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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 30658-5-III

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

STATE OF WASHINGTON,

Respondent,

vs.

Ignacio Cobos,

Appellant.

APPELLANT'S REPLY BRIEF

Ignacio Cobos # 920217
Appellant, In Propria Persona
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA. 99326

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I. Introduction

Ignacio Cobos, the appellant, In Propria Persona, hereby files his reply brief.

II. Assignment of Error

1. The sentencing court erred in sentencing appellant with an offender score of nine (9) without first specifying the convictions it found to exist, and without any preponderance of evidence on appellant's prior convictions.

Issues Pertaining to Assignments of Error

1. Did the sentencing court ERRED in sentencing appellant with an unproven offender score, and without any preponderance of evidence on appellant's prior convictions?

III. Statement of the Case

On December 16, 2011, appellant was found guilty by a jury, and the court set sentencing for January 18, 2012.

On December 19, 2011, respondent filed a motion and affidavit for order to shorten notice of motion for a PSI (Presentence Investigation Report). CP 90¹. And the court signed an order shortening notice of motion for a PSI, directing the clerk of the court to note respondent's motion for a PSI for December

¹ The appellant is using the index of the clerk's papers and going by the number on the bottom right-hand corner on the documents to refer to the CP. And will attach copies of the documents as attachments A, B, . to save the court's time

20, 2011. CP 91, See Attachment "B"

On December 20, 2011, this matter was before the sentencing court. Respondent asked the court to order a PSI, and appellant's counsel did not object. And the court entered an order scheduling sentencing for January 18, 2012. CP 92, 93, See Attachments "C," and "D"

On January 12, 2012, appellant filed a motion for self-representation. CP 114.2, See Attachment "E"

On January 18, 2012, appellant's trial counsel filed a Sentencing Memorandum. CP 131, See Attachment "F" And appellant appeared before the sentencing court for sentencing. CP 132, See Attachment "G" At this hearing the court continued the sentencing to January 31, 2012, to give appellant time to work on a brief in support of his motion to arrest judgment and sentence. CP 132, See Attachment "G"

On January 31, 2012, the court, on its own motion, cancelled the sentencing hearing. CP 141, See Attachment "H"

On February 6, 2012, appellant filed Defendant's Objection to Continuance of Sentencing Hearing. CP 146, See Attachment "I"

On February 7, 2012, appellant appeared before the sentencing court for sentencing. At this hearing, appellant's trial counsel informed the court that appellant wanted to represent himself for sentencing. Arguments took place, and the court

granted appellant's request/motion and signed an Order removing counsel from this matter. CP 150, 151, See Attachments "J," and "K" At this hearing, respondent, appellant's (ex) counsel and the court argued about the appellant's offender score, and parties (respondent and appellant's (ex) counsel) agreed that the offender score was nine. CP 150, See Attachment "J" at 2 At this hearing, respondent agreed that appellant had the right to represent himself, granted the request and continued the sentencing hearing to February 14, 2012. CP 150, See Attachment "J" at 1

On February 10, 2012, appellant filed his Notice of Appeal. CP 165, See Attachment "L"

On February 14, 2012, appellant, representing himself, appeared before the court for sentencing. RP 02/14/12

At this hearing, the respondent called the case: "I'll call State of Washington vs. Ignacio Cobos, 2011-1-00445-0. Your Honor, the defendant is present for purposes of sentencing. He appears pro se. The State is ready to proceed. RP 02/14/12,

at 3 And the Court addressed the appellant: "Well, Mr. Cobos, the first order of business is the -- the sentencing. And the prosecution has indicated to me they're willing -- they're -- they're ready to proceed." And asked the appellant whether or not he was ready to proceed. RP 02/14/12, at 4 And appellant informed the court: "I prepared the defendant's objection to

the calculation of the offender score." RP 02/14/12 at 4-5; CP 168, See Attachement "M" And the court asked the appellant: "I'd like to see it." RP 02/14/12, at 5 And asked the appellant: "could you hand it up to me?" RP 02/14/12, at 5 And the court stated: "The defendant's objection is simply -- he -- he simply objects to the calculation of the offender score." And addressed the appellant: "Mr. Cobos, I think the first order of business on the sentencing is to simply determine what your offender score is. So let me begin by asking you if -- I'd just like to read to you the criminal history which is set forth in the Proposed Judgment and Sentence. I'm just going to ask you if you agree with it. If you do not agree with it, I'm just -- I would just like you to tell me in what respect you disagree. Okay?" RP 02/14/12 at 6-7

The sentencing court read to appellant the criminal history set forth in the Proposed Judgment and Sentence, and appellant did not agreed to any of the criminal history set forth in the Proposed Judgment and Sentence, and objected to each of the prior convictions read by the court. RP 02/14/12 at 7-9 And the Court finally understood appellant's objection: "Okay. And so you -- you simply are not in the position to say 'yea' or 'no' -- or 'nay' to that? Okay." And appellant responded: "Exactly. That's correct, Your Honor." RP 02/14/12 at 9

The sentencing court continued to read the remaining crimi-

nal history, and the appellant continued to make the same objection. RP 02/14/12, at 9-10

And the sentencing court asked the respondent: "Ms. Highland, do you want to be heard as to criminal history? And respondent argued:

MS. HIGHLAND: Well, Your Honor, I am looking at the defendant's Triple I, which does contain all of those charges and convictions as articulated by the Court. It's my understanding that the information from Triple I comes from the booking. They have to include his -- the defendant's fingerprints and the defendant's identification. So I -- I -- I have a good faith belief that the criminal history that we've recited according to that is correct."
RP 02/14/12, at 10-11

And the Court asked the respondent, and respondent answered:

THE COURT: Well, let me ask you: Do you think the record is sufficient to proceed?
MS. HIGHLAND: I do, Your Honor.
RP 02/14/12, at 11

And the Court continued to address the respondent:

THE COURT: Okay. If Mr. -- Mr. Cobos does not agree to this, do we need -- you do not believe we need to produce copies of the J&S's?
MS. HIGHLAND: Well, if the Court wants to continue this over to this fall, I'll get the copies of the J&S's. RP 02/14/12, at 11

And the Court presented its concern with appellant's PSI:

THE COURT: -- the -- everything that -- I -- I believe everything that you've got listed here on the J&S is contained in the -- in the criminal history that's set forth in the PSI.
MS. HIGHLAND: It is, yes.
THE COURT: With the exception -- "with the exception" -- of the -- the last conviction

out of Franklin County, the possession of methamphetamine in January of '09. So if -- if I recall the court rule correctly, the -- upon receiving the PSI -- And understanding that Mr. Cobos is at a little bit of disadvantage because he -- he undertook to represent himself at the last hearing. -- my understanding is that if the -- if the criminal history in the PSI is not objected to -- And let me just take a look at this. -- that that criminal history becomes the record.

MS. HIGHLAND: Right.

THE COURT: I didn't put that very well. Let me get -- let me get the rule out.

MS. HIGHLAND: I'm not sure about the state of (undecipherable) failure to object (undecipherable) kind of acceptance of what's been related, but the entire case clearly Mr. Cobos is objecting to all of his criminal history as it is (undecipherable).

RP 02/14/12, at 12-13

And the Court presented his concern about the wash out rule:

THE COURT: I'm wondering whether that's going to affect potentially if we -- if we -- if we don't consider that last one, would it affect the washout -- the -- the -- the washout provisions.

MS. HIGHLAND: Your Honor, I suggest that we continue this for two weeks. We'll get certified copies of every single Judgment & Sentence of Mr. Cobos's.

THE COURT: I'm willing to -- well --

MS. HIGHLAND: I'm -- I -- I don't believe his offender score gets washed.

RP 02/14/12, at 14-15

And respondent stated: "I understand the Court's concern. But it's clear that Mr. Cobos's criminal history, I believe, is -- is at a 9. But I -- we do want to make sure. We want to do this right, so . . ." RP 02/14/12, at 15

And the Court stated: "I suspect that's true. I would just be a little bit more comfortable if the '09 -- the '09 conviction had -- was appearing in the PSI. And that's the one I'm primarily concerned about." RP 02/14/12, at 15

The Court and respondent initiated talks about continuing the sentencing hearing, and appellant objected to the continuance. RP 02/14/12, at 16-20 And the appellant informed the Court: ". . . I believe that the prosecutor should have done something concerning that (proving criminal history) and not continuing this matter, you know. I -- I do have a right to an -- a speedy sentencing, you know." RP 02/14/12, at 20

And the Court addressed the appellant:

THE COURT: Okay, Mr. Cobos, I need a "yes" or "no" from you. And let me -- let me explain to you where I am at this point. At the point that you were -- that -- that Ms. Rosborough represented to the Court that she -- that she agreed with the standard range in the criminal history, which is set forth in the Judgment & Sentence, she was representing you. She was your attorney. Now, under those circumstances it seems to me that really we're walking the extra mile for you here. The -- that -- that '09 conviction could be -- could have fairly substantial consequences for you. I underst -- I -- I think with the -- with no priors, if your -- if every -- all your priors wash out, I suspect your range with this -- with this -- with these convictions would be somewhere like 12 plus to 24. With these convictions, if they don't wash out, you're looking at 60 plus to 120. I don't think it's fair to have required the prosecutor to have produced, under these circumstances, the -- the certified Judgment & Sentence. So I am prepared to proceed today.

We will certainly proceed today, Mr. Cobos. But if we do, I am going to -- I am going to proceed under the understanding that the criminal history set forth in the Judgment & Sentence IS ACCURATE.

RP 02/14/12, at 22-23

And appellant presented his opinion about what his ex-counsel had agreed to at a prior hearing: "And if -- back then when I was, like the Court said, that I was represented by counsel, that was her opinion, you know. My opinion is that I don't agree to that calculation of the offender score. So whatever she says, I just want to make sure that it's an objection that I put in for the calculation of offender score. And if the Court wants to continue the sentencing, that's up to the Court. But I just want to -- to note an objection." RP 02/14/12, at 23-24 And the Court addressed the appellant: ". . . if you want to continue this for a couple -- or for a week so that counsel can bring you the certified Judgment & Sentence. But if you proc-- if you intend to proceed today -- And I will proceed today if it's your desire, -- I'm going to -- I'm going to rely, as Ms. Highland has, on the representation of your counsel last week. RP 02/14/12, at 25-26 And the appellant informed the court:

THE DEFENDANT: Well, I just -- like I said, you know, if that was her conclusion back then, you know, I mean, she never conferred with me and asked me any questions if it was okay, the calculation of the offender score. So, I mean, did she? I mean, she's present here in the courtroom. The Court can ask questions whether or not if she reviewed those and verified those convictions. RP 02/14/12, at 26

And the Court addressed appellant:

THE COURT: Okay. So I just need to hear from you. I -- I just need you to make a decision. If you want to continue this for a week, we will do so. And the prosecutor has offered to produce the Judgment & Sentence. If you do not, we'll proceed on the record that we've got.
RP 02/14/12 at 27

The appellant informed the court:

"Your Honor, the only thing I can say is that I submitted my objection to the offender score and I am objecting to any continuance."
RP 02/14/12 at 27

Appellant further addressed the court:

". . . I don't have the basis to make an -- a proper argument concerning that (offender score). So I'm just asking that if the Court is telling me and the prosecutor calculated my offender score to be from 60 to 120, then I'm asking the Court to sentence me to the lower range." RP 02/14/12 at 28

Respondent was heard on sentence recommendation. And the Court sentenced the appellant. RP 02/14/12 at 29-41

On or about March 12, 2013, respondent filed a motion to supplement the record, asking the Court of Appeals, to allow the State to introduce certified judgment and sentences of appellant's prior convictions. Arguments took place telephonically on April 24, 2013, and on April 25, 2013, the Honorable Commissioner Monica Wasson issued a ruling denying respondent's motion.

Respondent filed their response, and appellant hereby files his reply brief.

IV. Argument

1. Did the sentencing court ERRED in sentencing appellant WITH AN UNPROVEN offender score and WITHOUT any preponderance of evidence on appellant's prior convictions?

On December 16, 2011, appellant was convicted by a jury, and the Court set the sentencing hearing for January 18, 2012.

On January 12, 2012, appellant filed a motion for self-representation. CP 114.2, See Attachment "E" On February 7, 2012, the sentencing court GRANTED appellant's motion and signed appellant's proposed order removing counsel. CP 150, 151, See Attachments "J," and "K" And the sentencing hearing was continued to February 14, 2012.

On February 7, 2012, after the court allowed appellant to represent himself and removing counsel from case, appellant, knowingly took over the wheel of the vehicle of representation, and relinquished, as purely factual matter, many of the traditional benefits associated with counsel. Johnson v. Zerbst, 304 U.S. 458, 464-65, 58 S.Ct. 1023 (1930) As appellant does not have the right to "hybrid" representation. State v. Romero, 95 Wn.App 323 (1999); State v. Bebb, 108 Wn.2d 515, 524 (1987) And appellant will suffer ALL the consequences for his decisions as acting as his own counsel. Id.; State v. Dewese, 117 Wn.2d 369, 379 (1991) And cannot claim in effective assistance of counsel for the obvious reasons that

he became his own counsel and ASSUMED COMPLETE RESPONSIBILITY for his own representation. State v. McDonald, 143 Wn.2d 506 (2001)

THEREFORE, on February 14, 2012, at the FORMAL sentencing hearing, appellant appeared before the sentencing court for sentencing, acting as his own counsel, with complete responsibility for the representation.

RCW 9.94A.500(1) states in pertinent part:

"If the court is SATISFIED by a preponderance of the evidence that the defendant has a criminal history, the court SHALL specify the convictions it has found to exist. ALL OF THIS INFORMATION SHALL BE PART OF THE RECORD."

The legislature's plain intent under RCW 9.94A.500(1) is to direct the sentencing court to make the final decision on defendant's criminal history by the preponderance of the evidence, and specify, on the record, the convictions it has found to exist. State v. Bright, 129 Wn.2d 257, 265 (1996); State v. Hendrix, 109 Wn.App 508, 512 (2001) (citing State v. Elgin, 118 Wn.2d 551, 555 (1997)); State v. Walls, 106 Wn.App 792, 795 (2001) (Undefined statutory terms their common meaning unless the legislature intended otherwise)

The Sentencing Reform Act gives the defendant the right to know of and object to adverse facts, and does not compel the defendant to provide any information. State v. Franklin, 46 Wn.App 84 (1986); State v. Ammons, 105 Wn.2d 175 (1986)

And provides that if no objection is raised to the information presented or considered during sentencing, THEN that information is considered "acknowledged." State v. Mail, 121 Wn.2d 707 (1993) (citing State v. Hundley, 115 Wn.2d 275, 282 (1990); State v. Mendoza, 165 Wn.2d 913 (2009); State v. Hunley, ___ Wn.2d ___, 253 P.3d 448 (2011))

As the "real facts" doctrine requires the sentencing court to base a defendant's sentence on the defendant's current conviction, his criminal history, and circumstances surrounding the crime for which the defendant is being sentenced. State v. Morreira, 107 Wn.App 450, 458 (2001); State v. Zatkovich, 113 Wn.App 70 (2002); State v. Tait, 93 Wn.App 783, 790 (1990); State v. Coats, 84 Wn.App 623, 626 (1997)

The State, of course, must prove the prior convictions. State v. Bergstrom, 162 Wn.2d 87, 93 (2007) By the preponderance of the evidence. In re Pers. Restraint of Cadwallader, 115 Wn.2d 867, 876 (2005); State v. Priest, 147 Wn.App 662 (2008); State v. Ford, 137 Wn.2d 472 (1999) (other citations omitted)

And it is the obligation of the State, not the defendant, to assure that the record before the sentencing court supports the criminal history determination. In re Pers. Restraint of Adolph, ___ Wn.2d ___ (2010) (citing State v. Mendoza, 165 Wn.2d 913, 920 (2009))

"Because it is inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or choose not to prove." State v. Knippling, 141 Wn.App 50 (2007) (citing State v. Ford, 137 Wn.2d 472, 480 (1999) And constitutional due process requires the State to meet its burden of proof at sentencing. in re Pers. Restraint of Cadwallader, 115 Wn.2d 867 (2005) (other citations omitted)

In the present case, on February 14, 2012, at the "formal" sentencing hearing, the respondent called the case: "I'll call State of Washington vs. Ignacio Cobos, 2011-1-00445-0." And informed the court: "Your Honor, the defendant is present for sentencing. He appear pro se. The State is ready to proceed." RP 02/14/12 at 3

The Court addressed the appellant:

"Well, Mr. Cobos, the first order of business is the -- the sentencing. And the prosecution has indicated to me they're willing -- they're -- they're ready to proceed." RP 02/14/12 at 4

And asked the appellant if he was ready to proceed. Appellant informed the court:

"I prepared the defendant's objection to the calculation of the offender score." RP 02/14/12 at 4-5, See Attachment "M"

The Court asked the appellant: "I'd like to see it, could you hand it up to me?" RP 02/14/12 at 5 Appellant complied

and the Court stated:

"The defendant's objection is simply -- he -- he simply objects to the calculation of the offender score." RP 02/14/12 at 5

And the court addressed the appellant:

"Mr. Cobos, I think the first order of business on the sentencing is to simply determine what your offender score is. So let me begin by asking you if -- I'd just like to read to you the criminal history, which is set forth in the proposed Judgment and Sentence. I'm just going to ask you if you agree with it. If you do not agree with it, I'm just -- I would just like you to tell me in what respect you disagree. Okay?" RP 02/14/12 at 6-7

The sentencing court read to appellant the criminal history set forth in the proposed Judgment and Sentence, and appellant did not agreed to any of the criminal history, and objected to each of the prior convictions read by the court. RP 02/14/12 at 7-9

And the court finally understood appellant's objection and stated: "Okay. And so you -- you simply are not in the position to say 'yea' or 'no' -- or 'nay' to that? Okay." RP 02/14/12 at 9

And appellant responded: "Exactly. That's correct, Your Honor." RP 02/14/12 at 9

The sentencing court continued to read the remaining criminal history and appellant made the same objection. RP 02/14/12 at 9-10

Thereafter, respondent was heard as to appellant's criminal

history:

"Well, Your Honor I am looking at defendant's Triple I, which does contain all of those charges and convictions as articulated by the Court. It's my understanding that the information from Triple I comes from the booking. They have to include his -- the defendant's fingerprints and the defendant's identification. So I -- I -- I have a good faith belief that the criminal history that we've recited according to that is correct." RP 02/14/12 at 10-11

And the Court asked the respondent: "Well, let me ask you: Do you think the record is sufficient to proceed?" And respondent answered: "I do, Your Honor." RP 02/14/12 at 11

And the court expressed its concern on the preponderance of the evidence to respondent:

"Okay. If Mr. Cobos does not agree to this, do we need -- you do not believe we need to produce copies of the J&S's?"

To which respondent responded sarcastically:

"Well, if the Court wants to continue this over to this fall, I will get the copies of the J&S's." RP 02/14/12 at 11

The Court presented its concerns with the PreSentence Investigation (PSI) report stating that if the criminal history on the PSI is not objected to, that criminal history becomes the record. And that since the PSI did not include the last prior conviction on the Judgment and Sentence, the wash out rule would apply. And the respondent suggested a continuance for two (2) weeks. RP 02/14/12 at 12-15

And addressed the court:

"I understand the Court's concern. But its clear that Mr. Cobos's criminal history, I believe is -- is at a 9. But I -- we do want to make sure. We want to do this right, so . . ." RP 02/14/12 at 15

Appellant objected to the continuance, and informed the court:

"I believe that the prosecutor should have done something concerning that (criminal history) and not continuing this matter, you know, . I -- I do have a right to an -- speedy sentencing, you know. RP 02/14/12 at 20

The sentencing court proceeded to sentence appellant with the understanding that the criminal history set forth in the Judgment and Sentence was accurate:

THE COURT: I -- I am going to proceed under the understanding that the criminal history set forth in the Judgment and Sentence is accurate." RP 02/14/12 at 23

And the court addressed the appellant:

". . . if you intent to proceed today -- And I will proceed today if it's your desire. -- I'm going to -- I'm going to rely, as Ms. Highland has on the representation of your counsel last week." RP 02/14/12 at 25-26

And appellant addressed the Court:

"Well, I just -- like I said, you know, if that was her conclusion back then, you know, I mean she **never conferred with me** and asked me any questions if it was okay, the calculation of the offender score. So, I mean, did she? I mean, she's present here in the courtroom. The court can ask questions whether or not if she reviewed

those and verified those convictions." RP
02/14/12 at 26

And the court proceeded to sentencing stating:

". . . If you want to continue this for a week,
we will do so. And the prosecutor has offered
to produce the Judgment & Sentences. If you do
not, we'll proceed on the record that we've got."
RP 02/14/12 at 27

Based on the foregoing crystal clear record, it is clear,
that appellant's due process was violated by the sentencing
court's failure to specify, on the record, the convictions it
found to exist, and by sentencing the appellant WITH AN UNPROVEN
offender score. And therefore, this matter should be remanded
for resentencing, and the State MUST BE HELD to the existing
record.

Our Supreme Court has consistently held that the State
bears the constitutional burden of proving prior convictions
by a preponderance of the evidence. State v. Ford, 137 Wn.2d
472, 479-80 (1999); State v. McCorkle, 137 Wn.2d 490 (1999);
State v. Lopez, 147 Wn.2d 515 (2002) (other citations omitted)

Bare assertions unsupported by evidence are insufficient
to prove defendant's prior convictions. State v. Ford, 137 Wn.2d
at 482 Our Supreme Court in Ford held that: "Under the basic
principles of due process, the facts relied on in sentencing
must have some basis in the record. State v. Ford, 137 Wn.2d
at 482 (quoting State v. Brosolin, 13 Wn.App 386, 396 (1975))

And further held that: "The prosecutor's assertions are neither facts nor evidence, but merely argument. State v. Ford, 137 Wn.2d at 483 n.3

In the present case, the State's constitutional burden of proving appellant's prior convictions by the preponderance of the evidence was exercised by respondent's bare assertions unsupported by any reliable evidence:

"Well, Your Honor I am looking at defendant's Triple I, which does contain all of those charges and convictions as articulated by the Court. It's my understanding that the information from Triple I comes from the booking. They have to include his -- the defendant's fingerprints and the defendant's identification. So I -- I -- I have a good faith belief that the criminal history that we've recited according to that is correct." RP 02/14/12 at 10-11

The respondent's "good faith belief" is insufficient to prove appellant's prior convictions. In re Pers. Restraint of Cadwallader, 115 Wn.2d 867 (2005); State v. Lopez, 147 Wn.2d 515 (2002); State v. Ford, 137 Wn.2d 472 (1999); State v. McCorkle, 137 Wn.2d 490 (1999) (other citations omitted)

Therefore, based on the respondent's good faith belief the sentencing court was not able to use the unproven prior convictions in the calculation of appellant's offender score, and therefore, it is crystal clear that the sentencing court ERRED in sentencing the appellant with an UNPROVEN offender score of nine (9), and therefore, appellant's "unlawful" sentence

shall be vacated, and the matter remanded for resentencing with the existing record, current convictions only, in the interest of justice and fairness.

In State v. Priest, 147 Wn.App 662 (2008), this Honorable Court held that: "In order to establish a defendant's criminal history for sentencing purposes, the State must prove the defendant's prior convictions by a preponderance of the evidence." And that: "The State must provide reliable evidence establishing the accuracy of the offender score calculation."

In State v. Knippling, 141 Wn.App 50 (2007), this Honorable Court held that: "Where the defendant raising a specific objection and the disputed issues have been fully argued to the sentencing court we hold the State to the existing record." (citing State v. Lopez, 147 Wn.2d 515, 520 (2002))

In State v. Lopez, 107 Wn.App 270 (2001) this Honorable Court vacated Lopez's lifelong persistent offender sentence because the State failed to establish the necessary predicate convictions WITH satisfactory evidence, and remanded for sentencing on the existing record. And our Supreme Court affirmed this Honorable Court's decision. State v. Lopez, 147 Wn.2d 515 (2002)

The sole issue before our Supreme Court in Lopez was whether the State would have an opportunity on remand to present new evidence of the defendant's alleged prior convictions. At 519

As the record as it existed provided no evidence of those alleged convictions, and the Supreme Court concluded that the State should be held to the existing record on remand. At 520-21

The respondent, in their response to appellant's opening brief, ask this Court that if this matter is remanded, the State be allowed to present copies of appellant's certified Judgments and Sentences to the sentencing court. And in support of its argument, the respondent argues that: (1) the timing of appellant's argument did not sufficiently notify the State of the need to present evidence regarding his prior convictions, and (2) that defense counsel had already affirmatively acknowledged the prior convictions and appellant's offender score at the previous February 7, 2012 sentencing hearing. Response at 6-7

The respondent further argued that: "the State would argue that it was reasonable to rely on counsel's affirmative acquiescence, and that once Appellant had untimely challenged his history and score, Mr. Cobos had to choose between his former counsel's ratification and representation, or alternatively agree to a brief continuance to allow the State to present evidence. That he would refuse to choose and would then be allowed to request a remand without the State being allowed to prove his prior convictions would be both unconscionable and inequitable, relying on State v. Bergstrom, on respondent's belief that Bergstrom is very similar to the instant case.

Bergstrom does not have any similarities to the present case, because Mr. Bergstrom, at his sentencing, was represented by counsel, and in the present case, appellant, represented himself, at the FORMAL sentencing hearing that took place on February 14, 2012.

Bergstrom, during sentencing, argued pro se that his offender score was 7, not 11, because some of his prior crimes encompassed the same course of criminal conduct. Bergstrom's attorney did not join her client's argument, instead she stated, "I believe he believes that his -- some of his priors count as same criminal conduct. I've actually looked at this issue, and I 'm not going to take a position contrary to my client's. I'll let him make his argument." State v. Bergstrom, 162 Wn.2d at 91-92 In response to Bergstrom's pro se argument, the State made three arguments, one of them being that "Bergstrom had no right to hybrid representation, and that if he wanted to proceed pro se he would be required to dismiss his attorney."

In the present case, on February 7, 2012, the sentencing court allowed appellant to present himself and signed an order removing counsel from the case. CP 150, 151, See Attachments "J," and "K" THEREFORE, on February 14, 2012, at the FORMAL sentencing hearing, appellant appeared before the court for sentencing acting as his own counsel, WITH complete responsibility for the representation, and as soon as he had the oppor-

tunity to address the sentencing court, appellant timely and specifically objected to the calculation of his offender score:

"I prepared the defendant's objection to the calculation of the offender score," RP 02/14/12 at 4-5, See Attachment "M"

And the sentencing court acknowledged appellant's objection:

"The defendant's objection is simply -- he -- he simply objects to the calculation of the offender score." RP 02/14/12 at 5

The sentencing court read to appellant the criminal history set forth in the proposed judgment and sentence, and appellant did not agreed to any of the criminal history, and objected to each of the prior convictions read by the court. RP 02/14/12 at 7-9

And the sentencing court proceeded to sentence appellant with an offender score of nine (9):

THE COURT: I am going to proceed under the understanding that the criminal history set forth in the Judgment and Sentence is accurate." RP 02/14/12 at 23

"I'm going to rely, as Ms. Highland has on the representation of your counsel last week." RP 02/14/12 at 25-26

Pursuant to RCW 9.94A.500(1), on February 14, 2012, the sentencing court conducted the FORMAL sentencing hearing. At this hearing, appellant appeared before the court acting as his own counsel, and timely and specific objected to the calculation of his offender score, and the respondent FAILED

to prove appellant's prior convictions by a preponderance of the evidence, and was sentenced with an UNPROVEN offender score, therefore, appellant must be resentenced WITHOUT the unproven prior convictions. State v. Lopez, supra.

Where the sentencing court's offender score determination is challenged on appeal for insufficient evidence of prior convictions, the case law provides three approaches to analyze the issue, assuming the defendant has not pleaded guilty:

First, if the State alleges the existence of prior convictions at sentencing and the defendant fails to specifically object, before the imposition of the sentence, then the case is remanded for resentencing and the State is permitted to introduce new evidence.

Second, if the defense does specifically object during the sentencing hearing but the State fails to produce any evidence of the defendant's prior convictions, then the State may not present new evidence at resentencing. After the defense specifically objects, putting the sentencing court on notice that the State must present evidence, the State is held to the initial record on remand.

third, if the State alleges the existence of prior convictions and the defense not only fails to specifically object but agrees with the State's depiction of the defendant's criminal history, then the defendant waives the right to challenge the criminal history after sentence is imposed. State v. Bergstrom, 162 Wn.2d 87, 169 P.3d 816 (2007) Response at 5

The respondent DOES NOT have any objection to these three approaches described in Bergstrom, as the respondent relies on these three approaches to analyze the issue in the present case.
Response at 4-5

Therefore, appellant would like to point out to this Honorable Court that according to the three approaches described in Bergstrom, appellant's sentence must be vacated, and the matter remanded for resentencing, and the State must be held to the existing record.

The first approach requires an specific objection from the appellant before the imposition of the sentence. In the present case, appellant did objected before the imposition of the sentence:

THE COURT: Well, Mr. Cobos, the first order of business is the -- the sentencing. And the prosecution has indicated to me . . . they're ready to proceed.

THE DEFENDANT: I prepared the defendant's objection to the calculation of the offender score. RP 02/14/12 at 4-5

The second approach crystal clear describes the State's burden of proof: "but the State fails to produce any evidence of the defendant's prior convictions:

MS. HIGHLAND: Well, Your Honor, I am looking at the defendant's Triple I, which does contain all of those charges and convictions as articulated by the Court. . . . I have a good faith belief that the criminal history that we've recited according to that is correct. RP 02/14/12 at 10-11

THE COURT: Well, let me ask you: Do you think the record is sufficient to proceed?

MS. HIGHLAND: I do, Your Honor. RP 02/14/12 at 11

THE COURT: Okay. If Mr. -- Mr. Cobos does not agree to this, do we need -- you do not believe we need to produce copies of the J&S's?

MS. HIGHLAND: Well, if the court wants to continue this over to this fall, I'll get the copies of the J&S's. RP 02/14/12 at 11

And the second approach make crystal clear that if the State fails to produce any evidence of defendant's prior convictions: "then the State may not present new evidence at resentencing."

In the present case, the record crystal clear demonstrates that the appellant objected, and the State failed to produce any evidence, and therefore, the State must be held to the existing record. State v. Lopez, 147 Wn.2d 515 (2002)

The respondent appear to argue that appellant fails to show that he received ineffective assistance of counsel, in her attempt to distract this Court's attention from the issue at hand, as appellant did not raised an issue about ineffective assistance of counsel, because appellant appeared at sentencing, acting as his own counsel. See pages 10-11 of this reply brief

RCW 9.94A.530(2) states in pertinent part:

"In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, . . . Where the defendant disputes material facts, the court MUST either NOT consider the fact or grant an evidentiary hearing on the point. . ."
State v. Williams, 159 Wn.App 298 (2011)

In Williams, the court held that: "Where a defendant does dispute a fact, the trial court must either hold an evidentiary hearing or disregard that fact."

In the present case, the appellant disputed all of his criminal history and the court did not hold an evidentiary hearing:

THE COURT: Okay. And so you -- you simply are not in the position to say 'yea' or 'no' -- or 'nay' to that? Okay. RP 02/14/12 at 9

Therefore, the sentencing court shall have disregarded all UNPROVEN prior convictions.

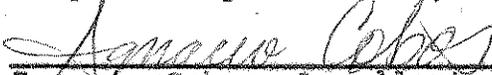
At last, respondent's motion to supplement the record asking this Honorable Court to allow the State to submit certified judgment and sentences to prove appellant's prior convictions, crystal clear demonstrates that respondent acknowledges the fact that the State FAILED to prove appellant's prior convictions by a preponderance of the evidence, after appellant's timely and specific objection.

V. Conclusion

Based on the foregoing crystal clear verifiable facts and arguments, appellant would respectfully ask the this matter be remanded for resentencing, and the State be held to the existing record, in the interest of justice and fairness, to glorify this Court's decision in State v. Lopez.

DATED THIS 26th day of June, 2013.

Respectfully submitted,



Ignacio Cobos, Appellant
In Propria Persona

FILED

DEC 19 2011

KIMBERLY A. ALLEN
Grant County Clerk



07-495710

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 11-1-00445-0

vs.

MOTION AND AFFIDAVIT FOR ORDER
TO SHORTEN NOTICE OF Motion for a
PSI

IGNACIO * COBOS,

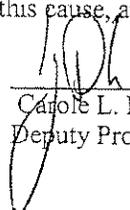
Defendant.

I. MOTION

COMES NOW plaintiff above by D. ANGUS LEE, Prosecuting Attorney and moves the above court for an order shortening notice of plaintiff's Motion for a PSI.

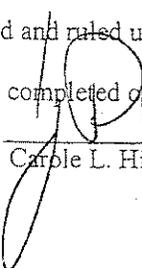
THIS MOTION is based upon the record and the file in this cause, and upon the affidavit below.

DATED: Dec 20, 2011


Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney

II. AFFIDAVIT

Under penalty of perjury under the laws of the State of Washington the undersigned certifies:
That he is (a deputy) prosecuting attorney for Grant County, and that he is familiar with the files herein;
That it is necessary to have the motion set, argued and ruled upon as soon as possible based upon RCW 9.94A.500(1), the Court should order a PSI to be completed on the Defendant.


Carole L. Highland

990

FILED

DEC 19 2011

KIMBERLY A. ALLEN
Grant County Clerk



07-495711

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 11-1-00445-0

vs.

ORDER SHORTENING NOTICE OF
Motion for a PSI

IGNACIO * COBOS,

Defendant.

THIS MATTER having come on before the above entitled court upon the motion of plaintiff for an order shortening time to bring a Motion for a PSI, and the court having reviewed the files and records herein, and being fully advised, NOW, THEREFORE,

IT IS HEREBY ORDERED that time for service of notice of this Motion for a PSI provided by CrR8.1 and CR 6(d) is shortened to one day(s).

IT IS FURTHER ORDERED that the Clerk of this court shall note Plaintiff's Motion for a PSI for the court's docket on Tuesday, December 20, 2011.

DATED: 12/19/11

Judge John Knodell

Presented by:

Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney

91
a

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY
CRIMINAL MINUTE SHEET

DATE FILED: DECEMBER 20, 2011
JUDGE: JOHN D. KNODELL

CAUSE NO: 11-1-00445-0
REPORTER:
PLTF ATTY: R. VALAAS

CLERK: M. WEBB
DEF ATTY:

STATE OF WASHINGTON

VS

- K. MCCRAE
- E. OWENS
- C. HIGHLAND
- D. MITCHELL
- T. HILL

- B. BILLINGSLEY
- S. KOZER
- J. TREJO
- Q. ROSBOROUGH
- J. PERRY
- R. KENTNER
- S. OGLEBAY
- FINANCIAL COLLECTOR, SANDRA JONES

DEF PRESENT: YES NO

INTERPRETER: _____ RECORDED IN DEPT #2 START: 2:08 END: 2:10

PRELIMINARY HEARING/ARRAIGNMENT

- INFORMATION PROVIDED TO DEFENDANT
- READING WAIVED
- ADVISED OF RIGHTS
- READ IN OPEN COURT
- ADVISED OF CHARGES
- ADVISED OF VIOLATIONS



COUNSEL:

- APPOINTED COUNSEL
- ORDER APPOINTING ATTORNEY SIGNED
- WAIVED COUNSEL
- RETAINED COUNSEL
- ADVICE OF RIGHTS FILED/SIGNED
- INDIGENCE REPORT FILED/SIGNED
- NOTICE OF APPEARANCE FILED

PROBABLE CAUSE:

- PREVIOUSLY ESTABLISHED
- PROBABLE CAUSE STATEMENT MADE BY _____ S&T
- ORDER FINDING PROBABLE CAUSE SIGNED
- BAIL SET \$ _____
- ORDER SETTING CONDITIONS OF RELEASE SIGNED
- RELEASED ON PERSONAL RECOGNIZANCE
- PR BOND \$ _____
- SIGNATURES REQUIRED OF _____
- BENCH WARRANT ORDERED
- ORDER FORFEITING BOND/BAIL ENTERED

PLEA ENTRY

- NOT GUILTY PLEA ENTERED
- PLEA ACCEPTED OF NOT GUILTY
- INITIAL ORDER SETTING SCHEDULE ENTERED
- AMENDED ORDER SETTING SCHEDULE ENTERED
- ORDER ON OMNIBUS HEARING
- DEFENDANT SIGNS STMT OF DEF ON PLEA OF GUILTY
- DEFENDANT ADVISED OF GUILTY PLEA RIGHTS
- GUILTY PLEA ENTERED
- GUILTY PLEA ACCEPTED
- COURT SIGNS STMT OF DEF ON PLEA OF GUILTY
- PLEA AGREEMENT APPROVED
- PROBABLE CAUSE STATEMENT ADOPTED BY PLTF/DEF
- ORDER AMENDING INFORMATION SIGNED
- AMENDED INFORMATION FILED
- PSI ORDER SIGNED
- SENTENCING DATE ORDER SIGNED
- DEFENDANT ADMITS/DENIES VIOLATION
- ORDER ON REVIEW OF COMPLIANCE
- ORDER ON COMMUNITY SUPERVISION VIOLATIONS SIGNED

SENTENCING

- JUDGMENT AND SENTENCE SIGNED
- ORDER EXONERATING BOND/BAIL ENTERED
- ORDER OF RESTITUTION ENTERED

SPECIAL MINUTES:

Mr. Mitchell requests PSI. Ms Rosborough does not obj.

CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____

PLMHRG ARRAIGN **MTHRG** GPOH GPSH SNTHRG SCVHRG RWVHRG DSMHRG HSTKIC HSTKPA HSTKSTP NCHRG
ARGPSH ARGPOH OMNHRG PTMHRG FNRHRG NGPH OTHER: _____

PROCESSED BY:

92 G.



07-471322

FILED

DEC 20 2011

KIMBERLY A. ALLEN
Grant County Clerk

Superior Court of Washington
County of Grant

STATE OF WASHINGTON,

Plaintiff,

vs.

Ignacio Cabal

Defendant.

No. 11-1-00445-0

ORDER SCHEDULING
SENTENCING
(ORST/PRSIO)

Defendant was convicted of the following crimes herein:

Delin. & Misdemeanors
Washington
Res. & Prob.

The court orders as follows:

1. A sentencing hearing is set for the criminal docket on Jan 18, 2012
 is specially set for (date): _____ time: _____
 shall be specially set by the Court Administrator
2. A Presentence Report is waived
 shall be prepared by the Department of Corrections, as follows:
 full report
 criminal history only
 shall include a SASSI screening (to consider DOSA sentence)
 shall include a mental health evaluation

Unless the Presentence Report is waived, the defendant shall report to the office of DOC within 3 days (if released on conditions), and shall cooperate fully with DOC in the preparation of any report or screening ordered.

3. Defendant shall be held in jail custody pending sentencing.
 Defendant does not present a danger of flight or of committing new offenses, and therefore may remain out of custody pursuant to the conditions for release previously set herein.

12/20/11
Date

[Signature]
Superior Court Judge

Jail

93
9

SONIA DAVIS
FILED

JAN 12 2012

KIMBELY A. ALLEN
Grant County Clerk



07-463175

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

STATE OF WASHINGTON,	}	NO. 11-1-00445-0
Plaintiff,		
vs.	}	DEFENDANT'S MOTION
<u>IGNACIO COBOS,</u>		FOR SELF-REPRESENTATION
Defendant.		

COMES NOW Ignacio Cobos, the defendant, In Propria Persona, and hereby moves this Honorable Court for an Order allowing him to represent himself as "In Propria Persona," not "pro-se," with an stand-by counsel out-of-the Grant County Public Defense Office.

In the present case the attorney-client relationship has completely collapsed and therefore, a REFUSAL to substitute new counsel will VIOLATE the defendant's 6th Amendment right to effective assistance of counsel. In PRP of Stenson (Stenson 2), 142 Wn.2d ⁷¹⁰ ~~710~~ 722 (2001) (citing U.S. v. Moore 159 F.2d 1154, 1158 (9th Cir. 1998))

Further, from the beginning of the case, the defendant filed "SEVERAL" pre-trial motions and

114.2
114

asked counsel to assist him to be noted and counsel ONLY brought the motion about the plea in the arguments and DID NOT mention anything about the Hybrid Representation, although, counsel crystal clear noted both motions. See Exhibit "A"

In State v. Varga, 151 Wn2d 179, 200 (2004), the court held that: "To justify appointment of new counsel, a defendant must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or complete breakdown in communication."

The defendant has filed a Motion To Arrest Judgment and Sentence, for which attorney has asked the defendant to produce a case law for her to do so, and defendant has asked for her assistance to have the motion heard on the 10th of this month and was ignored, after counsel itself made a midtrial motion to dismiss for lack of evidence.

Therefore, this court SHALL allow the defendant to represent himself In Propria Persona and appoint a stand-by counsel.

DATED THIS 10th day of January, 2012

Respectfully submitted

Juanito Cobos
Juanito Cobos

FILED LP

2012 JAN 18 A 10:33

KIMBERLY A. ALLEN
GRANT COUNTY CLERK



07-484530

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 11-1-00445-0

vs.

DEFENDANT'S SENTENCING
MEMORANDUM

IGNACIO COBOS,

Defendant.

COMES NOW the Defendant, by and through his attorney, Quinn R. Rosborough, and hereby requests the court to impose a sentence below the standard range. This motion is based upon the following legal authority and testimony at trial.

I. FACTS

Ignacio Cobos met Jennifer Gruver around February 2010, and the two hung out numerous times. She would request rides from him, call him, text him, and go over to his house – both on her own and with his assistance. Based upon her testimony she received methamphetamine from him, but she denied that the methamphetamine was the reason she engaged in sexual intercourse with Mr. Cobos. In fact, Mr. Cobos and Ms. Gruver were involved in an ongoing sexual relationship.

On August 19, 2010, Mr. Cobos was contacted by law enforcement for driving his vehicle at night without the headlights on. After he was contacted, law enforcement recognized and contacted Ms. Gruver. Ms. Gruver had previous interactions with Detective Francis where he specifically

131
131

discussed methamphetamine use with her. Ms. Gruver testified that she knew that Detective Francis didn't want her to be using methamphetamine and she was scared she was going to get in trouble.

Ms. Gruver alleged that Mr. Cobos had forcibly raped her. And, as a result, law enforcement obtained videos of sexual acts and drug usage, a small amount of drugs and two pips (one of which wasn't tested). The testing of one pipe and the narcotics found in the living room came back testing positive for methamphetamine.

A jury found Mr. Cobos guilty of Possession of Methamphetamine, Delivery of Methamphetamine and Voyeurism. The jury returned a verdict of not guilty of Rape in the Third Degree and said the Defendant did not commit Delivery of Methamphetamine with a sexual motivation. The jury had two questions while the deliberated – both of which dealt with the complicity of Ms. Gruver in the methamphetamine charges.

II. LEGAL AUTHORITY

A. The Possession of Methamphetamine Conviction Merges with the Delivery of Methamphetamine Charge

“We [The Supreme Court of Washington] presume that the legislature did not intend to punish criminal conduct twice when *the evidence required* to support a conviction upon one of [the charged crimes] would have been sufficient to warrant a conviction on the other Accordingly, if the crimes, as charged and proved, are the same law and in fact, they may not be punished separately absent clear legislative intent to the contrary.” *State v. Freeman*, 153 Wn.2d 765, 776-77, 108 P.3d 753, 759 (2005).

In order for a person to deliver methamphetamine, that person must also have possessed the methamphetamine to be delivered. Therefore, the elements of possession are necessary for the

elements of delivery. Accordingly, the possession conviction would merge into the delivery conviction.

B. To a Significant Degree, Ms. Gruver was a willing Participant in the Crime

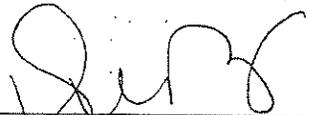
Under RCW 9.94A.535(1)(a), the legislature allows the court to impose a sentence below the standard sentence range based upon the fact that “[t]o a significant degree, the victim was a . . . willing participant . . . of the incident.” In the instant case, Ms. Gruver testified that she obtained methamphetamine from sources other than Mr. Cobos, that she smoked methamphetamine without the Defendant. In the video shown at trial, Ms. Gruver is seen passing the pipe back and forth with Mr. Cobos and often seen lighting her pipe by herself. By all accounts Ms. Gruver was a willing participant in the delivery of methamphetamine.

In fact, even the jury’s question “if they are both passing the pipe back and forth is it delivery?” indicates that the jury also believed Ms. Gruver was an willing participant in the delivery of methamphetamine.

III. CONCLUSION

For the foregoing reasons, the Defense respectfully requests the Court to impose a sentence below the standard sentence range for Mr. Cobos.

RESPECTFULLY SUBMITTED: January 18, 2012



QUINN R. ROSBOROUGH
Attorney for Defendant
Washington State Bar Number 40056

**SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY
CRIMINAL MINUTE SHEET**

ATTACHMENT "G"

DATE FILED: JANUARY 18, 2012
JUDGE: JOHN D. KNODELL

CAUSE NO: 11-1-00445-0

REPORTER:

CLERK: M. WEBB

DEF ATTY:

STATE OF WASHINGTON

VS

IGNACIO COBOS

DEF PRESENT: YES NO

PLTF ATTY: R. VALAAS
 K. MCCRAE
 E. OWENS
 C. HIGHLAND
 D. MITCHELL
 T. HILL

R. GONZALES
 S. KOZER
 J. PERRY
 R. KENTNER
 A. CABRERA
 Q. ROSBOROUGH
 S. OGLEBAY
 FINANCIAL COLLECTOR, SANDRA JONES

INTERPRETER: _____

RECORDED IN DEPT #2

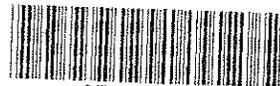
START: 11:32

END: 11:40

=====PRELIMINARY HEARING/ARRAIGNMENT=====

INFORMATION PROVIDED TO DEFENDANT
 READING WAIVED
 ADVISED OF RIGHTS

READ IN OPEN COURT
 ADVISED OF CHARGES
 ADVISED OF VIOLATIONS



COUNSEL:

APPOINTED COUNSEL
 ORDER APPOINTING ATTORNEY SIGNED
 WAIVED COUNSEL
 RETAINED COUNSEL

ADVICE OF RIGHTS FILED/SIGNED
 INDIGENCE REPORT FILED/SIGNED
 NOTICE OF APPEARANCE FILED

PROBABLE CAUSE:

PREVIOUSLY ESTABLISHED
 PROBABLE CAUSE STATEMENT MADE BY _____ S&T
 ORDER FINDING PROBABLE CAUSE SIGNED
 BAIL SET \$ _____

ORDER SETTING CONDITIONS OF RELEASE SIGNED
 RELEASED ON PERSONAL RECOGNIZANCE
 PR BOND \$ _____
 SIGNATURES REQUIRED OF _____
 BENCH WARRANT ORDERED
 ORDER FORFEITING BOND/BAIL ENTERED

=====PLEA ENTRY=====

NOT GUILTY PLEA ENTERED
 PLEA ACCEPTED OF NOT GUILTY
 INITIAL ORDER SETTING SCHEDULE ENTERED
 AMENDED ORDER SETTING SCHEDULE ENTERED
 ORDER ON OMNIBUS HEARING
 DEFENDANT SIGNS STMT OF DEF ON PLEA OF GUILTY
 DEFENDANT ADVISED OF GUILTY PLEA RIGHTS
 GUILTY PLEA ENTERED
 GUILTY PLEA ACCEPTED
 COURT SIGNS STMT OF DEF ON PLEA OF GUILTY

PLEA AGREEMENT APPROVED
 PROBABLE CAUSE STATEMENT ADOPTED BY PLTF/DEF
 ORDER AMENDING INFORMATION SIGNED
 AMENDED INFORMATION FILED
 PSI ORDER SIGNED
 SENTENCING DATE ORDER SIGNED

DEFENDANT ADMITS/DENIES VIOLATION
 ORDER ON REVIEW OF COMPLIANCE
 ORDER ON COMMUNITY SUPERVISION VIOLATIONS SIGNED

=====SENTENCING=====

JUDGMENT AND SENTENCE SIGNED
 ORDER EXONERATING BOND/BAIL ENTERED

ORDER OF RESTITUTION ENTERED

SPECIAL MINUTES:

Ms. Rosborough reports Cont. as Def. was working on a Brief re: this motion to arrest judgment. Ms. Highland obj & states he has case law. Ms. Rosborough states she felt there was no basis to file the motion therefore she did not. states she feels issues are best taken care of on Appeal. Court

CONTINUED TO: _____

FOR: _____

CONTINUED TO: 1-31-12

FOR: Sentencing

PLMHRG ARRAIGN MTHRG GPOH GPSH SNTHRG SCVHRG RVWHRG DSMHRG HSTKIC HSTKPA HSTKSTP
NCHRG ARGPSH ARGPOH OMNHRG PTMHRG FNRHRG NGPH OTHER: _____

PROCESSED BY: DAHLIA DE LA ROSA

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131*

States he intends to Cont. as he
has not reviewed the sent. memo.
Ms. Highland requests matter have a set
time as there are people who wish to
be heard at sentencing.
Court states Parties should think about
whether matter should be special.
Set.

11-1-00445-0

State

VS

Corpus

1-18-12

Pg 2

ATTACHMENT "H"

**SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY
CRIMINAL MINUTE SHEET**

DATE FILED: JANUARY 31, 2012
JUDGE: JOHN D. ANTOSZ

CAUSE NO: 11-1-00445-0
REPORTER: RECORDED
PLTF ATTY: R. VALAAS

CLERK: M. WEBB
DEF ATTY:

STATE OF WASHINGTON

VS

IGNACIO COBOS

DEF PRESENT: YES NO

K. MCCRAE
 E. OWENS
 C. HIGHLAND
 D. MITCHELL
 T. HILL

R. GONZALES
 S. KOZER
 A. CABRERA
 Q. ROSBOROUGH
 J. PERRY
 R. KENTNER
 S. OGLEBAY
 FINANCIAL COLLECTOR, SANDRA JONES

INTERPRETER: _____ RECORDED IN DEPT #2 START: _____ END: _____

=====PRELIMINARY HEARING/ARRAIGNMENT=====

INFORMATION PROVIDED TO DEFENDANT
 READING WAIVED
 ADVISED OF RIGHTS
 READ IN OPEN COURT
 ADVISED OF CHARGES
 ADVISED OF VIOLATIONS



COUNSEL:

APPOINTED COUNSEL
 ORDER APPOINTING ATTORNEY SIGNED
 WAIVED COUNSEL
 RETAINED COUNSEL
 ADVICE OF RIGHTS FILED/SIGNED
 INDIGENCE REPORT FILED/SIGNED
 NOTICE OF APPEARANCE FILED

PROBABLE CAUSE:

PREVIOUSLY ESTABLISHED
 PROBABLE CAUSE STATEMENT MADE BY _____ S&T
 ORDER FINDING PROBABLE CAUSE SIGNED
 BAIL SET \$ _____
 ORDER SETTING CONDITIONS OF RELEASE SIGNED
 RELEASED ON PERSONAL RECOGNIZANCE
 PR BOND \$ _____
 SIGNATURES REQUIRED OF _____
 BENCH WARRANT ORDERED
 ORDER FORFEITING BOND/BAIL ENTERED

=====PLEA ENTRY=====

NOT GUILTY PLEA ENTERED
 PLEA ACCEPTED OF NOT GUILTY
 INITIAL ORDER SETTING SCHEDULE ENTERED
 AMENDED ORDER SETTING SCHEDULE ENTERED
 ORDER ON OMNIBUS HEARING
 DEFENDANT SIGNS STMT OF DEF ON PLEA OF GUILTY
 DEFENDANT ADVISED OF GUILTY PLEA RIGHTS
 GUILTY PLEA ENTERED
 GUILTY PLEA ACCEPTED
 COURT SIGNS STMT OF DEF ON PLEA OF GUILTY
 PLEA AGREEMENT APPROVED
 PROBABLE CAUSE STATEMENT ADOPTED BY PLTF/DEF
 ORDER AMENDING INFORMATION SIGNED
 AMENDED INFORMATION FILED
 PSI ORDER SIGNED
 SENTENCING DATE ORDER SIGNED
 DEFENDANT ADMITS/DENIES VIOLATION
 ORDER ON REVIEW OF COMPLIANCE
 ORDER ON COMMUNITY SUPERVISION VIOLATIONS SIGNED

=====SENTENCING=====

JUDGMENT AND SENTENCE SIGNED
 ORDER EXONERATING BOND/BAIL ENTERED
 ORDER OF RESTITUTION ENTERED

SPECIAL MINUTES: _____

CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____

PLMHRG ARRAIGN MTHRG GPOH GPSH SNTHRG SCVHRG RVWHRG DSMHRG HSTKIC HSTKPA HSTKSTP
NCHRG ARGPSH ARGPOH OMNHRG PTMHRG FNRHRG NGPH OTHER: HSTKCC

PROCESSED BY: _____

141
14'

FILED

EXHIBIT "A"

FEB 06 2012

KIMBERLY A. ALLEN
GRANT COUNTY CLERK



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

STATE OF WASHINGTON,	)	NO. 11-1-00445-0
Plaintiff,)	
VS.	)	DEFENDANT'S OBJECTION TO
IGNACIO COBOS,	)	CONTINUANCE OF SENTENCING
Defendant.	)	HEARING

COMES NOW Ignacio Cobos, the defendant, In Propria Persona, and hereby OBJECTS to the continuance of the sentencing hearing properly noted (continued to) January 31, 2012, WITHOUT the defendant's "WAIWER" to speedy sentencing.

This objection is made pursuant to RCW 9A.94A, and Superior Court Criminal Rules and supported by the 1st and 14th Amendments of the United States Constitution and records herein.

DATED THIS 2nd day of February, 2012.

Respectfully submitted,

Ignacio Cobos
Ignacio Cobos, Defendant
In Propria Persona

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY
CRIMINAL MINUTE SHEET



07-462856

DATE FILED: FEBRUARY 7, 2012
JUDGE: JOHN D. KNODELL

CAUSE NO: 11-1-00445-0
REPORTER: RECORDED
PLTF ATTY: R. VALAAS
 K. MCCRAE
 E. OWENS
 C. HIGHLAND
 D. MITCHELL
 T. HILL

CLERK: M. WEBB
DEF ATTY:

R. GONZALES
 S. KOZER
 A. CABRERA
 Q. ROSBOROUGH
 J. PERRY
 R. KENTNER
 S. OGLEBAY
 FINANCIAL COLLECTOR, SANDRA JONES

STATE OF WASHINGTON

VS

IGNACIO COBOS
DEF PRESENT: YES NO

INTERPRETER: _____ RECORDED IN DEPT #2 START: 1:01 END: 1:29

PRELIMINARY HEARING/ARRAIGNMENT

____ INFORMATION PROVIDED TO DEFENDANT
____ READING WAIVED
____ ADVISED OF RIGHTS
____ READ IN OPEN COURT
____ ADVISED OF CHARGES
____ ADVISED OF VIOLATIONS

3:10-3:37

COUNSEL:

____ APPOINTED COUNSEL
____ ORDER APPOINTING ATTORNEY SIGNED
____ WAIVED COUNSEL
____ RETAINED COUNSEL
____ ADVICE OF RIGHTS FILED/SIGNED
____ INDIGENCE REPORT FILED/SIGNED
____ NOTICE OF APPEARANCE FILED

PROBABLE CAUSE:

____ PREVIOUSLY ESTABLISHED
____ PROBABLE CAUSE STATEMENT MADE BY _____ S&T
____ ORDER FINDING PROBABLE CAUSE SIGNED
____ BAIL SET \$ _____
____ ORDER SETTING CONDITIONS OF RELEASE SIGNED
____ RELEASED ON PERSONAL RECOGNIZANCE
____ PR BOND \$ _____
____ SIGNATURES REQUIRED OF _____
____ BENCH WARRANT ORDERED
____ ORDER FORFEITING BOND/BAIL ENTERED

PLEA ENTRY

____ NOT GUILTY PLEA ENTERED
____ PLEA ACCEPTED OF NOT GUILTY
____ INITIAL ORDER SETTING SCHEDULE ENTERED
____ AMENDED ORDER SETTING SCHEDULE ENTERED
____ ORDER ON OMNIBUS HEARING
____ DEFENDANT SIGNS STMT OF DEF ON PLEA OF GUILTY
____ DEFENDANT ADVISED OF GUILTY PLEA RIGHTS
____ GUILTY PLEA ENTERED
____ GUILTY PLEA ACCEPTED
____ COURT SIGNS STMT OF DEF ON PLEA OF GUILTY
____ PLEA AGREEMENT APPROVED ENTERED
____ PROBABLE CAUSE STATEMENT ADOPTED BY PLTF/DEF
____ ORDER AMENDING INFORMATION SIGNED
____ AMENDED INFORMATION FILED
____ PSI ORDER SIGNED
____ SENTENCING DATE ORDER SIGNED
____ DEFENDANT ADMITS/DENIES VIOLATION
____ ORDER ON REVIEW OF COMPLIANCE
____ ORDER ON COMMUNITY SUPERVISION VIOLATIONS SIGNED

SENTENCING

____ JUDGMENT AND SENTENCE SIGNED
____ ORDER EXONERATING BOND/BAIL ENTERED
____ ORDER OF RESTITUTION ENTERED

SPECIAL MINUTES: *Mr. Rosborough states Def. is requesting to represent his self for sentencing. Def. states there was no evidence on the record that he is in need of a Public Defender. States he asked his atty to file a motion to arrest the judgment but his atty would not; court states the motions filed are not*

CONTINUED TO: _____ FOR: _____
CONTINUED TO: 2-14-12 FOR: Sentencing

PLMHRG ARRAIGN **MTHRG** GPOH GPSH SNTHRG SCVHRG RVWHRG DSMHRG HSTKIC HSTKPA HSTKSTP
NCHRG ARGPSH ARGPOH OMNHRG PTMHRG FNRHRG NGPH OTHER: _____

RENEE CAMPBELL

PROCESSED BY: _____

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Before the Court today.

Def. states that is the problem; he files motions & they are returned as he is appointed Counsel; requests to represent his self.

Court asks Ms Raskborough if Def. has a right to represent himself.

Ms. Raskborough states she is not an expert; cites case law re: Def. right to represent himself.

Ms. Highland states Def. may be right that he does have the right to represent himself at any point; requests to proceed to sentencing as Def request to represent himself is not a basis for Court.

Court & Counsel hold discussion re: def. offender score.

Court asks if parties are in agreement that the offender score is 9

Ms. Raskborough concurs

Ms. Highland concurs.

Court states if parties agree that the Def. can represent himself should he be read his rights.

Ms Highland states yes.

11-1-00445-0

State

VS

Cobas

2-7-12

Pg 2

Court asks if Def. is prepared to proceed to Sent.

Def. responds no & states he is still working on a memo.

Ms. Highland states As the trial Judge this Court can orally rule on a motion to arrest Judgment, but would like to proceed to Sentencing today.

Court cites case law; states after a certain point the def. does not have the right to represent himself; states he has to be at Juvenile & will be back.

Court recalls & asks if Def. is still requesting to represent himself.

Ms. Rookerough cites case law re: Defs. right to represent himself; states she & the Def. disagree as to what motions have a legal basis to be argued & what do not; states because of that the Def. requests to represent himself; requests the court consider the Def. motion to represent himself.

Ms. Highland states if the court is going to allow Def. to represent himself

11-1-00445-0

State

vs

Cobos

2-7-12

Pg 3

The Court should hear the motion to arrest judgment first.

Court states it does not matter if the motion is heard before or after sentencing; advises Def. of the hazards of representing himself. finds Def. has waived his right to counsel & finds Def. can represent himself; asks if Def. would like the court to appoint stand by counsel.

Def. states he is not sure.

Court states if stand by counsel is appointed to answer legal ques.

Def. states he does not want stand by counsel; requests Court to allow him to complete memo for motion to arrest judgment.

Ms. Highland states Def. is talking about the appeal process & not to arrest the judgment, requests the argument be brief.

11-1-00445-1 Court states he intends to Cont. & look into a special setting; enters order

State
vs

Cobas

2-7-12

Pg 4



07-462857

RENEE CAMPBELL
FILED

FEB 07 2012
KIMBERLY A. ALLEN
Grant County Clerk

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

STATE OF WASHINGTON,	)	NO. 11-1-00445-0
Plaintiff,)	
vs.	)	ORDER
IGNACIO COBOS,)	
Defendant.)	

THIS MATTER HAVING COME before the Court on Defendant's Motion To Remove Appointed Counsel and Motion For Self Representation, and the court having reviewed the Motions and Memorandums in support, and being advised on the premises, now, therefore:

IT IS HEREBY ORDERED that court appointed counsel Ms. Quinn R. Rosborough is removed from this matter.

IT IS HEREBY FURTHER ORDERED that the Defendant is allowed to represent himself.

IT IS HEREBY FURTHERMORE ORDERED that the defendant shall receive writing and copying materials to prepare pleadings

~~[] To obtain the final transcripts to argue motion to correct judgment~~

DONE IN OPEN COURT this 7 day of February, 2012

Presented by

Ignacio Cobos

Superior Court Judge

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07-496793

KARA KNUTSON
FILED

FEB 10 2012

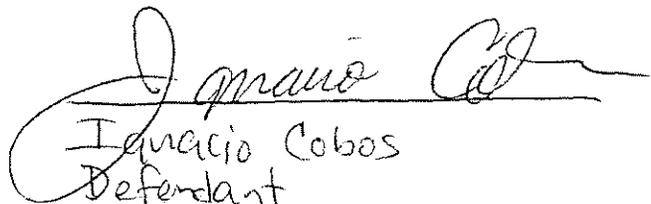
KIMBERLY A. ALLEN
Grant County Clerk

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

STATE OF WASHINGTON, Plaintiff,	}	NO. 11-1-00445-0
VS.		}
IGNACIO COBOS, Defendant.	NOTICE OF APPEAL TO COURT OF APPEALS DIVISION III	

Ignacio Cobos, the defendant, In Propria Persona, seeks review by the designated appellate court of the pre-trial rulings, jury verdict on December 16, 2011, and any and all post-trial rulings on motions by the defendant, and sentence

DATED THIS 7th day of February, 2012


 Ignacio Cobos
 Defendant
 In Propria Persona

KK

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07-463922

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF GRANT

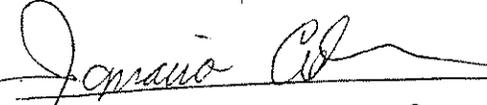
STATE OF WASHINGTON,	)	NO. 11-1-00445-0
Plaintiff,)	
vs.	)	DEFENDANT'S OBJECTION TO
IGNACIO COBOS,	)	CALCULATION OF HIS OFFENDER
Defendant.	)	SCORE

COMES NOW Ignacio Cobos, the defendant, In Propria Persona, and hereby OBJECTS to the calculation of his offender score.

This OBJECTION is made pursuant to RCW 9A.94A.525, and supported by the 1st and 14th Amendments and record herein.

DATED THIS 14th day of February, 2012

Respectfully submitted


 Ignacio Cobos, Defendant
 In Propria Persona

FILED

JUL 01 2013

Case No. 30658-5-III

Declaration of Service

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN ACCORDANCE WITH 28 USC § 1746, I declare that on this date, I mailed the following documents:

- A. Appellant's Reply Brief;
- B. Declaration of Service; and
- C. Cover Letter

directed to:

Renee S. Townsley
Clerk/Court Administrator
Court of Appeals, Division III
500 N. Cedar Street
Spokane, WA. 99201

and served a copy to:

D. Angus Lee
Carole L. Highland
P.O. Box 37
Ephrata, WA. 98823

Feat Eriksen
9532 SW"O"RD
Royal City, WA. 99357

DATED THIS 26th day of June, 2013.



Ignacio Cobos