

NO. 91368-4

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Received  
Washington State Supreme Court

JUL 31 2015  
E  
Ronald R. Carpenter  
Clerk

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STATE OF WASHINGTON,

Respondent,

v.

JOHN E. BETTYS,

Appellant,

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

Honorable David R. Needy, Judge

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REPLY TO STATE'S ANSWER TO MOTION TO STAY REVIEW

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By: John E. Bettys, pro se  
Special Commitment Center  
P.O. Box 88600  
Steilacoom, WA 98388

**A. REPLY TO STATE'S ANSWER TO MOTION TO STAY**

Mr. Bettys is seeking the permission of this Court to stay the proceedings to file a CrR 8.3 motion before the trial court for dismissal based on the evidence discovered April 8, 2015 in the trial court.

The new evidence involves an admission of Hon. Dave R. Needy, Judge of Skagit County Superior Court, that the court acted without being actually motioned to modify the sentence. APPENDIX-A.

The trial court has admitted a violation of "due process" and "double jeopardy" clauses of the United States and Washington State constitutions, not to mention establish court's rules. APPENDIX-B.

The new evidence establishes the State's attorney understood a CrR 7.8 motion was required to be filed before the hearings under this action on December 17, 2013, yet the record is devoid of the required motion by the State's attorney, showing sufficiently the required "governmental mismanagement" to warrant dismissal of the matter with prejudice to the State under CrR 8.3 rule. APPENDIX-C.

This reviewing court should keep in mind that the government mismanagement "need not be of an evil or dishonest nature, simple mismanagement is enough!" State V. Blackwell, 120 Wn.2d 822, 845 P.2d 1017 (1993). The facts show that Mr. Bettys was prejudiced in this action by the mismanagement, whereby had a proper motion been filed the trial court would have seen that the require "legal error" did not exist to require modification, and Mr. Bettys would never have been detained past January 1, 2014. APPENDIX-D.

This Court should take notice that the State's attorney does not actually claim a modification December 17, 2013 did not take

place in this action, nor could the State prevail on such claim based on the records before this Court today. APPENDIX-D.

The State's actual argument is to the effect that Court of Appeals opinion found the modification proper, which lacks merit as the Court of Appeals opinion relied heavily upon trial court's action being under a proper CrR 7.8 motion based on findings of a "legal error" requiring the modification, which never occurred in this action. Therefore, State's reliance is misplaced, as Court of Appeals opinion must be reversed on this ground. APPENDIX-E & F.

The records before this Court for review require this Court find the November 26, 2013 judgment and sentence had "legal error" requiring modification to uphold the trial court's conduct, or it must provide relief under State V. Hardesty, 129 Wn.2d 315, 915 P.2d 1080 (1996), prohibition against modifications to correct judgment and sentences increasing confinement. APPENDIX-G.

"A correct judgment and sentence entered in a criminal cause is final, and may not be reviewed or revised" State V. Mempa, 78 Wn.2d 530, 477 P.2d 178 (1970); State V. Loux, 69 Wn.2d 855, 420 P.2d 693 (1966)(cert. denied 389 U.S. 997, 87 S.Ct. 1319 (1967)).

Therefore, Mr. Bettys has established that the trial court's December 17, 2013 review hearing under this judgment and sentence is a violation of standing procedural law established by reviewing court's holdings, as no actual legal errors were established under the December 17, 2013 hearing to allow modification. APPENDIX-H.

The criminal judgment and sentence was correct, as the orders could be completed as written in the sentence, and did not violate any statute or law as entered November 26, 2013. APPENDIX-G.

The reviewing court should consider that the records herein establish that on February 5, 2014 the State's attorney appeared before the trial court to claim Bettys was in treatment, and the treatment record establishes Bettys began treatment February 14, 2014, nine days after the lie on the record. APPENDIX-I.

The act of perjury was done to hold Bettys in custody past the established February 1, 2014 release date in the modified sentence, which is vindictive mismanagement deliberately done to detain Mr. Bettys illegally in the criminal action. APPENDIX-J; APPENDIX-A; APPENDIX-D; APPENDIX-H; APPENDIX-I.

This act alone is sufficient for the trial court to dismiss with prejudice under CrR 8.3 motion standards, foregoing all the other matters proven in the evidence before this reviewing court in the records under direct appeal.

The State's citation to RAP 7.2 is misplaced, as State does appear to understand that permission must be sought for motions that would effect matters currently being reviewed, however goes on to suggest that Bettys could file a CrR 8.3 motion without a grant of permission. Clearly, if the trial court were to dismiss the matter based on mismanagement related to an issue already in the briefing before this reviewing court, it would effect current review of the merits by this court, thereby Bettys must seek the permission before filing in the trial court. See RAP 7.2 rule.

Additionally, it should be noted that Hon. David R. Needy, Judge has placed a stay on proceedings in the trial court until the current pending civil petition trial under RCW 71.09 becomes final in December of 2015. Therefore, without specific granted

permission of this reviewing court to allow the CrR 8.3 motion filed in the trial court, Mr. Bettys is without access before the trial court to address the issue until after December of 2015.

Hon. David R. Needy's directive prohibiting pleadings filed in the trial court until after December of 2015 violates Bettys' constitutional right to access the trial court, however Bettys is currently complying with the directive to date.

The reviewing court has authority to merely mandate parties file supplemental pleadings addressing the "government misconduct" issues, where all evidence is in the record before this court for review of the merits of this issue currently.

However, the reviewing court should mandate remand of this action to the trial court for an evidentry hearing to provide an opportunity for the State's attorney to prove "legal error" from the original judgment and sentence of November 26, 2013, under a "double jeopardy" clause claim in the petition for review. This would best serve the ends of justice in this matter, as then the state would be required to carry the burden of proof it failed to carry during the December 17, 2013 modification hearing, which is the basis for the prejudice faced by Mr. Bettys, in State's very failure to file the required CrR 7.8 motion seeking modification of the original sentence.

It is Mr. Bettys contention that the State's attorney cannot prove such a "legal error" actual existed in the original sentence, and therefore the trial court would never have modified sentence had the motion under CrR 7.8 been properly filed, which would now allow the trial court to dismiss under CrR 8.3 with prejudice for

the criminal action, serving the interest of judicial economy in the action in the best possible fashion, as it would avoid appeal to the Federal Courts of these proven constitutional violations in this set of records for the action.

On April 8, 2015, Hon. David R. Needy, Judge does admit that he acted to modify the criminal sentence without a motion by the parties being filed under CrR 7.8 rule on December 17, 2013, and therefore the State's suggestion that Bettys has failed to show a CrR 8.3 rule motion would likely be granted by the trial court if filed is without merits. APPENDIX-A; APPENDIX-J.

The judge admitted that he violated the established "due process of the law" protections, increasing Bettys confinement by 30 days in a criminal sentence, without being motioned by the parties, and that an increase to a criminal sentence of even a single day without the proof of an actual "legal error" requiring modification does violate the "double jeopardy" protections, would warrant trial court herein dismissing under CrR 8.3 rule standards.

The new evidence of April 8, 2015 established the the State's Prosecuting Attorneys "Ms. Kaholahula," "Ms. Larson," and "Mr. Pedersen" were all aware in advance that the matter required filing of motions under CrR 7.8 rule proving legal error to modify sentence, and that these attorneys advised Hon. David R. Needy, Judge of the fact this issue required a CrR 7.8 rule motion before the December 17, 2013 hearing was conducted. APPENDIX-C.

This evidence is sufficient for a CrR 8.3 rule motion dismissal, whereby it clearly establishes knowing acts of governmental misconduct by the involved attorneys, prejudicing Bettys by confinement beyond a

November 26, 2013 established date of release of January 1, 2014, without the State's attorney carrying the State's burden of proof to the required "legal error" to modify sentence.

The CrR 7.8 rule motion was never filed by the State, because the State's attorney knew the State could not prove the requirement of a "legal error" mandating modification of the sentence to extend the release past January 1, 2014, and State's solution is simply to violate trial court rules and procedural due process of the law, in this instance to avoid the State's burden of proof, with the court's assistance per the evidence, hoping that Bettys would not discover their illegal conduct that violated his constitutional rights.

The involved attorneys should all face disciplinary actions in this matter, where evidence shows the conduct is deliberate, willful, and fraudulent practice of law by the attorneys. See Rule of Professional Conduct(RPC).

**B. CONCLUSIONS**

For the reasons herein stated, this court should either GRANT the motion to stay pending review to allow CrR 8.3 rule motion, or remand for evidentiary hearing to allow State's attorney to prove an actual "legal error" required modification of the sentence extending confinement past January 1, 2014 date of release.

In the alternate, with the evidence in the record before this court current, the matter could be dismissed with prejudice directly by this reviewing court for conduct proven in violation of rights.

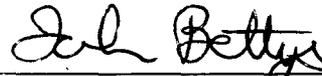
Mr. Bettys has been illegally held in State's custody since the established January 1, 2014 release date on the November 26, 2013's sentence, and should be released at this time.

The Washington State Bar Association and Judicial Conduct Board should be notified by this court of the conduct discovered in the evidence of this action, with suggestion that disciplinary proceeding be instituted on the attorneys and judge involved.

This conduct offends the very Jurish Prudence our greatest legal system is based upon, and should not be condone by courts on review.

DATED This 25<sup>th</sup> day of July, 2015.

Respectfully Submitted,



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John E. Bettys, Appellant pro se  
Special Commitment Center  
P.o. Box 88600  
Steilacoom, WA 98388

# APPENDIX A

1 MOUNT VERNON, WASHINGTON

2 APRIL 8, 2015

3 11:00 a.m.

4 \* \* \*

5  
6 THE COURT: Alright. We'll begin with the Bettys'  
7 matters. Mr. Pederson is here. Mr. Bettys, other than the  
8 court staff and one attorney observing there is no one else  
9 in the courtroom.

10 MS. LARSEN: I'm present, Your Honor. I'm sorry. Rhonda  
11 Larsen with the Attorney General's Office on behalf of the  
12 Department of Corrections. And my understanding is Mr.  
13 Bettys may have two things going on in this hearing. But my  
14 involvement is in respect to his motion for a written  
15 finding and the order denying motion for reconsideration, or  
16 the order denying a motion for a writ of mandamus.

17 THE COURT: Thank you, Ms. Larsen. I apologize. I  
18 wasn't aware you were joining us.

19 MR. PEDERSEN: Your Honor, it looks like Mr. Bettys does  
20 have the one, as far as I can tell, in the case number 10-1-159-9  
21 cause number the motion to type briefing. I'm not sure whether  
22 Mr. Bettys believes there are any other matters noted for today's  
23 date.

24 MR. BETTYS: I wasn't aware of any for today's date  
25 (indistinguishable).

1 MR. PEDERSEN: So it's Mr. Bettys's motion.

2 THE COURT: Alright. Mr. Bettys?

3 MR. BETTYS: Yes, Your Honor. I'm housed at the Special  
4 Commitment Center at this time. And the Special Commitment  
5 Center has a computer lab here. And they have a standard  
6 practice of not allowing legal pleadings and such typed in the  
7 computer lab. But I've spoken with Mr. Scott in the computer  
8 lab. He says with a Court's order he would have no problem  
9 having legal matters typed and printed in his computer lab. So  
10 I'm motioning the Court for such an order that is generally  
11 providing access to the computer lab to print legal pro se  
12 pleadings and my pending Supreme Court appeal for this matter.

13 MR. PEDERSEN: The concern that the State has with  
14 respect to basically ordering an individual or group, in this  
15 case the Special Commitment Center, to provide him access without  
16 making them a party to this particular action is not appropriate.  
17 It's not within this Court's jurisdiction. I, frankly, don't have  
18 a problem with having him type materials. I know Mr. Bettys has  
19 actually, according to his document filed by counsel, Mr.  
20 Thompson, associated with the counsel who has typed some matters;  
21 actually it's one motion and affidavit. I don't have a problem  
22 with him typing briefing. But I don't think this Court can order  
23 the Special Commitment Center to provide that type of material  
24 when they are not a party to this particular proceedings.

25 THE COURT: Ms. Larsen, you are not here on this issue or

1 are you?

2 MS. LARSEN: I am not on this issue, Your Honor.

3 THE COURT: Without any background or knowledge of  
4 knowing whether other inmates are getting the same privilege  
5 ordered by other courts and what the convenience or inconvenience  
6 is and what the potential security risks it does or doesn't  
7 create, Mr. Bettys, I'm not in a position to order the Department  
8 to do anything. And I do believe they are a necessary party to  
9 this request. So at this point your motion will be denied. But I  
10 would not prevent you from re-noting it at some point if, in  
11 fact, you can get a representation from DOC to participate in the  
12 process.

13 MR. BETTYS: Just to make the Court aware the Special  
14 Commitment Center is not a part of DOC. It's actually part of  
15 DSHS.

16 THE COURT: Alright. Then a representative from DSHS  
17 will be at least informed and let us know that they didn't care  
18 or are not participating or wish to be heard on the issue.

19 MR. BETTYS: Not a problem Your Honor. Thank you.

20 THE COURT: Did Mr. Young just come on the phone? Did  
21 someone just get added to the court call?

22 MS. LARSEN: I heard that as well. I'm not sure.

23 MR. PEDERSEN: Your Honor, I have an order in the Bettys'  
24 case that indicates the defense motion to provide access to typed  
25 briefing is denied.

1 THE COURT: And may be re-filed, just so that is  
2 preserved.

3 MR. PEDERSEN: And if he provides indication to DSHS of  
4 what his intent is they may provide him some access.

5 THE COURT: Do you know, Mr. Bettys, if other inmates  
6 have already been granted that access?

7 MR. BETTYS: Yes, Your Honor, inmate Scott here has been  
8 granted that access through the courts. That's why the computer  
9 lab recommend I come to the court to get a statement order.

10 THE COURT: Well, if they are happy to comply and simply  
11 need a court order perhaps they can send something to Mr.  
12 Pedersen, and I would be happy to sign an order. Because I don't  
13 have any personal stake one way or the other it doesn't offend me  
14 that you have the opportunity to type the documents. I just  
15 don't want to be stepping on DSHS's toes with knowing their  
16 position. So we can perhaps even bypass the need for a formal  
17 motion in a court hearing, if they'll put in a letter that they  
18 are willing to allow the Court to approve it.

19 MR. PEDERSEN: I would be glad to present an order if Mr.  
20 Bettys can, you know, put me in contact with someone at DSHS who  
21 would give that kind of authorization. Because it would be to my  
22 benefit because I can read things; although Mr. Bettys'  
23 handwriting is really pretty good, it's easier to read something  
24 that's typed.

25 THE COURT: So if you can put someone in touch with Mr.

1 Pedersen, Mr. Bettys, you might be able to short circuit that  
2 process.

3 MR. BETTYS: No problem.

4 THE COURT: I've signed the order denying the motion, but  
5 allowing it to be refiled if necessary.

6 MR. BETTYS: Thank you, Your Honor.

7 THE COURT: Next matter?

8 MS. LARSEN: And, Your Honor, I may be mistaken as to  
9 what the reason is for my having received a court call service  
10 offer, and that is why I believed I was involved in this hearing.

11 So, Mr. Bettys, did you have something that you were asking  
12 for in another matter regarding the Department of Corrections?

13 MR. BETTYS: Yes, it was the matter on the writ of  
14 mandamus that was denied and the reconsideration that was denied.  
15 I was asking to receive written finding of fact and conclusion as  
16 to why the Court denied that and decided not to uphold the United  
17 States Constitution.

18 MS. LARSEN: And for clarification that is Cause Number  
19 14-2-01883-8.

20 MR. PEDERSEN: That's correct. I have actually the  
21 Court's letter decision of March 19th, 2005 that denies the  
22 reconsideration. That's already, I believe, part of that cause  
23 number.

24 THE COURT: Mr. Bettys, we never issue full findings on a  
25 reconsideration. Or is your question why there weren't findings

1 in the first place upon the original ruling?

2 MR. BETTYS: Okay. I wasn't aware of this, Your Honor.

3 THE COURT: Well, a reconsideration motion is normally  
4 handled in Chambers, and it can be as brief as this letter, or it  
5 can give perhaps an explanation. But there's certainly no legal  
6 requirements of the court rules for findings of fact, conclusions  
7 of law on reconsideration. And this is probably, at least half  
8 of the time, done with a single sentence just denying the motion.  
9 And other times there are perhaps issues that need further  
10 explanation. But my hope would be that the initial ruling  
11 contained the necessary explanation and the necessary record for  
12 you to take any further action regarding appeal.

13 MR. BETTYS: Okay. I appreciate your time, Your Honor.  
14 We do have one outstanding motion in the (indistinguishable)  
15 cause number, which has not been docketed at this time. I've  
16 tried to docket it twice, and so far I haven't been heard. And  
17 it was simply a motion for a copy of the 78 motion filed that was  
18 heard on December 17, 2013.

19 THE COURT: A copy of the motion itself?

20 MR. BETTYS: Yeah, I was never served any documentation  
21 before the hearing. And I have been unable to locate any  
22 documentation in the court file showing that there's been action  
23 filed before the Court. The ruling is based upon that the Court  
24 of Appeals is relying on the 78 motion being filed, and I can't  
25 come up with the 78 motion.

1 THE COURT: Filed by whom?

2 MR. BETTYS: I'm assuming Rhonda Larsen would have filed  
3 it since she modified the judgment, and the Court went forward  
4 modifying the judgment. And the only possible ability to do so  
5 would be under a 78 motion.

6 MS. LARSEN: Your Honor, the Department of Corrections is  
7 not a party to the criminal cause State v. Bettys and did not,  
8 in fact, file any documents in that case.

9 THE COURT: I think I'm remembering. This is the process  
10 of trying to extend some dates to allow Mr. Bettys to get into  
11 treatment when we were working on a very short timeframe. There  
12 was some hearings regarding that. I don't remember how that  
13 initially came to the Court's attention, whether that was just  
14 Mr. Bettys' original counsel from the trial or whether -- I don't  
15 think the State initiated that on its own.

16 MR. PEDERSEN: I don't have a recollection. Ms.  
17 Kaholokula and I were both doing things on the case at that time.  
18 And, frankly, I was not aware we were going to be addressing this  
19 particular issue today.

20 THE COURT: I think Mr. Bettys has made it clear he  
21 didn't expect it to be on today. But he's bringing it up just to  
22 let us know since we are all on the same phone call.

23 Perhaps Mr. Bettys we can go back to the file and try to  
24 see if there's any documentation as to how that came before the  
25 Court as it did. But I do know my recollection was we were

1 dealing with issues of deadlines from DOC and timeframes and  
2 working very diligently to try to get you an opportunity and  
3 treatment at DOC. And clearly the records reflect the fact that  
4 your Judgment and Sentence was altered, and I don't think it's  
5 denying that. But you should be entitled to have any motion, if  
6 one was filed, or whether it was simply brought to the Court's  
7 attention or we arranged a conference call and everyone started  
8 talking about how to best solve the problem. So I honestly don't  
9 remember if a specific motion was filed. Have you already asked  
10 for access to the court file and copies of the court file, Mr.  
11 Bettys?

12 MR. BETTYS: I did and we can't locate it anywhere in the  
13 docket sheet.

14 THE COURT: Well, I don't know if we have to go back to  
15 the trial counsel to see if they have any recollection about that  
16 or not. But, again, it's been pointed out --

17 MS. LARSEN: I --

18 THE COURT: Go ahead, Ms. Larsen.

19 MS. LARSEN: I was just looking at my computer file here,  
20 and this was a case that arose -- or the hearing that the Court  
21 is referring to arose in December of 2014 -- excuse me --  
22 December of 2013. And there is a letter here from the Court that  
23 was received December 24th that no action will be taken -- let's  
24 see here. It was a special set hearing and order for transport.  
25 So I'm receiving things from superior court that was asking, it

1 looks like, for the DOC to be involved. So that may be how it  
2 arose.

3 THE COURT: Right. And that would have come at a request  
4 from counsel, I believe. I certainly wouldn't have initiated  
5 that.

6 MS. LARSEN: Yes, I believe you are right. I believe you  
7 are right.

8 THE COURT: I don't know if it came in the form of a  
9 motion, Mr. Bettys. But you are certainly entitled to have that  
10 record procedurally and otherwise in case that needs to be  
11 reviewed.

12 MR. PEDERSEN: The order modifying was entered  
13 December 17th, 2013, it looks like. And I think my recollection  
14 is the Judgment and Sentence was actually entered November 26th,  
15 2013. And that Judgment and Sentence itself had a kind of review  
16 set in it, and that was part of the review process I think.

17 THE COURT: Is Mr. Bettys' question what got us to court  
18 on December 13th or?

19 MR. PEDERSEN: I don't see any document filed prior to  
20 that being a motion to modify under the statute.

21 THE COURT: Is that your question, Mr. Bettys, what does  
22 the Court originally do to start doing the process of amending  
23 the Judgment and Sentence?

24 MR. BETTYS: What I'm looking for is under what  
25 jurisdiction the Court took to modify the Judgment and Sentence

1 (indistinguishable) violates double jeopardy claims, and that's  
2 what I brought the appeal under. And the Court of Appeals'  
3 ruling just kind of laid out to me that there's some type of 78  
4 motion that had to have been filed for the Court to even have  
5 jurisdiction to have entered the modified order. And without  
6 accepting any motions this double jeopardy has been violated.

7 MR. PEDERSEN: I'm going to quibble with Mr. Bettys' use  
8 of the term jurisdiction. I think the Court had authority on its  
9 own to modify the Judgment and Sentences after they have been  
10 entered. And this was a function of the fact that there was a  
11 review process that was set up to have Mr. Bettys qualify for the  
12 treatment through the Department of Corrections. And so I think  
13 it was a part of that process that this was occurring. And that  
14 was noted as a result of the fact that we were trying to get him  
15 qualified.

16 THE COURT: I would be comfortable in representing, Mr.  
17 Bettys, in any pleadings that you represent that there was no  
18 such motion brought before the Court. No one can prove that there  
19 was apparently. There's no record of it. So I think that would  
20 be an accurate representation by you if they are putting the  
21 burden on you to prove how it got to the Court. I don't think  
22 that's fair. But you are welcome to represent that no such  
23 motion was filed, but that the parties, because of the  
24 circumstances, gathered and agreed to discuss the possible  
25 amendments that would still give you the opportunity for

1 treatment despite DOC's deadline.

2 MR. BETTYS: I appreciate that, Your Honor.

3 THE COURT: And I don't mean to justify that you were  
4 necessarily in agreement with it, but certainly your trial  
5 counsel was. The prosecutor and I were in agreement with me to  
6 discuss it. I'm not even finding you saying that you were a party  
7 to that. But you were certainly included in the discussions as  
8 was DOC at that point in time. I think it's fair to represent  
9 that there was no formal motion filed.

10 MR. PEDERSEN: Written motion filed. There may have been  
11 something orally addressed on the December 17th date.

12 THE COURT: There certainly could have been.

13 MR. BETTYS: Thank you, Your Honor. Is it possible to get  
14 a copy of the transcript of today's hearing?

15 THE COURT: Yes, you may. The court reporter is here.  
16 We'll enter an order allowing you the transcript at public  
17 expense for today's hearing.

18 MR. BETTYS: Thank you, Your Honor.

19 THE COURT: Anything else on the Bettys' matter?

20 MR. BETTYS: No, Your Honor.

21 MR. PEDERSEN: Not from the State.

22 THE COURT: Is anyone else on the phone call at this  
23 point?

24 MS. LARSEN: I am, Your Honor. I will hang up now.

25 THE COURT: Okay. Thank you, Ms. Larsen.

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MR. PEDERSEN: Thank you.

(PROCEEDINGS ENDING IN THIS MATTER FOR THE DAY)

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STATE OF WASHINGTON )

) ss: C E R T I F I C A T E

COUNTY OF SKAGIT )

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

That the foregoing is a true and correct transcript of  
the proceedings held on April 8, 2015.

Witness my hand on this 23rd day of April, 2015.



JENNIFER CHRISTINE POLLINO,  
WA CCR #2221, CA CCR #10176, RPR,  
Official Court Reporter

## **APPENDIX B**



10. That during the April 8, 2015 hearing the Honorable David R. Needy, Judge established the court acted without CrR 7.8 or any other form of motion filed.
11. That the court lacked authority to act on its own, without a motion presenting a legal error presented by the parties.
12. That the law allows dismissal of criminal prosecutions with prejudice for governmental mismanagement, whereby such need not be of an evil or dishonest nature, simple mismanagement is enough to warrant extraordinary remedy of dismissal.
13. That the Department of Corrections is not a party to criminal prosecution #10-1-00159-9, as admitted by "Ronda Larson".
14. That "Ronda Larson", Attorney General is not a party to this criminal prosecution #10-1-00159-9, as Washington State was represented by and through Skagit Prosecutor "Erik Pedersen" at all times relevant to this action. December 17, 2013.
15. That the modification increased the confinement term of the original correct judgment & sentence by more than one day.
16. That nothing in the original judgment and sentence allowed the court to re-sentence the defendant at a later date, and the judgment & sentence was valid when modified.

DATED This <sup>16<sup>th</sup></sup> day of April, 2015.

Respectfully Submitted,

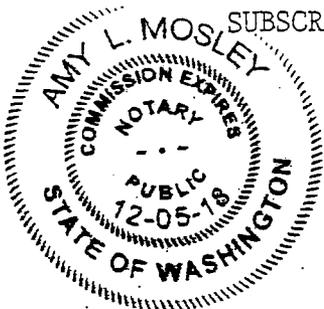
John E. Bettys  
 John E. Bettys, pro se  
 P.O. Box 88600  
 Steilacoom, WA 98388

SUBSCRIBED AND SWORN to before me this <sup>16<sup>th</sup></sup> day of April, 2015.

Amy L. Mosley  
 NOTARY PUBLIC in and for Washington State

Residing at: Pierce County Washington

My Commission Expires: 12/05/18



# **APPENDIX C**

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Sent from my iPhone

On Dec 11, 2013, at 1:02 PM, "Larson, Ronda (ATG)" <[REDACTED]> wrote:

I understand your perspective. The difficulty that the DOC faces is that the Court's release date is January 1<sup>st</sup>. That is a very short time away. Between the conference call or hearing date, I need to file a post-sentence petition in the Court of Appeals and an emergency motion to stay the release condition in the judgment and sentence. And this is all during the holidays.

As a result, I am reluctant to agree to a hearing when the Court has offered a conference call, because of the delay that a hearing would bring. Furthermore, I am not optimistic that my efforts will have any effect. However, I felt it was the most reasonable step to take to accept the Court's offer of a conference call before I file my post-sentence petition, even though the Court has already made it clear that it is not going to amend the judgment and sentence.

Does that make sense? I wish the timeline were not so rushed, but that is the judgment and sentence we are working under.

---

**From:** Rosemary Kaholokula [mailto:[REDACTED]@co.skagit.wa.us]  
**Sent:** Wednesday, December 11, 2013 12:55 PM  
**To:** Larson, Ronda (ATG); DaveNeedy; ErikPedersen; 'cswift@prolegaldefense.com'; 'cmcdonald@prolegaldefense.com'  
**Cc:** Landon, Jeffrey M. (DOC); Bailey, Karen (ATG); Delilah M. George; MelissaBeaton  
**Subject:** RE: 711306 BETTYS, John Edward; Skagit County Cause #10-1-00159-9

Actually, on second thought, Erik and I believe that this cannot be resolved by a conference call. We believe an open court hearing would be required, with a motion by the State (AG) and that the presence of Mr. Bettys would be required.

---

**From:** Rosemary Kaholokula  
**Sent:** Wednesday, December 11, 2013 12:49 PM  
**To:** 'Larson, Ronda (ATG)'; DaveNeedy; ErikPedersen; cswift@prolegaldefense.com; cmcdonald@prolegaldefense.com  
**Cc:** Landon, Jeffrey M. (DOC); Bailey, Karen (ATG); Delilah M. George; MelissaBeaton  
**Subject:** RE: 711306 BETTYS, John Edward; Skagit County Cause #10-1-00159-9

I am available any time.

---

**From:** Larson, Ronda (ATG) [mailto:[REDACTED]]  
**Sent:** Wednesday, December 11, 2013 12:47 PM  
**To:** DaveNeedy; ErikPedersen; cswift@prolegaldefense.com; cmcdonald@prolegaldefense.com; Rosemary Kaholokula  
**Cc:** Landon, Jeffrey M. (DOC); Bailey, Karen (ATG)  
**Subject:** 711306 BETTYS, John Edward; Skagit County Cause #10-1-00159-9  
**Importance:** High

SKAGIT COUNTY SUPERIOR COURT  
STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner,  
vs.

JOHN EDWARD BETTYS, Defendant.

NO: 10-1-00159-9

NOTE FOR SPECIAL SET HEARING

Before: Dave R. Needy, Judge

PREVIOUSLY APPROVED  
BY COURT ADMINISTRATION  
 CLERK'S ACTION REQUIRED

NOTE FOR SPECIAL SET HEARING

Please take note that the issue in this case  
will be heard on the date and time indicated,  
and that the Clerk is requested to note the  
same on the case docket for that day.

Date of Hearing: 12/17/2013  
Time of Hearing: 9:00 AM  
Nature of Hearing: Status

TO: THE CLERK OF COURT

AND TO: CATHERINE M. MCDONALD,  
ATTORNEY FOR DEFENDANT

DATED: December 12, 2013

Names/Addresses of Other Attorneys or Parties Pro Se

Catherine M. McDonald  
1809 SEVENTH AVENUE, STE. 1108  
SEATTLE, WA 98101-1313

SKAGIT COUNTY PROSECUTING ATTORNEY

By: Rosemary H. Kaholokula  
ROSEMARY H. KAHOLOKULA, WSBA#25026  
CHIEF CRIMINAL DEPUTY PROSECUTOR  
605 S. Third Street  
Mount Vernon, WA 98273 360-336-9460

If Attorney, Party Represented

CERTIFICATE OF MAILING: I certify that I mailed a copy of this document to the attorney/parties listed hereon,  
postage prepaid on 12/12/13.

Signed Kris Desmarais

# **APPENDIX D**



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

April 9, 2015

John Bettys 490445  
Special Commitment Center  
P.O. Box 88600  
Steilacoom, WA 98388

**Re: STATE v. BETTYS**  
**Skagit County Superior Court Cause No. 10-1-00159-9**

Mr. Bettys:

At the hearing in Skagit County Superior Court on April 8, 2015, you requested a copy of the motion that was filed in your criminal case, Skagit County Cause No. 10-1-00159-9, that prompted the court to hold a hearing on December 17, 2013, at which the court amended your judgment and sentence. The parties at the hearing on April 8, 2015, including the court and the deputy prosecuting attorney, could not recall how the hearing on December 17, 2013, originally arose. I also could not recall.

I have now researched the history in this case. I have enclosed with this letter the email chain that prompted that December 17, 2013, hearing. I have also enclosed the note for special set hearing and the transport order, both filed by the prosecutor for that hearing. As the email chain illustrates, no motion was filed, either by me, the Department of Corrections (DOC), the prosecutor, or the defense attorney, to amend your judgment and sentence.

Rather, your attorney responded to a DOC email and copied Judge David Needy on her response, and that led ultimately to a hearing being set. The original email from the DOC was simply a standard email from DOC records staff to the prosecutor and the defense counsel requesting that the J&S be amended to fix legal errors. The email was part of the process that the DOC is required to undertake pursuant to RCW 9.94A.585(7) to try to resolve problems with a J&S prior to filing a post-sentence petition in the Washington Court of Appeals. The email was not a motion. The December 17, 2013, hearing arose because the prosecutor wanted the hearing so that the parties and the court could properly address the DOC's email request with you present.

Ultimately, the problems with the J&S were resolved among the parties, the DOC, and the court during the December 17, 2013, hearing, eliminating the need for a post-sentence petition by the

ATTORNEY GENERAL OF WASHINGTON

April 9, 2015  
Page 2

DOC. These are precisely the types of actions contemplated by the requirement in RCW 9.94A.585(7), which requires the DOC to attempt to resolve matters with the parties and sentencing court prior to filing a post-sentence petition.

Sincerely,



RONDA D. LARSON  
Assistant Attorney General

RDL:cm

cc: Erik Pederson, Deputy Prosecuting Attorney

# **APPENDIX E**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 JOHN EDWARD BETTYS, )  
 )  
 Appellant. )

No. 71418-0-I  
DIVISION ONE  
UNPUBLISHED OPINION  
FILED: January 20, 2015

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2015 JAN 20 AM 10:58

TRICKEY, J. — Sentences may be modified under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, in specific, carefully delineated circumstances. Here, such circumstances were present. The trial court’s intent in imposing the defendant’s sentence was to ensure that the defendant received the requisite counseling services during his confinement. The trial court merely granted the State an additional month to enable the State to commence treatment. Because the defendant was provided with those services, he was not entitled to early release. We affirm.

FACTS

In 2011, John Bettys was convicted by a jury of first degree child molestation and sentenced to life without parole.<sup>1</sup> In 2013, this court reversed his conviction based on the improper admission of evidence of a prior sex offense.<sup>2</sup>

On remand, Bettys pleaded guilty to third degree child molestation entering an Alford plea. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162

<sup>1</sup> Skagit County Superior Court No. 10-1-00159-9.  
<sup>2</sup> State v. Bettys, noted at 174 Wn. App. 1002 (2013).

(1970). Because Bettys had a previous conviction for a sexual offense and an offender score of 9 plus, he was sentenced to the statutory maximum of 60 months. The court imposed an exceptional indeterminate sentence under former RCW 9.94A.712, setting both the maximum and minimum terms at 60 months, the statutory maximum. The sentence required the Department of Corrections (DOC) to provide sex offender treatment to commence by January 1, 2014, or release Bettys to the community to obtain sex offender treatment while still under the supervision of the DOC.

In December 2013, the court learned that the imposed date of January 1, 2014 was not feasible because nothing could be undertaken until the parole board met on January 15, 2014. The trial court modified its judgment and sentence, extending the date to provide treatment from January 1, 2014, to February 1, 2014.

At a review hearing held on February 5, 2014, Bettys moved the court to reconsider its order extending the treatment date until February 1, 2014. At that time, Bettys was enrolled in the sex offender program.

Bettys appeals, contending that the trial court had no authority to modify the sentence. Bettys also appeals his guilty plea contending there was an insufficient factual basis and that the court incorrectly included a juvenile offense in his offender score.

#### ANALYSIS

Bettys contends the trial court erred in modifying his original sentence by extending the timeframe within which the DOC had to begin sex offender treatment from January 1, 2014, to February 1, 2014. Bettys argues the court lacked authority to reconsider or modify the original sentence.

In support of his argument, Bettys relies on State v. Shove, 113 Wn.2d 83, 776 P.2d 132 (1989). In Shove, the court reversed a postjudgment sentencing modification because there was no specific statutory authority for the modification. Shove is distinguishable because the court modified the sentence based on changes in the defendant's situation that had occurred since the entry of judgment. Even in Shove, our Supreme Court recognized that final judgments in both criminal and civil cases may be faceted or altered whenever "the interests of justice most urgently require." Shove, 113 Wn.2d at 88; see also State v. Hardesty, 129 Wn.2d 303, 315, 915 P.2d 1080 (1996) ("A court has jurisdiction to amend a judgment to correct an erroneous sentence, where justice requires, under CrR 7.8.").

This case is more similar to State v. Smith, 159 Wn. App. 694, 247 P.3d 775 (2011). There, the court held that the elimination of the partial confinement programs was an extraordinary circumstance that warranted modification of the sentence. Here, as in Smith, the circumstances could not have been envisioned at the time of sentencing.

Further, the trial court was amending the judgment to accomplish exactly what was meant when the sentence was imposed—to obtain treatment for Bettys while still under the supervision of DOC. This was not a modification of a judgment because of changed circumstances. Rather, the extension of one month within which to provide treatment accomplished exactly what the court wanted in imposing the sentence.

Guilty Plea

Bettys next contends he is entitled to withdraw his plea to third degree child molestation because there is no factual basis establishing the "sexual contact" element of the charge.

The guilty plea contained Bettys' statement:

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

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

[XX] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea and for the factual basis for the greater offenses.<sup>[3]</sup>

The statement of probable cause noted that the child stated that he was touched twice in the groin area by Bettys and was told not to tell anyone. The statement provided sufficient evidence for the court to believe that a jury could find Bettys guilty of first degree child molestation.

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<sup>3</sup> Clerk's Papers at 124.

Furthermore, at the time Bettys pleaded guilty, he agreed that the facts submitted would be sufficient to find him guilty:

THE COURT: To me that means you're not admitting having committed this particular offense, but you do believe if you went to trial you could be found guilty of this or even a more serious charge and a more serious penalty, and based on the circumstances you want to take advantage of the prosecutor's offer; is all of that correct?

MR. BETTYS: That is correct, Your honor.<sup>[4]</sup>

The court then found that the reports filed in the case and the court's prior knowledge of having conducted the jury trial in this case was sufficient to find a factual basis to find Bettys guilty.

Finally, Bettys contends that the trial court incorrectly included a washed-out conviction in calculating his offender score. This claim is based on obsolete statutory provisions. Under the original SRA, juvenile convictions did not constitute "criminal history" for crimes committed after the defendant's 23rd birthday. Former RCW 9.94A.030(6) (1981) (LAWS OF 1981, ch. 137, § 3). This rule was abolished in 1997. Since then, the definition of "criminal history" has been the same for juvenile and adult convictions. LAWS OF 1997, ch. 338, § 2(12) (RCW 9.94A.030(11)).

The effect of these changes was clarified in 2002:

A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

LAWS OF 2002, ch. 107, § 2(13)(c) (RCW 9.94A.030(11)(c)). For crimes committed after the effective date of the 2002 amendment, the former rules for the "wash out" of juvenile convictions no longer apply. State v. Varga, 151 Wn.2d 179, 193-95, 86 P.3d 139 (2004).

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<sup>4</sup> Report of Proceedings (Sept. 26, 2013) at 10.

Furthermore, Bettys agreed to the offender score at the time of his guilty plea and is precluded from contesting that scoring now.

Affirmed.

Trickey, J

WE CONCUR:

Schneider, J

COX, J.

# **APPENDIX F**

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

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 JOHN EDWARD BETTYS, )  
 )  
 Appellant. )

No. 71418-0-1

ORDER DENYING MOTION  
FOR RECONSIDERATION

The appellant, John Edwards Bettys, has filed a motion for reconsideration herein. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 6<sup>th</sup> day of February, 2015.

FOR THE COURT:

Trichey, J

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2015 FEB -6 AM 11:26

No. 71418-0-I

C O U R T   O F   A P P E A L S  
Division I  
O F   T H E   S T A T E   O F   W A S H I N G T O N

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STATE OF WASHINGTON,  
Respondent,

V.

JOHN E. BETTYS,  
Appellant,

---

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ON APPEAL FROM THE SUPERIOR COURT OF WHASINGTON  
IN AND FOR SKAGIT COUNTY

Honorable David R. Needy, Judge

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MOTION TO RECONSIDER COURT'S  
JANUARY 20, 2015 OPINION

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By: John Bettys, pro se  
Coyote Ridge Correction Center  
P.O. Box 769  
Connell, WA 98326-0769

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RAP 5.2 7,  
WAC 388-15-009(3) 3,10  
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United States Const. Amend. V. 7,  
Washington Const. Art. I, Sec. 3 5,7,8,  
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TABLE OF EXHIBITS

- A. Sex Offender Treatment Records
- B. February 5, 2014 Transcripts
- C. Probable Cause Documentation
- D. Declaration of Recantation Hearsay
- E. 2002 Opinion/ 2002 Re-sentence Judgment
- F. OPINION OF JANUARY 20, 2015 ON REVIEW

A. IDENTITY OF MOVING PARTY

I, John Bettys, appellant, pro se, hereby moves the Court for reconsideration of the opinion entered January 20, 2015.

B. STATEMENT OF RELIEF SOUGHT

Appellant seeks reversal of the "unpublished opinion" this court entered in COA# 71418-0-I on January 20, 2015 affirming an Alford plea conviction of "child molestation third degree," with compliance under long established holdings of the law. Reversal should be with prejudice, finding insufficient evidence supports the factual basis of "sexual contact" element required in both a child molestation first and third degree conviction. Additionally, reversal should address the constitutional and statutory violations caused by the trial court's abuse of discretionary powers in this criminal sentence's terms and conditions imposed, which are clearly out of compliance with the purpose of the SRA of 1981 provisions.

C. FACTS RELEVANT TO MOTION

Nothing in RCW 9.94A.712 gives the trial court authority to order "sex offender treatment" while in-custody on a criminal term on confinement. The Trial Court's discretionary authority comes directly from RCW 9.94A.535 terms, which specifically required the sentence imposed converted to a determinate sentence, if court was applying RCW 9.94A.535 "exceptional sentence" provisions. Thereby, if the reviewing court determines the sentence was imposed under a term of RCW 9.94A.535, it must determine the sentence is no longer an "indeterminate" sentence, which opinion ignored.

Sentence Reform Act(SRA) provided the trial court authority in the "community custody" portion of a sentence to impose 'terms and conditions' requiring sex offender treatment. This authority does not extend to impose 'terms and conditions' in-custody, and that sole ability rests soundly in RCW 9.94A.535 sentences only.

RCW 9.94A.535 requires any sentence imposed thereunder to be a "DETERMINATE" sentence, per legislative wording in the statutes, and therefore the trial court's imposition of an "INDETERMINATE" exceptional sentence is an abuse of discretionary powers, and is void on the face.

United States and Washington constitutions prohibited this sentence requiring "Sex Offender Treatment," where the treatments require the Appellant "give evidence against himself" during the pending appeal of the "guilt" sufficiency findings. UNITED STATES CONST. AMEND. V; WASH. CONST. ARTICLE I, SECTION 9.

Sex offender treatment started February 14, 2014, which is a violation of the judgment and sentence February 1, 2014 settled start date, in violation of the "due process of the law" clause of both United States and Washington's constitutions. The State's attorneys perjured themselves in the February 5, 2014 hearings of the trial court, claiming Appellant was in treatment as required. EXHIBIT-A; EXHIBIT-B.

The Alleged victim in the "probable cause" statement clearly recanted all hearsay statements previously made prior to 9/14/09, and the hearsay statement reviewing court relied on is of 7/16/09, made through Niccol Flacco's interview of M.F. for prosecutor's office. The words MIF actually stated are in "quotation" marks,

which establish and constitute actual "hearsay" words of the child, and not mere paraphrasing by Ms. Flacco in her report, or Mr. Hansen during the writing of the "probable cause" statement. EXHIBIT-C.

This does nothing to address either the "Recantation" 9/14/09, listed in the "probable cause" statement, nor the "Recantations" of MIF during live testimony "under oath" before the Trial Court Judge Hon. David R. Needy, proven by transcript records. see IRP.

These two separate MIF "Recantations" both recanted the words the reviewing court relies on to sustain the convictions, directly claiming that "no sexual contact" occurred between the child and a related adult caretaker, therefore without "sexual contact" neither child molestation first or third degree can be upheld. EXHIBIT - C Page 12-13; Exhibit - D; IRP 15 Line 1-2; IRP 39 Lines 9-22; also IRP 42 Lines 19-21.

Additionally, "probable cause" proved Appellant has a role as parentally approved "paid" caretaker of MIF at the time in question, and was providing a care function while touching the outside of the child's clothing, which established the affirmative defense under a Washington Administrative Code(WAC) 388-15-009(3) terms.

The determination for a "vested right" under the wash-out of the juvenile offense committed prior to age 15 is established with the ruling in State V. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004) is binding on this reviewing court, so long as the party has enjoyed the vestment under a prior criminal judgment & sentence. Bettys' right vested by this court's ruling in COA# 50285-9-1, where this Appellant was remanded to be re-sentenced without inclusions of a 1988 "indecent liberty" conviction in the sentence. EXHIBIT-E.



Additionally, Appeals Court's long established and settled jurisprudence continues to bar converting the lower trial courts to appellant courts at all costs, especially on non-party motion in a criminal action. In effect, the opinion would violate this well established history, and allow DOC's agents to file motions under CrR 7.8 standards to the trial court.

Nothing in the opinion of January 20, 2015 established the requisite 'specific or alleged' "legal error" to allow modifying the final judgment on the DOC's December 17, 2013 motion, nor is DOC's refusal to comply with a criminal judgment terms actually an acceptable legal error in Washington State laws.

Department of Correction's duty is to ensure that all agents of DOC comply with the sentence terms timely, until those terms are invalidated by the Court of Appeals on review of a "legal error"; as ruled in Dress V. Department of Corrections, 168 Wn.2d 319, 279 P.3d 375 (2013), thereby the opinion must reflect that a criminal judgment that is not appealed under RCW 9.94A.585(7) by the DOC is **valid**.

Opinions reliance on CrR 7.8 rulings are misplaced in this instance, where the DOC attorney failed to file a CrR 7.8 motion in the trial court, failed to file the required "affidavit" for facts and reasons supporting sentence modification, therefore is in violation of the established "due process of the law". UNITED STATES CONST. AMEND. XIV; WASH. CONST. ARTICLE I, SECTION 3.

Opinion's reliance on State V. Smith, 159 Wn.App. 694, 247 P.3d 776 (2011), is misplaced in this instance, where the ruling involved actual legal error in the sentence the court imposed, as the laws no longer existed the trial court had used.

Unless the Court can find "specific statutory authority" to modify the criminal sentence on non-parties' motions, the court's modification December 17, 2013 cannot be distinguished from those errors found in State V. Shove, 113 Wn.2d 83, 776 P.2d 132 (1989), as trial court lacked authority to impose the modifications of a correct final judgment & sentence under the SRA guidelines, and constitutional "double jeopardy" clause protections.

The Court herein must distinguish this criminal sentence by a "legal error" requiring correction, before ignoring constitution clause protections of "double jeopardy" committed by modification of a correct final judgment & sentence, on motion of the non-party to the criminal action.

Nothing prohibited the DOC from complying with the terms of the exceptional sentence requiring release January 1, 2014, where Appellant would remain under DOC community custody being treated in a community based program for sex offenders.

DOC merely wanted to have Appellant meet the ISRB members to determine if Appellant could attend and complete treatment in the DOC's in-custody sex offender program, instead of the community's based program the trial court had established. This does nothing in showing a "legal error" in the terms of the exceptional sentence the trial court imposed, therefore the increase violated "double jeopardy" clause protections in this instance.

However, Appellant was completely deprived sex offender's treatment by the modification of the sentence, where Appellant's criminal action was on appeal of the "guilt", and the DOC program required Appellant's admission of the "guilt" to attend, which is

improper while the matters remained on direct appeal of "guilt" factors, which could result in further proceedings before trial court. UNITED STATES CONST. AMEND. V; WASH. CONST. ART. I, SEC. 9.

Appellant "pro se" filed direct criminal appeal December 10, 2013 in the matters, and extensively addressed the appeal before a trial court December 17, 2013, advising the court in-custody type sex offender treatment is not available while appeal "guilt," which court ignored.

The December 17, 2013 modification violated RAP 7.2 rules, and trial court should have advised DOC's attorney to cross-appeal their issues under RAP 5.2 in the pending direct appeal. see UNITED STATES CONST. AMEND. XIV; WASH. CONST. ART. I, SEC. 3.

Reviewing Court herein should not extend authority under the provisions of CrR 7.8 rule to allow non-parties or DOC to file the motion, which is what the January 20, 2015 opinion provided, and a Court should uphold the long established rule prohibiting turning a trial court in to a court of review or appeal of its own rulings or sentence orders, terms, and conditions.

**2. COURT'S OPINION IGNORED LEGISLATIVE COMMANDS  
REQUIRING EVERY SENTENCE IMPOSED UNDER TERMS  
OF RCW 9.94A.535 MUST BE "DETERMINATE" ONLY?**

Court herein recognized the sentence imposed is exceptional, then ignored the legislative command in RCW 9.94A.535 requiring an exceptional sentence must be solely "DETERMINATE" sentence.

The Court herein does not have the authority to substitute its own judgment for the wording the legislature placed in statute and law, where the wording is clear, and the meaning is clear for Court's application, interpretation is not permitted.

Trial Court used RCW 9.94A.712(3) to sentence Appellant to an exceptional term, with special conditions directing treatment while under supervision of the Department of Corrections(DOC).

Washington State's Legislature specifically worded those RCW 9.94A.712(3) provisions to allow the exceptional sentence by the trial court, and directed the sentence shall be under those terms and conditions of RCW 9.94A.535 standards.

This required the trial court enter the exceptional terms of the sentence as "Determinate"; whereby Legislature has taken a trial courts authority to enter an "Indeterminate" exceptionally termed and conditioned sentence under "Laws of Washington 2005, Chapter 68 Sec. 3"; removing that very language from statute RCW 9.94A.535 specifically.

Opinion's reliance on the ability to enter an indeterminate exceptional sentence simply is misplaced, and the sentence imposed under RCW 9.94A.712(3) through RCW 9.94A.535 must be held as the "Determinate" sentence legislature commanded, until Ligislature's enactment of a different standard.

Appellant has been denied the proper process of the laws, as established by the Legislature wording in the statute, therefore a violation of the "due process of the law" clause has occured under these circumstnaces, which opinion must reflect. UNITED STATE CONST. AMEND. XIV; WASH. CONST. ART. I, SEC. 3.

The Court's opinion should be corrected to reflect what the Legislative statutes required, and Appellant provided relief from the illegal confinement term caused by misapplications of the law in the present criminal judgment & sentence.

3. COURT'S OPINION RELIED ON STATEMENTS THE CHILD  
RECANTED DURING LIVE TESTIMONY BEFORE THE COURT  
SUBJECT TO CROSS-EXAMINATIONS?

Reviewing Court's opinion relied on the "hearsay" statements of the child that: "Bettys touched him twice and was told not to tell or he would be in trouble for telling!"

However, this statement was "recanted" by MIF on 9/14/09 to his parents, which is listed in "probable cause" on page 12, and the statements were "recanted" under oath in live in-court trial testimony May 5, 2011.

Honorable David R. Neddy, Judge presided over the 2011 trial, and directly heard MIF's testimony regarding being touched only a single time, and that Appellant "said nothing to him" when checking his pull-up diaper for wetness. Additionally, the child MIF told a "intent and purpose" of the touch during the live testimony, which is non-sexual completely, "recanting" the entire sexual charges in this action of any kind.

Alleged victim MIF, in the "probable cause" document clearly "recanted" all allegations the Appellant sexually touched him in an apparent spontaneous statement to his mother, which she swore to in a "declaration" on 9/24/09, and informed Detective Hansen 9/14/09, per the "probable cause" statements. EXHIBIT-D; EXHIBIT-C.

Alleged victim MIF, in the "live testimony" clearly "Recanted" that Appellant said anything to him while touching the outside of MIF's clothing. 1RP 42 Lines 19-21; see also 1 RP 39 Lines 9-22.

The wording this Court's opinion relied on to establish the "sexual contact" element are "hearsay" through Niccol Flacco of an interview she conducted 7/16/09 of MIF, which are "Recanted!"

The actual words of MIF are in "quotation" marks in this probable cause statement, which establish the actual admissible hearsay of the child, and not mere paraphrasing by Ms. Flacco's report writings, or Detective Hansen's writing of the "probable cause document. EXHIBIT-C.

Reviewing Court's opinion addressed word not "quoted" as directly from MIF's mouth to Niccol Flacco, thereby not even a claimed "hearsay" statement of the child.

Court's opinion additionally ignored Washington State law, that allows touching of a child's genital area, so long as there existed a "**parentally approved caretaker role**" between child and adult relative, which is proven in 'probable cause' of this case clearly, when the child's mother admitted paying Appellant \$30.00 to care for the child at the times relevant. see WAC 388-15-009(3).

"The constitutional preference for live testimony maybe disregarded in only two circumstances: (1) when the original out-of-court statement is inherently more reliable than any live in-court repetition would be; (2) when live testimony is not possible because the declarant is unavailable, in which case the Court must settle for the weaker version!" State V. Rohrich, 139 Wn.2d 472, 939 P.2d 697 (1997).

These courts have held that live testimony, under oath, and subjected to cross-examination, under the watchful eye of a jury maximizes the truth seeking process in criminal actions. Rohrich, 139 Wn.2d at 477, 939 P.2d 697 (1997). "It is always harder to tell a lie about a person 'to his face' than 'behind his back'!" see Coy V. IOWA, 487 U.S. 1012, 108 S.Ct. 2798 (1988).

The Court's opinion completely ignored the two separately stated "Recantations" of the child MIF in the record, which are clear in disproving the element of 'sexual contact' required in either first or third degree child molestations.

This action is unique, in that the child's "recantations" establish the actual "purpose or intent," under oath in the live 2011 trial testimony of the touching over clothing as a pull-up or diaper checking, and that Appellant returned to washing the dishes immediately after the fleeting touch. see 1 RP at 39.

Trial Court must establish the touching amounted to having the "purpose or intent" of sexual gratification, to find elements sufficient to establish 'sexual contact' element required.

Thereby, the opinion's reliance on a single statement that MIF later recanted completely under oath in live testimony as the proof of 'sexual contact' element in child molestation is clearly misplaced in this instance, and should be corrected. In light of the substantial evidence, and direct live testimony of MIF that the sole purpose or intent of the touch is to check the pull-up or diaper he was wearing at the time, a finding of insufficiency of the evidence for child molestation should be entered.

**4. COURT'S OPINION IGNORED VESTED RIGHTS UNDER THE WASHED-OUT OFFENSE CLAUSE?**

The Court's opinion relies on State V. Varga, 151 Wn.2d 179, 193-95, 86 P.3d 139 (2004), to establish that Appellant's not now entitled to his vested right to the wash-out of the juvenile case occurring prior to age fifteen, which had actually vested as the law required under a prior 2002 criminal judgment & sentence.

However, it is under State V. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004), that Appellant established the entitlement to have a vested right in the previous wash-out offense exclusion. Thereby, unless the Court's opinion can establish why State V. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004) should not be applied, the right to have the juvenile offenses committed prior to age fifteen wash-out must occur herein this action.

The Washington Supreme Court held that Varga could not enjoy a vested right to his prior convictions washing-out, because those convictions had never actually vested in a prior criminal judgment as washed-out before the change in the laws.

Appellant was remanded under COA# 50285-9-I to have the prior juvenile crimes committed before age fifteen removed from a offender score calculation, and was re-sentenced without the washed-out prior juvenile offense. EXHIBIT-E.

Therefore, unlike Mr. Varga, Appellant does have an established "vested right" in the juvenile offenses remaining washed-out under a present sentence.

Additionally, Court's opinion misplaced reliance on Bettys' "Alford Plea," to claim that Bettys' has no right to challenge the offender scoring, however Bettys did not make any affirmative type acknowledgement of the score calculations during proceedings, and is not bound by an erroneous score.

Court's opinion ignored the long settled jurisprudence that a defendant cannot agree to be punished more than allowed by the law, without affirmative acknowledgment on record, and such score calculation is a fundamental defect, resulting in a miscarriage of

justice, which must always be corrected upon discovery by either party to the action.

Therefore, it is required that the "indecent liberty" must be removed for three points, and the Burglary must be removed for half a point, leaving a score of 6 points on the records, with a standard range of 41-54 months confinement.

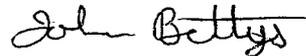
Court's opinion should be corrected to show that "vestment" of the right to the washed-out status vested at re-sentencing in the 1993 action, as established under State V. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004) holdings. Appellant, unlike Varga did previously enjoy the washed-out status creating a vested right to the continued wash-out status in later proceedings.

E. CONCLUSIONS

For the reasons herein stated, the Court's opinion should be modified, and relief provided to the Appellant, which addresses all errors committed in this action.

DATED This 27<sup>th</sup> day of January, 2015.

Respectfully Submitted,



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John Bettys, pro se

#711306

Coyote Ridge Correction center

P.O. Box 769

Connell, WA.99326-0769

# **APPENDIX G**

2013 NOV 26 PM 1:36

**Superior Court of Washington  
County of Skagit**

No. 10-1-00159-9

State of Washington, Plaintiff,

vs.

JOHN EDWARD BETTYS,  
Defendant.

SID: WA15110978

DOB: 09/12/1974

Agency No: APD 09-A05618

**Felony Judgment and Sentence – (FJS)**

**Prison**

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

**Prison Confinement (Sex Offense and Kidnapping  
of a Minor)**

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

**Defendant Used Motor Vehicle**

**I. Hearing**

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

**II. Findings**

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

as charged in the Third Amended Information.

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

Additional current offenses are attached in Appendix 2.1a.

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

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

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

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

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

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

**ORIGINAL**

B

OR

- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count \_\_\_\_\_ RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count \_\_\_\_\_ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_ RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_ RCW 9.94A.602, 9.94A.533.
- For the crime(s) charged in Count \_\_\_\_\_ **domestic violence** was pled and proved. RCW 10.99.020.
- Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a **criminal street gang-related felony offense** in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang member or associate** when the defendant committed the crime. RCW 9.94A.702, 9.94A.\_\_\_\_\_
- The defendant committed  **vehicular homicide**  **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count \_\_\_\_\_ involves **attempting to elude a police vehicle** and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- For the crime(s) charged in Count \_\_\_\_\_, **domestic violence** was pled and proved. RCW 10.99.020.
- In Count \_\_\_\_\_ the defendant had (number of) \_\_\_\_\_ passenger(s) under the age of 16 in the vehicle. RCW 9.94A.533
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

|    | <i>Crime</i> | <i>Cause Number</i> | <i>Court (County &amp; State)</i> | <i>DV*<br/>Yes</i> |
|----|--------------|---------------------|-----------------------------------|--------------------|
| 1. |              |                     |                                   |                    |
| 2. |              |                     |                                   |                    |

\* DV: Domestic Violence was pled and proved.

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

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

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

\* DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

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

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

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

**2.3 Sentencing Data:**

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

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

Additional current offense sentencing data is attached in Appendix 2.3.

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

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

The defendant shall receive sex offender treatment.

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

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

**2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160) The court finds:

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

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

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

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

### III. Judgment

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

3.2 The Court DISMISSES Counts \_\_\_\_\_. The defendant is found NOT GUILTY.

### IV. Sentence and Order

*It is ordered:*

#### 4.1 Confinement and Community Custody.

The court sentences the defendant as follows:

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

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

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

While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody;

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

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

[xx ] Follow conditions of Appendix F.

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

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

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

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

Agency Name: \_\_\_\_\_

Agency Address: \_\_\_\_\_

\$ \_\_\_\_\_ Total

RCW 9.94A.760

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

Restitution. Schedule attached. Appendix 4.3

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

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

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

A restitution hearing is scheduled for \_\_\_\_\_.

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

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

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

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

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

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

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

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

**4.5 No Contact:**

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

The defendant is excluded or prohibited from coming within \_\_\_\_\_ (distance) of:  
 \_\_\_\_\_ (name of protected person(s))'s  home/ residence [  
 work place  school  (other location(s)) \_\_\_\_\_, or  
 other location: \_\_\_\_\_,  
until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

*Sexual Assault Protection*

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

4.6 Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

### V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

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

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

5.4 Community Custody Violation.

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

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

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

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

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

If you are not a resident of Washington but you are a student in Washington or you are employed in

Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

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

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

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

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

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

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

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

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

*Conditions (Check all that apply)*

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

5.8 Other: \_\_\_\_\_

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

*Dave Needy*  
Judge

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

*Catherine McDonald*  
Attorney for Defendant  
Catherine McDonald, WSBA #24002

*John Edward Bettys*  
Defendant  
John Edward Bettys

018

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

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

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

Defendant's signature: *John Edward Bettys*

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 10-1-00159-9

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

**VI. Identification of the Defendant**

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

Date of Birth 09/12/1974

FBI No. 240067TA5

Local ID No. SO 20159

Alias name, DOB: UNK

DOC No. 711306

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

**Ethnicity:**  Hispanic  Non-Hispanic

**Sex:**  Male  Female

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

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

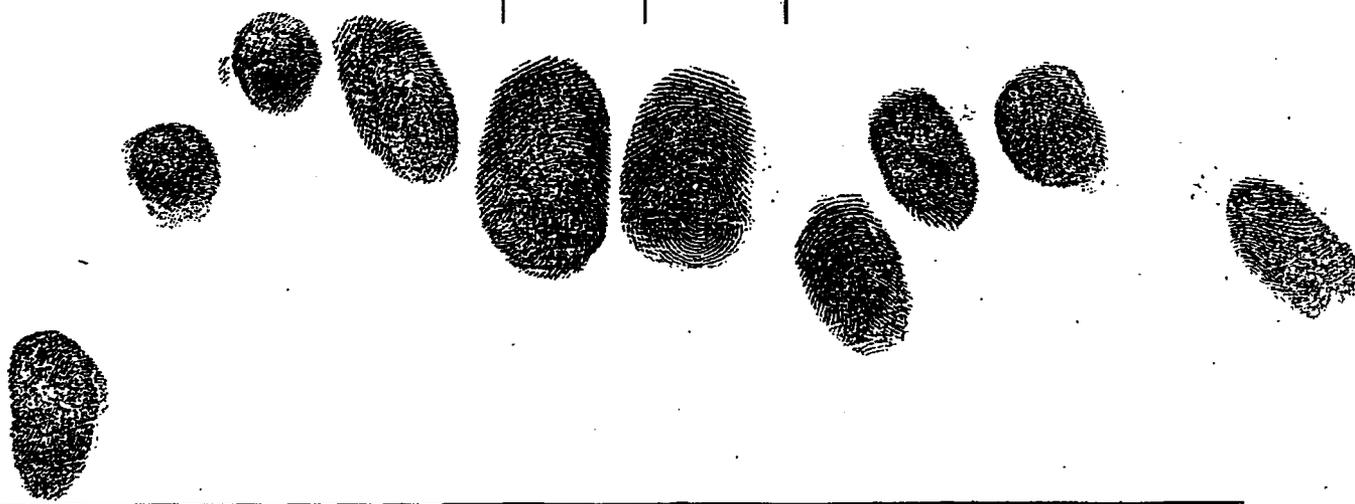
Defendant's signature: [Signature]

Defendant's current address: \_\_\_\_\_

| Officer Initials | Badge/ID# | DNA | FINGERPRINTS | Date |
|------------------|-----------|-----|--------------|------|
|------------------|-----------|-----|--------------|------|

ASm      U111      L      11-26-13

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| Left four fingers taken simultaneously | Left Thumb | Right Thumb | Right four fingers taken simultaneously |
|--|------------|-------------|---|



SUPERIOR COURT OF WASHINGTON  
COUNTY OF SKAGIT

STATE OF WASHINGTON, Plaintiff, vs.

No. 10-1-00159-9

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

WARRANT OF COMMITMENT

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

The Defendant's charges are disposed of as follows:

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

GUILTY PLEA

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

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

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

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

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

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

Defendant: \_\_\_\_\_

Approved; Attorney for Defendant: *C. Donnell*

LEGAL FINANCIAL OBLIGATIONS

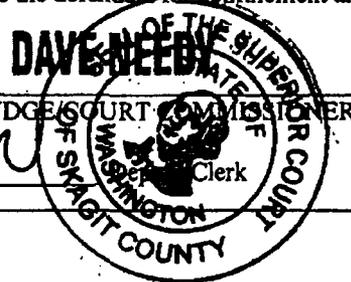
Defendant must pay all ordered fines, fee and restitution to the Superior Court Clerk's Office. Contact a Collections Clerk at 360-419-3448 within 10 days of sentencing for amount ordered and acceptable methods of payment. Payments are to begin within 30 days from sentencing, unless otherwise arranged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

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

DATED: 11/26/13

Nancy K. Scott, Clerk

By: *Wilson*



JAIL CERTIFICATION OF COMPLETION:

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

Date: \_\_\_\_\_

Officer: \_\_\_\_\_

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

STATE OF WASHINGTON )

Cause No.: 10-1-00159-9

Plaintiff )

v. )

BETTYS, John Edward )

Defendant )

JUDGEMENT AND SENTENCE (FELONY)

APPENDIX F

ADDITIONAL CONDITIONS OF SENTENCE

DOC No. 711306

OK

CRIME RELATED PROHIBITIONS:

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

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

DATE 11-26-13

Dave Needy  
JUDGE, SKAGIT COUNTY SUPERIOR COURT

OK

11/27/13  
02:15

SKAGIT COUNTY JAIL  
Jail Log:

Page: 524  
1

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

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

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

=====

Description:

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

JAIL TIME CERTIFICATION

Court: Cause # 10-1-00159-9

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

Date of Arrest: 02/20/10

Date(s) Returned to custody: N/A

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

Date Released to DOC: 12/03/13

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

Certified days of Earned Early Release time: 461 DAYS

Total days credited: 1842 DAYS.

# APPENDIX H

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DECEMBER 17, 2013

10:00 A.M.

\* \* \*

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

THE COURT: Hello. Who is there?

THE DEFENDANT: It's Mr. Bettys.

THE COURT: Mr. Bettys.

MS. LARSEN: AG, Rhonda Larsen.

THE COURT: Alright. Good morning.

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

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

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

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

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

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

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

MS. KAHOLOKULA: Your Honor, this is State versus

1 Bettys, 10-1-159-9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

→ 8   [So he would be placed on the highest priority for treatment  
9 entrance.]

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

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

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

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

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

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

23 MS. LARSEN: Okay. Thank you.

24 MR. SWIFT: I have a couple questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 That's all I have.

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

5 So Mr. Swift.

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

8 THE COURT: Mr. Landon?

9 MR. SWIFT: Mr. Landon.

10 MR. LANDON: Yes, sir.

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

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

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

20 THE COURT: Parole?

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

22 MR. LANDON: Correct.

23 MS. LARSEN: Are you asking me?

24 MR. SWIFT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: My preference would be --

13 THE DEFENDANT: Your Honor --

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

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

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

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

6 THE COURT: Are you in Shelton?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exceptional sentence portion.

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

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

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

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

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

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

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

13 THE COURT: Yes.

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

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

1 longer than February 2015 under normal circumstances?

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

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

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

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

11 MS. KAHOLOKULA: Page 4.

12 MR. LANDON: Okay.

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

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

1 to file the petition after that point.

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

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

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

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

1 MR. SWIFT: No, Your Honor.

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

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

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

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

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

18 THE COURT: So who should it go to?

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

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

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

23 THE COURT: How about an email address?

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

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

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

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

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

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

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

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17 (PROCEEDINGS ENDING FOR THE DAY IN THIS MATTER)

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STATE OF WASHINGTON )  
 ) ss: C E R T I F I C A T E  
COUNTY OF SKAGIT )

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

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

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

  
JENNIFER CHRISTINE SCHROEDER,

WA CCR #2221, CA CCR #10176, RPR,  
Official Court Reporter

# APPENDIX I

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SKAGIT COUNTY

|                      |   |                        |
|----------------------|---|------------------------|
| STATE OF WASHINGTON, | ) |                        |
| Plaintiff,           | ) |                        |
| -vs-                 | ) | Cause No. 10-1-00159-9 |
| JOHN E. BETTYS,      | ) |                        |
| Defendant.           | ) | COA 71418-0-I          |

VERBATIM REPORT OF PROCEEDINGS

DATE: FEBRUARY 5, 2014

The Honorable David R. Needy  
Department IV Skagit County Courthouse  
Mount Vernon, Washington 98273

APPEARANCES

For Dept. of Corrections: Ms. Ronda Larson  
(Attorney General's Office)  
Appearing telephonically.

For the State: Ms. Rosemary Kaholokula

For the Defendant: Mr. Charles Swift  
Ms. Catherine McDonald

Defendant present in custody,  
telephonically.

Reported by: Eileen Sterns, CCR, RMR-CRR  
Official Court Reporter

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WEDNESDAY, FEBRUARY 5, 2014

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MS. KAHOLOKULA: First up is *State vs. Bettys*.

THE COURT: Let wait to get Mr. Bettys present.

(TELEPHONE CALL.)

THE COURT: Good morning.

THE DEFENDANT: Good morning.

THE COURT: Mr. Bettys, you're here?

THE DEFENDANT: Yes, your Honor.

THE COURT: And who else do I have on the line?

MS. ANDERSON: Lisa Anderson, personal unit supervisor where Mr. Bettys is housed at Twin Rivers Unit.

THE COURT: All right. Anyone else? Do I have an Attorney General? Not yet? I don't know if the AG's office is going to be appearing for not. This is Judge Needy here in Skagit County Superior Court, and Ms. Kaholokula, if you want to call the case, please.

MS. KAHOLOKULA: This is *State vs. Bettys*, 10-1-159 --

THE BAILIFF: There they are.

MS. KAHOLOKULA: Dash nine.

THE COURT: Ms. Larson, are you there?

1 MS. LARSON: I am, thank you.

2 THE COURT: Okay. We've got everyone, I  
3 think. Ms. Kaholokula was just calling the case. Have  
4 you finished doing that or were you interrupted?

5 MS. KAHOLOKULA: I had finished, but I can  
6 call it again.

7 THE COURT: No, that's fine. We're on *State*  
8 *vs. Bettys*. This was really just a review to check  
9 status, I believe, of what's going on, and I will let  
10 anyone who knows anything start.

11 MS. KAHOLOKULA: Your Honor, this is  
12 Rosemary Kaholokula for the state, and it's my  
13 understanding that Mr. Bettys is currently enrolled in the  
14 sex offender treatment program with the Department of  
15 Corrections, and so the terms of the judgment are  
16 satisfied.

17 MR. SWIFT: Charles Swift for the defense.  
18 That's also our understanding, and we would agree that it  
19 satisfies the judgment.

20 THE COURT: So Mr. Bettys has filed  
21 paperwork indicating his concern that he may not be  
22 allowed to complete the program either because of actions  
23 that he's bringing or the program itself. I don't know if  
24 that really affects the judgment or sentence or not,  
25 but --

1 MS. LARSON: I believe Ms. Anderson might be  
2 in the best position to address that. My understanding is  
3 that he is enrolled.

4 THE DEFENDANT: Yes, your Honor. Mr. Bettys  
5 here. I'm not sure how that would affect the Judgment and  
6 Sentence in this case. I believe the motion to reconsider  
7 that I had filed on the December 17th order is about the  
8 main thing that would affect the case at this point. And  
9 I would ask the Court to, you know, consider that at this  
10 hearing, if we are able to.

11 THE COURT: All right. Just to summarize,  
12 that is a motion to reconsider, because Mr. Bettys was not  
13 in treatment by the January date originally ordered on the  
14 Judgment and Sentence. And I, after the first hearing,  
15 extended that date to February to allow Mr. Bettys to be  
16 enrolled or at that point to be released to the community.

17 And because he is now enrolled, and I'm the  
18 one that made the modification of the Judgment and  
19 Sentence, I will not grant the motion for reconsideration,  
20 in other words, release Mr. Bettys because he wasn't in  
21 treatment by the January date.

22 So I have considered your motion,  
23 Mr. Bettys, and I understand the basis for it, and I will  
24 deny that motion for granting your release based on the  
25 fact that you were not in treatment by the original

1 January date.

2 So Ms. Anderson, if you wanted to speak to  
3 current circumstances and/or treatment, I would be happy  
4 to hear from you now.

5 MS. ANDERSON: Good morning. Mr. Bettys is  
6 here. We were just speaking before the telephone call,  
7 and he has gone through the intake process to be enrolled  
8 in the SOTP program here, sex offender treatment program.  
9 And he implied this morning that there was some question,  
10 that he had been told by his would-be assigned therapist  
11 about whether or not he would be able to participate, and  
12 I think he could better explain that than I can.

13 THE COURT: Well --

14 MS. ANDERSON: Although I have not had the  
15 opportunity to validate this, as I just heard it a few  
16 minutes prior.

17 THE COURT: I have his explanation for that.  
18 What I was wondering is if there was any response from the  
19 Department of Corrections, but it may be too early for you  
20 to even know; is that correct?

21 MS. ANDERSON: That's correct. As far as I  
22 know, we're going to attempt to provide him treatment.

23 THE COURT: All right. Mr. Bettys, if you  
24 want to comment on that.

25 THE DEFENDANT: No, your Honor. I will

1 reserve comment.

2 THE COURT: Okay. Then I'm going to  
3 consider the Judgment and Sentence satisfied.

4 I want to thank the Department of  
5 Corrections for their extra effort, at least what I  
6 perceive as their extra effort, in allowing Mr. Bettys to  
7 get enrolled perhaps more quickly than normal, and so I  
8 will consider this status review satisfied.

9 And Mr. Bettys, there's also a pending  
10 matter. I realize that I have never ruled on your motion,  
11 and I don't even know the date of it, to stop your  
12 requirement for registration. So I am going to rule and  
13 deny that motion. It obviously doesn't have any immediate  
14 impact, and when you come out of the Department of  
15 Corrections on your current charge, there will also be a  
16 registration requirement. But based on your motion to  
17 stop registration on the 93 cause number, I am going to  
18 deny that also.

19 MS. KAHOLOKULA: And so that I can --

20 THE DEFENDANT: Okay, thank you. Your  
21 Honor, if I may put on the record --

22 THE COURT: Yes.

23 THE DEFENDANT: At this time, we have a  
24 modification in December in the current Judgment and  
25 Sentence, but there's not been an amended judgment, nor a

1 modified judgment entered in the 2010 cause regarding that  
2 change, and DOC has not followed the judgment that is on  
3 file with DOC at this time.

4 I understand your Honor entered a written  
5 order that would technically modify the judgment, but no  
6 modified judgment or amended judgment was ever entered.  
7 So that's part of the summons I will be briefing in a  
8 personal restraint petition in this case in the next  
9 couple weeks. I just want to make a clear record here  
10 that we did not have entered a modified Judgment and  
11 Sentence as is required.

12 THE COURT: Well, I will leave that up to  
13 the state, if they feel a need to recirculate an entire  
14 new Judgment and Sentence, or whether the order we all  
15 signed off was sufficient to modify that.

16 Mr. Bettys, I do just want to say one  
17 personal comment. A lot of people, including the  
18 prosecutor's office, your attorneys, myself, and the  
19 Department of Corrections, have worked very, very hard to  
20 give you this opportunity for a spot in treatment.

21 And I realize none of us can change what you  
22 decide to do, but it seems to me like you're a little bit  
23 geared towards sabotaging all this by your continued legal  
24 motions -- which you have every right to bring. At the  
25 same time, you seem to be more aware than any of us that

1 that may jeopardize your opportunity to participate in the  
2 treatment program.

3 And I would just strongly encourage you to  
4 stop for a moment and think about that, whether you want  
5 to focus on your treatment or whether you want to focus on  
6 ongoing litigation, and with the possibility of coming out  
7 of the department with no supervision and no treatment and  
8 the odds of future ability to stay in the community  
9 without treatment.

10 So that's all I'm going to say. You're  
11 going to make your own decisions, but please at least  
12 consider all the work that's gone into this current  
13 placement for you in treatment.

14 MS. KAHOLOKULA: Your Honor, I've handed  
15 forward a proposed order regarding the 10 cause number,  
16 and I heard your Honor just deny a motion to reconsider  
17 removal of registration requirement, is that correct, on  
18 the 93 cause?

19 THE COURT: The reconsideration was the fact  
20 that I altered the Judgment and Sentence by granting the  
21 extension to today's date.

22 MS. KAHOLOKULA: But then you said something  
23 after that, I think, referring to the registration  
24 requirement.

25 THE COURT: There was a motion before me to

1 stop registration. It wasn't a reconsideration, I don't  
2 believe; it was just a motion that I never formally ruled  
3 on that I wanted to at least make a record and rule on  
4 today, if we want to follow up with an order today or  
5 sometime later.

6 MS. KAHOLOKULA: If I could have the cause  
7 number, I could prepare an order.

8 THE COURT: Sure.

9 THE WITNESS: Your Honor, if I may, I would  
10 like to make an oral motion today. I would ask that the  
11 Court notify the court clerk and court administrator now  
12 that the 2010 case has been finalized, that my pro se  
13 pleadings and filings will properly be accepted and  
14 processed through the office from here out, since I will  
15 no longer be represented by Counsel after today, and I  
16 would also ask that the Court have Counsel forward my  
17 legal documents, file and such to me here at the facility  
18 so we can continue forward with this matter.

19 MS. McDONALD: Your Honor, we would be happy  
20 to make an oral motion to withdraw on this case, and we  
21 can follow up by sending in a notice of withdrawal this  
22 week.

23 THE COURT: All right. Once -- I will  
24 accept the motion to withdraw at this point, as the  
25 Judgment and Sentence is complete and status review is

1 done.

2 And Mr. Bettys, the clerk is here, and will  
3 note that anything further you will be going forward on  
4 will be under pro se status, and I have already reviewed  
5 prior, and I assume circumstances haven't changed, that  
6 you are indigent, and qualify for all services under that  
7 status.

8 MS. McDONALD: And we will confirm to  
9 Mr. Bettys that we will forward the papers that he had  
10 asked to forward to him now that he is settled at Twin  
11 Rivers.

12 THE COURT: And I'm indicating, Mr. Bettys,  
13 on both of the orders I'm signing today that you were  
14 present telephonically. The one is under the 93 cause  
15 number denying the request to stop registration, and the  
16 other is denial of the motion to reconsider and also just  
17 indicating -- I guess this doesn't indicate anything about  
18 today's status, does it?

19 MS. KAHOLOKULA: I didn't put that on there,  
20 your Honor.

21 THE COURT: Is there any reason to enter an  
22 order today for anyone's purpose?

23 MS. McDONALD: I don't believe so.

24 THE COURT: Okay. So I have signed those  
25 two orders and indicated your telephonic presence,

1 Mr. Bettys. Is there anything else this morning?

2 THE DEFENDANT: No, your Honor. I believe  
3 that covers everything we have pending. Thank you.

4 THE COURT: All right. Thank you. We will  
5 be at recess.

6 (PROCEEDINGS CONCLUDED; 9:11 A.M.)

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STATE OF WASHINGTON )  
 ) ss. C E R T I F I C A T E  
COUNTY OF SKAGIT )

I, Eileen E. Sterns, hereby certify that I am  
a Certified Court Reporter and Official Court Reporter for  
Skagit County Superior Court of the State of Washington;  
that I reported in Stenotype the foregoing proceedings and  
subsequently transcribed my said shorthand notes into the  
printed transcript, pages 1 through 11 both inclusive;  
that the said transcript constitutes a full, true and  
accurate record of the proceedings as requested, to the  
best of my knowledge, ability and belief.

Dated this 2nd day of June 2014 in Mount Vernon,  
Washington.



EILEEN STERNS, CCR, RMR-CRR  
Official Court Reporter  
Washington CCR No. 3233

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# **APPENDIX J**

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SKAGIT

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA

STATE OF WASHINGTON,  
Plaintiff,

vs.

2013 DEC 17 AM 10:17

CAUSE NO. 10-1-00159-9

ORDER RE:

John E. Bettys  
Defendant

- HEARING DATES (Clerk's Action Required)
- QUASHING WARRANT (Sheriff's Action Required)
- BAIL (Sheriff's Action Required)
- CLERK'S ACTION REQUIRED
- OTHER: amend ITS; strike 1-3-14

The Court, being fully advised and good cause having been shown, Now, Therefore, ORDERS:

HEARING DATES: This matter is continued to the dates below. [ ] by agreement of the parties (signed by defendant) [ ] by motion of defendant/state. The defendant's presence is required for:

OMNIBUS: \_\_\_\_\_ 9:00 a.m. STATUS: \_\_\_\_\_ 9:00 a.m.

3.5/3.6 HEARING: \_\_\_\_\_ 9:30 a.m. REVIEW: \_\_\_\_\_ 9:00 a.m.

TRIAL CONFIRMATION: \_\_\_\_\_ 1:30 p.m. OTHER: \_\_\_\_\_ 9:00 a.m.

TRIAL: \_\_\_\_\_ 9:00 a.m. (See Waiver Below If Applicable)

TIME FOR TRIAL: \_\_\_\_\_ (30 days after trial pursuant to continuance under CrR 3.3)

SENTENCING: \_\_\_\_\_ 9:00 a.m. (See Waiver Below If Applicable)

[ ] Presentence Investigation required. [ ] Defendant is in custody [ ] Defendant's Address:

[ ] WARRANTS: Outstanding warrants in this cause are quashed. The next hearing date is as noted above.

~~BAIL~~ Bail is set at \$ The hearing of 1-3-14 is stricken.

OTHER: The judgment of Nov. 26, 2013, at P 4.1, at the paragraph commencing with "If the Department..." is amended as follows:

"If the Department fails to commence sex offender treatment by Feb 1, 2014, then the defendant shall..."

Dated: Dec 17, 2013

Dave Moody  
Judge of the above-titled Court

WAIVERS BY DEFENDANT

[ ] SPEEDY TRIAL: The undersigned, having been advised by my Attorney of Record that I have the right to be brought to trial within 60/90 days of the commencement date, hereby requests that trial in this matter be reset. I am aware of and wish to waive my right to speedy trial by resetting a commencement date of: \_\_\_\_\_ resulting in a new time for trial date as provided in CrR 3.3 of: \_\_\_\_\_ (60/90 days after commencement date).

[ ] SENTENCING: The undersigned, having been advised of my right to be sentenced within 40 court days from the date of the guilty plea or conviction, and being aware of, hereby waive the right to speedy sentencing pursuant to RCW 9.94A.500. I acknowledge this waiver is my personal request and I am not prejudiced by this continuance.

Defendant

[Signature]  
Attorney for Defendant

[Signature] 20015  
Prosecuting Attorney

Original: Clerk's Office  
PA-8

Canary Copy - Defendant

Pink Copy - Attorney for Defendant

Goldenrod Copy - Prosecuting Attorney

DECLARATION OF SERVICE

GR 3.1

I, John Bettys, declare that on the 29<sup>th</sup> day of July, 2015, I deposited the following documents:

- 1. Reply to State's Answer to Motion to Stay Review
- 2. Appendices A through J to the Above Reply
- 3. Decl. of Service
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

Or a true and correct copy thereof, in the internal mail system of Specia Commitment Center (SCC), and made arrangements for postage, addressed as follows:

The Supreme Court  
Temple of Justice  
Po Box 40929  
Olympia WA 98504-0929

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

Ms. Rosemary Kahalohua  
Mr. Erik Pedersen  
Attorney At Law  
605 South Third St.  
Mount Vernon, WA 98273

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

I, John Bettys, declared under penalty of perjury, under the laws of the State of Washington, that the forgoing is true and correct.

DATED This 29<sup>th</sup> day of July, 2015

John Bettys  
 (Signature)