn.2d 333, 111 P.3d 1183 (2005)..... 3

A. SUPPLEMENTAL ASSIGNMENT OF ERROR

The trial court erred when it found appellant had the current or future ability to pay legal financial obligations (LFOs). CP 105 (finding 2.5).¹

Issue Pertaining to Supplemental Assignment of Error

Whether the trial court erred when it found, absent an inquiry into appellant's individual circumstances, that he has the current or future ability to pay LFOs?

B. SUPPLEMENTAL STATEMENT OF THE CASE

The trial court imposed \$3,284.41 in legal financial obligations on Kevan Vansyckle, including \$2,000 in court-appointed attorney fees and defense costs, \$500 crime victim assessment, \$484.41 crime victim compensation, \$200 criminal filing fee, and \$100 DNA database fee. CP 105; 1RP² 1326-27.

Although there was no discussion of Vansyckle's financial circumstances, the judgment and sentence includes a written "finding," which was pre-printed on the sentencing form:

The court has considered the total amount owing, the defendant's past, present and future ability to pay legal

¹ The Judgment and Sentence is attached as an appendix.

² The index to the citations to the record is found in the Brief of Appellant (BOA) at 2, n.2.

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.

CP 105 (finding 2.5).

C. SUPPLEMENTAL ARGUMENT

THE TRIAL COURT ERRED WHEN IT FOUND – WITHOUT EVIDENCE – THAT VANSYCKLE HAD THE PRESENT OR FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.

To enter a finding regarding ability to pay LFOs, a sentencing court must consider the individual defendant's financial resources and the burden of imposing such obligations on him. State v. Bertrand, 165 Wn. App. 393, 403-04, 267 P.3d 511 (2011) (citing State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991)).

This Court reviews the trial court's decision on ability to pay under the "clearly erroneous" standard. Bertrand, 165 Wn. App. at 403-04. This error may be raised for the first time on appeal. Bertrand, 165 Wn. App. at 394-95, 404 (explicitly noting issue was not raised at sentencing hearing, but nonetheless striking sentencing court's unsupported finding); see also State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999) (unlawful sentence may be challenged for the first time on appeal).

While formal findings are not required, to survive appellate scrutiny the record must establish the sentencing judge at least considered

the defendant's financial resources and the "nature of the burden" imposed by requiring payment. Bertrand, 165 Wn. App. at 404 (citing Baldwin, 63 Wn. App. at 311-12); see also State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005) (court's failure to exercise discretion in sentencing is reversible error).

As in Bertrand, the record here reveals no evidence or analysis supporting the court's "finding" that Vansyckle had the present or future ability to pay his LFOs. The record actually suggests precisely the opposite – that the trial court imposed the LFOs as a matter of practice rather than based on a consideration of Vansyckle's individual financial resources. The trial court noted it was imposing "\$200.00 court costs and \$2,000.00 because this case preceded all the way through trial and that's the amount that I award for DAC recoupment." 1RP 1327.

The record suggests that far from having a present or future ability to pay, Vansyckle has neither. He was found to be indigent for purposes of appeal. 1RP 1330. His motion for order of indigency indicates he is unemployed, owns no real estate, owns no stocks or bonds, is not the beneficiary of any trust, has no savings or substantial income of any kind, and has debts totaling \$600. Supp. CP ____ (Motion and Declaration for Order Authorizing Review at Public Expense, dated 11/8/11).

Accordingly, the court's finding that Vansyckle has the present or future ability to pay LFOs is clearly erroneous and should be stricken. Bertrand, 165 Wn. App. at 405. Before the State can collect LFOs in this case, there must be a properly supported, individualized judicial determination that Vansyckle has the ability to pay. Id.

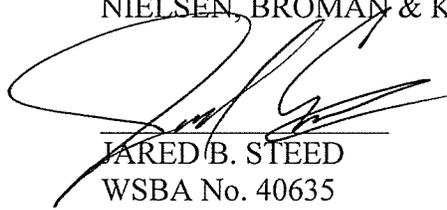
D. CONCLUSION

For the reasons stated above, and in the opening brief, this Court should grant the requested relief.

DATED this 23rd day of October, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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APPENDIX



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-02885-2

NOV - 9 2011
2:10 pm

vs.

KEVAN M. VANSYCKLE

Defendant.

AS TO COUNTS I, III & IV ONLY
JUDGMENT AND SENTENCE (FJS)
 Prison RCW 9.94A.712 Prison Confinement
 Jail One Year or Less
 First-Time Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative
 Alternative to Confinement (ATC)
 Clerk's Action Required, para 4.5 (SDOSA),
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
 Juvenile Decline Mandatory Discretionary

SID: 22821722
DOB: 01/11/1989

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 9/27/11
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	CHILD MOLEST 1 (139)	9A.44.083	NONE	06/15/07-06/03/09	PCSD 091350546
III	CHILD MOLEST 1 (139)	9A.44.083	NONE	06/15/07-06/03/09	PCSD 091350546
IV	CHILD MOLEST 1 (139)	9A.44.083	NONE	06/15/07-06/03/09	PCSD 091350546

* (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, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

11-9-12850-5

as charged in the AMENDED Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	CHILD MOLEST 1	07/12/05	THURSTON, WA	06/01/04	J	SV
2	INDECENT EXPOS	09/20/04	THURSTON, WA	06/18/04	J	NV
3	CHILD MOLEST 1	07/12/05	THURSTON, WA	01/01/05	J	SV
4	OTHER CURRENT 09-1-02885-2	OTHER CURRENT	PIERCE, WA	06/15/07- 06/03/09	A	SV
5	OTHER CURRENT 09-1-02885-2	OTHER CURRENT	PIERCE, WA	06/15/07- 06/03/09	A	SV

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	X	149-198 MONTHS TO LIFE	NONE	149-198 MONTHS TO LIFE	LIFE/50K
III	9+	X	149-198 MONTHS TO LIFE	NONE	149-198 MONTHS TO LIFE	LIFE/50K
IV	9+	X	149-198 MONTHS TO LIFE	NONE	149-198 MONTHS TO LIFE	LIFE/50K

2.4 **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

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

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by 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 defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

III. JUDGMENT

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

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RIN/RJN	\$ _____	Restitution to: _____
	\$ 484.41	Restitution to: CRIME VICTIM COMPENSATION
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ 2400.00	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 3284.41 TOTAL

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] RESITITUION. Order Attached

[X] Restitution ordered above shall be paid jointly and severally with:

	NAME of other defendant	CAUSE NUMBER	(Victim 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).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

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

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

4.3 NO CONTACT
The defendant shall not have contact with M.D. 6/15/00 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE 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: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

Empty table with 6 rows and 1 column.

4.4a [] All property is hereby forfeited

[] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Court _____ months on Court _____
_____ months on Court _____ months on Court _____
_____ months on Court _____ months on Court _____

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Court I Minimum Term: 198 Months Maximum Term: LIFE
Court II Minimum Term 198 Months Maximum Term: LIFE
Court IV Minimum Term 198 Months Maximum Term: LIFE

* The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: 198 MONTHS MINIMUM, UP TO LIFE PER ISRB
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other

1
2 deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with
3 juvenile present as set forth above at Section 2.3, and except for the following courts which shall be served
4 consecutively: _____

5 The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to
6 the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony
7 sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for
8 the following cause numbers. RCW 9.94A.589: _____

9 Confinement shall commence immediately unless otherwise set forth here: _____

10 (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely
11 under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the
12 credit for time served prior to sentencing is specifically set forth by the court: 65 DAYS

13 4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

14 Count _____ for _____ months,

15 Count _____ for _____ months,

16 Count _____ for _____ months,

17 [] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community
18 custody see RCW 9.94A.701)

19 (A) The defendant shall be on community custody for the longer of:

20 (1) the period of early release. RCW 9.94A.728(1)(2); or

21 (2) the period imposed by the court, as follows:

22 Count(s) _____ 36 months for Serious Violent Offenses

23 Count(s) _____ 18 months for Violent Offenses

24 Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses
25 involving the unlawful possession of a firearm by a
26 street gang member or associate)

27 COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of
28 release from total confinement until the expiration of the maximum sentence:

Count I until _____ years from today's date for the remainder of the Defendant's life.

Count III until _____ years from today's date for the remainder of the Defendant's life.

Count IV until _____ years from today's date for the remainder of the Defendant's life.

(B) 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) not

own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's 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 court orders that during the period of supervision the defendant shall:

consume no alcohol.

have no contact with: M.D (6/15/00) OR ANY MINORS

remain within outside of a specified geographical boundary, to wit: PER DOC

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

participate in the following crime-related treatment or counseling services: _____

undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions: _____

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.

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

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

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 and 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: _____

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 198 Months Maximum Term: LIFE

Count III Minimum Term 198 Months Maximum Term: LIFE

Count IV Minimum Term 198 Months Maximum Term: LIFE

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count I until _____ years from today's date for the remainder of the Defendant's life.

Count III until _____ years from today's date for the remainder of the Defendant's life.

Count IV until _____ years from today's date for the remainder of the Defendant's life.

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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

5.4 RESTITUTION HEARING.
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

1
2 **5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

3
4 **5.6 FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

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7 **5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

8 **1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor 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 at the time of your release and within three (3) business days from the time of release.

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12 **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 (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

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16 **3. Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

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20 **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 three (3) business 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 three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

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23
24 **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 three (3) business days prior to arriving at the institution. 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 three (3) business days prior to beginning to work at the institution. 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 three (3) business 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 three (3) business days prior to arriving at the school to attend classes. 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 three (3) business days 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 three (3) business days after losing your fixed residence, you must provide 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 within three (3) business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You 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. **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 three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [] The court finds that Court _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: APPENDICES: "H", "F"; HIV ORDER; DNA ORDER;
ORDER PROHIBITING CONTACT WITH M.D.

DONE in Open Court and in the presence of the defendant this date: 11/8/11

JUDGE [Signature]
Print name SUSAN SERKO

[Signature]
Deputy Prosecuting Attorney
Print name: MICHAEL SOMMERFELD
WSB # 24009

[Signature]
Attorney for Defendant
Print name: HARRY STEINMETZ
WSB # 24863

[Signature]
Defendant
Print name: KEVAN M. JANSYCKLE

FILED
DEPT. 14
IN OPEN COURT
NOV 08 2011
Pierce County Clerk
By.....
Office of Prosecuting Attorney
900 Pacific Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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: *[Handwritten Signature]*

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 09-1-02885-2

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

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk.

IDENTIFICATION OF COURT REPORTER

LANRE G ADEBAYO
Court Reporter

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 42786-9-1
)	
KEVAN VANSYCKLE,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 24TH DAY OF OCTOBER, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] KEVAN VANSYCKLE,
DOC NO. 352699
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 23RD DAY OF OCTOBER, 2012.

x *Patrick Mayovsky*

NIELSEN, BROMAN & KOCH, PLLC

October 23, 2012 - 4:59 PM

Transmittal Letter

Document Uploaded: 427869-Supplemental Appellant's Brief.pdf

Case Name: Kevan Vansyckle

Court of Appeals Case Number: 42786-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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

Comments:

No Comments were entered.

Sender Name: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

A copy of this document has been emailed to the following addresses:

PCpatcecf@co.pierce.wa.us