No. 97714-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Personal Restraint of

RAYMOND MAYFIELD WILLIAMS,

Petitioner.

PERSONAL RESTRAINT PETITION

Cowlitz County Cause No. 08-01-00735-6

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Mr. Raymond Williams is serving life without parole based, in part, on a crime he committed as a child. He challenges his Cowlitz County Superior Court Judgment and Sentence in Cause No. 08-01-00735-6, entered on October 15, 2008, that classified him as a Persistent Offender under the Persistent Offender Accountability Act (POAA), RCW 9.94A.570, and subjected him to life without parole, even though his first strike, burglary in the first degree, occurred when he was 16 years old. The judgment and sentence is attached as Appendix A. Mr. Williams is incarcerated in the Monroe Correctional Complex in Monroe, Washington.

Mr. Williams asks this Court, which has original concurrent jurisdiction under RAP 16.3(c), to determine that article I, section 14 categorically bars a strike offense committed as a child to support a life without parole sentence under the POAA—an issue the Court explicitly left open in *State v. Moretti*, __ Wn.2d __, 446 P.3d 609, 614 n.5 (2019) ("We express no opinion on whether it is constitutional to apply the POAA to an offender who committed a strike offense as a juvenile").

On November 28, 2016, Mr. Williams filed a counseled personal restraint petition ("first PRP") in Division Two of the Court of Appeals, alleging unlawful restraint pursuant to the same judgment and sentence (Cowlitz County Superior Court Cause No. 08-01-00735-6), but on

different grounds than the instant petition. The first PRP is attached as Appendix B.[1] On February 26, 2019, Division Two denied Mr. Williams's petition; on April 2, 2019, it denied Mr. Williams's motion for reconsideration. The unpublished opinion and order denying motion for reconsideration are attached as Appendix C. Petitioner sets forth in the argument and authorities section the reasons this PRP should not be dismissed as a successive petition, *infra* pp. 8-11.

GROUNDS FOR RELIEF

I. Facts Upon Which Claim of Restraint Is Based

Mr. Williams is serving a life without parole sentence under the POAA. He was 16 when he pleaded guilty to his first strike offense when he was experiencing homelessness and suffering severe mental health issues and drug addiction. Williams Decl. ¶ 2, Appendix H. The first strike offense is attached as Appendix D.[2]

Mr. Williams's childhood was marked by multiple adverse childhood experiences (ACEs).[3] By the age of 9, Mr. Williams had already attempted to run away from his abusive home. Williams Decl. ¶ 3. His

[1] After the first PRP was mistakenly served on Thurston County, it was later served properly on Cowlitz County.
[2] He also pleaded guilty to custodial assault, which took place at a juvenile facility while he was awaiting resolution of what would be his first strike offense. *Id.*, Appendix B-5, B-70.
[3] *See generally* Michael T. Baglivio, et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, 3 OJJDP J. Juv. Just. 1 (2014), https://www.ncjrs.gov/pdffiles/246951.pdf.

father was incarcerated, and his mother struggled with addiction. By his early teens, he was on the path to becoming a state-raised youth. *Id.* ¶ 3.

While Mr. Williams initially thought that foster care would save him from further abuse, it only reinforced his worldview that adults could not be trusted, and that everyone was out to hurt him. *Id.* ¶ 4. He had been placed in several foster homes and group homes, but all were abusive and hostile. *Id.* ¶ 4. The only place he felt safe was on the streets of Olympia. *Id.* ¶ 10. He never finished middle school, completing only sixth grade. *Id.* ¶ 5. Before the age of 15, he had been placed in lockdown mental health facilities three times. *Id.* ¶¶ 6-8. As a young teenager, he was hospitalized at least three times for attempted suicide. *Id.* ¶¶ 8-9.

After serving his sentence for his first strike offense, he was released at the age of 19 into a homeless shelter in Port Angeles. *Id.* ¶ 15. A few years later, in 2004, at the age of 23, he was convicted of a second strike offense—burglary in the first degree. The judgment and sentence is attached as Appendix E. Finally, in 2008, at the age of 28,[4] Mr. Williams pleaded guilty to his third strike offense of assault in the second degree. Appendix A. He has no other adult criminal history. *See id.* at 2.

[4] Unlike the appellants in *Moretti,* who were in their 30s or 40s when they committed their third strike, Mr. Williams was only 28, and recent studies demonstrate that neuro-developmental growth continues into the mid- to late-twenties. *See* Christian Beaulieu & Catherine Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 27 J. Neuroscience 31 (2011); Nico V. F. Dosenbach et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 Sci. 1358, 1358-59 (2010).

Since being sentenced to life without parole in 2008, Mr. Williams has demonstrated remarkable rehabilitation. Here are some highlights:

- He is working toward his Associates degree and expects to graduate in 2020. *See* Williams Decl. ¶ 18.
- From 2009 – 2015, he served on the Earned Incentive Team that helped administer activities and programs to reduce violence in the Washington State Penitentiary (WSP). *Id*. ¶ 19.
- In 2012, he helped start the Sustainable Practices Lab at WSP that provided jobs to the prison population and donated numerous items to the community. *Id*. ¶ 22.
- He has helped to lead The Redemption Project since 2013 at both the WSP and Monroe Correctional Complex. *Id*. ¶ 23.
- He helped to start the State Raised Working Group in 2016 to address systemic issues that lead to disproportionate representation of foster youth within the criminal justice system. *Id*. ¶ 20.
- And in 2016, he saved the life of a corrections officer who was being bludgeoned in the head by another prisoner. *Id*. ¶ 24.
- Since 2017, he has served as a leader for the Concerned Lifers Organization and in February 2019 testified[5] before the Senate Human Services, Reentry and Rehabilitation Committee regarding sentencing reforms that could address systemic inequities in our justice system. *Id*. ¶ 26.

Not only do his accomplishments reflect his deep capacity for personal change, they also reflect his commitment to the communities of which he is a part, both within and outside the walls of prison. *See id*. ¶¶ 16-32.

II. Unlawfulness of Restraint

Mr. Williams's life without parole sentence that rests, in part, on a juvenile strike offense prosecuted in adult court, is disproportionate and

[5] https://www.tvw.org/watch/?eventID=2019021111 (testimony at 25:20-32:15).

therefore cruel punishment under article I, section 14, and constitutes illegal restraint under RAP 16.4.[6]

First, under RAP 16.4(c)(2), Mr. Williams's "sentence…entered in a criminal proceeding…was imposed or entered in violation of…the Constitution or laws of the State of Washington." RAP 16.4(c)(2). The POAA mandates that strike offenses committed as juveniles count as predicate strikes to support a life without parole sentence—the harshest sentence available in Washington. Imposition of life without parole based in part on inherently less-culpable juvenile conduct violates the categorical proportionality principles of article I, section 14 articulated by this Court in *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), as well as this Court's repeated pronouncements that mandatory sentencing schemes that fail to take into account the diminished culpability of children are constitutionally infirm. *State v. Gilbert*, 193 Wn.2d 169, 438 P.3d 133, 134 (2019); *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017).

Second, under RAP 16.4(c)(4), Mr. Williams's restraint is unlawful because *Bassett*, 192 Wn.2d 67, constitutes a significant change in the law, which is both retroactive in application and material to Mr. Williams's sentence. *Bassett* determined that article I, section 14 is more

[6] In this successor petition to a counseled PRP, Mr. Williams may only raise those issues not previously heard and determined on the merits, and which could not have been raised in the first PRP. This PRP does not prejudice any arguments Mr. Williams may wish to raise in a future PRP attacking his restraint pursuant to the 1997 conviction.

protective in the juvenile sentencing context and requires categorical proportionality analysis to address claims based on the characteristics of juveniles. *Bassett* is therefore a significant change that is retroactive and material to Mr. Williams' sentence, as it renders unconstitutional the POAA's imposition of life without parole based on a juvenile strike, which is reflective of inherently less culpable conduct than an adult strike.

The one-year time limit for filing PRPs specified in RCW 10.73.090 does not apply here, as Mr. Williams's claim that he is unlawfully restrained under an unconstitutional life sentence meets two different exceptions to the time bar under RCW 10.73.100. First, Mr. Williams was convicted as a persistent offender under the POAA based, in part, on his juvenile strike.[7] The application of the POAA is "unconstitutional…as applied to the defendant's conduct," RCW 10.73.100(2). This Court's juvenile justice jurisprudence cannot countenance a mandatory imposition of life without parole based in part on a juvenile strike offense prosecuted in adult court, where the same punishment is imposed on POAA offenders who commit all three strikes as fully formed adults. The POAA is unconstitutional as applied to Mr. Williams, and the class of POAA offenders who are serving life without parole based on one or more juvenile strike offenses.

[7] RCW 9.94A.030(38) (persistent offender); RCW 9.94A.570 (imposition of LWOP).

Second, for the same reasons Mr. Williams's sentence constitutes unlawful restraint under RAP 16.4(c)(4), Mr. Williams's claim is not time barred, as RCW 10.73.100(6) exempts a late-filed petition from the one-year bar where "[t]here has been a significant change in the law, whether substantive or procedural, which is material to the…sentence."

Because Mr. Williams presents one claim that meets two different exceptions to the one-year bar of RCW 10.73.100, it is not a mixed petition. RCW 10.73.100 ("[t]he time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds"); *In re Pers. Restraint of Greening,* 141 Wn.2d 687, 698 n.10, 9 P.3d 206, 212 (2000) (granting relief on RCW 10.73.100(6), declining to reach other grounds listed in RCW 10.73.100); *see also In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 697, 72 P.3d 703 (2003) (PRP containing *multiple* claims filed after one year period expires will be dismissed as a mixed petition unless all claims meet an exception to one year-time bar).

LEGAL ARGUMENT AND AUTHORITIES

I. This Petition Presents an Important State Constitutional Claim that Is Not Successive to Mr. Williams's First PRP.

"A successive petition seeks similar relief if it raises matters which have been previously heard and determined on the merits or if there has been an abuse of the writ or motion remedy." *In re Pers. Restraint of*

Jeffries, 114 Wn.2d 485, 488, 789 P.2d 731 (1990) (internal quotations omitted). Mr. Williams's instant petition is not successive because it presents a new claim that was not included in the first PRP. Nor is the instant petition an abuse of the writ, as counsel for Mr. Williams's first PRP could not have raised this claim because it is based on intervening changes in the law that occurred well after the filing of the first petition.

A. This PRP Presents a Constitutional Issue Not Previously Heard and Determined on the Merits

"No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown." RAP 16.4(d).[8] A petition seeks "similar relief" if it renews claims *heard and determined on the merits* in a previous petition. *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 362, 256 P.3d 277 (2011) (emphasis added). An issue is not "heard and determined on the merits" if it was not sufficiently argued to command judicial consideration and discussion, and there is no reasonable basis to conclude the merits were reviewed. *Greening*, 141 Wn.2d at 700.[9]

Mr. Williams's first PRP challenged his restraint under the 2008 LWOP sentence due to an improper declination procedure with respect to the first strike offense in 1997. Mr. Williams maintained that his PRP met

[8] RCW 10.73.140 does not apply, as Mr. Williams has not filed in the Court of Appeals.
[9] "Similar relief" focuses on the grounds for relief, not the type of relief sought, meaning a distinct legal basis for granting relief was determined adversely to the petitioner on a prior petition. *State v. Brown*, 154 Wn.2d 787, 794, 117 P.3d 336 (2005).

an exception to the time bar under RCW 10.73.100(5), because the 2008 sentencing court lacked jurisdiction to use his juvenile strike offense because of the improper decline. The Court of Appeals dismissed the PRP as time barred. *In re Pers. Restraint of Williams*, No. 49894-4-II, 2019 WL 949431, at *4-5 (Feb. 26, 2019).[10] Because the PRP was time barred, the court declined to address the constitutional argument presented by amicus.[11] *Id.* at *1, n.2. This PRP presents a distinct constitutional claim from the first PRP, and thus does not seek "similar relief."[12]

B. This PRP Does Not Constitute an Abuse of the Writ Because It Is Based on Intervening Changes in this Court's Juvenile Justice Jurisprudence that Occurred Well After Mr. Williams Filed His First Counseled PRP.

If a petitioner has been represented "throughout the entirety of

[10] The first PRP cited RCW 10.73.100(6), but it was never briefed. The Court of Appeals declined to consider it, as Mr. Williams did not adequately argue, cite to authority, or support his assertion that there has been a significant change in the law. *Id.* at *4.
[11] The Korematsu Center filed an amicus brief, arguing that under *State v. Bassett*, 198 Wn. App. 714, 394 P.3d 430 (2017), the POAA as applied to Mr. Williams was unconstitutional. The constitutional argument was not raised in the first PRP. Four days before oral argument was originally scheduled, the court *sua sponte* asked counsel to address at oral argument the following question: "Does using a conviction that was committed when an individual was under the age of 18 years old as a strike in a persistent offender case violate the prohibition against *cruel and unusual* punishment?" Dec. 1, 2017, Letter, attached as Appendix F (emphasis added). Later, an appendix to Mr. Williams's reply brief set forth a summary of how his counsel would respond at oral argument to the question regarding cruel and unusual punishment. Mr. Williams's reply brief is attached as Appendix G. As stated above, the court declined to address the constitutional argument.
[12] Even if the first PRP were construed as requesting similar relief, good cause is shown where petitioner demonstrates that a material intervening change in the law has occurred. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 261, 111 P.3d 837 (2005) (citing *Jeffries*, 114 Wn.2d at 488). The intervening change analysis, *infra*, demonstrating there was no abuse of the writ, also demonstrates good cause in the context of the similar relief rule.

post-conviction proceedings, it is an abuse of the writ to raise a new issue that could have been raised in an earlier petition." *Martinez*, 171 Wn.2d ¶ 17. However, the abuse of the writ rule does not apply if there are intervening changes in case law after the earlier petition(s) are filed, as is the case here. *See Jeffries*, 114 Wn.2d at 492 (claim "based…upon intervening case law" would not have been "available").[13]

Mr. Williams filed his first PRP on November 28, 2016, before *Houston-Sconiers*, 188 Wn.2d 1 (2017), *Bassett*, 192 Wn.2d 67 (2018), and *Gilbert*, 193 Wn.2d 169 (2019).[14] These decisions *each* represent an intervening change in the law, either with regard to the obligation of sentencing courts to consider fully the mitigating qualities of youth at sentencing, or with regard to categorical proportionality analysis required under article I, section 14.

When Mr. Williams filed his original PRP on November 28, 2016, mandatory sentencing schemes that did not allow for consideration of the mitigating qualities of youth were still considered constitutional; juvenile life without parole was constitutional under our state constitution; article I,

[13] A determination that Mr. Williams's claim meets an exception to the time bar under RCW 10.73.100(6) would necessarily recognize an intervening change in the law, thereby excusing counsel's failure to raise it in an earlier petition

[14] The original petition was filed well before the Court of Appeals's decision in *Bassett* as well, which was issued on April 25, 2017.

section 14 had not been declared to be more protective in the juvenile sentencing context than the Eighth Amendment; and this Court had not yet applied categorical proportionality analysis to *any* punishment under article I, section 14.[15] Thus, none of the constitutional arguments presented here could have been raised by Mr. Williams's counsel.[16]

II. The POAA Violates Article I, Section 14 As Applied to Mr. Williams Because It Requires Imposition of Life Without Parole Based on Juvenile Conduct.

Mr. Williams's PRP presents this Court a critical opportunity to continue to ensure that the diminished culpability of children prosecuted in adult court is taken into account in the punishment imposed. His claim is not time-barred, because the POAA is unconstitutional under article I, section 14 as applied to him and any other individuals serving life without parole under the POAA based on juvenile strike offenses prosecuted in adult court. RCW 10.73.100(2) (one-year time limit does not apply if "[t]he statute that the defendant was convicted of violating was unconstitutional…as applied to the defendant's conduct"). *Houston-Sconiers*, *Gilbert*, and *Bassett* represent a sea-change in how this Court

[15] Before *Bassett*, the Court recognized that article I, section 14 guaranteed both individual and categorical proportionality but had not yet found any particular punishment to be categorically barred. *See State v. Manussier*, 129 Wn.2d 652, 676, 921 P.2d 473 (1996).

[16] *Houston-Sconiers*, *Bassett*, and *Gilbert* are more thoroughly discussed *infra* pp. 24-27, as to how they represent intervening changes. For a more thorough discussion of how *Bassett* constitutes a significant change in the law, see *infra* Part III.A.

analyzes the constitutionality of the punishment of juvenile conduct in adult court under both article I, section 14 of the Washington Constitution and the Eighth Amendment. This sea change renders use of a juvenile strike offense to support a life without parole sentence unconstitutional under article I, section 14.

Article I, section 14 affords heightened protection in the two sentencing contexts that overlap in Mr. Williams's case: proportionality review of persistent offender sentences, *State v. Thorne*, 129 Wn.2d 736, 776, 921 P.2d 514 (1996), *abrogated on other grounds by Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *State v. Fain*, 94 Wn.2d 387, 392, 617 P.2d 720 (1980), and juvenile sentencing, *Bassett*, 192 Wn.2d at 82.

First, proportionality review must encompass all three strikes—and indeed always has. Proportionality review in Mr. Williams's case in particular must give close scrutiny to all strike offenses, given the inherently diminished criminal culpability that underlies his juvenile strike offense—a predicate to his life without parole sentence. Next, the categorical approach adopted in *Bassett* is required, because the challenge is based on the characteristics of children, rather than any particular and

individualized mitigating factors specific to Mr. Williams.[17] Finally, the categorical proportionality analysis reveals that use of a juvenile strike to support a life without parole sentence is barred, rendering the POAA as applied to him unconstitutional under article I, section 14. A life without parole sentence must not be based on the actions of a child that reflect inherently less culpable conduct than a strike committed as an adult. And even if this Court ultimately declines to apply the categorical proportionality analysis, the POAA's use of juvenile strikes to support a life sentence violates the individual proportionality guarantee of article I, section 14 in Mr. Williams's case.

A. Proportionality Review Under Article I, Section 14 Encompasses All Strikes that Form the Basis for Recidivist Punishment.

The consideration of all strikes is—and has been—central to proportionality review of recidivist punishment under article I, section 14 since *Fain*, 94 Wn.2d 387. In *Fain*, this Court considered the proportionality of a life sentence under the habitual offender statute by looking at the nature of "*each of the crimes that underlies his conviction as a habitual offender*" in determining whether Mr. Fain's sentence violated article I, section 14. *Id.* at 397-98 (emphasis added) (citing

[17]As set forth fully below, *infra* pp. 33-36, Mr. Williams's sentence also violates article I, section 14 under *Fain* individual proportionality.

Rummel v. Estelle, 445 U.S. 263, 295, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980) (Powell, J., dissenting) (considering each of the victimless crimes underlying a life sentence)).

The punishment meted out under the POAA is characterized as punishment for the third strike in order to avoid double jeopardy, due process, and ex post facto problems. However, this characterization does not disturb the Court's duty in the context of proportionality review to consider all of the conduct supporting the punishment imposed. Indeed, this Court has repeatedly demonstrated that the third strike is not considered in a vacuum for purposes of proportionality review, even where it has characterized recidivist punishment as punishment for the qualifying strike offense. *See Thorne*, 129 Wn.2d at 776 ("The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime" (quoting *State v. Lee*, 87 Wn.2d 932, 937, 558 P.2d 236 (1976)),[18] and *id.* at 775 (considering *all* of Mr. Thorne's previous convictions to determine if his punishment was disproportionate under *Fain* factor 4); *see also Lee*, 87 Wn.2d at 937, 937 n.4 (discussing

[18] The *Lee* rule is a product of the original constitutional challenges to recidivist punishment—none of which were based on proportionality, but instead involved challenges to early habitual criminal offender statutes under double jeopardy, due process, and ex post facto challenges. *Lee*, 87 Wn.2d at 937 (citing *State v. Miles*, 34 Wn.2d 55, 61-62, 207 P.2d 1209 (1949), and *Graham v. West Virginia*, 224 U.S. 616, 623, 32 S. Ct. 583, 56 L. Ed. 917 (1912) (citing *McDonald v. Commonwealth of Massachusetts*, 180 U.S. 311, 21 S. Ct. 389, 45 L. Ed. 542 (1901))).

all of Mr. Lee's prior convictions and finding sentence not disproportionate).

This Court's decisions in *State v. Manussier*, 129 Wn.2d 652, 921 P.2d 473 (1996), and *State v. Witherspoon*, 180 Wn.2d 875, 329 P.3d 888 (2014), again demonstrate that proportionality analysis under article I, section 14 subjects each of the strike offenses to scrutiny, as well as the "qualifying" strike, in reviewing a sentence under the POAA. In *Manussier*, this Court's proportionality analysis under article I, section 14[19] explicitly considered the first two strikes before determining that the sentence was not disproportionate. 129 Wn.2d at 485 (considering "*each of the offenses underlying his conviction* as a 'persistent offender'" and that *all three* of his offenses were serious crimes (emphasis added)).

In *Witherspoon*, before concluding that the life sentence was not disproportionate, the Court looked at the nature of the first two strike offenses (first degree burglary and residential burglary with a firearm). 180 Wn.2d ¶ 27 (relying on the analysis in *Manussier* and *Lee*, where the Court had considered the prior strikes in conducting proportionality analysis of prior persistent offender punishments). The *Witherspoon* Court

[19] This Court also considered prior strikes under its Eighth Amendment proportionality analysis. *Id.* at 484 (contrasting Mr. Manussier's strike offenses as "far more serious" than the petitioners in *Solem* and *Rummel*, where the strike offenses were nonviolent property offenses (citing *Solem v. Helm*, 463 U.S. 277, 299, 103 S. Ct. 3001, 3013, 77 L. Ed. 2d 637 (1983); *Rummel*, 445 U.S. at 284-85)).

also suggested, in dicta, that the "differences between children and adults" recognized in *Graham* and *Miller* might have application in proportionality analysis under article I, section 14, based on the offender's age at commission of "*all three* of his strike offenses." *Id.* ¶¶ 29-31 (emphasis added) (declining to apply *Graham* and *Miller*, because Mr. Witherspoon was an adult at the time of all three of his strike offenses).

This Court's repeated articulation of the rule that a POAA sentence is punishment for the third strike does not disturb the proportionality guarantee provided by article I, section 14.[20] While the individual proportionality analysis originally adopted in *Fain* differs in scope from the categorical challenge Mr. Williams presents here, *Fain*, *Witherspoon*, and *Manussier* demonstrate more generally that any proportionality analysis of recidivist punishment under article I, section 14 encompasses *all* of the conduct that forms the basis for the life without parole sentence, in recognition of its severe consequences. The proportionality guarantee is particularly important here, where the harshest punishment available in Washington has been imposed based, in part, on a juvenile strike.

[20] Federal decisions conducting proportionality analysis under the Eighth Amendment in persistent offender contexts also scrutinize all strike offenses. *Solem*, 463 U.S. at 296–97, 303 (1983) (life without parole imposed to punish minor criminal conduct underlying *all* strike offenses was disproportionate); *Rummel*, 445 U.S. at 284 (punishment is "based not merely on that person's most recent offense"); *Rummel*, 445 U.S. at 300 (Powell, J., dissenting) (analyzing each crime in concluding that "a mandatory life sentence for the commission of three nonviolent felonies is unconstitutionally disproportionate").

Nothing in this Court's recent decision in *Moretti* alters the scope of proportionality review to anything less than all strike offenses. Were the Court to read *Moretti* as precluding consideration of the previous strikes, it would be *sub silentio* overruling *Witherspoon*, *Manussier*, *Thorne*, *Fain*, and *Lee*, because the Court in each of these cases reviewed all three strikes. While the Court noted that proportionality review "focuses" on the nature of the current offense, *Moretti*, 446 P.3d ¶ 41, that focus does not exclude consideration of the predicate offenses. *Witherspoon*, 180 Wn.2d ¶ 27 (considering all three strikes); *Manussier*, 129 Wn.2d at 485 (same); *Thorne*, 129 Wn.2d at 775 (same); *Fain*, 94 Wn.2d at 397-98 (same); *Lee*, 87 Wn.2d at 937, 937 n.4 (same). And, that statement in *Moretti* was made in the context of the Court's individual proportionality analysis under *Fain*, where the first factor considers "nature of the offense"—not the offender,[21] rather than in its categorical proportionality analysis, which, by definition, requires consideration of culpability and "directs us to consider the nature of children." *Bassett*, 192 Wn.2d ¶ 28; *see also Moretti*, 446 P.3d at 615-17 (categorical bar analysis begins with questions of culpability of the offender class).

[21] However, this Court in *Moretti* recognized that "this [first *Fain*] factor demands consideration of…the culpability of the offender." 446 P.3d ¶ 41.

B. Use of a Juvenile Strike Offense to Support a Life Without Parole Sentence Is Categorically Unconstitutional Under Article I, Section 14.

Mr. Williams represents a class deserving categorical protection from the harshest punishment available in Washington. As a general matter, proportionality analysis asks whether the punishment is disproportionate to either the crimes or the class of offender. *Bassett*, 192 Wn.2d ¶ 28; *Graham*, 560 U.S. at 59. While individual proportionality "weighs the offense with the punishment," *Bassett*, 192 Wn.2d ¶ 28, categorical proportionality analysis "requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Id.* (citing *Graham*, 560 U.S. at 67).

Only categorical proportionality review adequately considers the diminished culpability of the class of offenders serving life without parole based on a juvenile strike. *Bassett*, 192 Wn.2d ¶ 27, 28 (individual proportionality is "ill suited" to analyze a categorical challenge based on the mitigating qualities of youth). It is now universally accepted that "children are less criminally culpable than adults." *Bassett*, 192 Wn.2d at 87. Mr. Williams and all others serving life without parole based on juvenile strikes offenses prosecuted in adult court are, by definition, less culpable than those serving life without parole based on three strike

offenses committed as adults. *Cf. Moretti*., 446 P.3d at 614 n.5.

In applying a categorical proportionality analysis, the Court must first consider national consensus regarding the specific sentencing practice at issue. *Bassett*, 192 Wn.2d ¶ 32. Second, the Court must exercise its independent judgment based on "'the standards elaborated by controlling precedents and by the [c]ourt's own understanding and interpretation of the [cruel punishment provision]'s text, history,…and purpose.'" *Id.* ¶ 34 (quoting *Graham*, 560 U.S. at 61) (alternations in original). This requires consideration of "'the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question,' and 'whether the challenged sentencing practice serves legitimate penological goals.'" *Id.* (quoting *Graham*, 560 U.S. at 67).

1. A National Consensus Against Use of Juvenile Strikes Is Emerging.

There are significant indicia of an "emerging national consensus against using adult convictions of juvenile offenders for sentencing enhancements." Beth Caldwell, *Twenty-Five to Life for Adolescent Mistakes: Juvenile Strikes as Cruel and Unusual Punishment*, 46 U.S.F. L. Rev. 581, 628 (2012); *see also Roper v. Simmons*, 543 U.S. 551, 566 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (it is the "consistency of the direction of change" rather than a static examination of the law at any particular point that is relevant (quoting *Atkins v. Virginia*, 536 U.S. 304,

315, 122 S. Ct. 2442, 153 L. Ed. 2d 335 (2002))). In 2012, Professor Caldwell identified at least eight jurisdictions that "prohibit or limit the circumstances under which convictions of juvenile offenders in adult court may be used for future sentencing enhancement under three strikes laws." Caldwell, *supra*, at 628 n.282.[22]

Since 2012, at least one additional jurisdiction, Wyoming, as part of its *Miller* fix statute, excluded convictions of juveniles in adult court from counting as strike offenses under its habitual offender statute, and eliminated juvenile life without parole. Wyo. Stat. Ann. § 6-10-201(b)(ii) (permitting life without parole for three strikes only after three or more previous convictions for "offenses committed after the person reached the age of eighteen (18) years of age."); *see also* 2013 Wyo. Sess. Laws 75 (showing *Miller* fix along with revision to habitual offender statute).[23]

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[22] These jurisdictions break down into two categories. Kentucky, New Jersey, New Mexico, North Dakota, and Oregon expressly exclude or otherwise limit the use of juvenile convictions as strikes. Ky. Rev. Stat. Ann. § 532.080(2)(b), 3(b); N.J. Stat. Ann. § 2C:44-7; N.M. Stat. Ann. § 31-18-23(C); N.D. Cent. Code § 12.1-32-09; Or. Rev. Stat. Ann. § 161.725. Alabama, New York, and Wisconsin do not allow the use of "youthful offender convictions" in adult court as strikes. N.Y. Penal Law § 60.10; *Ex parte Thomas*, 435 So. 2d 1324, 1326 (Ala. 1982); *State v. Geary*, 95 Wis. 2d 736, 289 N.W.2d 375, 1980 WL 99313 (Ct. App. 1980). There is also a national consensus against using juvenile adjudications as prior convictions to enhance sentences under recidivist statutory schemes. *Caldwell*, *supra*, at 617-25. As of 2012, ten states, including Washington, RCW 9.94A.030(35), (38), have legislation that explicitly excludes the use of juvenile adjudications as prior convictions for three strikes sentencing. *See* Caldwell, *supra*, at 619 n.240 (citing jurisdictions). Ten additional jurisdictions' statutes "most likely prohibit the use of juvenile adjudications as strikes." *Id.* at 619 n.241. Thirteen additional states appear to prohibit the use of juvenile adjudications as strikes through case law. *Id.* at 620 n.244.

[23] http://legisweb.state.wy.us/2013/Session Laws.pdf.

Wyoming's 2013 legislation barring juvenile strikes is indicative of the emerging national consensus. The subsequent decision in *Counts v. State*, 2014 WY 151, 338 P.3d 902 (Wyo. 2014), is not. On severely inadequate briefing, the court in *Counts* declined to find *Miller* applicable to the use of juvenile strike offenses, did not engage in any meaningful proportionality review under the Eighth Amendment, and determined the petitioner could not benefit from the 2013 legislation barring use of juvenile strikes, as it was not expressly retroactive and the case was on collateral review. *Id.*; *see also State v. Green*, 412 S.C. 65, 770 S.E.2d 424 (Ct. App. 2015) (declining to engage in meaningful proportionality review under Eighth Amendment and finding *Miller* inapplicable because offender was an adult at time of sentencing as a persistent offender).

The Fourth Circuit—the only circuit to date that has meaningfully considered the import of *Graham* and *Miller* on federal recidivist schemes under the federal sentencing guidelines—determined that a life sentence imposed under the de facto career offender provision of the federal sentencing guidelines was substantively unreasonable, where the majority of the predicate convictions occurred when the petitioner was a juvenile. *United States v. Howard*, 773 F.3d 519, 531-32 (4th Cir. 2014). The *Howard* court conducted a substantive reasonableness review, requiring courts to consider the "totality of the circumstances," *id.* (quoting *Gall v.*

United States, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007)), by "proceed[ing] beyond a formalistic review of whether the district court recited and reviewed the 3553(a) factors [federal sentencing guidelines] and ensur[ing] that the sentence caters *to the individual circumstances of a defendant*," *id.* at 531 (citation omitted).[24] The *Howard* court determined the district court erred by "focusing too heavily on Howard's juvenile criminal history in its evaluation of whether it was appropriate to treat Howard as a career offender." *Id.*; *see also id.* at 532 (relying on *Graham* and *Miller* to support its conclusion, given the diminished culpability of juvenile offenders).[25]

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[24] The federal sentencing guidelines articulated in 18 U.S.C. § 3553(a) include "the nature and circumstances of the offense and *the history and characteristics of the defendant*." 18 U.S.C. § 3553(a)(1) (emphasis added).

[25] The federal cases cited by this Court in *Moretti* either did not engage in substantive reasonableness review, and/or simply avoided the issue of youth altogether by concluding that sentencing took place at the time the offender was an adult—which evades the obligation both of the trial court to consider "the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), and of the appellate court to consider the "totality of the circumstances" when it undertakes substantive reasonableness review. *Howard*, 773 F.3d at 531-32 (quoting *Gall*, 552 U.S. at 51). *Contra United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013) (declining to consider youth under substantive reasonableness review, because *Roper* and *Miller* did "not deal specifically—or even tangentially—with sentence enhancement" (internal quotations omitted)); *United States v. Scott*, 610 F.3d 1009, 1018 (8th Cir. 2010) (rejecting individual proportionality argument, declining to engage in substantive reasonableness review, and declining to acknowledge the import of *Roper* and *Graham*, instead relying on *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002)—a case decided before *Roper*—that permitted juvenile court adjudications to enhance subsequent sentences for adult convictions); *United States v. Graham*, 622 F.3d 445, 457-64 (6th Cir. 2010) (declining to consider totality of circumstances in conducting reasonableness review and unpersuasively determining that *Graham v. Florida* does not apply because defendant was an adult at the time of the commission of the third strike offense); *United States v. Mays*, 466 F.3d 335 (5th Cir. 2006) (no substantive reasonableness review; declining to acknowledge

When *Graham* was decided, only six jurisdictions had prohibited JLWOP categorically for all juvenile offenders. *Graham*, 560 U.S. at 62.[26] Now, at least nine jurisdictions and the Fourth Circuit prevent or otherwise severely limit the use of juvenile strike offenses—more than the six that categorically prohibited juvenile life without parole when *Graham* was decided. There is ample evidence of an emerging national consensus here.

And even if there were not strong indicia of an emerging national consensus, national consensus is not dispositive. *Bassett*, 193 Wn.2d ¶ 33. It is the arc of change, rather than any static number, that the Court must assess in proportionality. *Fain*, 94 Wn.2d at 397 (proportionality "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958))).

2. Independent Judgment: The Harshest Punishment Under Washington's Criminal Law Cannot Be Imposed on Inherently Less Culpable Juvenile Conduct.

The second step of the categorical bar analysis requires consideration of "'the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question,' and 'whether the challenged sentencing practice serves

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applicability of *Roper* because there was no national consensus that sentencing enhancement based upon juvenile conviction contravenes modern standards of decency).

[26] Another seven jurisdictions allowed JLWOP but only for homicide crimes. *Id.*

legitimate penological goals.'" *Bassett*, 192 Wn.2d ¶ 34 (quoting *Graham*, 560 U.S. at 67). This Court must then exercise its independent judgment as to the constitutionality of the challenged sentencing practice, based on "'the standards elaborated by controlling precedents and by the [c]ourt's own understanding and interpretation of the [cruel punishment provision]'s text, history,…and purpose.'" *Id.* ¶ 27 (quoting *Graham,* 560 U.S. at 61) (alternations in original).

a. Culpability of the Offender Class

Brain science has established that children, by definition, "are less criminally culpable than adults." *Id.* ¶ 35.

> As we have stated, we now "have the benefit of the studies underlying *Miller, Roper,* and *Graham* ... that establish a clear connection between youth and decreased moral culpability for criminal conduct." *O'Dell,* 183 Wn.2d at 695, 358 P.3d 359 (citing the findings in *Miller* that a child's "transient rashness, proclivity for risk, and inability to assess consequences" lessen their culpability (*Miller,* 567 U.S. at 472, 132 S. Ct. 2455)). "As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well formed.'" *Graham,* 560 U.S. at 68, 130 S. Ct. 2011 (internal quotation marks omitted) (quoting *Roper*, 543 U.S. at 569-70, 125 S. Ct. 1183). Because children have "lessened culpability they are less deserving of the most severe punishments." *Id.*

Id. Mr. Williams is less deserving of the most severe punishment because of the decreased moral culpability associated with his criminal conduct under the age of 18. Mr. Williams's culpability is inherently less than

those serving life without parole under the POAA based on three strikes committed as an adult. But the POAA treats all strikes equally,[27] subjecting the two classes of offenders to life without parole—the harshest punishment available in Washington. *See State v. Gregory*, 92 Wn.2d 1, 427 P.3d 621 (2018) (holding the death penalty statute unconstitutional and converting all capital sentences to life without parole).

The POAA is a mandatory scheme that requires a strike offense that was committed at the age of 16 to have the same retributive consequences as a strike offense committed at age 40. Just as the *Miller* fix statue "allow[ed] children to be sentenced to the extremely severe punishment of life without parole," *Bassett*, 192 Wn.2d ¶ 35, the POAA allows the harshest of punishments to rest on the same conduct the *Bassett* Court—and countless others, including the United States Supreme Court—have already determined is inherently less culpable.

Further, this Court has already acted twice to address the significant risks of applying adult sentencing procedures to juveniles, resoundingly rejecting sentencing schemes that fail to account for the diminished culpability of children, and instead empowering sentencing

[27] POAA requires that "a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release." RCW 9.94A.570. RCW 9.94A.030(35), which defines "offender," makes no distinction between an adult offender and a juvenile offender declined to adult court.

courts to craft appropriate sentences that reflect this diminished culpability. *See generally Gilbert*, 193 Wn.2d 169; *Houston-Sconiers*, 188 Wn.2d 1. In *Houston-Sconiers*, this Court interpreted the Eighth Amendment to require courts to exercise complete discretion to consider mitigating qualities of youth, with regard to otherwise mandatory sentencing schemes. 188 Wn.2d ¶ 39 ("Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements."). And in *Gilbert*, all nine members of this Court agreed that *Houston-Sconiers* "held that sentencing courts possess this discretion to consider downward sentences for juvenile offenders regardless of any sentencing provision to the contrary." *Gilbert*, 193 Wn.2d at 175 (citing *Houston-Sconiers*, 188 Wn.2d at 21). The *Gilbert* Court recognized that *any* sentencing scheme that precludes consideration of youth is constitutionally infirm, regardless of the type of sentencing hearing or the mandatory nature of the sentencing scheme:

> Our opinion in that case [*Houston-Sconiers*] cannot be read as confined to the firearm enhancement statutes as it went so far as to question *any statute that acts to limit consideration of the mitigating factors of youth during sentencing*. Nor can it be read as confined to, or excluding, certain types of sentencing hearings as we held that the courts have discretion to impose downward sentences "regardless of how the juvenile got there."

Id. at 175–76 (quoting *Houston-Sconiers*, 188 Wn.2d at 9) (emphasis

added).

Houston-Sconiers and *Gilbert* reject mandatory sentencing schemes like the POAA that fail to account for the diminished culpability of children. These two decisions highlight the constitutional deficiencies in sentencing POAA offenders with juvenile strikes to life without parole—the same punishment as POAA offenders who committed all strikes as adults. But *Bassett*'s analysis of the goals of punishment highlights that juvenile strike offenses can *never* be the basis of a life without parole sentence, as the sentencing practice defies legitimate penological goals. A categorical bar of juvenile strike offenses is required.

b. Goals of Punishment

The exercise of independent judgment in *Bassett* as to why juvenile life without parole constitutes cruel punishment yields the same conclusion when exercised as to the cruelty of sentencing someone to life without parole based in part on childhood criminal conduct. Like in *Bassett*, "the case for retribution is weakened", 192 Wn.2d ¶ 37, as the "'[t]he heart of the retribution rationale relates to an offender's blameworthiness' and children have diminished culpability," *id.* (quoting *Miller*, 567 U.S. at 472 (alteration in original) (internal quotations omitted)). A strike offense committed as a child is inherently less deserving of punishment than a strike offense committed as an adult. That

a juvenile strike and an adult strike then carry the same retributive consequences points to a failure of the system to adjust retribution according to blameworthiness. Mr. Williams is less blameworthy than a persistent offender who committed all strike offenses as an adult.

Allowing juvenile strikes to form the basis of a POAA sentence serves no deterrent effect, because "'the same characteristics that render juveniles less culpable than adults'—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* (quoting *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 72)). Here again, by definition, because children as a class are less likely to consider potential punishment, a juvenile convicted of a strike offense will be far less likely to consider potential future punishment than an adult convicted of a strike offense. And here, the material question is not whether deterrence is served by looking at subsequent adult strikes, because that inquiry ignores the very nature of the sentencing practice challenged here—the use of *juvenile* strikes to support a life sentence.

Nor does allowing a juvenile strike to form the basis of a life without parole sentence serve any rehabilitative purpose. Rather, the statutory scheme allows the deck to be stacked against a child before he can even vote, open a bank account, enlist in the army, or serve on a jury. Nor must the existence of subsequent adult strike offenses cut against the

rehabilitative ideal, because rehabilitation is not an overnight process. Mr. Williams's rehabilitation demonstrates that the existence of two adult strikes is not indicative of a person's capacity for change and rehabilitation—and is a remarkable achievement in a system that devotes few resources to rehabilitation to those sentenced to life without parole. *See, e.g.*, State of Washington Department of Corrections, Educational and Vocational Programs in Prisons Policy 500.000 (rev. Aug. 6, 2019) (LWOP individuals cannot be required to take basic skills education classes, may not participate in associate workforce degree program, and must pay for vocational programs). Mr. Williams's personal achievements and contributions to his communities are emblematic of the rehabilitative ideal. Williams Decl. ¶¶ 17-31. Further, foreswearing rehabilitation based on two subsequent adult strikes ignores that those who come into contact with the criminal justice system often face huge obstacles in pursuing rehabilitation and reformation, through the weight of collateral consequences and other personal challenges.

As noted by Justice Yu, joined by Justices González and Madsen, "Those sentenced to life without a possibility of parole are treated as irredeemable and incapable of rehabilitation. The indefinite isolation of an individual conflicts with the prohibition on cruel punishment because removing the possibility of redemption is the definition of cruel." *Moretti*,

446 P.3d ¶ 55 (Yu, J., concurring). The cruelty of Mr. Williams's sentence is manifest in light of his transformation to become emblematic of the rehabilitative ideal; yet he faces the harshest sentence imposed by the State of Washington and is condemned to die in prison for non-homicide offenses he committed when he was 16, 23, and 28.[28]

Allowing juvenile strikes to form the basis for a life without parole sentence does not serve the goal of incapacitation, as incapacitation is an "irrevocable judgment about the person that is at odds with what we know about children's capacity for change." *Bassett*, 192 Wn.2d ¶ 38 (internal quotations omitted). While this Court has upheld the POAA's incapacitation in the form of a life sentence after three adult strikes, it has also recognized that incapacitation for life involves a determination of incorrigibility, which "is inconsistent with youth." *Id.* The legislative judgment that three strikers must be incapacitated for life must not fall on Mr. Williams, who has only two adult strike offenses.

And the task of determining when a juvenile strike might reflect permanent incorrigibility can no more be made at the time of the commission of a juvenile strike than it can at the time of the commission of a third strike—which weighs in favor of a categorical bar of juvenile

[28] At age 16, Burglary in the First Degree; at age 23, Burglary in the First Degree; and at age 28, Assault in the Second Degree.

strikes, rather than a remedial scheme in which trial courts exercise discretion as to whether a juvenile strike is indicative of the need for permanent incapacitation. The exercise of discretion at the time of sentencing a juvenile strike offense would create the same risk already identified as unacceptable in *Bassett*—that juveniles would be prejudged as irretrievably corrupt. *See id.* ¶¶ 38-39. And the exercise of discretion at the time of the third strike creates a similar risk: that sentencing courts may be biased by subsequent adult strikes to assume the juvenile strike was the beginning of a pattern rather than an act reflective of the hallmark immaturities of youth. The commission of new crimes cannot justify excessive punishment for less culpable acts.

None of the goals of punishment is served by the use of juvenile strikes under the POAA. Article I, section 14 cannot countenance imposition of life without parole based on inherently less culpable juvenile conduct, mandated through a statutory scheme that treats all strike offenses as equally culpable.

Finally, the POAA as applied to Mr. Williams is unconstitutional because it does not recognize that children charged with a strike offense may interfere with the best outcome of their own cases. As the Supreme Court recognized in *Miller*, children must not be treated as adults at sentencing, as "it ignores that [they] might have been charged and

convicted of a lesser offense if not for incompetencies associated with youth—for example, [their] inability to deal with police officers or prosecutors (including on a plea agreement) or [their] incapacity to assist [their] own attorneys." 567 U.S. at 477–78 (citing *Graham*, 560 U.S. at 78 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings")); *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (discussing children's responses to interrogation)). Mr. Williams's case highlights this constitutional problem. He was "wholly incapable of thinking beyond [his] day to day struggle," and "wholly incapable of understanding the consequences of being tried in the adult system." Williams Decl. ¶ 12.

When the life without parole sentence imposed on Mr. Williams is properly viewed as punishing juvenile as well as adult conduct, the inescapable conclusion is that the harshest punishment available in Washington may not be imposed to punish conduct that this Court has already recognized as categorically less deserving of punishment. *See generally Bassett*, 192 Wn.2d 67. The only way to ensure that Mr. Williams does not end up serving life without parole based in part on "crimes [that] reflect transient immaturity," *id.* ¶ 38, is to categorically bar a juvenile strike offense from counting as a strike under the POAA. This

would also be a logical extension of Washington law that does not allow juvenile adjudications to count as strikes. RCW 9.94A.030(35), (38).

C. Mr. Williams's Sentence Violates the Individual Proportionality Guarantee of Article I, Section 14.

If the Court disagrees that the use of juvenile strikes is not categorically barred, the use of Mr. Williams's juvenile strike is unconstitutional under the individual proportionality analysis articulated in *Fain*. The *Fain* factors that define individual proportionality analysis require the Court to consider "(1) the nature of the offense; (2) the legislative purpose behind the statute; (3) the punishment the defendant would have received in other jurisdictions; and (4) the punishment meted out for other offenses in the same jurisdiction." 94 Wn.2d at 397.

First, the nature of the offense requires the court to look holistically at all three strike offenses, *supra* pp. 13-17. Here, the focus of the proportionality review is on the juvenile strike offense, burglary in the first degree. The offense resulted from Mr. Williams's attempt to survive as a homeless youth. Williams Decl. ¶ 10. Mr. Williams entered a home to steal firearms only after observing the residents leave on a camping trip. Appendix B – 66 (Williams Decl. in First PRP).

More fundamentally, however, the nature of the offense cannot be understood without taking into consideration that it was a crime

committed by a child. Most recently, this Court has recognized that the *Fain* factors may include consideration of the nature of the offender as well as the offense. *Moretti*, 446 P.3d ¶ 41. *Contra Bassett*, 192 Wn.2d ¶ 28 (recognizing that "the *Fain* framework does not include significant consideration of the characteristics of the offender class"). Any individual proportionality analysis that is in step with this Court's juvenile sentencing jurisprudence and consistent with the heightened protection of article I, section 14 in both the POAA and juvenile sentencing contexts must formally consider the characteristics of the *offender* as well as of the offense—both the truth that children are less culpable than adults, as well as any individualized consideration of the mitigating qualities of youth specific to Mr. Williams's childhood.

In addition to the inherently diminished culpability of juvenile conduct, Mr. Williams's childhood was also marked by adversity, further diminishing his culpability. As set forth in detail in Mr. Williams's declaration, he came from an abusive home where his mother struggled with substance abuse and his father was incarcerated. Mr. Williams then became a ward of the state, where was placed in numerous, and abusive, foster homes, and he continued to suffer deeply, including multiple suicide attempts as well as other mental health struggles. Williams Decl. ¶¶ 2-11.

Second, the legislative purpose behind the POAA includes "deterrence of criminals who commit three 'most serious offenses' and the segregation of those criminals from the rest of society." *Thorne*, 129 Wn.2d at 775. As discussed above in the independent judgment analysis, *supra* pp. 28-31, deterrence and incapacitation are not served through imposition of life without parole to punish juvenile conduct, casting serious doubt on whether the legislative purpose is actually being served by allowing juvenile strikes to support a life sentence.

Third, Washington has the most punitive form of recidivist punishment in the country—mandatory imposition of life without parole upon the third most serious offense. Many other jurisdictions with recidivist statutes impose something far short of life, or provide an indeterminate scheme allowing for the possibility of release.[29]

Fourth, and finally, life without parole is now the harshest sentence in Washington. After *Gregory*, life without parole became the harshest penalty that can be imposed in Washington, and the previous "gradation of sentences that once existed before *Gregory* have now been condensed." *Moretti*, 446 P.3d ¶ 50 (Yu, J., concurring). This case affords the Court an opportunity to engage in "a serious reexamination of our mandatory

[29] Caldwell, *supra*, at 645, Appendix A, Second Column (explaining the punishment imposed under each jurisdiction's recidivist statute, if applicable).

sentencing practices . . . to ensure a just and proportionate sentencing scheme." *Id*. Mr. Williams is serving the same sentence as murderers and serial killers, including at least 93 adults who committed aggravated murder against multiple victims in unimaginably brutal ways. *See* Br. of Appellant at 65-71, *Gregory*, 92 Wn.2d 1 (No. 88086-7) (setting forth the details of these crimes).[30]

Mr. Williams's life without parole sentence under the POAA is categorically unconstitutional as applied to him and the class of offenders of which he is a part; alternatively, his sentence is unconstitutional as applied to him because it violates individual proportionality.[31] RCW 10.73.100(2). Thus, he has articulated an exception to the one-year bar on collateral attacks as set forth in RCW 10.73.090.

[30] If the Court decides that neither categorical nor individual proportionality render use of a juvenile strike to support a life without parole sentence unconstitutional under article I, section 14, then the Court could consider a discretionary rule in the same vein as *Houston-Sconiers* and *Gilbert*. The POAA is unconstitutional as applied to Mr. Williams because the sentencing court had no discretion to consider the mitigating qualities of youth that significantly lessened the culpability of Mr. Williams or to declare that the offense could not be counted toward a POAA sentence. Mr. Williams would be entitled to vacation of the life sentence and remand for resentencing, where the trial court must take into account the mitigating qualities of youth that diminish his culpability as a persistent offender, with explicit direction that courts have discretion to decline to count a juvenile strike offense under the POAA.

[31] A sentencing statute may be facially constitutional but violate the cruel punishment clause as applied to a particular defendant's conduct. *Thorne*, 129 Wn.2d at 773 n.11.

III. *Bassett* Is a Significant Change in the Law Which Is Retroactive and Material to Mr. Williams's Sentence Because *Bassett* Categorically Precludes Basing the Harshest Punishment on Juvenile Conduct.

A. *Bassett* Is a Significant Change in the Law, as It Overturned Numerous Decisions By this Court that Permitted Juvenile Life Without Parole.

Bassett constitutes a significant change in the law by any measure. It opened up an entirely new avenue under the state constitution for challenging the imposition of adult sentences based on juvenile conduct. First, it held article I, section 14 to be more protective in the juvenile sentencing context through a *Gunwall* analysis, which no Washington court had conducted in the juvenile sentencing context. Next, it adopted the categorical bar analysis as the appropriate analysis to address claims based on the intrinsic characteristics of children under article I, section 14, which no Washington court other than the Court of Appeals in Mr. Bassett's case had done. Finally, through application of the categorical bar analysis, *Bassett* explicitly held RCW 10.95.030(3)(a)(ii), permitting imposition of juvenile life without parole for aggravated murder, to be unconstitutional under article I, section 14.

The inviolate principle in post-conviction collateral review is the maintenance of "unlimited access to review in cases where there truly exists a question as to the validity of the prisoner's continuing detention." *Greening*, 141 Wn.2d at 695 (quoting *In re Personal Restraint of Runyan*,

121 Wn.2d 432, 453, 853 P.2d 424 (1993)). *Bassett* is a significant change in the law because all three of its holdings call into question the validity of Mr. Williams's continuing detention, as he is serving life without parole based in part on inherently less culpable conduct.

The *Bassett* decision is also a significant change in the law when measured against this Court's pronouncements that the "[t]he 'significant change' language is intended to *reduce* procedural barriers to collateral relief in the interests of fairness and justice." *In re Pers. Restraint Yung-Cheng Tsai*, 183 Wn.2d 91, 104, 351 P.3d 138 (2015) (citing *Greening*, 141 Wn.2d at 697) (emphasis in original).[32] One of the ways this Court assesses whether a change in law is significant for purposes of RCW 10.73.100(6) is whether the defendant "could have made the argument" prior to the alleged change in the law. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 258-59, 111 P.3d 837 (2005); *In re Pers. Restraint of Turay*, 153 Wn.2d 44, 51, 101 P.3d 854 (2004) ("*Turay II*"); *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 83, 74 P.3d 1194 (2003) ("*Turay I*"); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 264, 36 P.3d 1005 (2001), *as amended* (Jan. 15, 2002).

[32] On the other hand, retroactivity analysis is intended to "*strengthen* procedural barriers to collateral relief in the interests of finality and comity." *Id.* at 104 (quoting *Danforth v. Minnesota*, 552 U.S. 264, 279–81, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008)) (emphasis in original).

Typically, the availability of a particular argument turns on whether the decision whose significance is in question effectively overturned a prior appellate decision—such that the arguments currently at issue were previously "unavailable" to the litigants.[33] *Lavery*, 154 Wn.2d at 258-59; *Turay II*, 153 Wn.2d at 51-52; *Greening*, 141 Wn.2d at 697. This is because litigants "have a duty to raise available arguments in a timely fashion and may later be procedurally penalized for failing to do so... [but] they should not be faulted for having omitted arguments that were essentially unavailable at the time." *Greening*, 141 Wn.2d at 697.

This Court's previous articulation that a significant change in the law may be measured by whether it effectively overturned a prior appellate decision does not fit the monumental shift that *Bassett* created in our state cruel punishment jurisprudence as it relates to the sentencing of juveniles prosecuted in adult court. *Bassett* constitutes a significant change in the law not only because it invalidated the *Miller* fix statute allowing for LWOP, RCW 10.95.030, but also because it is the first decision to establish that article I, section 14 is more protective in the juvenile

[33] This Court has made clear that "[a]n appellate decision that settles a point of law without overturning prior precedent" is not a significant change in the law. *Turay I*, 150 Wn.2d at 83 (citing *Greening*, 141 Wn.2d at 696). *Bassett* defies simple categorization: it created new law. It did not settle a point of law, as no Washington court had ever considered whether life without parole could be imposed on a juvenile, nor had Washington courts ever considered whether article I, section 14 was more protective in the juvenile sentencing context.

sentencing context; the first to adopt the categorical bar analysis as a method of challenging proportionality under article I, section 14 (in addition to individual proportionality under *Fain*); and the first to hold that juvenile life without parole is categorically barred as cruel punishment under the Washington constitution. Thus, there is no appellate opinion "originally determinative" of the material issues at issue in Mr. Williams's case that *Bassett* overruled, because Mr. Bassett's case created new law.

By that same vein, before *Bassett*, none of the article I, section 14 arguments were available to Mr. Williams. Before *Bassett* was decided, this Court had not explicitly adopted a categorical approach to article I, section 14 in its jurisprudence. Before *Bassett* was decided, article I, section 14 did not prohibit the imposition of life without parole upon a juvenile. And before *Bassett*, no one had challenged juvenile life without parole under article I, section 14. In fact, before *Miller* and *Graham*, this Court routinely denied Eighth Amendment challenges to LWOP. *See, e.g.*, *State v. Furman*, 122 Wn.2d 440, 458, 858 P.2d 1092 (1993); *State v. Massey*, 60 Wn. App. 131, 145-46, 803 P.2d 340, *review denied*, 115 Wn.2d 1021, 802 P.2d 126 (1990), *cert. denied*, 499 U.S. 960, 111 S. Ct. 1584, 113 L. Ed. 2d 648 (1991); *State v. Stevenson*, 55 Wn. App. 725, 737-38, 780 P.2d 873 (1989), *review denied*, 113 Wn.2d 1040, 785 P.2d 827 (1990); *State v. Forrester*, 21 Wn. App. 855, 870-71, 587 P.2d 179

(1978), *review denied*, 92 Wn.2d 1006, 1979 WL 71412 (1979). Mr. Bassett was the first to challenge juvenile life without parole based on the state constitution in a post-*Miller* and -*Graham* landscape.

Before *Bassett*, the last time this Court had considered juvenile life without parole was to deny review in *Massey*, where the Court of Appeals had upheld life without parole imposed on a thirteen-year-old, reasoning that Eighth Amendment proportionality "does not embody an element or consideration of the defendant's age, only a balance between the crime and the sentence imposed. Therefore, there is no cause to create a distinction between a juvenile and an adult who are sentenced to life without parole for first degree aggravated murder." 60 Wn. App. at 145–46. *Bassett* fundamentally changed how this Court approaches constitutional review of adult punishment imposed on juvenile conduct and constitutes a significant change in the law.

B. *Bassett* Applies Retroactively Under *Teague* Because It Is a Substantive Rule that Forbids Juvenile Life Without Parole.

Bassett is retroactive because it creates a new substantive rule. "Whether a changed legal standard applies retroactively is a distinct inquiry from whether there has been a significant change in the law." *Tsai*, 183 Wn.2d at 103. *Teague v. Lane*, 489 U.S. 288, 301, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), provides the test to determine whether a new

rule applies retroactively.[34] *See, e.g.*, *In re Pers. Restraint of Gentry*, 179 Wn.2d 614, 628, 316 P.3d 1020 (2014) (new rule regarding prosecutorial misconduct not retroactive under *Teague*). A new rule is retroactive if it is a substantive rule[35] that places certain behavior "beyond the power of the criminal law-making authority to proscribe," or a watershed rule of criminal procedure "implicit in the concept of ordered liberty." [36] *Teague*, 489 U.S. at 311 (internal quotations omitted).

"Substantive rules include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 728, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016) (quotations omitted) (*Miller*'s prohibition of mandatory LWOP was a substantive rule placing behavior outside the power of the criminal law to proscribe). The decision in *Bassett* categorically barring the imposition of juvenile life without parole is a hallmark substantive rule, as it forbids a category of punishment for an entire class of defendants. *Bassett* applies retroactively.

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[34] "In general…a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government." *Id.* at 301.
[35] Substantive rules "are more accurately characterized as ... not subject to the bar." *Montgomery v. Louisiana*, 136 S. Ct. 718, 728, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016) (quotations omitted).
[36] *Teague*, 489 U.S. at 313 ("those new procedures without which the likelihood of an accurate conviction is seriously diminished").

C. *Bassett* Is Material to Mr. Williams's Sentence.

When Mr. Williams was sentenced to life without parole in 2008 under the POAA, children prosecuted as adults received no special treatment for sentencing purposes, under either the Eighth Amendment or article I, section 14. The United States Supreme Court had not decided *Graham* or *Miller*, and the "kids are different" jurisprudential arc had just begun with *Roper*—a decision that was initially limited because it applied only to capital punishment, which receives distinct treatment under both the Eighth Amendment and article I, section 14. Juvenile life without parole was still a constitutional punishment under both the Eighth Amendment and article I, section 14, even for nonhomicide crimes. Article I, section 14 had not been declared to provide heightened protection in the juvenile sentencing context, and this Court had not categorically barred any type of punishment under our state constitution.

Bassett is material to Mr. Williams because the constitutional norms of juvenile sentencing in effect when he was sentenced were fundamentally different, and because Mr. Williams presents facts showing the relevance of the *Bassett* decision to him. *Cf. Zedrick v. Kosenski*, 62 Wn.2d 50, 54, 380 P.2d 870 (1963) ("material facts are those…upon which the outcome of the litigation depends." (internal quotations omitted)); *accord Greening*, 141 Wn.2d at 697 (significant change in

construction of firearm enhancement statute was material because part of Greening's sentence was unlawfully imposed).

When this Court decided *Bassett*, it made clear its commitment to ensuring that crimes committed as children do not receive the harshest of punishments when they are prosecuted as adults, *regardless of the specific sentencing context*. To reach its holding that juvenile life without parole is unconstitutional, this Court had to first establish two jurisprudential milestones under article I, section 14. *Bassett*, 192 Wn.2d at 76-77 (setting out issues presented). First, the *Bassett* Court conducted a *Gunwall* analysis and determined that "in the context of juvenile sentencing, article I, section 14 provides greater protection than the Eighth Amendment." *Id.* ¶¶ 15-25. Second, the Court adopted a categorical framework under article I, section 14 to address challenges to sentencing schemes based on the intrinsic qualities of juveniles and their inherently diminished culpability, recognizing that individual proportionality under *Fain* did not consider the characteristics of the offender class. *Id.* ¶¶ 26-31.

In addition to the fundamentally different legal landscape around juvenile sentencing brought about by *Bassett*, *Bassett*'s independent judgment analysis is material to Mr. Williams's conviction because it creates a framework to consider whether allowing a juvenile strike to support a life without parole sentence serves the goals of retribution,

deterrence, rehabilitation, and incapacitation under article I, section 14. As set forth in the independent judgment analysis above, *supra* pp. 32-33, application of the categorical bar analysis to juvenile strikes renders Mr. Williams' sentence unconstitutional. Thus, *Bassett* is material to Mr. Williams's sentence not only for its categorical bar of juvenile life without parole, but also for the two jurisprudential milestones that the Court marked along the way.

In *Greening*, the court emphasized the logical connection between the "significant change in the law" element and the "material" element, stating: "[w]hile litigants have a duty to raise *available* arguments in a timely fashion and may later be procedurally penalized for failing to do so…they should not be faulted for having omitted arguments that were essentially *unavailable* at the time." *Greening*, 141 Wn.2d at 697 (emphasis in original). Like in *Greening*, Mr. Williams should not be faulted for failing to raise an argument that was "essentially *unavailable* at the time." *Id.* Under the plain language of the POAA, all strike offenses are treated equally without regard to the defendant's age at the time of the strike offense. RCW 9.94A.030(35) ("'Offender' means a person who has committed a felony established by state law and is eighteen years of age or older <u>or</u> is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030" (emphasis added)).

When this Court decided *Bassett*, it cemented Washington's commitment to giving heightened protection under article I, section 14 to anyone being punished in adult court for juvenile conduct. The law in effect in 2008, at the time of Mr. Williams's sentencing, gave Mr. Williams no basis on which to request an exceptional downward sentence, much less argue that juvenile strikes were categorically unconstitutional under our state constitution, nor that our state constitution afforded heightened protection against cruel punishment in the juvenile sentencing context. Mr. Williams has demonstrated that *Bassett* constitutes a significant change in the law that is substantive and material to his POAA sentence, RCW 10.73.100(6), and thus he has articulated an exception to the one-year bar on collateral attacks as set forth in RCW 10.73.090.[37]

IV. Mr. Williams Demonstrates Prejudice Entitling Him to Relief from his Life Without Parole Sentence.

Mr. Williams's life without parole sentence under the POAA is unconstitutional under article I, section 14, constituting unlawful restraint under RAP 16.4(c)(2) and 16.4(c)(4), and his claim satisfies two different exceptions to the time bar, RCW 10.73.100(2) and RCW 10.73.100(6).

[37] If this Court determines that neither exception to the time bar is met, the time limit, which is not jurisdictional, *In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 431, 993 P.2d 296 (2000), should be equitably tolled. Equitable tolling is appropriate where justice requires, as it does here. *In re Pers. Restraint of Carter*, 172 Wn.2d 917, ¶ 21, 263 P.3d 1241 (2011).

Because the use of his juvenile strike to support his life without parole sentence is unconstitutional under article I, section 14, the error is per se prejudicial. Even if this Court disagrees that the constitutional error is per se prejudicial on collateral review, Mr. Williams's life without parole sentence that rests, in part, on a juvenile strike offense actually and substantially prejudices him.

A petitioner alleging constitutional error has the prima facie burden of showing by a preponderance of the evidence that he was actually and substantially prejudiced. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). The petitioner must demonstrate that the outcome would more likely than not have been different had the alleged error not occurred. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 825, 650 P.2d 1103 (1982) (quotation omitted). However, the burden to establish prejudice "may be waived if the particular error gives rise to a conclusive presumption of prejudice." *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492 (1992); *In re Pers. Restraint of Borrero*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007).[38]

In cases where this Court has determined a constitutional error is per se prejudicial on collateral review, the Court has emphasized that the

[38] For a clear characterization of the different tests for assessing prejudice on collateral review, see *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 606-09, 316 P.3d 1007 (2014) (Gordon McCloud, J., concurring).

error itself constitutes automatic proof of prejudice. *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, ¶ 18, 316 P.3d 1007 (2014); *see also In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983) (proof of constitutional invalidity of guilty plea constitutes proof of actual prejudice); *In re Pers. Restraint of Richardson*, 100 Wn.2d 669, 679, 675 P.2d 209 (1983), *abrogation recognized by Stockwell*, 179 Wn.2d at 597[39] (finding prima facie case of per se prejudice based on ineffective assistance of counsel, but remanding for additional fact finding to determine extent and nature of conflict of interest); *In re Pers. Restraint of Crace*, 174 Wn.2d 835, 843, 280 P.3d 1102 (2012) (claims of ineffective assistance of counsel and prosecutorial withholding of exculpatory evidence "share [an] important characteristic ... [in that] a petitioner who proves a violation [necessarily] shows prejudice," without any further requirement of additional prejudice on collateral review).[40]

Like an invalid guilty plea or ineffective assistance of counsel, the error here is per se prejudicial on collateral review because proof of the harmful effect of permitting a juvenile strike to support a life without

[39] *Stockwell* confirmed a narrower reading of *Richardson* that "some per se errors on direct review could also be per se prejudicial on collateral attack." 179 Wn.2d at 601.
[40] In cases where this Court has declined to find a constitutional error per se prejudicial on collateral review, the Court has highlighted that despite the error, the petitioners were not functionally and completely deprived of the underlying constitutional protection. *See, e.g.*, *St. Pierre*, 118 Wn.2d 321 (defect in charging document not per se prejudicial on collateral review because it still put petitioner on notice of aggravating circumstance).

parole sentence inheres in the claim of the unconstitutional sentence itself. But for Mr. Williams's juvenile strike offense at the age of 16, he would not be serving life without parole, but would instead be a contributing member of the community outside prison walls. Williams Decl. ¶¶ 16-32, discussed *supra* p. 4 (detailing the remarkable contributions Mr. Williams has made to the various communities of which he is a part, as well as his laudable accomplishments in the way of education and volunteer work).

Should the Court decline to find the use of a juvenile strike per se prejudicial, the use of the strike to support a life without parole sentence actually and substantially prejudices Mr. Williams. The life sentence imposed in 2008 actually and substantially prejudices him to die in prison, serving the harshest punishment available in Washington, under a statute whose retributive scheme makes *no* distinction between the culpability of juvenile and adult conduct. Had the trial court not accepted the juvenile strike as one of the predicate strikes, the life without parole sentence would not have been imposed.[41]

Finally, Mr. Williams has no other remedy available to him. RAP 16.4(d). The life without parole sentence, by definition, precludes his

[41] The identical nature of the argument under both the prejudice per se test and the actual and substantial prejudice test underscores how the error is per se prejudicial. But for the use of the juvenile strike offense to support a POAA sentence, the outcome would more likely than not have been different. The error itself is the prejudice.

ability to seek parole. The remote possibility of clemency is not to be considered in the context of a proportionality challenge, as "chances for executive grace are not legally enforceable." *Fain*, 94 Wn.2d at 395.

CONCLUSION

Petitioner respectfully requests that this Court determine that Mr. Williams is unlawfully restrained under RAP 16.4, that his PRP meets an exception to the one-year bar under RCW 10.73.100(2) or RCW 10.73.100(6), and to hold that article I, section 14 categorically bars the use of a juvenile strike to support a life without parole sentence under the POAA. The use of the juvenile strike offense to support Mr. Williams's life without parole sentence is per se prejudicial. Mr. Williams requests that this Court remand to Cowlitz County Superior Court for resentencing, with instructions to vacate his life without parole sentence and release him for time served on the standard range sentence for the third strike.

DATED this 20th day of September 2019.

Respectfully Submitted:

/s/Jessica Levin

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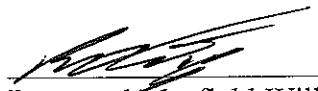
VERIFICATION OF PETITION

I declare under penalty of perjury under the laws of the State of Washington that I am the petitioner, that I have read the petition, know its content, and I believe the petition is true.



Raymond Mayfield Williams

Signed this 13 Th day of Sept., 2019, at Monroe, Washington.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on September 20th, 2019, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 20th day of September, 2019.

/s/ Jessica Levin

Jessica Levin
Attorney for Petitioner

APPENDIX A

FILED
SUPERIOR COURT

2008 OCT 15 A 11:16

COWLITZ COUNTY
RONI A. BOOTH, CLERK
BY

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RAYMOND MAYFIELD, Williams

Defendant.

SID: WA16455471
If no SID, use DOB:04-06-80

No. 08-1-00735-6

Felony Judgment and Sentence (FJS)
[X] Prison [ ] RCW 9.94A.712 Prison Confinement
[ ] Jail One Year or Less [ ] RCW 9.94A.712 Prison Confinement
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[X] Clerk's Action Required, para 4.5 (DOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

08 9 02817 4

I. Hearing

1.1 The court conducted a sentencing hearing this date 10-15-2008; the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. Findings

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

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
[X] guilty plea [ ] jury-verdict [ ] bench trial: 10-15-2008

Count	Crime	RCW	Date of Crime
I	ASSAULT SECOND DEGREE	9A.36.021(1)(c)	07-05-08

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

[ ] Additional current offenses are attached in Appendix 2.1.

[ ] The **burglary** in Count _____ involved a theft or intended theft.

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

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

[ ] The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.533(9).

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

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

[ ] The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

[ ] The defendant acted with **sexual motivation** in committing the offense in Count_____. RCW 9.94A.835.

[ ] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.

[ ] The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ _____. RCW 9.94A.602, 9.94A.533.

[ ] Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

[ ] The defendant committed **[ ] vehicular homicide [ ] vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.

[ ] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

[ ] The crime(s) charged in Count _____ involve(s) **domestic violence. RCW 10.99.020.**

[ ] The offense in Count _____ was committed **in a county jail or state correctional facility**. RCW 9.94A.533(5).

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult, Juv.	Type of Crime
1	MAL MIS 2	10-31-95	THURSTON, WA	09-03-05	J	
2	MAL MIS 2	12-12-95	THURSTON, WA	11-21-95	J	
3	THEFT 2	07-21-95	THURSTON, WA	06-26-95	J	
4	PSP 2	09-07-95	THURSTON, WA	06-25-95	J	
5	PSP 2	09-07-95	THURSTON, WA	06-25-95	J	
6	BURG 1	07-08-97	THURSTON, WA	02-14-97	A	
7	CUST ASSAULT	07-08-97	THURSTON, WA	05-11-97	A	

8	BURG 1	02-09-04	KING, WA	09-13-03	A	

[ ] Additional criminal history is attached in Appendix 2.2.
[X] The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
[X] The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570)**:BURG 1 1997, AND BURG 1 2004**

[ ] The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	8	IV	53 – 70 MOS if not a Persistent Offender			CLASS B if not a Persistent Offender

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).
[ ] Additional current offense sentencing data is attached in Appendix 2.3.

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

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

[ ] within [ ] below the standard range for Count(s) _____.
[ ] above the standard range for Count(s) _____.
[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury, by special interrogatory.

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

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

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

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

III. Judgment

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

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

[ ] The court DISMISSES Counts _____.

IV. Sentence and Order

It is Ordered:

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

JASS CODE			
RTN/RJN	$ TBD	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	$ 500.00	Victim assessment	RCW 7.68.035
	$	Domestic Violence assessment up to $100	RCW 10.99.080
CRC	$ 350	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee $ 200.00 FRC	
		Witness costs $ WFR	
		Sheriff service fees $ SFR/SFS/SFW/WRF	
		Jury demand fee $ JFR	
		Extradition costs $ EXT	
		Incarceration fee $ 150.00 JLR	
		Other $	
PUB	$ 805.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	$	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	$	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD NTF/SAD/SDI	$	Drug enforcement fund of Cowlitz County Prosecutor	RCW 9.94A.760
MTH	$	Meth/Amphetamine Clean-up fine $3000. RCW 69.50.440, 69.50.401(a)(1)(ii).	
CLF	$	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
	$ 100.00	Felony DNA collection fee [ ] not imposed due to hardship	RCW 43.43.7541
RTN/RJN	$	Emergency response costs (for incidents resulting in emergency response and conviction of driving, flying or boating under the influence, vehicular assault under the influence, or vehicular homicide under the influence, $1000 max.)	RCW 38.52.430
	$	Urinalysis cost	
	$	Other costs for: _____	
	$ 1755	**Total**	RCW 9.94A.760

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

[ ] shall be set by the prosecutor.
[ ] is scheduled for _____.

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

Name of other defendant	Cause Number	(Amount-$)
RJN		

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

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ 50.00 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 finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of $50 per day, unless another rate is specified here: _____. (*JLR*) RCW 9.94A.760.

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

4.1b [ ] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

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

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

4.3 No Contact: The defendant shall not have contact with CHAD T. GAYNOR 05-15-59 AND SASHA VANDUSON 04-24-87 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for __LIFE__ years (not to exceed the maximum statutory sentence).

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

The defendant shall not use, own or possess any **firearm** or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120.

[ ] The firearm, to wit: _____ is forfeited to _____, a law enforcement agency.

4.4 Other: _____

4.5 **Persistent Offender.** The court found the defendant to be a Persistent Offender. RCW 9.94A.570.

[X] Count I is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[ ] Count _____ is a crime listed in RCW 9.94A.030(33)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was 16 years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was 18 years of age or older when the offender committed the offense), or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(33)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(33)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(33)(b)(i).

The defendant's prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030(33), RCW 9.94A.525.

Confinement. RCW 9.94A.570. The court sentences the defendant to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release	on Count	I
_____	months on Count	_____
_____	months on Count	_____
_____	months on Count	_____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

_____.

The sentence herein shall run consecutively with the sentence in cause number(s) _____

_____

but concurrently to any other felony cause not referred to in this judgment. RCW 9.94A.589.

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

4.6 Other: _____

_____

_____

_____

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). **You are required to contact the Cowlitz County Collections Deputy, 312 SW First Avenue, Kelso, WA 98626 (360) 414-5532 with any change in address and employment or as directed. Failure to make the required payments or advise of any change in circumstances is a violation of the sentence imposed by the Court and may result in the issuance of a warrant and a penalty of up to 60 days in jail.** 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).

[ ] This crime involves a Rape of a Child in which the victim became pregnant. The defendant shall remain under the court"s jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is longer.

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

5.4 Restitution Hearing.
[ ] I waive any right to be present at any restitution hearing (sign initials):_____.

5.5 Community Custody Violation.
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

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

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register

immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

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

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding, weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence

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

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

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

5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 IF AN APPEAL IS PROPERLY FILED AND APPEAL BOND POSTED, THE DEFENDANT WILL REPORT TO THE DEPARTMENT OF CORRECTIONS, WHO WILL MONITOR THE DEFENDNAT DURING THE PENDENCY OF THE APPEAL, SUBJECT TO ANY CONDITIONS IMPOSED BY DOC AND/OR INCULDED IN THIS JUDGMENT & SENTENCE AND SPECIFICALLY NOT STAYED BY THE COURT.

5.11 Other: _____.

Done in Open Court and in the presence of the defendant this date: 10/15/08.

_____
Judge/Print Name:

_____	_____	_____
(Deputy) Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA No. 35537	WSBA No.	
Print Name: J. Smith	Print Name:	Print Name:

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

Defendant's signature: _____

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

Interpreter signature/Print name: _____

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

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

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

Identification of the Defendant

SID No. _____ WA16455471_ _____ Date of Birth _____04-06-80_____
(If no SID take fingerprint card for State Patrol)

FBI No. _____561188EB3_____ Local ID No. _____

PCN No. _____ Other _____

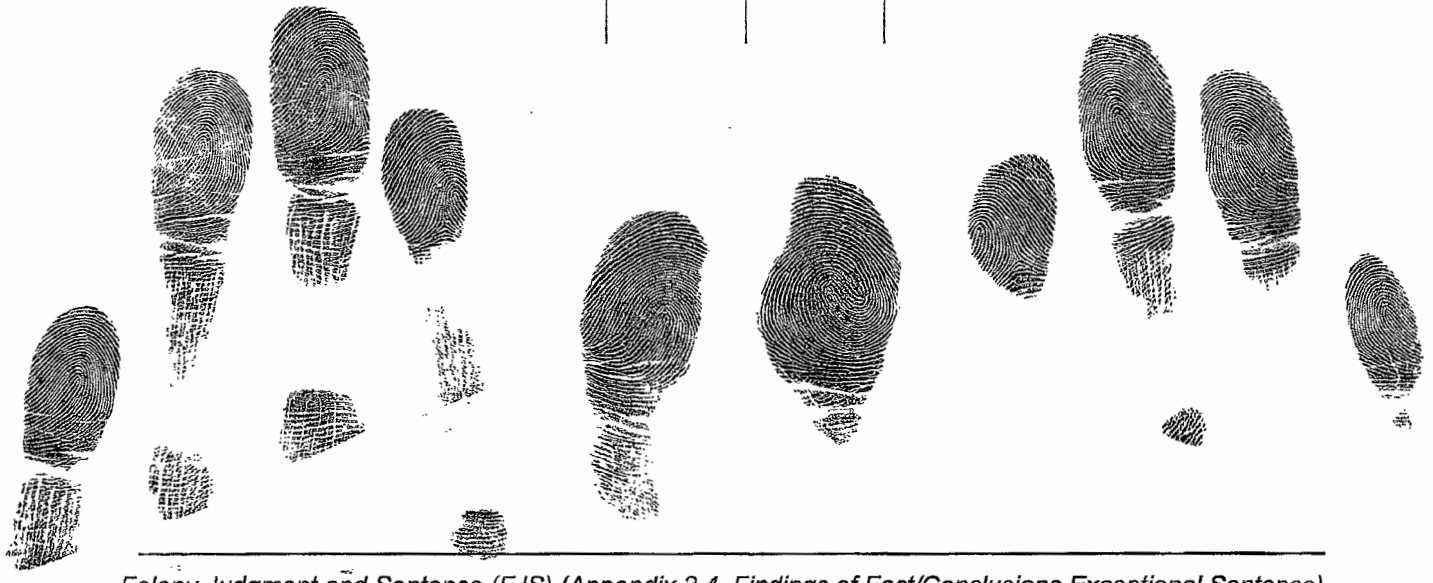
Alias name, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other:_____		[X] Non-Hispanic	[ ] Female

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.
Clerk of the Court, Deputy Clerk, _____ Dated: 10-15-08

The defendant's signature: _____

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



APPENDIX B

Court of Appeals No. _____

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

In Re the Personal Restraint of:

RAYMOND WILLIAMS, JR.,

Petitioner.

PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT AND AUTHORITIES

Cowlitz County Superior Court No. 08-1-00735-6

Corey Evan Parker
Attorney for Petitioner
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TABLE OF AUTHORITIES

United States Supreme Court Cases

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I. STATUS OF PETITIONER

Raymond Mayfield Williams, Jr. is currently serving a life sentence in the custody of the Department of Corrections at Monroe Correctional Complex. Williams pled guilty to one count of Burglary in the First Degree and one count of Custodial Assault on July 8, 1997. He was sixteen years old when he committed the crimes and seventeen years old when he was charged with the crimes. Williams pled guilty to the aforementioned crimes at seventeen years old after he waived a decline hearing. Following his improper sentencing as an adult, he was convicted on two subsequent occasions of strike offenses. As a result, he was sentenced to life in prison under the persistent offender act.

II. GROUNDS FOR RELIEF

Williams' continued restraint is unlawful because his plea and sentence were entered in a criminal court which lacked competent jurisdiction. RAP 16.4(c)(1). Williams' continued restraint is additionally unlawful because there has been a significant change in the substantive law which is material to his plea and sentence and sufficient reasons exist to require retroactive application of the changed legal standard.

Specifically, Williams raises the following legal claims:

A. The adult court lacked authority to enter a judgment and sentence because there is insufficient evidence in the record to show that Williams knowingly and intelligently waived his right to a decline hearing.

B. The adult court lacked authority to enter a judgment and sentence because the juvenile court did not make findings that it was in the best interest of Williams or the public.

C. Because the juvenile court did not properly transfer jurisdiction to the adult court, the adult court lacked competent jurisdiction to enter a judgment and sentence against Williams. Therefore, he is not procedurally barred from bringing this petition.

III. STATEMENT OF FACTS RELEVANT TO RELIEF

A. Substantive Facts

On October 15, 2008, Mr. Williams was convicted of Assault in the Second Degree. At sentencing, the trial court sentenced Mr. Williams as a persistent offender under the Persistent Offender Accountability Act ("POAA"), commonly known as the "three strikes and you're out law". The trial court determined that Mr. Williams' latest conviction qualified as the third strike. Thus, he was sentenced to the maximum sentence of life in prison without the possibility of release. See RCW 9.94A.570 (former RCW 9.94A.560). ***See Appendix "A," Judgment and Sentence, Cowlitz County Superior Court, Cause No. 08-1-00735-6.***

On February 9, 2004, Mr. Williams was convicted of Burglary in the First Degree in King County Superior Court. This conviction was

deemed to be his second strike offense. ***See Appendix "B," Judgment and Sentence, King County Superior Court, Cause No. 03-1-02507-7.***

On February 14, 1997, at sixteen years old, Mr. Williams was involved in criminal activity. He was subsequently charged on May 5, 1997 at seventeen years old in the Juvenile Division of the Thurston County Superior Court with Burglary in the First Degree, and two counts of Theft of a Firearm. ***See Appendix "C," Information, Thurston County Superior Court, Cause No. 97-8-00601.***

There was a decline hearing held on May 19, 1997 in the Thurston County Juvenile Department at the same time as his arraignment. ***See Appendix "D," Notice of Hearing, Thurston County Superior Court, Cause No. 97-8-00601.*** In this hearing, the commissioner stated in the written Order the following:

> "The Respondent having been charged with Burglary in the First Degree 9A.52.020(1)(a) and two counts of Theft of a Firearm RCW 9A.56.300, hereby waives his right to a decline hearing pursuant to RCW 13.40.110 and jurisdiction for the above named respondent shall be transferred to Superior Court.
>
> Probable Cause has been established for the above enumerated charges
>
> Pursuant to State v. Holland adopting US v. Kent 383 U.S. 541(1966), court finds that Respondent shall be declined to Adult Superior Court. Respondent to be held in Adult Thurston County Jail for further proceedings on this matter." ***See Appendix "E," Order to Decline Raymond Williams to Adult Court Jurisdiction, Cause No. 97-8-00601.***

The juvenile court commissioner approved the waiver and transfer, but failed to make any written findings articulating why the juvenile court declined jurisdiction. Furthermore, there was not an express waiver to prove Mr. Williams was fully informed of his rights. Following the decline hearing, Mr. Williams was charged as an adult and ultimately plead guilty to Burglary in the First Degree and Custodial Assault in Thurston County Superior Court on July 8, 1997. ***See Appendix "F," Judgment and Sentence, Thurston County Superior Court, Cause No. 97-1-866-6.*** The adult conviction of Burglary in the First Degree was determined to be a strike offense.

Williams' current appellate counsel requested the verbatim record of proceeings of the decline hearing held on May 19, 1997 from the Juvenile Division of Thurston County Superior Court. After a thorough search by Chief Deputy Clerk, Tawni Sharp, it was determined that the oral record had either been destroyed or did not exist. See ***Appendix "G," Declaration of Jan Griffin, Judicial Services Manager, Thurston County Superior Court***. The declination order did not contain any written findings, but referenced "State v. Holland" and "US v. Kent." ***See Appendix E***.

But for this improper transfer to adult court, Mr. Williams would not have been sentenced as a persistent offender in 2008 because that

offense would have only been his second strike. Due to this error, he is unlawfully serving life in prison without parole.

IV. ARGUMENTS AND AUTHORITY

RAP 16.4 and RCW 10.73.090-.100 govern when a personal restraint petition can be filed. The one-year limitation does not apply if the sentence imposed was in excess of the court's jurisdiction or there has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard. RCW 10.73.100 (4).

A. The juvenile court's transfer to adult court was invalid because the record does not reflect that Williams made a knowing and intelligent waiver and the juvenile court did not make findings that a transfer was in the best interest of Williams or the public.

1. Right to a Decline Hearing

At the time of Williams' conviction, it was already well established that before a juvenile court commissioner or judge could exercise its discretion and enter an order declining jurisdiction, it must afford the juvenile an opportunity to be heard as to whether he should be

tried as a juvenile or as an adult. Dillenburg v. Maxwell, 70 Wn.2d 331, 353, 422 P.2d 783 (1967). At the time of Williams' conviction, the juvenile court was required to find that a "declination of juvenile court jurisdiction would be in the best interest of the juvenile or the public" in order to decline jurisdiction. Former RCW 13.40.110(2) (1997). The State bears the burden of proving declination is appropriate by a preponderance of the evidence. State v. Massey, 60 Wn. App. 131, 137, 803 P.2d 340 (1990)

When a decline hearing is held, the juvenile court must consider the following factors laid out in Kent v. United States, 383 U.S. 541, 566-67 (1966): (1) the seriousness of the alleged offense and whether the protection of the community requires declination; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the alleged offense was against persons or against property; (4) prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's accomplices in the alleged offense are adults; (6) the juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living; (7) the juvenile's record and previous history; and (8) the prospects for adequate protection of the public and the likelihood of reasonable

rehabilitation of the juvenile by the use of procedures, services, and facilities available in the juvenile court. State v. Furman, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993).

When the juvenile court does decline jurisdiction, its order must analyze the factors with enough "specificity to permit meaningful review." In re Harbert, 85 Wn.2d 719, 724, 538 P.2d 1212 (1975).

In the instant case, despite the established law, the juvenile court abdicated its duty to determine whether transferring Williams to adult court was in his, or the public's, best interest. In the juvenile court's order declining jurisdiction, it baldy cited to State v. Holland, 98 Wn.2d 507, 515, 656 P.2d 1056 (1983), the case which adopted the Kent factors, and Kent, 383 U.S. 541, but made no actual findings. See ***Appendix "E," Decline Order***. This court is left with the juvenile court's assertion that it considered the Kent factors, but without findings the reviewing court is deprived of any meaningful review. Further, there is no evidence that a decline hearing ever took place.

In this case, if the court had conducted a meaningful review there is a strong likelihood that Williams would have been sentenced as a juvenile. At seventeen years old, Williams was homeless, he had been a part of the juvenile system, he was addicted to drugs, his home life was not supportive, and his emotional attitude was immature. ***See Appendix "H,"***

Declaration of Petitioner, Raymond Williams. His emotionally immature attitude at 17 years old was demonstrated by his custodial assault charge that he received along with the Burglary in the First Degree, where he was found guilty of kicking the door to his room while in custody at the Thurston County Youth Service Center, causing damage to the door. He was removed by staff and taken into the other room where he charged a staff member and hit them in the back with his fist. ***See Appendix "I," Certification of Probable Cause.*** In light of all of the aforementioned, there should have at least been a meaningful review at the juvenile decline hearing.

2. State v. Saenz and State v. Bailey allow an adult defendant who was deprived of a declination hearing to challenge the adult court's jurisdiction even when that defendant waived his right to a hearing and stipulated to adult court jurisdiction.

In 2012, the Washington Supreme Court held that "under RCW 13.40.110, a judge must carefully weigh whether declining jurisdiction is in the best interest of the juvenile or the public and enter findings to that effect, even where the parties waive the decline hearing and stipulate to transfer to adult court." State v. Saenz, 175 Wn.2d 167, 180, 283 P.3d 1094 (2012).

Our Supreme Court spent a considerable amount of time discussing the history and purpose of the Juvenile Justice Act of 1977,

chapter 13.40 RCW (JJA). This discussion reveals a very good reason for its holding. The juvenile system is fundamentally different than the adult system. Juvenile courts are rehabilitative and not punitive. Id. at 173. When Washington adopted the JJA it preserved that fundamental difference which was "manifest in the additional protections juveniles receive in juvenile court but not in adult court." State v. Saenz, 175 Wn.2d 167, 173, 283 P.3d 1094 (2012).

Some of those additional protections include:

> giving juvenile courts far more discretion to order alternative sentences, such as diversion agreements in lieu of prosecution, community supervision, and individualized programs involving employment, education, or treatment. See, e.g., RCW 13.40.080, .0357 (" Option B, Suspended Disposition Alternative"); RCW 13.40.020(4). In juvenile court, convicted offenders cannot be confined past the age of 21. RCW 13.40.300. Juvenile offenses are not generally considered crimes, so a juvenile cannot be convicted of a felony. RCW 13.04.240; In re Pers. Restraint of Frederick, 93 Wash.2d 28, 30, 604 P.2d 953 (1980). A juvenile cannot be sent to adult prison, or to any adult jail or holding facility. RCW 13.04.116. There are limitations on the use of juvenile records and the length of time they will be made public. See RCW 13.50.050. Juvenile courts can consider mitigating [283 P.3d 1098] factors at disposition hearings, RCW 13.40.150(3)(h), and can impose sentences outside standard sentencing ranges to prevent "manifest injustice." RCW 13.40.160(2).

Saenz, 175 Wn.2d at 173.

When a juvenile waives juvenile court jurisdiction he waives those increased protections. And the juvenile exits a "system designed to rehabilitate and enter[s] a system designed to punish." Id. at 74. Once the

juvenile enters the adult system, he can never go back into the juvenile system. Id. citing former RCW 13.40.020(14 (1997)[1]; State v. Sharon, 100 Wn.2d 230, 231, 668 P.2d 584 (1983).

"Thus, moving a case from juvenile court to adult court is a 'critically important' action determining vitally important statutory rights of the juvenile." Saenz, 175 Wn.2d at 174 quoting Kent, 383 U.S. at 556, (quoting Black v. United States, 122 U.S. App. D.C. 393, 355 F.2d 104, 105 (1965)). This critical importance of transferring a juvenile to adult court prompted our legislature to include two very important statutory protections before the transfer can be made. Id.

First, a juvenile can only waive juvenile court jurisdiction and a decline hearing if he makes an "express waiver" and that waiver is "intelligently made" by the juvenile after the juvenile has been fully informed of the right being waived. Id. at 175 citing Former RCW 13.40.140(9) (1981).[2]

Second, "after a decline hearing but before transferring a case to adult court," the juvenile court must make findings in the record that transfer to adult court is in the best interest of the juvenile or the public. Former RCW 13.40.110(2), (3) (1997). Under Saenz, both of these

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[1] Now codified at RCW 13.40.020 (15)

statutory protections are required. The absence of one is fatal.

For example, in Saenz, the juvenile court did hold a decline hearing. But there was nothing in the record that affirmatively showed Saenz understood the important protections he was waiving. Saenz, 175 Wn.2d at177. There was only a statement by Saenz's attorney that she had "two conversations" with Saenz about the waiver. And the record did not indicate what was discussed, or whether he was fully informed of the rights being waived as required by former RCW 13.40.140(9) (1981). Id.

A waiver by the juvenile defendant alone is insufficient to transfer authority to adult court because the juvenile court's consideration of the relevant reports, facts, opinions, and arguments presented by the parties and their counsel are mandatory. Id. at 179 citing Former RCW 13.40.110(2), (3) (1997). It is mandatory because the juvenile court has a "solemn responsibility to independently determine that a decline of jurisdiction is in the best interest of the juvenile or the public." To ensure it upholds that responsibility, it must enter written findings to that effect before transferring the case. Saenz, 175 Wn.2d at 179 citing Former RCW 13.40.110(2), (3) (1997).

Written findings are required even if there is no hearing because "juvenile court judges are not simply potted palms adorning the courtroom

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[2] Now codified at RCW 13.40.140(10).

and sitting idly by while parties stipulate to critically important facts. Instead, these judges enforce a juvenile code, 'designed with [juveniles'] special needs and limitations in mind.'" Saenz, 175 Wn.2d at 179-80 citing Dutil v. State, 93 Wn.2d 84, 94, 606 P.2d 269 (1980).

Here, Williams' mental health was at issue. He was sentenced to spend three months in Pacific Gateway mental hospital in Portland, Oregon in 1994 by Thurston County Juvenile Court. See ***Appendix "F," Declaration of Ray Williams.*** Williams was also committed to Kitsap County mental health facility in both 1995 and 1996. Id. Current appellant counsel attempted to obtain records from these cases to evidence that Mr. Williams was sentenced to the aforementioned mental health facilities, but the juvenile cases were sealed. See ***Appendix "J," Declaration of Appellate Counsel, Corey Evan Parker.***

Despite all of his mental health issues, the court did not inquire. Because of Williams' past experience with the juvenile system, the court should have been aware that Williams had an unstable home life and that he battled drug addiction. They should have also taken note of his custodial assault and considered Mr. Williams maturity level with regard to that recent incident. All of the aforementioned circumstances should have been analyzed in light of the Kent factors. These legislatively mandated requirements cannot be erased by stipulating to a waiver. Saenz,

175 Wn.2d at 179-80.

In State v. Bailey, 179 Wn. App. 433, 335 P.3d 942 (Div. 3 2014), the Court of Appeals followed the Washington Supreme Court's analysis and reversed Stephen Bailey's sentence of life without parole. Bailey stipulated to a waiver of juvenile court jurisdiction and plead guilty to second degree robbery in adult court in 1998. Bailey, 179 Wn. App. at 436. When Bailey was convicted of first degree assault and intimidating a witness in 2008, the trial court allowed his earlier conviction to be used as a strike and convicted Bailey under the POAA. Bailey, 179 Wn. App. at 437. Bailey appealed and the Court of Appeals affirmed the conviction. Then Bailey moved for reconsideration in light of Saenz, 175 Wn.2d 167. At trial, the sentencing court reviewed the transcript of the 1998 guilty plea hearing and found that because Bailey had an attorney the court was satisfied that the stipulation was voluntary and intelligent. Bailey, 179 Wn. App. 433, 437-38.

However, when the Court of Appeals viewed Bailey's case in light of Saenz, it held that the transfer to adult court was similarly flawed because "although the court informed Mr. Bailey that his guilty plea to second degree assault was a 'very serious' matter that would result in 'a strike on [his] record,' Mr. Bailey was not advised that a strike conviction could later be used to sentence him to life without parole or of the

significant protections he would forever lose by exiting the juvenile system." Bailey, 179 Wn. App. at 440. For example, juvenile offenses are generally not considered crimes and do not count as strikes under the POAA. Bailey, 179 Wn. App. at 441 citing Saenz, 175 Wn.2d at 173.

Here, too, the transfer to juvenile court was similarly flawed. In Saenz, only one of the procedural protections were violated and that was fatal. Here, both of the procedural protections were violated. First, the record in this case is even more deficient than in Saenz or Bailey. In Saenz, the defense counsel stated on the record that she had two conversations with Saenz about his waiver. In Bailey, the defendant was informed that the conviction would be a strike on his record. Here, there is no evidence that Williams' counsel had any conversation with him about the waiver. There is no evidence at all that Williams knew the important protections under the JJA that he was waiving. The juvenile justice system prohibits confinement past the age of 21. Saenz, 175 Wn.2d at 173. Had Williams been sentenced in juvenile court his conviction would not have counted as a strike. Williams received a strike in adult court and his two subsequent strike offenses lead to him currently serving life without the possibility of release. There is no indication in the record that Williams understood the implication of being tried as an adult. In fact, Williams' only thought was immediately escaping the inhumane condition of the

juvenile facility. ***Appendix "F," Declaration of Raymond Williams***.

In addition to the lack of evidence that Williams made a knowing and intelligent waiver, the juvenile court did not uphold its solemn responsibility to independently determine that declining jurisdiction was in the best interest of Williams or the public. Even if Williams' waiver was valid, the juvenile court still had a duty to inquire whether declining jurisdiction was in Williams' or the public's best interest. Instead, it simply rested on a stipulation by the parties. This is the exact conduct that was condemned in Saenz and Bailey. The juvenile court's duty did not end with a stipulation. Because neither of the statutory protections for transfer to adult court were adhered to, jurisdiction was not effectively transferred to the adult court and it lacked jurisdiction to enter a judgment and sentence against Williams.

B. Williams' faulty transfer deprived the adult court of authority to enter any judgment or sentence against Williams.

In State v. Werner, 129 Wn.2d 485, 918 P.2d 916 (1996), the Washington Supreme Court clarified the nature of juvenile court jurisdiction. It specifically stated that the juvenile court is not a separate court, but a division of the superior court. Id. at 492.

However, by statute, only the juvenile division of the superior

court has the power to hear and determine certain juvenile matters. Werner, 129 Wn.2d 494. Juvenile divisions of the superior courts in Washington have exclusive original jurisdiction over all juvenile proceedings unless one of the exceptions in former RCW 13.04.030(1)(e)(1995)[3] applies. See Id. at 491.

In re Personal Restraint Petition of Dalluge, 152 Wn.2d 772, 783,789, 100 P.3d 279 (2004) is illustrative. At first, Dalluge was charged with a serious violent offense, which prompted an automatic decline under RCW 13.04.030(1)(e)(v)(A) (2000). But, when the information was amended to exclude the serious violent offense, the juvenile court resumed its exclusive jurisdiction. At that point, the only way to transfer the case to adult criminal court was "upon a finding that the declination would be in the best interest of the juvenile or the public." Dalluge, 152 Wn.2d 772, 780 citing RCW 13.04.030(1)(e)(i) (2000) and former RCW 13.40.110(2)(1997).[4] Because the trial court failed to do so, it lacked competent jurisdiction and Dalluge's petition was not procedurally barred by RCW 10.73.100. *Id.* at 778-79, 789.

Although "jurisdiction" may not have been the correct word, it

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[3] The current statute is substantially the same.

[4] When Williams was convicted in 1997, this subsection was identical to the Statute referenced in Dalluge. It is now codified at RCW 13.40.110(3).

conveyed the right rule because the Dillenburg Court had already explained:

> when we spoke of 'surrender of jurisdiction' and 'jurisdiction' in reference to juvenile and superior court proceedings in our original opinion in this case, we were not accurately using the word 'jurisdiction' in its true juridical and traditional sense. More properly, we were referring to the procedural steps required by our Juvenile Court Law and by due process concepts whereby the superior court, sitting in juvenile court 'session,' grants to prosecuting officials the 'authority to proceed,' in an appropriate case, with the criminal prosecution of a child under 18 years of age.

Dillenburg, 70 Wn.2d at 353.

Despite these cases, the issue of jurisdiction seemingly remained unclear and was again revisited in State v. Posey, 161 Wn.2d 638, 167 P.3d 560 (2007) (Posey I) and State v. Posey, 174 Wn.2d 131, 272 P.3d 840 (2012) (Posey II).

In 2003, 16-year-old Posey was charged in Yakima County Juvenile Court with three counts that were not a serious violent offense under former RCW 9.94A.030(37)(a)(v) (2002) and one that was a serious violent offense. Because one of the counts was classified as a serious violent offense, the juvenile court automatically declined jurisdiction over Posey pursuant to RCW 13.04.030(1)(e)(v)(A) (1997) and transferred the case to the Yakima County Superior Court. Posey I, 161 Wn.2d at 641-42.

The jury acquitted Posey of the charge that led to the automatic

declination of the juvenile jurisdiction, but the trial court sentenced Posey under the adult sentencing guidelines anyway. Id. The Washington Supreme Court affirmed Posey's convictions but remanded to the juvenile court for sentencing. Posey I, 161 Wn.2d at 647, 649. But, the mandate for the Court's opinion issued after Posey turned 21 years of age. When the Yakima County Juvenile Court conducted a sentencing hearing, Posey's counsel moved to dismiss because the juvenile court was without jurisdiction to sentence him since Posey was 21 years old. The juvenile court agreed and sentenced him under its authority as a superior court, but entered a standard range sentence according to the Juvenile Justice Act. The Supreme Court held in Posey II that the legislature cannot deprive the superior courts of their constitutional jurisdiction over felony offenses. 74 Wn.2d at 133-35.

Posey I and II did not overrule the previous cases that have held that the adult court has no authority to act unless the correct statutory procedures for declining jurisdiction and transferring the case to adult court are followed. Instead, the Court held that there is no limbo. There is no scenario where neither court has the authority to sentence an individual. "Where a person is no longer subject to the procedures governing juvenile adjudications, the superior court retains such constitutional jurisdiction." Posey II, 174 Wn.2d at 135.

The Washington Supreme Court affirmed this interpretation when the court again stated that juvenile courts have "exclusive original jurisdiction" over cases that involve juvenile defendants. State v. Maynard, 183 Wn.2d 253, 262-63, 351 P.3d 159 (2015) citing RCW 13.04.030. But, as the Court explained, when used in this context, the word "jurisdiction" is more properly understood as authority. Id. When properly understood "Title 13 RCW entitles a juvenile to the protections of the JJA" and "requires the juvenile division of the superior court to apply the JJA, with some exceptions, to a juvenile defendant." Id. at 263; See Posey II, 174 Wn.2d at 141; RCW 13.40.300.

As argued above, Williams' transfer to adult court was faulty. Because the juvenile court did not properly abdicate its jurisdiction, or more properly called authority, the adult court lacked authority to enter a judgment and sentence against Williams. Posey II makes it clear that just as there is no limbo, there is no concurrent jurisdiction. The adult court cannot exercise authority over a juvenile, who is not subject to automatic declination, unless the juvenile court properly transfers authority. Therefore, Williams was sentenced by a court who lacked competent jurisdiction and his judgment and sentence should be reversed.

C. A faulty transfer is sufficient to overcome RCW 10.73.090's one-year time bar on a personal restraint petition

RCW 10.73.090's time bar applies only if the judgment and sentence "[were] rendered by a court of competent jurisdiction." Dalluge, 152 Wn.2d at 778-79. A faulty transfer from the juvenile court to adult court leaves the adult court lacking in competent jurisdiction.

As pointed out in Posey II, the Court's discussion of jurisdiction has not been a "model of clarity." But, when Dalluge, Dillenburg, Posey I and II, Saenz, and Maynard are read together it is clear that, regardless of whether jurisdiction is the correct term, when a transfer to adult court is faulty the sentence or judgement imposed by the adult court is invalid. See Dalluge, 152 Wn.2d at 778-79, 789; Dillenburg, 70 Wn.2d at 355-56; Posey I, 161 Wn.2d at 647, 649; Posey II, 174 Wn.2d at 133-35; Saenz, 175 Wn.2d at 170, 176; Maynard, 183 Wn.2d at 262-63.

Because Williams' transfer was faulty and the adult court lacked competent jurisdiction, Williams is not procedurally barred from bringing this petition.

V. CONCLUSION

Williams' transfer to adult court was faulty because there is no evidence in the record that he knowingly and intelligently waived his right to a decline hearing and because the juvenile court did not make findings

that the transfer was in the best interest of Williams or the public. The transfer of Mr. Williams' 1997 juvenile charge to adult court was defective and his 1997 Burglary in the First Degree conviction in adult court cannot be used as a strike under the POAA. As a result, this Court should reverse the 2008 life without parole sentence imposed in Cowlitz County Superior Court and remand the case for imposition of a sentence on his most recent Assault in the Second Degree conviction within the standard range.

Respectfully Submitted this 28th day of November, 2016

LAW OFFICE OF COREY EVAN PARKER

Corey Evan Parker

Corey Evan Parker
WSBA #40006
Attorney for Petitioner

Appendix A

FILED
SUPERIOR COURT

2008 OCT 15 A 11:16

COWLITZ COUNTY
RONI A. BOOTH, CLERK
BY

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RAYMOND MAYFIELD, Williams

Defendant.

SID: WA16455471
If no SID, use DOB:04-06-80

No. 08-1-00735-6

Felony Judgment and Sentence (FJS)
[X] Prison [ ] RCW 9.94A.712 Prison Confinement
[ ] Jail One Year or Less [ ] RCW 9.94A.712 Prison Confinement
[ ] First-Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative
[X] Clerk's Action Required, para 4.5 (DOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

08 9 02817 4

I. Hearing

1.1 The court conducted a sentencing hearing this date 10-15-2008; the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. Findings

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

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
[X] guilty plea [ ] jury-verdict [ ] bench trial: 10-15-2008

Count	Crime	RCW	Date of Crime
I	ASSAULT SECOND DEGREE	9A.36.021(1)(c)	07-05-08

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

[ ] Additional current offenses are attached in Appendix 2.1.

[ ] The **burglary** in Count _____ involved a theft or intended theft.

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

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

[ ] The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.533(9).

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

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

[ ] The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

[ ] The defendant acted with **sexual motivation** in committing the offense in Count_____. RCW 9.94A.835.

[ ] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.

[ ] The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ _____. RCW 9.94A.602, 9.94A.533.

[ ] Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

[ ] The defendant committed **[ ] vehicular homicide [ ] vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.

[ ] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

[ ] The crime(s) charged in Count _____ involve(s) **domestic violence. RCW 10.99.020.**

[ ] The offense in Count _____ was committed **in a county jail or state correctional facility**. RCW 9.94A.533(5).

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult, Juv.	Type of Crime
1	MAL MIS 2	10-31-95	THURSTON, WA	09-03-05	J	
2	MAL MIS 2	12-12-95	THURSTON, WA	11-21-95	J	
3	THEFT 2	07-21-95	THURSTON, WA	06-26-95	J	
4	PSP 2	09-07-95	THURSTON, WA	06-25-95	J	
5	PSP 2	09-07-95	THURSTON, WA	06-25-95	J	
6	BURG 1	07-08-97	THURSTON, WA	02-14-97	A	
7	CUST ASSAULT	07-08-97	THURSTON, WA	05-11-97	A	

8	BURG 1	02-09-04	KING, WA	09-13-03	A	

[ ] Additional criminal history is attached in Appendix 2.2.
[X] The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
[X] The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570)**:BURG 1 1997, AND BURG 1 2004**

[ ] The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	8	IV	53 – 70 MOS if not a Passsent offender			CLASS B if not a Passsent offender

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).
[ ] Additional current offense sentencing data is attached in Appendix 2.3.

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

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

[ ] within [ ] below the standard range for Count(s) _____.
[ ] above the standard range for Count(s) _____.
[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury, by special interrogatory.

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

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

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

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

III. Judgment

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

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

[ ] The court DISMISSES Counts _____.

IV. Sentence and Order

It is Ordered:

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

JASS CODE		
RTN/RJN	$ TBD	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)
PCV	$ 500.00	Victim assessment — RCW 7.68.035
	$ _____	Domestic Violence assessment up to $100 — RCW 10.99.080
CRC	$ 350	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee $ 200.00 FRC
		Witness costs $ _____ WFR
		Sheriff service fees $ _____ SFR/SFS/SFW/WRF
		Jury demand fee $ _____ JFR
		Extradition costs $ _____ EXT
		Incarceration fee $ 150.00 JLR
		Other $ _____
PUB	$ 805.00	Fees for court appointed attorney — RCW 9.94A.760
WFR	$ _____	Court appointed defense expert and other defense costs — RCW 9.94A.760
FCM/MTH	$ _____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430
CDF/LDI/FCD NTF/SAD/SDI	$ _____	Drug enforcement fund of Cowlitz County Prosecutor — RCW 9.94A.760
MTH	$ _____	Meth/Amphetamine Clean-up fine $3000. RCW 69.50.440, 69.50.401(a)(1)(ii).
CLF	$ _____	Crime lab fee [ ] suspended due to indigency — RCW 43.43.690
	$ 100.00	Felony DNA collection fee [ ] not imposed due to hardship — RCW 43.43.7541
RTN/RJN	$ _____	Emergency response costs (for incidents resulting in emergency response and conviction of driving, flying or boating under the influence, vehicular assault under the influence, or vehicular homicide under the influence, $1000 max.) RCW 38.52.430
	$ _____	Urinalysis cost
	$ _____	Other costs for: _____
	$ 1755	**Total** — RCW 9.94A.760

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

[ ] shall be set by the prosecutor.
[ ] is scheduled for _____.

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

Name of other defendant	Cause Number	(Amount-$)
RJN		

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

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ 50.00 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 finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of $50 per day, unless another rate is specified here: _____. (*JLR*) RCW 9.94A.760.

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

4.1b [ ] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

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

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

4.3 No Contact: The defendant shall not have contact with CHAD T. GAYNOR 05-15-59 AND SASHA VANDUSON 04-24-87 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for __LIFE__ years (not to exceed the maximum statutory sentence).

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

The defendant shall not use, own or possess any **firearm** or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120.

[ ] The firearm, to wit: _____ is forfeited to _____, a law enforcement agency.

4.4 Other: _____

4.5 **Persistent Offender.** The court found the defendant to be a Persistent Offender. RCW 9.94A.570.

[X] Count I is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[ ] Count _____ is a crime listed in RCW 9.94A.030(33)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was 16 years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was 18 years of age or older when the offender committed the offense), or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(33)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(33)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(33)(b)(i).

The defendant's prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030(33), RCW 9.94A.525.

Confinement. RCW 9.94A.570. The court sentences the defendant to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release	on Count	I
_____	months on Count	_____
_____	months on Count	_____
_____	months on Count	_____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

_____.

The sentence herein shall run consecutively with the sentence in cause number(s) _____

_____

but concurrently to any other felony cause not referred to in this judgment. RCW 9.94A.589.

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

4.6 Other: _____

_____

_____

_____

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). **You are required to contact the Cowlitz County Collections Deputy, 312 SW First Avenue, Kelso, WA 98626 (360) 414-5532 with any change in address and employment or as directed. Failure to make the required payments or advise of any change in circumstances is a violation of the sentence imposed by the Court and may result in the issuance of a warrant and a penalty of up to 60 days in jail.** 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).

[ ] This crime involves a Rape of a Child in which the victim became pregnant. The defendant shall remain under the court"s jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is longer.

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

5.4 Restitution Hearing.
[ ] I waive any right to be present at any restitution hearing (sign initials):_____.

5.5 Community Custody Violation.
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

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

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register

immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

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

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding, weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence

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

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

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

5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 IF AN APPEAL IS PROPERLY FILED AND APPEAL BOND POSTED, THE DEFENDANT WILL REPORT TO THE DEPARTMENT OF CORRECTIONS, WHO WILL MONITOR THE DEFENDNAT DURING THE PENDENCY OF THE APPEAL, SUBJECT TO ANY CONDITIONS IMPOSED BY DOC AND/OR INCULDED IN THIS JUDGMENT & SENTENCE AND SPECIFICALLY NOT STAYED BY THE COURT.

5.11 Other: _____.

Done in Open Court and in the presence of the defendant this date: 10/15/08.

_____
Judge/Print Name:

_____	_____	_____
(Deputy) Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA No. 35537	WSBA No.	
Print Name: J. Smith	Print Name:	Print Name:

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

Defendant's signature: _____

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

Interpreter signature/Print name: _____

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

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

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

Identification of the Defendant

SID No. _____ WA16455471_ _____ Date of Birth _____04-06-80_____
(If no SID take fingerprint card for State Patrol)

FBI No. _____561188EB3_____ Local ID No. _____

PCN No. _____ Other _____

Alias name, DOB: _____

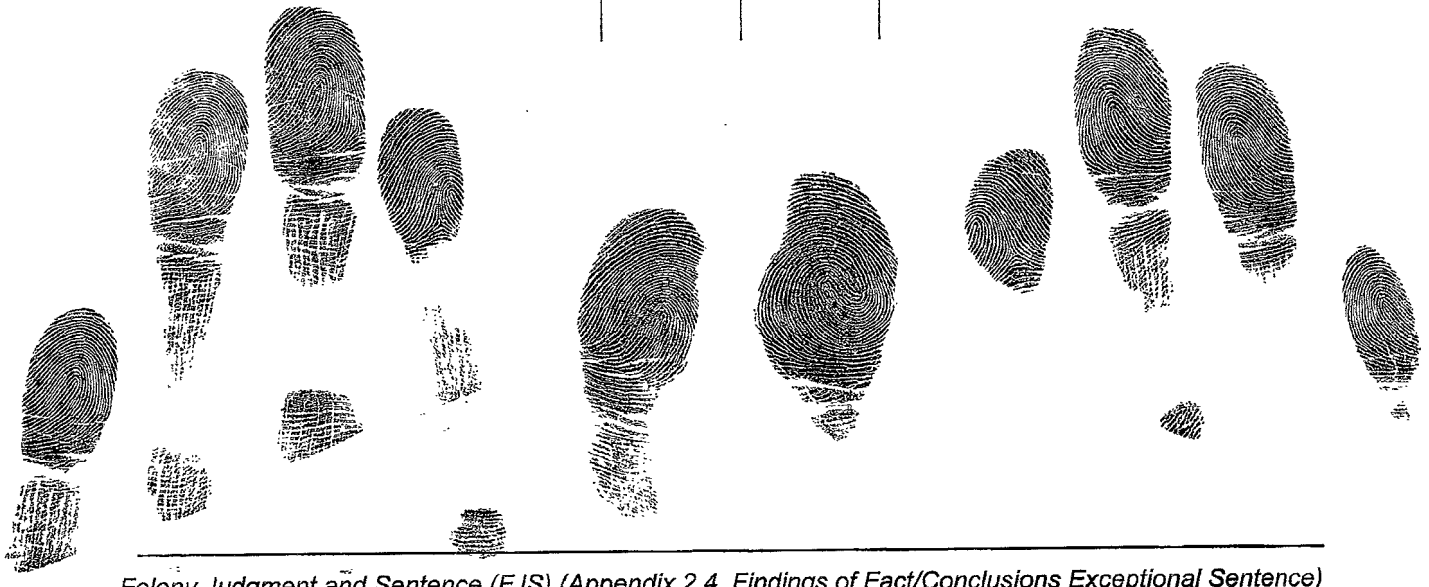
Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other:_____		[X] Non-Hispanic	[ ] Female

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

Clerk of the Court, Deputy Clerk, _____ Dated: 10-15-08

The defendant's signature: _____

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



Appendix B

FILED
2004 APR -7 AM 9:59
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

FILED
KING COUNTY, WASHINGTON
APR 07 2004
SEA
SUPERIOR COURT CLERK

DOC COMMITMENT ISSUED APR 7 2004

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 03-1-02507-7 SEA
Vs.	)	JUDGMENT AND SENTENCE FELONY
RAYMOND M. WILLIAMS Defendant.	)	

I. HEARING

1.1 The defendant, the defendant's lawyer, ~~DENNIS HOUGH~~ Bob Flenaugh, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds**:
2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 2/9/2004 by plea of:

Count No.: 1 Crime: BURGLARY IN THE FIRST DEGREE
RCW 9A.52.020 Crime Code: 02306
Date of Crime: 9/13/2003 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in **Appendix A**

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
(b) [ ] While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
(c) [ ] With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
(d) [ ] A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
(e) [ ] **Vehicular homicide** [ ]Violent traffic offense [ ]DUI [ ] Reckless [ ]Disregard.
(f) [ ] **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
(g) [ ] **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
(h) [ ] **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____
(i) [ ] Current offenses **encompassing the same criminal conduct** in this cause are count(s)_____ RCW 9.94A.589(1)(a)

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

_____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
[X] Criminal history is attached in **Appendix B.**
[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	5	VII	41 TO 54 MONTHS		41 TO 54 MONTHS	10 YRS AND/OR $20,000
Count						
Count						
Count						

[ ] Additional current offense sentencing data is attached in **Appendix C.**

2.5 **EXCEPTIONAL SENTENCE** (RCW 9.94A.535):
[ ] Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D.** The State [ ] did [ ] did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A.**
[ ] The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **RESTITUTION AND VICTIM ASSESSMENT:**

[ ] Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E.**

[ ] Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.

[X] Restitution to be determined at future restitution hearing on (Date) 9-18-04 at 8:30 a.m.

[ ] Date to be set.

[ ] Defendant waives presence at future restitution hearing(s).

[ ] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of $500.

4.2 **OTHER FINANCIAL OBLIGATIONS**: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) [ ] $_____, Court costs; [X] Court costs are waived; (RCW 9.94A.030, 10.01.160)

(b) [ ] $100 DNA collection fee; [X] DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);

(c) [ ] $_____, Recoupment for attorney's fees to King County Public Defense Programs: [X] Recoupment is waived (RCW 9.94A.030);

(d) [ ] $_____, Fine; [ ] $1,000, Fine for VUCSA; [ ] $2,000, Fine for subsequent VUCSA; [ ] VUCSA fine waived (RCW 69.50.430);

(e) [ ] $_____, King County Interlocal Drug Fund; [ ] Drug Fund payment is waived; (RCW 9.94A.030)

(f) [ ] $_____, State Crime Laboratory Fee; [ ] Laboratory fee waived (RCW 43.43.690);

(g) [ ] $_____, Incarceration costs; [X] Incarceration costs waived (RCW 9.94A.760(2));

(h) [ ] $_____, Other costs for: _____.

4.3 **PAYMENT SCHEDULE**: Defendant's **TOTAL FINANCIAL OBLIGATION** is: $ 500.00 plus rest. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [ ] Not less than $_____ per month; [X] On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

[ ] Court Clerk's trust fees are waived.

[ ] Interest is waived except with respect to restitution.

4.4 **CONFINEMENT OVER ONE YEAR:** Defendant is sentenced to a term of total confinement in the custody of the **Department of Corrections** as follows, commencing: [X] immediately; [ ](Date): _____ by _____ ____m

48 months days on count 1 ; _____months/days on count____ ; _____months/day on count_____

_____months/days on count____ ; _____months/days on count____ ; _____months/day on count_____

The above terms for counts _____ _____ are consecutive / concurrent.

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to cause No.(s) _____

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order.

[ ] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special **WEAPON** finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[ ] The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is _____months.

Credit is given for [X] 247 days served [ ] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6).

4.5 **NO CONTACT:** For the maximum term of 10 years defendant shall have no contact with _____ Peter Suski

4.6 **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, as ordered in **APPENDIX G.**
[ ] **HIV TESTING:** For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

4.7 (a) [ ] **COMMUNITY PLACEMENT** pursuant to RCW 9.94A.700, **for qualifying crimes committed before 7-1-2000,** is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96, 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] **APPENDIX H** for Community Placement conditions is attached and incorporated herein.

(b) [ ] **COMMUNITY CUSTODY** pursuant to RCW 9.94A.710 for any **SEX OFFENSE committed after 6-5-96 but before 7-1-2000,** is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer **APPENDIX H** for Community Custody Conditions and **APPENDIX J** for sex offender registration is attached and incorporated herein.

(c) [X] **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 **for qualifying crimes committed after 6-30-2000** is ordered for the following established range:

[ ] Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
[ ] Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
[X] Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
[ ] Crime Against Person, RCW 9.94A.411 - 9 to 18 months
[ ] Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

[X] **APPENDIX H** for Community Custody conditions is attached and incorporated herein.

[ ] **APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8 [ ] **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

4.9 [ ] **ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480.** The State's plea/sentencing agreement is [ ] attached [ ] as follows.

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 4-6-04

Anthony P. Wartnik
JUDGE
Print Name: WARTNIK

Presented by:

Sheila Weirth
Deputy Prosecuting Attorney, WSBA# 21193
Print Name: S. Weirth

Approved as to form:

[signature] 26764
Attorney for Defendant, WSBA #
Print Name: Robert Flannagh II

Appendix C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY
JUVENILE DIVISION

97 MAY -5 PM 1:49
BETTY J. GOULD, CLERK
BY

STATE OF WASHINGTON,

Plaintiff,

vs.

RAYMOND WILLIAMS,
DOB: 04-06-80
Juvis No. 336778
W,M,xxx,xxx,red,blu,
c/o Clark County Juvenile Detention
P.O. Box 5000
Vancouver, WA 98666-5000

Respondent.

NO. 97 8 00601 4

INFORMATION

Police Report No.:
OPD 97-1635

COMES NOW the Prosecuting Attorney in and for Thurston County, Washington, and charges the Respondent with the following offense:

COUNT I: BURGLARY IN THE FIRST DEGREE, A FELONY RCW 9A.52.020(1)(a):

RAYMOND WILLIAMS, in the County of Thurston, State of Washington, on or about the 14th day of February, 1997, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in such building or immediate flight therefrom, was armed with a deadly weapon, to-wit: unlawfully entered the Prohaska residence and took firearms.

COUNT II: THEFT OF FIREARM, A FELONY, RCW 9A.56.300:

RAYMOND WILLIAMS, in the County of Thurston, State of Washington, on or about the 14th day of February, 1997, did commit a theft of a firearm regardless of value, to wit: Winchester 100 .308 rifle.

COUNT III: THEFT OF FIREARM, A FELONY, RCW 9A.56.300:

RAYMOND WILLIAMS, in the County of Thurston, State of Washington, on or about the 14th day of February, 1997, did commit a theft of a firearm regardless of value, to wit: Winchester 59/2 gauge shotgun .

DATED THIS 5th day of May, 1997.

BERNARDEAN BROADOUS
Prosecuting Attorney

CHRISTEN A. PETERS, WSBA #23559
Deputy Prosecuting Attorney

ORIGINAL

BERNARDEAN BROADOUS
THURSTON COUNTY PROSECUTING ATTORNEY
2415 EVERGREEN PK. DR. S.W., BLDG C
OLYMPIA, WASHINGTON 98502-6045
(360) 357-2490 FAX (360) 754-3349

Appendix D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
IN JUVENILE COURT

STATE OF WASHINGTON, NO. 97-8-00601-4

vs. NOTICE OF HEARING

Raymond Williams
RESPONDENT

To: Respondent, Attorney

YOU ARE NOTIFIED that:

A hearing is scheduled for the purpose of:

- ☐ Pre-trial Conference
- ☐ Trial (Fact Finding Hearing)
- ☐ Probation Violation
- ☒ Other Decline hearing

The Juvenile Offender is:

- ☒ Detained
- ☐ Not Detained

A juvenile hearing has been scheduled for May 19, 1997 (Date)
10:00 (Time) m., at Thurston County Juvenile Department/Youth Service Service Center, 1520 Irving Street S.W., Tumwater, Washington.

FAILURE OF THE JUVENILE OFFENDER TO APPEAR FOR THE SCHEDULED HEARING MAY RESULT IN ISSUANCE OF A BENCH WARRANT.

BETTY J. GOULD, County Clerk

Elaine Moreno
Juvenile Court Clerk

Please contact your attorney at the earliest possible date for an appointment.

Your attorney is: MARTIN D. MEYER
Attorney at Law
#12 U.S. Bank Bldg.
402 Capitol Way S.
Olympia, WA 98501
(206) 357-6335

CC: Respondent/Parents
Defense Attorney
Deputy Prosecuting Attorney
Probation Counselor

Date Information Filed 5-5-97
Arraignment Date _____
Probation Counselor Tom Noe

3

Appendix E

SUPERIOR COURT
THURSTON CO.

97 MAY 19 AM 11:57

BETTY J. GOULD, CLERK

DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

Raymond Williams

Defendant.

NO. 978601-4

ORDER

to Decline Raymond Williams to Adult Court Jurisdiction

IT IS HEREBY ORDERED that the Respondent having been charged with Burglary in the First Degree 9A.52.020(1)(a) and two counts of Theft of a Firearm RCW 9A.56.300, hereby waives his right to a decline hearing pursuant to RCW 13.40.110, and jurisdiction for the above named Respondent shall be transferred to Superior Court.

Probable Cause has been established for the above enumerated charges.

Pursuant to State v. Holland adopting US v. Kent 383 U.S 541 (1966), court finds that Respondent shall be Declined to Adult Superior Court. Respondent to be held in Adult Thurston County Jail for further proceedings on this matter.

DATED: 5/19/97

JUDGE

PRESENTED BY:

Deputy Prosecuting Attorney

APPROVED BY:

Attorney for Defendant

BERNARDEAN BROADOUS
THURSTON COUNTY PROSECUTING ATTORNEY
2000 LAKERIDGE DRIVE SW
OLYMPIA, WASHINGTON 98502
(360) 786-5540 FAX (360)

COPIES TO: P.O. PROS. ATTY. DEF ATTY.

ORDER

Appendix F

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

v.

RAYMOND M. WILLIAMS
Defendant.

SID:WA16455471
If no SID, use DOB:4/6/80

No. 97-1-866-6

97 JUL 8 , P12 : 18

FILED
COUNTY CLERK
BY
DEPUTY

JUDGMENT AND SENTENCE (JS)

[x] Prison
[ ] Jail One Year or Less
[ ] First Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on July 8, 1997 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on July 8, 1997 by [X] plea [ ] jury verdict [ ] bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(a)	February 14, 1997
II	CUSTODIAL ASSAULT	9A.36.100	May 11, 1997

as charged in the (First Amended) Information

[ ] Additional current offenses are attached in Appendix 2.1
[ ] A special verdict/finding for use of **a firearm** was returned on Count(s)_____ RCW 9.94A.125, .310
[ ] A special verdict/finding for use of **a deadly weapon other than a firearm** was returned on Count(s) _____. RCW 9.94A.125, .310
[ ] A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.127
[ ] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s)_____, RCW 69.50.401 and RCW 69.50.435, taking 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, in a public transit vehicle, or in a public stop shelter.
[ ] The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
[ ] Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv.	TYPE OF CRIME
Minor Poss. Firearm	8-10-93	Thurston Co., WA	5-13-93	J	N-V
PSP 2°	8-9-95	Thurston Co., WA	6-25-95	J	N-V
PSP 2°	8-9-95	Thurston Co., WA	6-25-95	J	N-V
Theft 2°	6-29-95	Thurston Co., WA	6-26-95	J	N-V
Malicious Mischief 2°	10-5-95	Thurston Co., WA	9-3-95	J	N-V

[ ] Additional criminal history is attached in Appendix 2.2
[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	VII	31-41 months		31-41 months	Life
II	3	III	9-12 Months		9-12 Months	5 Years

[ ] Additional current offense sentencing data in Appendix 2.3

2.4 [ ] **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] within [ ] below the standard range for

Count(s)_____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):_____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [X] as follows: 31 Months Dept. of Corrections; $110 court costs; $500 crime victim compensation; Restitution (charges and uncharges counts) No criminal law violations; obey all rules of Dept. of Corrections; No contact with victims for life.

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 _____

3.3 [ ] The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

$5798.09 Restitution to: Pemco, P.O. Box 2985, Tacoma, WA 98401 - 2985

LASS CODE $1,467.07 Restitution to: Stephen H. Prohaska, 1120 Fir Street SE, Olympia, WA 98501

RTN/RJN $_____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV $500 Victim Assessment RCW 7.68.035

CRC $110 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
Criminal Filing fee $110 FRC
Witness costs $_____ WFR
Sheriff service fees $_____ SFR/SFS/SFW/SRF
Jury demand fee $_____ JFR
Other $_____

PUB $_____ Fees for court appointed attorney RCW 9.94A.030

WFR $_____ Court appointed defense expert and other defense costs RCW 9 94A.030

FCM $_____ Fine RCW 9A.20.021; [ ] VUSCA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/ FCD/NTF/SAD/SDI $_____ Drug enforcement fund of _____ RCW 9 94A.030

CLF $_____ Crime lab fee [ ] deferred due to indigency RCW 43 43.690

EXT $_____ Extradition costs RCW 9.94A.120

$_____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1,000 maximum) RCW 38.52 430

$_____ Other costs for: _____

$7,875.16 TOTAL, ~~in addition to Restitution to be set by a later court order~~. RCW 9 94A.145

~~X~~ The above total ~~does~~ not include all restitution or other legal financial obligations, which may be set by later order of the court
An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
[ ] shall be set by the prosecutor ~~for charged and uncharged counts to include all injury to persons or property~~
[ ] is scheduled for _____

[ ] **RESTITUTION.** Schedule attached, Appendix 4.1

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

RJN	NAME of other defendant	CAUSE NUMBER	(Victim Name)	(Amount$)
	Wesley S. Ivy	#97-1-353-2	(1) Pemco	$5,798.09
			(2) Stephen H Prohaska	$1,467.07

X The Department of Corrections may immediately issue a Notice of Payroll Deduction.
RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ _____ per month commencing _____. RCW 9.94A.145

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

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

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

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The Defendant shall not have contact with Stephen H. Prohaska, DOB 7-18-47, his immediate family, residence, and work place of victim and family members, (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life ~~years~~ (not to exceed the maximum statutory sentence.).

[ ] Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER: No criminal law violations;
Obey all rules of Department of Corrections

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

(a) **CONFINEMENT.** RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

31 months on Count I _____ months on Count _____

10 months on Count II _____ months on Count _____

_____ months on Count _____ _____ months on Count _____

Actual number of months of total confinement ordered is: 31 Months
(Add mandatory firearm or deadly weapon enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and the following which shall be served consecutively: _____

The sentence herein shall run concurrentlyy with the sentence in cause number(s) _____ but consecutively to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.7 **COMMUNITY PLACEMENT AND COMMUNITY CUSTODY.** RCW 9.94A.120. Community placement is ordered for a community placement eligible offense (e.g., sex offense, serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense), or community custody is ordered to follow work ethic camp if it is imposed, and standard mandatory conditions are ordered. Community Placement is ordered for the period of time provided by law. The defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) to unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody.

[ ] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: Stephanie Prokarka, DOB 7-18-47, his immediate family, residence and workplace of victim and family members.

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____

[ ] The defendant shall participate in the following crime-related treatment or counseling services: _____

[ ] The defendant shall comply with the following crime-related prohibitions: _____

[X] Other conditions: No criminal law violations; obey all rules of Dept. of Corrections 4.8

[ ] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions of community custody. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.7.

4.9 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

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

5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or releasee from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections 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.200010 Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

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

5.7 **SEX OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with he sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of moving. If you change your residence to a new county within this state, you must register with he sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of moving. If you move out Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

5.8 **OTHER:** _____

Done in Open Court in the presence of the defendant this date: July 8, 1997

JUDGE Print name: PAULA CASEY

Deputy Prosecuting Attorney
WSBA#16529
Print name:JAMES M. GILLIGAN

Attorney for Defendant
WSBA#20257
Print name:JAMES J. DIXON

Ray Williams Jr.
Defendant

Translator signature/Print name: _____
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: 97-1-866-6

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

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

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

IDENTIFICATION OF DEFENDANT

SID No. WA16455471 (If no SID take fingerprint card for State Patrol) Date of Birth 4/6/80

FBI No. UNKNOWN Local ID No. B65394

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/ African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other: _____		[X] Non-hispanic	[ ] Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: _____, Deputy Clerk. Dated: 7-8-97

DEFENDANT'S SIGNATURE: _____

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff, vs. RAYMOND M. WILLIAMS Defendant.	)	NO. 97-1-866-6 WARRANT OF COMMITMENT ATTACHMENT TO JUDGMENT AND SENTENCE (PRISON)

DOB: 4/6/80
SID:WA16455471
RACE: W
SEX: M
BOOKING NO: B65394

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant RAYMOND M. WILLIAMS has been convicted in the Superior Court of the State of Washington for the crime(s) of: COUNT I - BURGLARY IN THE FIRST DEGREE
COUNT II - CUSTODIAL ASSAULT

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

PAULA CASEY

PAULA CASEY

BETTY J. GOULD
CLERK

By: _____
DEPUTY CLERK

Appendix G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
IN JUVENILE COURT

STATE OF WASHINGTON, Plaintiff, vs. RAYMOND MAYFIELD WILLIAMS JR., Respondent.	NO. 97-8-00601-4 DECLARATION OF JAN GRIFFIN, JUDICIAL SERVICES MANAGER FOR THE THURSTON COUNTY SUPERIOR COURT FAMILY AND JUVENILE COURT CLERK'S OFFICE

I, Jan Griffin, declare as follows:

1. I am the Judicial Services Manager for the Thurston County Superior Court Family and Juvenile Court Clerk's Office.

2. On August 19, 2016, Attorney Corey Evan Parker requested the audio recording of Raymond Mayfield Williams Jr.'s court proceeding held on May 19, 1997. The related case number is 97-8-00601-4.

3. On October 10, 2016, after a thorough search by Thurston County Superior Court Chief Deputy Clerk Tawni Sharp, I informed Mr. Parker that we were unable to locate the audio from the above-mentioned proceeding.

4. It is my understanding that the tapes have been destroyed and there is no possible way of obtaining the record from that proceeding if such a record existed.

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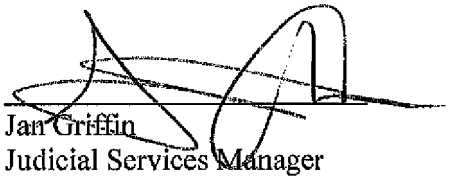
1275 12th Ave NW, Suite 1B
Issaquah, WA 98027
[PH] 425.221.2195 [FX] 1.877.802.8580
corey@parkerlawseattle.com

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

Dated this 18th day of October, 2016 at Tumwater, Washington.



Jan Griffin
Judicial Services Manager

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Appendix H

STATE OF WASHINGTON, Plaintiff, vs. RAYMOND MAYFIELD WILLIAMS JR, Respondent.	CAUSE NO. 97-8-00601-4 DECLARATION OF RAYMOND MAYFIELD WILLIAMS JR

I, Raymond M. Williams Jr., the petitioner in this matter, declare as follows:

1. In 1997, during the process of my declination of juvenile jurisdiction, I was not in the right frame of mind to make a rational decision about my future. I was emotionally unstable and had a long history up to that point struggling with mental illness, trauma, and drug addiction.

2. Three times in my teenage years prior to the declination of juvenile jurisdiction I was put into lockdown mental health facilities.

3. The first time was in 1993, as an alternative sentence by Thurston County Juvenile Court. I was sentenced to spend three months at Pacific Gateway in Portland, Oregon and I served my time there.

4. The second time, I was sent to Kitsap County Mental Health, as requested by Clark County Juvenile Court. If memory serves me correctly, this placement was done instead of detention time for a probation violation. This was approximately in 1994 or 1995.

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5. The third time I was put into a lockdown mental health facility I was placed again in Kitsap County Mental Health in 1995. This was a placement done as a hospital transfer after a suspected suicide attempt, where I had overdosed on prescription pills. In this instance, I had needed to be brought back to life with a resuscitator machine.

6. My youth, much to my demise, was filled with confused and self-destructive behavior. I was hospitalized at least two other times for attempted suicide. Even while attending elementary school, it was clear to my teachers that for various reasons I would do better in school by attending special education classes.

7. My upbringing was very hostile and unsupportive. My first attempt of running away from home was at the age of nine. By my early teens, Child Protective Services had already played a major role in my life, and I had seen several foster homes and group homes.

8. My inability to trust my well-being to adults or authority figures, I believe, played a large role in my desire to be left to my own devices as a teen. This meant that my life was spent homelessly wandering the streets. In those streets I turned to crime for survival. This was a stupid decision, and as such it made sense to me at that age.

9. Looking back to those years, I even have trouble today understanding what was wrong with me. Though several explanations could be made, one thing remains clear to me as pertains to this case: something was wrong with me in particular, that put me at a distinct disadvantage to be able to make such an important decision in knowing and intelligent manner.

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10. Knowing was one of my biggest problems, as I thought I knew everything at that age. And intelligence was several years away at best, as everything in the world was viewed through an emotional, rather than a logical lens by me as a teen. While this mental and emotional state is common in most teens, I believe I was at a greater disadvantage, considering my mental and emotional make-up, than a normal teenager to make such a decision. I was several years in mental and emotional maturity behind my peers at that point in my life.

11. I truly needed to have my best interest represented through the process of my declination. I needed more than most, the protections offered through the Juvenile Justice Act, as I was wholly incapable of understanding what the decision I was pushing for would mean to my life, or what the difference was between the adult justice system and juvenile one.

12. What I distinctly remember was that I wanted out of Thurston County Juvenile Detention Center. I had spent many months there throughout the years of my teens. During these years I had suffered abuse at the hands of certain staff members.

13. I had, for example, spent several weeks before in a cell where I had to use a small hole covered by a grate in the middle of the floor for bodily functions. Cell A-15, as I recall, and forever will, the place where I had to mush my own feces through the grate with little squares of toilet paper, being careful to not get any on my hands as there was no access to a sink with which to wash.

14. I just wanted out of the juvenile facility. It was my understanding that if I was declined, I would be transferred immediately. Being completely incapable of comprehending a

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future past the next day, I pushed to get through the process and waived my right to the hearing. At no point did my attorney or the Court discuss any of the potential consequences with me.

15. My crime was not horrendous. It was a crime to be punished for, undoubtedly. Please don't mistake my statement, as I don't mean to make light of my actions. I do take personal responsibility. I did steal several items from the home in question including firearms which were discovered in the residence, entering after watching the residents of the house leave for a camping trip. This was a dishonest crime, and I have no pride in it (or any other crime) whatsoever. But that crime might have found justice in the Juvenile Division of our courts, had the law been applied properly to my case.

16. Had the courts took the time to consider and review my case through the declination process, these issues of my mental health, and what might have been in both societies and my own best interest could have been considered. I could have been tried in Juvenile Court, and placed into a facility that could have given me the opportunity to develop tools for life, which in turn could have prevented me from the continuance of my criminal behavior. Would it all have happened that way will forever be a mystery, but what is not a mystery is that there should have been the option.

17. I sit here today, serving life without parole as a persistent offender. This sentence has been both the worst and the best thing to happen to me.

18. Many people who receive such sentences lose themselves completely to the prison system, becoming involved with gangs, and a myriad of other negativities that prevail within these walls and fences. I have instead found myself and I am today a completely

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different person than the one who was incarcerated in 2008. A good person, maybe for the first time since early adolescence.

19. My record in the prison system reflects this boast, as I am renowned for staying out of trouble, for being a good role model to other inmates and mentoring them to shed their criminal thought processes, as well as for being an outspoken proponent of violence prevention. My D.O.C. record shows that I have been involved with sustainability efforts in which I am credited for having saved the state tens of thousands of dollars. I even played a major role in stopping the attempted murder of Corrections Officer Breedlove at Clallam Bay Corrections Center on January 25, 2016.

20. I am ready to be a productive member of society. I am ready to be a father to my son, a good neighbor, and someone who gives to the community around him.

21. As I write these things in this declaration, I don't know that they have any bearing whatsoever on the legal process of my case. I would imagine that they do not. But I can't help the feeling that I must declare not just what or where or how, but also who brings forth this petition to the Court. Both who I was then, which prevented me from understanding the ramifications of the events taking place around me at that age. And who I am now, with so much to offer the world, but as a consequence of the previous, prevented from doing so.

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

Dated this 13th day of November, 2016 at Monroe, Washington.

Raymond Mayfield Williams Jr.
Petitioner

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Appendix I

FILED
COUNTY, WASH

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

97 JUL 7 A8:04

STATE OF WASHINGTON,

Plaintiff,

vs.

RAYMOND M. WILLIAMS,

Defendant.

NO. 97-1-00866-6

CERTIFICATION OF PROBABLE CAUSE

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

1. I am a Deputy Prosecuting Attorney for Thurston County, Washington and I am familiar with the police reports and investigation conducted in this case;

2. Based upon information provided through that investigation there is probable cause to believe that the defendant committed the crime(s) of CUSTODIAL ASSAULT supported by the following facts and circumstances:

On May 11, 1997, Raymond Williams was in custody at the Thurston County Youth Service Center. He kicked the door of his room, causing damage to the door. He was removed by staff and placed in another room. When staff removed the handcuffs and left the room, the defendant charged at the victim, one of the staff members, and struck the victim in the back with his fist.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to the best of my knowledge.

Signed and dated by me this 3d day of July, 1997, at Olympia, Washington.

JAMES M. GILLIGAN, #16529
Deputy Prosecuting Attorney

BERNARDEAN BROADOUS
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5441

Appendix J

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
IN JUVENILE COURT

STATE OF WASHINGTON, Plaintiff, vs. RAYMOND MAYFIELD WILLIAMS JR, Respondent.	CAUSE NO. 97-8-00601-4 DECLARATION OF COREY EVAN PARKER

I, Corey Evan Parker, declare as follows:

1. I am an attorney licensed in Washington State under the bar number 40006.

2. I represent the Petitioner, Raymond Williams.

3. In preparation for this Personal Restraint Petition, I requested Mr. Williams' juvenile records in Thurston County Juvenile Court to locate the Judgment and Sentence ordering Mr. Williams to serve his sentence in a mental health facility.

4. An employee of Halo Messenger Services appeared in Thurston County Juvenile Court to obtain the records and the clerk informed him that they were sealed and could not be obtained.

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

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corey@coreyevanparkerlaw.com

Dated this 27th day of November, 2016 at Issaquah, Washington.

Corey Evan Parker

Corey Evan Parker
Attorney for Petitioner
WSBA No. 40006

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OATH

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Respectfully submitted this 28th day of November, 2016.

LAW OFFICE OF COREY EVAN PARKER

By Corey Evan Parker
Corey Evan Parker, WSBA #40006
Attorney for Petitioner

Case No. 08-1-00735-6

Personal Restraint Petition of Raymond Williams

Verification of Petitioner – RAP 16.7(a)(7) –

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated on November 28, 2016.

Raymond Williams, Petitioner

CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on November 28, 2016, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

Ryan Jurvakainen
Cowlitz County Prosecuting Attorney
jurvakainen.ryan@co.cowlitz.wa.us

☒ By Email
☐ By Fax
☐ By Fed Express
☐ By Hand Delivery
☐ By Messenger

Corey Evan Parker

Corey Evan Parker
WSBA #40006
1275 12th Ave. NW Suite 1B
Issaquah, WA 98027
(425) 221-2195

LAW OFFICE OF COREY EVAN PARKER

November 28, 2016 - 2:09 PM

Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20161128.pdf

Case Name: In Re Personal Restraint Of Raymond Williams, Jr.

Court of Appeals Case Number:

Is this a Personal Restraint Petition? ■ Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

■ Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Corey Parker - Email: corey@coreyevanparkerlaw.com

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

jurvakainen.ryan@co.cowlitz.wa.us

APPENDIX C

Filed
Washington State
Court of Appeals
Division Two

February 26, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of: RAYMOND MAYFIELD WILLIAMS, JR. Petitioner.	No. 49894-4-II UNPUBLISHED OPINION

MELNICK, J. — Raymond Williams seeks relief from personal restraint imposed following his 2008 Cowlitz County conviction for assault in the second degree. The conviction was his "third strike" under the Persistent Offender Accountability Act (POAA).[1] Thus, the court sentenced Williams to total confinement for life without the possibility of release.

In his personal restraint petition (PRP), Williams challenges the 2008 sentencing court's use of a 1997 Thurston County conviction as his first strike. Williams argues that his 1997 conviction should not have counted as a strike.

Williams argues that his PRP is not time barred because he satisfies two exceptions to the one-year time bar. He argues his sentence was imposed in excess of the court's jurisdiction and argues that a significant change in the law has occurred.[2]

We deny Williams's petition.

---

[1] RCW 9.94A.570.

[2] We asked for and received supplemental briefing on whether the 1997 conviction, committed when Williams was a juvenile, could be used as a strike offense under the POAA. Amicus curiae, the Fred T. Korematsu Center for Law and Equality, argues that the POAA, as applied to Williams, is unconstitutional. Because of our conclusion that Williams's PRP is time barred, we do not address these issues. *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003).

FACTS

In 1997, the State charged Williams, then 16 years old, with one count of burglary in the first degree and two counts of theft of a firearm. Williams waived his right to be a tried as a juvenile, and the Thurston County Superior Court entered a decline order transferring Williams for adult criminal prosecution. Williams, then 17, plead guilty to one count of burglary in the first degree and one count of custodial assault. The court sentenced Williams as an adult.

In 2004, the State convicted Williams of burglary in the first degree.

In 2008, Williams plead guilty to assault in the second degree. The court used this conviction as Williams's third strike under the POAA. The court used Williams's 1997 and 2004 convictions as his first and second strikes.

At his sentencing hearing, the court stated: "You agree that you have a prior conviction for burglary in the first degree out of Thurston County in 1997 and another for burglary in the first degree out of King County in 2004?" Amended Br. of Resp't in Response to PRP, App. B, at 8. Williams responded, "Yes." Amended Br. of Resp't in Response to PRP, App. B, at 8. The court sentenced Williams to total confinement for life without the possibility of release.

In 2016, Williams brought this PRP to challenge his POAA lifetime sentence imposed in 2008.

ANALYSIS

Williams argues that in 2008, the court erroneously found him a persistent offender because it erroneously counted his 1997 conviction as his first strike. Therefore, Williams argues that the court erred in sentencing him to life imprisonment without the possibility of release under the POAA.

Williams argues that his PRP is not time barred under RCW 10.73.090 because of two exceptions. He first argues that a significant change in the law has occurred. RCW 10.73.100(6). He also argues the 2008 court imposed a sentence in excess of its jurisdiction. RCW 10.73.100(5).[3] We disagree.

I. LEGAL PRINCIPLES

In a PRP, the petitioner has the initial burden. RAP 16.4; *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). "A personal restraint petitioner must prove either a (1) constitutional error that results in actual and substantial prejudice or (2) nonconstitutional error that 'constitutes a fundamental defect which inherently results in a complete miscarriage of justice.'" *In re Pers. Restraint of Monschke*, 160 Wn. App. 479, 488, 251 P.3d 884 (2010) (internal quotation marks omitted) (quoting *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 672, 101 P.3d 1 (2004)). The petitioner must prove the error by a preponderance of the evidence. *Lord*, 152 Wn.2d at 188. In addition, "[t]he petitioner must support the petition with facts or evidence and may not rely solely on conclusory allegations." *Monschke*, 160 Wn. App. at 488; *see* RAP 16.7(a)(2)(i).

In evaluating PRPs, we can

> (1) dismiss the petition if the petitioner fails to make a prima facie showing of constitutional or nonconstitutional error, (2) remand for a full hearing if the petitioner makes a prima facie showing but the merits of the contentions cannot be determined solely from the record, or (3) grant the PRP without further hearing if the petitioner has proven actual prejudice or a miscarriage of justice.

In re Pers. Restraint of Stockwell, 160 Wn. App. 172, 176-77, 248 P.3d 576 (2011).

[3] Williams does not argue that his 2008 sentence is facially invalid. RCW 10.73.090(1). Nor does Williams argue that he is under restraint pursuant to the 1997 conviction.

II. ONE-YEAR TIME BAR

In general, there is a one-year time limit for filing PRPs. RCW 10.73.090(1). PRPs filed more than one year after the judgement and sentence becomes final are usually time barred unless an exception applies. RCW 10.73.090, .100. Because Williams's PRP was brought more than one year after his 2008 POAA conviction, his PRP is time barred unless he demonstrates that an exception applies.

Williams claims that two exceptions apply in this case to exempt it from the time bar. They are that "[t]he sentence imposed was in excess of the court's jurisdiction" and that "[t]here has been a significant change in the law." PRP at 5; *see* RCW 10.73.100(5), (6). We disagree.

A. Significant Change in the Law

Williams only mentions that a significant change in the law occurred on two occasions. He does not cite RCW 10.73.100(6). Because Williams does not adequately argue, cite to authority, or support his assertion that there has been a significant change in the law, we do not consider it. *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004).

B. Sentence in Excess of Court's Jurisdiction

Williams argues that his petition is exempt from the one-year time bar because the 1997 conviction exceeded the Thurston County Court's jurisdiction. Williams argues that because the juvenile court improperly declined Williams's case to adult court, the superior court's adult division lacked the jurisdiction in 1997 to convict and sentence him. Therefore, according to Williams, the 2008 court lacked jurisdiction to sentence him as a persistent offender. We disagree.

A court has subject matter jurisdiction when it "'has the authority to adjudicate the type of controversy in the action, and . . . it does not lose subject matter jurisdiction merely by interpreting the law erroneously.'" *In re Pers. Restraint of Vehlewald*, 92 Wn. App. 197, 201-02, 963 P.2d

903 (1998) (alteration in original) (emphasis omitted) (quoting *State v. Moen*, 129 Wn.2d 535, 545, 919 P.2d 69 (1996)). Consequently, a sentence is not jurisdictionally defective for purposes of triggering the exception in RCW 10.73.100(5) simply because it is in violation of a statute or based on a misinterpretation of a statute. *In re Pers. Restraint of Richey*, 162 Wn.2d 865, 872, 175 P.3d 585 (2008).

Williams conflates "jurisdiction" with "statutory authority." The excess of jurisdiction exception is narrow. Jurisdiction, under RCW 10.73.100(5), only means traditional notions of personal and subject matter jurisdiction; it does not apply to claims that the sentencing court imposed a sentence not authorized by statute. *Vehlewald*, 92 Wn. App. at 201-03. Williams's 2008 judgment and sentence was not imposed in excess of jurisdiction because the Washington Superior Court had personal jurisdiction over him and subject matter jurisdiction over his in-state criminal conduct. WASH. CONST. art. 4, § 6; *State v. Werner*, 129 Wn.2d 485, 492-93, 918 P.2d 916 (1996). Therefore, we conclude that Williams's PRP does not survive the one-year time bar.

We deny Williams's petition.

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

Melnick, J.

We concur:

Maxa, C.J.

Lee, J.

Filed
Washington State
Court of Appeals
Division Two

April 2, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of: RAYMOND MAYFIELD WILLIAMS, JR. Petitioner.	No. 49894-4-II ORDER DENYING MOTION FOR RECONSIDERATION

Petitioner, Raymond Mayfield Williams, Jr., moves this court to reconsider its February 26, 2019 opinion. After consideration, we deny the motion.

IT IS SO ORDERED.

PANEL: Jj. Maxa, Lee, Melnick.

FOR THE COURT:

Melnick, J.

APPENDIX D

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

v.

RAYMOND M. WILLIAMS
Defendant.

SID:WA16455471
If no SID, use DOB:4/6/80

No. 97-1-866-6

97 JUL 8 , P12 : 18

FILED
COUNTY CLERK
BY DEPUTY

JUDGMENT AND SENTENCE (JS)

[x] Prison
[ ] Jail One Year or Less
[ ] First Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on July 8, 1997 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on July 8, 1997 by [X] plea [ ] jury verdict [ ] bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(a)	February 14, 1997
II	CUSTODIAL ASSAULT	9A.36.100	May 11, 1997

as charged in the (First Amended) Information

[ ] Additional current offenses are attached in Appendix 2.1
[ ] A special verdict/finding for use of **a firearm** was returned on Count(s)_____ RCW 9.94A.125, .310
[ ] A special verdict/finding for use of **a deadly weapon other than a firearm** was returned on Count(s) _____. RCW 9.94A.125, .310
[ ] A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.127
[ ] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s)_____, RCW 69.50.401 and RCW 69.50.435, taking 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, in a public transit vehicle, or in a public stop shelter.
[ ] The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
[ ] Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv.	TYPE OF CRIME
Minor Poss. Firearm	8-10-93	Thurston Co., WA	5-13-93	J	N-V
PSP 2°	8-9-95	Thurston Co., WA	6-25-95	J	N-V
PSP 2°	8-9-95	Thurston Co., WA	6-25-95	J	N-V
Theft 2°	6-29-95	Thurston Co., WA	6-26-95	J	N-V
Malicious Mischief 2°	10-5-95	Thurston Co., WA	9-3-95	J	N-V

[ ] Additional criminal history is attached in Appendix 2.2
[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	VII	31-41 months		31-41 months	Life
II	3	III	9-12 Months		9-12 Months	5 Years

[ ] Additional current offense sentencing data in Appendix 2.3

2.4 [ ] **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] within [ ] below the standard range for

Count(s)_____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):_____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [X] as follows: 31 Months Dept. of Corrections; $110 court costs; $500 crime victim compensation; Restitution (charges and uncharges counts) No criminal law violations; obey all rules of Dept. of Corrections; No contact with victims for life.

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 _____

3.3 [ ] The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

$5798.09 Restitution to: Pemco, P.O. Box 2985, Tacoma, WA 98401 - 2985

LASS CODE $1,467.07 Restitution to: Stephen H. Prohaska, 1120 Fir Street SE, Olympia, WA 98501

RTN/RJN $_____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV $500 Victim Assessment — RCW 7.68.035

CRC $110 Court costs, including: — RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
Criminal Filing fee $110 FRC
Witness costs $_____ WFR
Sheriff service fees $_____ SFR/SFS/SFW/SRF
Jury demand fee $_____ JFR
Other $_____

PUB $_____ Fees for court appointed attorney — RCW 9.94A.030

WFR $_____ Court appointed defense expert and other defense costs — RCW 9 94A.030

FCM $_____ Fine RCW 9A.20.021; [ ] VUSCA additional fine deferred due to indigency — RCW 69.50.430

CDF/LDI/ FCD/NTF/SAD/SDI $_____ Drug enforcement fund of _____ — RCW 9 94A.030

CLF $_____ Crime lab fee [ ] deferred due to indigency — RCW 43 43.690

EXT $_____ Extradition costs RCW 9.94A.120

$_____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1,000 maximum) — RCW 38.52 430

$_____ Other costs for: _____

$7,875.16 TOTAL, ~~in addition to Restitution to be set by a later court order~~. — RCW 9 94A.145

~~X~~ The above total ~~does~~ not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
[ ] shall be set by the prosecutor
[ ] is scheduled for _____
~~for charged and uncharged counts to include all injury to persons or property~~

[ ] **RESTITUTION.** Schedule attached, Appendix 4.1

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

RJN	NAME of other defendant	CAUSE NUMBER	(Victim Name)	(Amount$)
	Wesley S. Ivy	#97-1-353-2	(1) Pemco	$5,798.09
			(2) Stephen H Prohaska	$1,467.07

X The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ _____ per month commencing _____. RCW 9.94A.145

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

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

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

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The Defendant shall not have contact with Stephen H. Prohaska, DOB 7-18-47, his immediate family, residence, and work place of victim and family members, (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life ~~years~~ (not to exceed the maximum statutory sentence.).

[ ] Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER: No criminal law violations;
Obey all rules of Department of Corrections

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

(a) **CONFINEMENT.** RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

31 months on Count I _____ months on Count _____

10 months on Count II _____ months on Count _____

_____ months on Count _____ _____ months on Count _____

Actual number of months of total confinement ordered is: 31 Months
(Add mandatory firearm or deadly weapon enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and the following which shall be served consecutively: _____

The sentence herein shall run concurrentlyy with the sentence in cause number(s) _____ but consecutively to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.7 **COMMUNITY PLACEMENT AND COMMUNITY CUSTODY.** RCW 9.94A.120. Community placement is ordered for a community placement eligible offense (e.g., sex offense, serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense), or community custody is ordered to follow work ethic camp if it is imposed, and standard mandatory conditions are ordered. Community Placement is ordered for the period of time provided by law. The defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) to unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody.

[ ] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: Stephanie Prokarka, DOB 7-18-47, his immediate family, residence and workplace of victim and family members.

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____

[ ] The defendant shall participate in the following crime-related treatment or counseling services: _____

[ ] The defendant shall comply with the following crime-related prohibitions: _____

[X] Other conditions: No criminal law violations; obey all rules of Dept. of Corrections 4 8|

[ ] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions of community custody. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.7.

4.9 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

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

5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or releasee from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections 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.200010 Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

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

5.7 **SEX OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with he sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of moving. If you change your residence to a new county within this state, you must register with he sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of moving. If you move out Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

5.8 **OTHER:** _____

Done in Open Court in the presence of the defendant this date: July 8, 1997

JUDGE Print name: PAULA CASEY

Deputy Prosecuting Attorney
WSBA#16529
Print name:JAMES M. GILLIGAN

Attorney for Defendant
WSBA#20257
Print name:JAMES J. DIXON

Ray Williams Jr.
Defendant

Translator signature/Print name: _____
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: 97-1-866-6

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

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

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

IDENTIFICATION OF DEFENDANT

SID No. WA16455471 (If no SID take fingerprint card for State Patrol) Date of Birth 4/6/80

FBI No. UNKNOWN Local ID No. B65394

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/ African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other: _____		[X] Non-hispanic	[ ] Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: _____, Deputy Clerk. Dated: 7-8-97

DEFENDANT'S SIGNATURE: _____

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff, vs. RAYMOND M. WILLIAMS Defendant.	)	NO. 97-1-866-6 WARRANT OF COMMITMENT ATTACHMENT TO JUDGMENT AND SENTENCE (PRISON)

DOB: 4/6/80
SID:WA16455471
RACE: W
SEX: M
BOOKING NO: B65394

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant RAYMOND M. WILLIAMS has been convicted in the Superior Court of the State of Washington for the crime(s) of: COUNT I - BURGLARY IN THE FIRST DEGREE
COUNT II - CUSTODIAL ASSAULT

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

PAULA CASEY

PAULA CASEY

BETTY J. GOULD
CLERK

By: _____
DEPUTY CLERK

APPENDIX E

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 03-1-02507-7 SEA
Vs.	)	JUDGMENT AND SENTENCE FELONY
RAYMOND M. WILLIAMS Defendant.	)	

I. HEARING

1.1 The defendant, the defendant's lawyer, ~~DENNIS HOUGH~~ Bob Flenaugh, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds**:
2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 2/9/2004 by plea of:

Count No.: 1 Crime: BURGLARY IN THE FIRST DEGREE
RCW 9A.52.020 Crime Code: 02306
Date of Crime: 9/13/2003 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in **Appendix A**

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
(b) [ ] While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
(c) [ ] With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
(d) [ ] A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
(e) [ ] **Vehicular homicide** [ ]Violent traffic offense [ ]DUI [ ] Reckless [ ]Disregard.
(f) [ ] **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
(g) [ ] **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
(h) [ ] **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____
(i) [ ] Current offenses **encompassing the same criminal conduct** in this cause are count(s)_____ RCW 9.94A.589(1)(a)

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

_____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
[X] Criminal history is attached in **Appendix B.**
[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	5	VII	41 TO 54 MONTHS		41 TO 54 MONTHS	10 YRS AND/OR $20,000
Count						
Count						
Count						

[ ] Additional current offense sentencing data is attached in **Appendix C.**

2.5 **EXCEPTIONAL SENTENCE** (RCW 9.94A.535):
[ ] Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D.** The State [ ] did [ ] did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A.**
[ ] The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **RESTITUTION AND VICTIM ASSESSMENT:**

[ ] Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E.**

[ ] Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.

[X] Restitution to be determined at future restitution hearing on (Date) 9-18-04 at 8:30 a.m.

[ ] Date to be set.

[ ] Defendant waives presence at future restitution hearing(s).

[ ] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of $500.

4.2 **OTHER FINANCIAL OBLIGATIONS**: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) [ ] $_____, Court costs; [X] Court costs are waived; (RCW 9.94A.030, 10.01.160)

(b) [ ] $100 DNA collection fee; [X] DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);

(c) [ ] $_____, Recoupment for attorney's fees to King County Public Defense Programs: [X] Recoupment is waived (RCW 9.94A.030);

(d) [ ] $_____, Fine; [ ] $1,000, Fine for VUCSA; [ ] $2,000, Fine for subsequent VUCSA; [ ] VUCSA fine waived (RCW 69.50.430);

(e) [ ] $_____, King County Interlocal Drug Fund; [ ] Drug Fund payment is waived; (RCW 9.94A.030)

(f) [ ] $_____, State Crime Laboratory Fee; [ ] Laboratory fee waived (RCW 43.43.690);

(g) [ ] $_____, Incarceration costs; [X] Incarceration costs waived (RCW 9.94A.760(2));

(h) [ ] $_____, Other costs for: _____.

4.3 **PAYMENT SCHEDULE**: Defendant's **TOTAL FINANCIAL OBLIGATION** is: $ 500.00 plus rest. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [ ] Not less than $_____ per month; [X] On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

[ ] Court Clerk's trust fees are waived.

[ ] Interest is waived except with respect to restitution.

4.4 **CONFINEMENT OVER ONE YEAR:** Defendant is sentenced to a term of total confinement in the custody of the **Department of Corrections** as follows, commencing: [X] immediately; [ ](Date): _____ by _____ ____m

48 (months) days on count 1 ; _____months/days on count____ ; _____months/day on count_____

_____months/days on count____ ; _____months/days on count____ ; _____months/day on count_____

The above terms for counts _____ _____ are consecutive / concurrent.

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to cause No.(s) _____

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order.

[ ] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special **WEAPON** finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[ ] The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is _____months.

Credit is given for [X] 247 days served [ ] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6).

4.5 **NO CONTACT:** For the maximum term of 10 years defendant shall have no contact with _____ Peter Suski

4.6 **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, as ordered in **APPENDIX G.**
[ ] **HIV TESTING:** For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

4.7 (a) [ ] **COMMUNITY PLACEMENT** pursuant to RCW 9.94A.700, **for qualifying crimes committed before 7-1-2000,** is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96, 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] **APPENDIX H** for Community Placement conditions is attached and incorporated herein.

(b) [ ] **COMMUNITY CUSTODY** pursuant to RCW 9.94A.710 for any **SEX OFFENSE committed after 6-5-96 but before 7-1-2000,** is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer **APPENDIX H** for Community Custody Conditions and **APPENDIX J** for sex offender registration is attached and incorporated herein.

(c) [X] **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 **for qualifying crimes committed after 6-30-2000** is ordered for the following established range:

[ ] Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
[ ] Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
[X] Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
[ ] Crime Against Person, RCW 9.94A.411 - 9 to 18 months
[ ] Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

[X] **APPENDIX H** for Community Custody conditions is attached and incorporated herein.

[ ] **APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8 [ ] **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

4.9 [ ] **ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480.** The State's plea/sentencing agreement is [ ]attached [ ]as follows.

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 4-6-04

Anthony P. Wartnik
JUDGE
Print Name: WARTNIK

Presented by:

Sheila Weirth
Deputy Prosecuting Attorney, WSBA# 21193
Print Name: S. Weirth

Approved as to form:

[signature] 26764
Attorney for Defendant, WSBA #
Print Name: Robert Flannagh II

APPENDIX F

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

December 1, 2017

Corey Evan Parker
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Joseph James Anthony Jackson
Thurston County Prosecutor's Office
2000 Lakeridge Dr SW Bldg 2
Olympia, WA 98502-6045
jacksoj@co.thurston.wa.us

CASE #: 49894-4-II
Personal Restraint Petition of Raymond Mayfield Williams, Jr.

Counsel:

Please be prepared to discuss the following question during oral argument set for December 5, 2017:

Does using a conviction that was committed when an individual was under the age of 18 years old as a strike in a persistent offender case violate the prohibition against cruel and unusual punishment?

Sincerely,

Derek M. Byrne
Court Clerk

DMB:k

APPENDIX G

Court of Appeals No. 49894-4-II

In the

Court of Appeals for the State of Washington

Division Two

In re the Personal Restraint Petition of:

RAYMOND MAYFIELD WILLIAMS, JR.,

Petitioner

PETITIONER'S REPLY BRIEF RESPONDING TO THE AMENDED BRIEF OF RESPONDENT FILED BY THE COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

Cowlitz County Superior Court No. 08-1-00735-6

Corey Evan Parker
Washington State Bar Number 40006
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Attorney for Petitioner

PETITIONER'S REPLY BRIEF RESPONDING TO COWLITZ COUNTY

Cowlitz County has attached as Appendix B to its Amended Brief a copy of a verbatim report of proceedings dated October 15, 2008. It should be kept in mind in reading that transcript that Petitioner Raymond Williams was, even at that time, unaware of the fact that his earlier 1997 conviction was being used improperly as a "first strike," as explained below.

INTRODUCTION

When Thurston County filed its response to Petitioner's PRP in April of 2017 (which response has been replaced by the current response filed by Cowlitz County on January 30, 2018), the response, in part, was that "Williams did not challenge his persistent offender status at his 2008 sentencing." (*See* Thurston County's response at page 4, lines 5-6.) Now, with the presentation of the October 15, 2008 sentencing hearing transcript, that argument is known to be false, for Appendix B attached to Cowlitz County's Amended Brief clearly shows that Petitioner did, in fact, challenge his persistent offender status at his 2008 sentencing (as shown from the following quotation from Appendix B, page 9, line 17, through page 10, line 17):

> Instead of being sentenced to life in prison without the possibility of parole as a persistent offender, I believe this is a gross error in the reasons why this law was created in relation to the deeds that led me here.
>
> At age 16 I witnessed a family leave their home on a camping trip. Later that day, knowing nobody was home, I broke into the home. Inside of the home I stumbled upon numerous rifles. Knowing I could sell them to support myself, as I was homeless, I bundled them up and sold them. For this I was sentenced to burglary in the first degree in court. That was my first strike.

> At age 23 I went over to a friend's house and discovered to my great shock that my girlfriend was in bed with another man. I was told to leave. A fight broke out between me and this other man, and once again I was arrested for various crimes including first degree burglary. And that was strike two.
>
> And here I stand at age 28 with assault in the second degree as strike three. This Court has deemed me as persistent in my offenses. I don't believe there to be any persistence in my criminal behavior that would warrant me as unfit for my society for the rest of my days on earth. I will point out that as an adult, saying after the age 18, I only have one single felony conviction on my record other than the one that I stand here for today.

(App. B, 9:17-10:17.)

Probably because of the need to make its arguments appear to be consistent with the statements made by the Petitioner as recorded in Appendix B, Cowlitz County has jettisoned the argument made by Thurston County (to the effect that "Williams did not challenge his persistent offender status at his 2008 sentencing"). So, instead, Cowlitz County now argues **(1)** that at the 2008 sentencing hearing Petitioner acknowledged his "prior conviction for burglary in the first degree out of Thurston County in 1997" (Cowlitz County Amended Brief at pp. 1-2) and **(2)** that Petitioner signed his name to the 2008 judgment and sentence which "outlined his entire criminal history . . . which included [the] burglary from 1997. . . ." (Cowlitz County Amended Brief at p. 2.) Based thus upon Petitioner's asserted acknowledgement of his two prior strikes and the timing of his present PRP, Cowlitz County now argues that the PRP is untimely and is based on arguments that Petitioner assertedly has waived.

However, as with the transcript of the sentencing hearing (App. B), so with the arguments in the Cowlitz County Amended Brief: It should be kept in mind in

reading the County's Amended Brief, that Petitioner Raymond Williams was, at the time of the 2008 sentencing hearing, unaware of the fact that his earlier 1997 conviction was being used improperly as a "first strike," as explained below.

Technically, in this present PRP matter, the collateral attack is *not* against "the prior 1997 conviction," as stated in this court's November 15, 2017 Order. Rather, the present PRP attacks the October 15, 2008 sentencing order. While it may seem that the PRP in effect attacks the 1997 conviction, it is more correctly to be viewed as an attack on the 2008 court's improper use of the 1997 conviction.

FACTS

On October 15, 2008 the Superior Court of Washington for Cowlitz County entered its Felony Judgment and Sentence (PRP, App. A), and in sentencing Mr. Williams, the court pointed to the July 8, 1997 first degree burglary conviction (PRP, App. F) as one of two "prior offenses that require the defendant to be sentenced as a Persistent Offender." (*See* PRP, App. A, p. 3, fourth paragraph ("The following prior offenses require that the defendant be sentenced as a Persistent Offender (RCW 9.94A.570): BURG 1 1997, AND BURG 1 2004").) The court in 2008 thereupon "found the defendant to be a Persistent Offender," sentencing Petitioner to life without parole. (*Id.,* p. 6.)

ARGUMENT

1. THE PETITION IS NOT TIME BARRED ON ACCOUNT OF ITS NOT HAVING BEEN BROUGHT WITHIN ONE YEAR OF THE JUVENILE COURT DECLINE IN 1997

At pages 8 to 14 of the Cowlitz County Amended Brief, the argument is made that Petitioner's present PRP is time barred because it was not filed within

one year after the 1997 sentencing. The premise of that argument assumes that Petitioner is directly attacking the 1997 sentence and the 1997 decline. However, that is not what Petitioner is attacking by his present PRP. Rather, he is attacking the 2008 court's improper use of the 1997 conviction.

The underlying premise of Cowlitz County's arguments regarding timeliness is stated on page 3 of its Amended Brief. Citing RCW 10.73.090(1), it does not help Cowlitz County's argument. Cowlitz County argues: "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face *and was rendered by a court of competent jurisdiction*." Amended Brief at page 3, emphasis here added.

Petitioner asserts that his petition is not time barred because he has met his burden of proof under RCW 10.73.100 (5) that the sentence imposed *was in excess of the court's jurisdiction* when he was sentenced for a "third strike" where the first strike was imposed by adult court after an *invalid transfer of jurisdiction* from juvenile court.

First and foremost on this account, it is helpful to discuss what is not at issue. The State has already conceded through Thurston County that if Williams was improperly transferred from Juvenile Court to Adult Court, then the Superior Court lacked jurisdiction to count his 1997 conviction as his first strike. See Thurston County's Resp. at page 6, footnote 4. And it necessarily follows that Williams could not be sentenced under the Persistent Offender Act for a "third strike" in 2008. Through Thurston County, the State focused largely on what may

have been contained within the audio tape and other documents that were destroyed. *See* Thurston County's Resp. at page 9. Cowlitz County, too, relies on this area of focus. *See* Cowlitz County's Amended Brief at page 10. In both response briefs, the State argues that in absence of the audio, this Court should conclude findings were made after a decline hearing was held becasue one was *scheduled* and because a declaration from Christen Peters states it was standard practice for Thurston County juvenile courts to address intelligent waivers by juveniles at decline hearings generally. *See* State's Resp. at 2, 9-10 FN 5.

The State further argues that even though it would have been the State's burden to prove that Williams was properly sentenced as a persistent offender in 2008, RCW 10.73.100 now shifts the burden to Williams to prove that jurisdiction was improper. *See* State's Resp. at 6. But, that argument mischaracterizes Williams' burden under RCW 10.73.100 and overemphasizes the importance of extrinsic evidence and the impact of Mr. Peters' testimony.

First, the State reads a heightened standard into RCW 10.73.100 that is not there. To avoid the one year time limit outlined in RCW 10.73.190, Williams is only required to prove that the juvenile court lacked jurisdiction. Under *Saenz*, the decline order is facially invalid because it does not analyze the *Kent* factors with enough specificity to provide a meaningful review. Therefore, the adult court lacked jurisdiction to hear the case. *Saenz*, 175 Wn.2d at 170. This conclusion undermines the premise of the Cowlitz County argument—which is to the effect, as it states, that "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment

becomes final if the judgment and sentence is valid on its face *and was rendered by a court of competent jurisdiction*." (Amended Brief at page 3, emphasis here added.)

Second, this court does not need to "speculate that the decline hearing never addressed the required *Kent* factors or intelligent waiver…" as the State suggests because it need not look further than the order itself. *See* State's Resp. at 6-7. The *Saenz* court made it clear that if there are no *written findings* that the transfer was in the best interest of the juvenile or the public, then the transfer is invalid. *State v. Saenz*, 175 Wn.2d 167, 170, 283 P.3d 1094 (2012) ("Our juvenile justice code requires court to enter written findings before declining juvenile jurisdiction . . . . Next, we hold that Sanez's case was not properly transferred to adult court because the commissioner transferring the case failed to enter findings that transfer was in the best interest of the juvenile or the public as required by statute").

The State, through Thurston County, already has conceded that the order is insufficient to provide a meaningful review in violation of well-established Washington law. *See* Thurston County's Resp. at 9-10 (The written order in the instant case fails to "provide much of a basis for judicial review"); *In re Harbert*, 85 Wn.2d 719, 724, 538 P.2d 1212 (1975) (When a juvenile court declines jurisdiction, it must make written findings that analyze the factors with enough "specificity to permit meaningful review"). Cowlitz County realizes that such a concession is unhelpful to its position, so it remains silent concerning it, mentioning nothing of the sort in its Amended Brief.

Yet, Cowlitz County, just like Thurston County previously, would have this court overlook the omission of findings simply because there may have been an audio recording of the decline hearing, which may or may not have taken place, which may have indicated that the court questioned Williams about intelligent waiver. *See* State's Resp. at 13. The State has already conceded through Thurston County that its argument is speculative and now Cowlitz County remains mum on the issue, hoping it will disappear. *See* Thurston's Response at 13 ("Granted this is speculative, but no more than any arguments offered by Williams . . .").

Third, although a reviewing court may consider transcripts and statements in the record, the absence of such a record is not fatal. The State even conceded, through Thurston County, that *State v. Holland*, 98 Wn.2d 507, 518-19, 656 P.2d 1056 (1983), which is still good law, did not approve of the juvenile court's omission of a written analysis. *See* State's Resp. at 10.

And even in *Saenz*, 175 Wn.2d at 179, our Supreme Court affirmed its disapproval of omitting written findings. By way of Thurston County's April 2017 Response, the State tried to cure this omission by reliance on a declaration from Mr. Christen Anton Peters. Cowlitz County attaches, as Appendix A to its Amended Brief, that same April 2017 declaration. However, that declaration provides no authority whatsoever that would allow this court to replace the actual record with a declaration in which Mr. Peters is "unable to recall specific details" of Williams' prosecution. *See* Decl. of Christen Peters at para. 3. And, in any event, providing a 20-year-old recollection of the standard practice is not a guarantee that the proper legal procedure took place.

The State's contention that "the juvenile courts [*sic*] decision to transfer Williams likely would have been upheld as a valid exercise of discretion" presumes that there actually was an exercise of discretion. And the only record that could confirm whether or not the decline hearing actually addressed the *Kent* factor and intelligent waiver is no longer available. Therefore, as the State concedes, it is unknown whether or not these issues were addressed. *See* State's Resp. through Thurston County, at page 3. On this account, Cowlitz County repeats the very strange argument that was made by Thurston County:

> "Williams waives his right to a decline hearing, he shall be transferred to Superior Court, and pursuant to State v. Holland adopting U.S. v. Kent, the court finds that respondent shall be declined to adult Superior Court."

See Cowlitz County Amended Brief at page 10 (similar to Thurston County's Response at page 10. Such a statement is the epitome of circularity; it is a perfect example of making no finding whatsoever; instead, it states a conclusion and supports the conclusion by restating the conclusion. It is not a finding.

The State (both by Thurston County and now by Cowlitz County) would have this court impose the risk on Petitioner, but neither County cites authority allowing the imposition of risk. The State argues, still, that the presiding judge should be taken at his word that he considered the *Kent* factors in making his decision to decline jurisdiction. *See* Thurston County's response at p. 10 and now in Cowlitz County's Amended Brief at p. 10. But, in requiring that an analysis be done in writing and that findings be made and memorialized, the *Saenz* court essentially rejected any such argument. Simply *stating* that the *Kent* factors were considered does not equate to memorializing findings themselves, as the State has

now twice suggested. *See* State's Resp. at page 2 in the Thurston County response and at page 12 in the Cowlitz County Amended Brief. Strangely, having seen Petitioner's prior brief, Cowlitz County now attempts (at p. 12) to distinguish *State v. Knippling* (2007) 141 Wn. App. 50, on the ground "there is an Order summarizing the court's findings." Not so. Stating a conclusion is not the same as "summarizing"—let alone making—findings. (*See* more on *Knippling* below.)

The fact that *Saenz* was an appeal and not a PRP does not distinguish it from the instant case. In *Saenz* the defendant appealed his life sentence under the Persistent Offender Accountability Act (RCW 9.94A). That life sentence, was the immediate result of 22-year-old Saenz's decision to commit first-degree assault and to unlawfully possess a firearm in 2008, knowing that he already had two strikes. At his three-strikes hearing, Saenz challenged his 2001 "strike" resulting from conviction rendered when he was only 15 years of age. Despite the fact that the third strike was for a crime he committed as an adult, the Washington Supreme Court still applied all of the public policy considerations for sentencing a juvenile. *Saenz*, 175 Wn.2d at 170-71.

Given the *Saenz* court's analysis, it is irrelevant that "Williams is being punished for his actions as an adult, not what he may have done as a juvenile." *See* State's Resp. (by Thurston County) at page 8. Cowlitz County has rightly jettisoned this argument. The fact is, Williams' life sentence is a direct result of the strike that he received from a court that lacked jurisdiction to impose it.

a. <u>Cowlitz County Errs in Attempting to Distinguish the *Knippling* Case.</u> In *State v. Knippling* (2007) 141 Wn. App. 50, 168 P.3d 426, the State

contended before the Supreme Court of Washington that the appellate court had erred in affirming the trial court's determination that the State had failed to prove that one of defendant's prior convictions counted as a strike for purposes of persistent offender status. The appellate court had disagreed, finding that the State had not met its burden of showing that defendant was convicted as an "offender" at the time of the prior conviction in question because there had been no evidence in the record that the superior court had jurisdiction over the defendant. This was critical because to classify defendant as an "offender," the State had to show either that the defendant had been convicted of an automatic decline charge or that the juvenile court had after conducting a declination hearing declined jurisdiction. The juvenile court had jurisdiction over the second degree robbery charge and there was no evidence before the sentencing judge indicating that a declination hearing had occurred. By failing to establish the existence of a declination hearing in juvenile court, the State could not show that defendant was convicted as an "offender" under Wash. Rev. Code § 9.94A.030(37)(a)(ii). Therefore, defendant could not be sentenced as a persistent offender.

As with defendant Knippling in the 2005 sentencing in the *Knippling* case, so to with Williams in the present case. In *Knippling* the defendant was "not challenging the constitutional validity of the 1999 conviction" but "[i]nstead, Knippling present[ed] a statutory challenge to the use of the 1999 conviction for sentencing purposes." *State v. Knippling*, 166 Wn.2d 93, at 103. Said the *Knippling* court:

> The State's burden, as required by the [Persistent Offender Accountability Act], is to establish that Knippling is a three-time "offender" in order to sentence him to life without release. *See* RCW 9.94A.030(37)(a)(ii). This burden is related to but distinct from an affirmative duty to prove the constitutional validity of prior convictions.

State v. Knippling, 166 Wn.2d 93, 103-104.

In light of the above analysis, a strict interpretation of this court's November 15, 2017 Order is that it properly should invite the parties to brief the question whether petitioner in this present PRP can collaterally attack the October 15, 2008 finding, made by the Superior Court of Washington for Cowlitz County in its Felony Judgment and Sentence, that Mr. Williams is a three-time "offender" based, in part, on the existence of the earlier, 1997, conviction for burglary in the first degree. This reformulation of the question presented by this court's November 15, 2017 Order is justified by what the *Knippling* court says regarding the State's contention in that case (which is similar to what the State contends in its Response to PRP here):

> The State contends that Knippling cannot dispute the 1999 conviction at his persistent offender sentencing because doing so amounts to an improper collateral attack on that conviction. This argument also fails. We reach that conclusion because Knippling's objection to the use of that conviction is not a collateral attack. Rather, his arguments are directed at the present use of a prior conviction to establish his current status as a persistent offender. *See State v. Carpenter*, 117 Wn. App. 673, 678, 72 P.3d 784 (2003) (objecting to a prior conviction in a POAA sentencing proceeding is not a collateral attack).

State v. Knippling, 166 Wn.2d 93, 102-103.

As for the *ratio decidendi* in *Knippling*, leading to the conclusion there that "[b]y failing to establish the existence of a declination hearing in juvenile

court, the State could not show that defendant was convicted as an 'offender' under Wash. Rev. Code § 9.94A.030(37)(a)(ii),"[1] the *Knippling* court reasoned as follows:

> The State urges this court to ignore the declination requirement, asserting that an absence of information in the judgment form does not affirmatively mean that Knippling's conviction does not exist for sentencing purposes under the POAA. That argument fails because Washington courts have long held that in imposing a sentence, the facts relied upon by the trial court "'*must have some basis in the record*.'" [*State v.*] *Ford*, 137 Wn.2d [472] at 482 (quoting *State v. Bresolin*, 13 Wn. App. 386, 396, 534 P.2d 1394 (1975)). The [Sentencing Reform Act] places the burden of proving prior strikes "on the State because it is 'inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove.'" *Ford*, 137 Wn.2d at 480 (quoting *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988)). If the juvenile court declined jurisdiction in 1999, the State should have been able to produce the record because all juvenile court declination decisions are to be in writing. See RCW 13.40.110(3). If there is no record of the declination hearing, we can presume that no such hearing occurred. See *State v. Golden*, 112 Wn. App. 68, 80, 47 P.3d 587 (2002).
>
> In sum, the juvenile court had jurisdiction over the second degree robbery charge and there was no evidence before the sentencing judge in 2005 indicating that a declination hearing occurred. By failing to establish the existence of a declination hearing in juvenile court, the State cannot show that Knippling was convicted as an "offender" in 1999. Therefore, we agree with the Court of Appeals and the trial court that Knippling cannot be sentenced as a persistent offender because he was not "convicted as an *offender* on at least two separate occasions" prior to the 2005 sentencing. RCW 9.94A.030(37)(a)(ii) (emphasis added).

State v. Knippling, 166 Wn.2d 93, 102 (italics in original, emphasizing that the facts relied upon by the trial court "*must have some basis in the record*.")

In the present case, the record is crystal clear: the Juvenile Court Order of

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[1] *State v. Knippling*, 166 Wn.2d 93, 96.

May 19, 1997 either contradicts itself if it is read to say that a declination hearing *was* held or it is wholly consistent with itself if it is read to say what it actually says—namely, (1) that a declination hearing was *waived*; (2) that declination occurred nonetheless (albeit without a hearing); and (3) that no *Kent* findings were stated on the record. In short, the State necessarily fails in this present case to establish the holding of a declination *hearing* in juvenile court in 1997 because there is no record of the declination *hearing* and therefore this court necessarily "can presume that no such hearing occurred." See *State v. Golden*, 112 Wn. App. 68, 80 (2002).

Here is what the May 19, 1997 Juvenile Court Order states (with reference to the *waiver* preceded here by insertion of a bracketed "**[1]**" and with reference to the declination here preceded by a bracketed "**[2]**"):

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 978601-4
vs.	)	ORDER
	)	to Decline Raymond Williams
Raymond Williams	)	to Adult Court Jurisdiction
Defendant.	)	

IT IS HEREBY ORDERED that the Respondent [*sic*] having been charged with Burglary in the First Degree 9A.52 020(1)(a) and two counts of Theft of a Firearm RCW 9A.56.300, **[1]** hereby waives his right to a decline hearing pursuant to RCW 13.40.110, and jurisdiction for the above named Respondent shall be transferred to Superior Court.

Probable cause has been established for the above enumerated charges.

Pursuant to State v. Holland adopting US v. Kent 383 U.S 541 (1966), court finds that Respondent [*sic*] shall be **[2]** Declined to Adult Superior Court. Respondent to be held in Adult Thurston County Jail for further

proceedings on this matter.

DATED: 5/19/97

/s/
JUDGE

PRESENTED BY:
/s/
Deputy Prosecuting Attorney

APPROVED BY:
/s/
Attorney for Defendant

/s/

(*See* PRP at App. E, underlining added; note there is no reference in the Order to the court having held a declination hearing and no *stated Kent* findings.)

In short, therefore, the State in this present case necessarily must be held to have failed in 2008 to establish the holding of a declination *hearing* in juvenile court in 1997 because there is no record of a declination *hearing*. This court necessarily "can presume that no such hearing occurred." See *State v. Golden*, 112 Wn. App. 68, 80 (2002).

In its Response to Personal Restraint Petition ("RPRP")), the State tiptoes around this inescapable fact by making unsubstantiated assertions that such a hearing was held. For example, the State contends, "In that 1997 case, Williams was tried as an adult *following a decline hearing in Thurston County*. Petitioner's Appendix F." (See RPRP at p. 2, emphasis added.) While the State's citation to the PRP's Appendix F does lead to the Superior Court's Judgment and Sentence, that document in turn is wholly silent about there having been held any "decline hearing." The State also contends in its RPRP that "Williams waived his right to be tried as a juvenile, and the juvenile court entered a brief finding of facts[2] *at the*

[2] The May 19, 1997 Order does *not* "enter[] a brief finding of facts." [*sic*] Rather, it "finds that Respondent [*sic*] shall be Declined to Adult Superior Court." That is not a statement that the court found any facts but it is a statement of the conclusion ("Respondent shall be declined") as if it were a "finding." Not one of

conclusion of the hearing. See Petitioner's Appendix H; E." (See RPRP at p. 2, emphasis added.) However, Appendices H and E are silent. Appendix H (the Declaration of Raymond Williams) does not refer to "the conclusion of the hearing" and does not even refer to a hearing; rather, it asserts that Mr. Williams "*waived my right to the hearing*." (See PRP, App. H, p. 4, lines 1-2, emphasis added.) And Appendix E, likewise, is silent about any declination hearing having been held. And in its RPRP the State repeatedly thereafter refers to "the decline hearing" (see third-to-last line on p. 2 of the RPRP, fourth and eighth lines of the argument on p. 3 of the RPRP, etc.), and yet never cites any other document in support of the notion that there was evidence before the sentencing judge in 2008 "indicating that a declination hearing [had in 1997] occurred." *State v. Knippling*, 166 Wn.2d 93, 102. Here quoting from *State v. Knippling*, 166 Wn.2d 93, 102 but substituting Mr. Williams' name for Mr. Knippling's and changing the years of the comparable proceedings in the two cases from the years in Mr. Kippling's cases to those in Mr. Williams' cases, we can say here as was said in *Kippling*:

> By failing to establish the existence of a declination *hearing* in juvenile court, the State cannot show that [Mr. Williams] was convicted as an 'offender' in 199[7]. Therefore, [the Supreme Court of Washington may well] agree with [this present] Court of Appeals . . . that [Williams could not properly have been] sentenced as a persistent offender because he was not "convicted as an *offender* on at least two separate occasions" prior to the 200[8] sentencing. RCW 9.94A.030(37)(a)(ii) (emphasis added).

State v. Knippling, 166 Wn.2d 93, 102.

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the *Kent* factors is mentioned.

Here the State argues in its RPRP that the burden of proof rests on Mr. Williams to prove "that he was not warned of the consequences of intelligent waiver." (RPRP at pp. 12-13.) However, the burden of proof is on *the State*, to show that Mr. Williams was convicted as an "offender" at the time of the 1997 conviction based on *evidence in the record* that the superior court had jurisdiction over the defendant, *evidence in the record* that establishes the existence of a declination hearing in juvenile court in 1997. *State v. Knippling*, 166 Wn.2d 93, 102.

The court imposing on Mr. Williams the life-without-parole sentence in 2008 cannot possibly have relied on a transcript or recording of any declination hearing held in 1997 for not only was such transcript or recording of any declination hearing (if held) not available in 2016 (*see* PRP at App. G), it was not available in 2008. RCW 13.50.010 - 13.50.270.[3] That is one reason why "If the juvenile court declined jurisdiction in 199[7], the State should have been able to produce the record *because all juvenile court declination decisions are to be in writing*. See RCW 13.40.110(3)." *State v. Knippling*, 166 Wn.2d 93, 102. And "[i]f there is no record of the declination hearing, we can presume that no such hearing occurred. See *State v. Golden*, 112 Wn. App. 68, 80, 47 P.3d 587 (2002)." *State v. Knippling*, 166 Wn.2d 93, 102.

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[3] *See also* County Clerks and Superior Court Records Retention Schedule (1983, 1993, 2001, 2006-2007, 2009, 2014) available at https://www.sos.wa.gov/_assets/archives/RecordsManagement/County%20Clerks%20and%20Superior%20Court%20Records%20RS%20ver%207.0.pdf and Juvenile Courts and Services Records Retention Schedule available at https://www.sos.wa.gov/_assets/archives/RecordsManagement/Juvenile%20Cts%20and%20Services%20ver%201.0%20Revocation%20Guide.pdf

In its RPRP, the State points to the Notice of Hearing (PRP App. D) as supposed evidence that the hearing actually was held. *See* RPRP at pp. 9-10, n. 5 ("Williams states in his brief that there is no evidence that a decline hearing actually occurred. Petitioner's Motion [PRP] at 7. To the contrary, there is a notice that the decline hearing was scheduled for May 19, 1997, Petitioner's Appendix D, in addition to an order declining jurisdiction dated May 19. Petitioner's Appendix E. Based on these documents, it seems clear that a decline hearing did actually occur."). No. The documents merely say what they say: a decline hearing was *scheduled* (App. D) and Mr. Williams *waived* the hearing (App. E).

b. The *Kent, Saenz,* and *Bailey* Cases. Under Wash. Rev. Code § 13.40.110, a judge must carefully weigh whether declining jurisdiction is in the best interest of the juvenile or the public and enter findings to that effect, even where the party waives the decline hearing and stipulates to transfer to adult court. If the judge is unable to *enter findings* without a hearing, the judge should order a hearing. *State v. Saenz*, 175 Wn. 2d 167, 180-181. Such a hearing was not ordered and the record shows the court entered *no findings*. (*See* footnote 2 above.) The prosecution bears the burden of proving by a preponderance of the evidence that a prior conviction constitutes a "strike" under the POAA. *Saenz*, 175 Wn.2d at 172; *State v. Bailey*, 179 Wn. App. 433, 439. The burden of establishing criminal history by a preponderance of the evidence, for purposes of determining the offender score at sentencing, lies with the prosecution. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 868 n.3, 50 P.3d 618 (2002). "'The best evidence of a prior conviction is a

certified[4] copy of the judgment.'" *State v. Priest*, 147 Wn. App. 662, 668, 196 P.3d 763 (2008) (quoting *Ford*, 137 Wn.2d at 480). As stated above, "[b]y failing to establish the existence of a declination hearing in juvenile court, the State could not show that defendant was convicted as an 'offender' under Wash. Rev. Code § 9.94A.030(37)(a)(ii)." *Knippling*, 166 Wn.2d 93, 96.

> Even where the parties stipulate to decline juvenile jurisdiction, the statute still requires the court to enter findings, and the court cannot transfer a case to adult court until it has done so." *Saenz*, 175 Wn.2d at 179. Jurisdiction cannot be transferred if declination is not in the best interest of the juvenile or the public, despite any agreement between the parties. *Id*. The *Saenz* court explained:
>
> > Juvenile court judges are not simply potted palms adorning the courtroom and sitting idly by while the parties stipulate to critically important facts. Instead, these judges enforce a juvenile code, "designed with [juveniles'] special needs and limitations in mind." *Saenz*, 175 Wn.2d at 179 (alteration in original) (quoting *Dutil v. State*, 93 Wn.2d 84, 94, 606 P.2d 269 (1980)).

State v. Bailey, 179 Wn. App. 433, 442-443 (2014).

c. <u>The Standard of Review</u>. An appellate court reviews *de novo* a trial court's determination that a convicted defendant's prior convictions qualify as "strike" offenses for purposes of persistent offender sentencing to life imprisonment without the possibility of parole under the Sentencing Reform Act of 1981 (ch. 9.94A RCW). *State v. Bailey*, 179 Wn. App. 433, 438-439 (2014), citing *State v. Thiefault*, 160 Wn. 2d 409, 414, 158 P.3d 580 (2007). *See also Saenz* at 172.

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[4] PRP App. F shows a photocopy of the July 8, 1997 Judgment and Sentence relied upon by the sentencing court in 2008 but does not show that it was a certified copy.

d. Constitutional Argument

This court has asked the parties to address at oral argument the question whether "using a conviction that was committed when an individual was under the age of 18 years old as a strike in a persistent offender case violate the prohibition against cruel and unusual punishment." Petitioner sets forth in Appendix A attached hereto what his contention will be on that question, so that the oral argument on the issue will be concise. Petitioner's argument will be that using as a strike in a persistent offender case a punishment that was imposed on an individual for an offense he committed when he under the age of 18 years does indeed violate the prohibition against cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, Mr. Williams respectfully suggests that upon *de novo* review, this court should conclude that the 2008 sentencing court's use of the 1997 conviction was improper.

Dated: February 26, 2018

Corey Evan Parker

COREY EVAN PARKER
Attorney for Petitioner Williams

APPENDIX A

This court has asked the parties to address the question at oral argument whether "using a conviction that was committed when an individual was under the age of 18 years old as a strike in a persistent offender case violate the prohibition against cruel and unusual punishment." For the convenience of the court and for the benefit of Cowlitz County, Petitioner here sets forth what its contention will be at oral argument. Petitioner will contend that using as a strike in a persistent offender case a punishment that was imposed on an individual for an offense he committed when he under the age of 18 years does indeed violate the prohibition against cruel and unusual punishment.

The oral argument by Petitioner (set forth at page 27 below) will essentially be founded on the following one factual resource (item 1 below) and the two legal resources (items 2 and 3 below), and essentially will constitute reliance on the principles enunciated in the dissenting opinion by Chief Justice Bjorgen in *State v. Moretti*, 2017 Wash. App. LEXIS 2491 (at ¶¶ 121-135).

1. Facts. Petitioner, born on April 6, 1980 (PRP, App. A, p. 1), was sixteen (16) years of age on February 14, 1997 when he committed the first offense. (*See* PRP, App. F, p. 1.) Although this court's December 1, 2017 request for discussion of the question regarding the prohibition against cruel and unusual punishment does not distinguish between the Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution, both of which prohibit cruel punishment but the latter of which is more protective of the defendant than the former, it is respectfully suggested that Chief Justic Bjorgen's dissenting opinion in

State v. Moretti, 2017 Wash. App. LEXIS 2491, ¶¶ 121-135 surely applies particularly powerfully to Petitioner, who was age 16 at the time of the first offense. While it may be argued regarding Petitioner Williams here, paraphrasing here what was stated in *State v. Nguyen*, 2018 Wash. App. LEXIS 69, that "the trial court [in 2008] did not sentence [Williams] for his first strike offense that he committed when he was [16] years old" and, rather, that "the court sentenced [Williams] for his third strike offense that he committed when he was [28] years old" (compare at *State v. Nguyen*, 2018 Wash. App. LEXIS 69 ¶ 15), here it should be found that Williams "was not sentenced to life without possibility of release for his last 'strike' conviction or for any single 'strike' conviction[, but] his sentence rested equally on all three convictions, his first as indispensable as the rest to the POAA sentence." (Compare *State v. Moretti*, Chief Justic Bjorgen dissenting, 2017 Wash. App. LEXIS 2491, ¶ 132.) "Without that first conviction, he could not have been sentenced under the POAA. His POAA sentence, therefore, was as much a punishment for his first 'strike' offense at age [16] as it was for any of the others." (*Id*.)

2. <u>Legally</u>. In *State v. Nguyen*, 2018 Wash. App. LEXIS 69 defendant Nguyen claimed that a sentence of life without the possibility of parole violated the federal and state constitutions' prohibition against cruel and unusual punishment because he committed his first strike offense when he was only **<u>20</u>** years old. The court rejected that claim. The court reasoned:

> The Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution prohibit cruel punishment. This includes punishment disproportionate to the crime

committed. Nguyen cites a number of United States Supreme Court cases to support that life in prison without the possibility of parole is a disproportionate punishment for youth.

But here, the trial court did not sentence Nguyen for his first strike offense that he committed when he was 20 years old; the court sentenced Nguyen for his third strike offense that he committed when he was 41 years old. In affirming a life sentence under the former habitual criminal law, our Supreme Court stated, "The life sentence contained in RCW 9.92.090 is not cumulative punishment for prior crimes. The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime." Thus, neither the fact that Nguyen was 20 years old when he committed his first strike offense nor the constitutional limits on sentences imposed on juveniles is relevant. In addition, our Supreme Court has held that the mandatory sentence imposed on persistent offenders does not violate the state or federal constitutions. The trial court did not err in imposing a term of life sentence under the POAA.

See State v. Nguyen, 2018 Wash. App. LEXIS 69 at ¶¶ 14-15.

3. <u>Legally</u>. In a dissent in *State v. Moretti*, 2017 Wash. App. LEXIS 2491 (at ¶¶ 121-135), Chief Justice Bjorgen analyzed the issue thus dealing with a **<u>20-year-old</u>**:

This appeal presents the next step in the evolution of our law governing punishment of those with psychological traits of juveniles at the time of the offense. Moretti was sentenced as an adult under the Persistent Offender Accountability Act of the Sentencing Reform Act of 1981 (POAA), chapter 9.94A RCW, to mandatory life imprisonment without possibility of release. However, he committed one of the "strike" offenses that was essential to this sentence when he was 20 years old, well within the age at which our Supreme Court has recognized the characteristics of youth persist. *State v. O'Dell*, 183 Wn.2d 680, 692 n.5, 358 P.3d 359 (2015). The question, then, is whether our law consigns one to imprisonment without hope of release, with no whisper of human discretion and no consideration of the characteristics of youth, based in part on a crime committed when our law recognizes those characteristics persist. After *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), O'Dell, 183 Wn.2d 680, and *State v. Houston- Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017), the answer must be no.

¶122 In *Miller*, the Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." 567 U.S. at 479. The court rested this holding on its recognition that

> [b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.

Miller, 567 U.S. at 479.

¶123 The characteristics of youth on which *Miller* relied were those first summarized in *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). *Miller*, 567 U.S. at 472. In that decision the Court identified three general differences between adults and juveniles central to an Eighth Amendment analysis. First, juveniles more often display "'[a] lack of maturity and an underdeveloped sense of responsibility,'" often resulting in "'impetuous and ill-considered actions and decisions.'" *Roper*, 543 U.S. at 569 (*quoting Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)). This susceptibility means that their "'irresponsible conduct is not as morally reprehensible as that of an adult.'" *Roper*, 543 U.S. at 570 (*quoting Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)).

¶124 Second, juveniles "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Roper*, 543 U.S. at 569. This "vulnerability and comparative lack of control over their immediate surroundings" give juveniles "a greater claim than adults to be forgiven for failing to escape negative influences." Id. at 570.

¶125 Finally, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles . . . less fixed." *Id.* at 570. Thus, "it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* at 570.

¶126 In finding these differences, the Court in *Roper*, *Miller*, and the intervening *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), drew on developments in psychology and neuroscience showing "'fundamental differences between juvenile and adult minds'—for example, in 'parts of the brain involved in behavior control.'" Miller, 567 U.S. at 471-72 (*quoting Graham*, 560 U.S. at 68). These differences, the Court

recognized, both lessened a juvenile's moral culpability, *Roper*, 543 U.S. at 571, and enhanced the prospect of reformation, *Miller*, 567 U.S. at 472. With these differences, each decision recognized that the penological justifications for imposing the harshest sentences were diminished for juveniles. *See Miller*, 567 U.S. at 472.

¶127 Our state Supreme Court has embraced the reasoning of the *Roper* line of cases and extended that reasoning to hold that

> [t]he Eighth Amendment [r]equires [s]entencing [c]ourts [t]o [c]onsider [t]he [m]itigating [q]ualities of [y]outh at [s]entencing, [e]ven in [a]dult [c]ourt.

Houston-Sconiers, 188 Wn.2d at 18. The court read the Sentencing Reform Act (SRA), chapter 9.94A RCW, to allow courts to comply with this mandate. The court also held that the mandatory nature of the sentencing enhancements imposed violated the Eighth Amendment under the same reasoning. Houston-Sconiers, 188 Wn.2d at 25-26.

¶128 *Roper*, *Graham*, *Miller*, and *Houston-Sconiers* all dealt with crimes committed while the defendant was a juvenile. Moretti's POAA offenses were committed while an adult, the first at age 20. Thus, the specific holdings of these three decisions do not disclose any flaw in his POAA sentence, but their rationales and empirical bases do.

¶129 The law acknowledges that one's 18th birthday does not mark some abrupt and mystic translation into the mind of an adult. In *Roper*, 543 U.S. at 574, the United States Supreme Court recognized that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Consistently with that recognition, the Washington Supreme Court held in *O'Dell*, 183 Wn.2d at 698-99, that

> a defendant's youthfulness can support an exceptional sentence below the standard range applicable to an adult felony defendant, and that the sentencing court must exercise its discretion to decide when that is.

(Emphasis added.) *O'Dell* reasoned that the same characteristics of youth based on the same scientific findings relied on by *Miller*, *Roper*, and *Graham* require a sentencing court to consider whether a youthful defendant should receive an exceptional sentence below the standard range under the SRA, even if the defendant was over 18

when he or she committed the offense. *O'Dell*, 183 Wn.2d at 689, 691-92, 695.

¶130 In reaching this holding *O'Dell* quoted A. Rae Simpson, MIT Young Adult Development Project: Brain Changes, Mass. Inst. of Tech. (2008), http://hrweb.mit.edu/worklife/youngadult/brain.html, for the proposition that "'[t]he brain isn't fully mature at . . . 18, when we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.'" *O'Dell*, 183 Wn.2d at 692 n.5. The court also quoted the finding in Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Ann. N.Y. Acad. Sci. 77 (2004), that "[t]he dorsal lateral prefrontal cortex, important for controlling impulses, is among the latest brain regions to mature without reaching adult dimensions until the early 20s." *O'Dell*, 183 Wn.2d at 692 n.5. These neurological characteristics also formed the substrate of the constitutional reasoning in *Roper*, *Graham*, *Miller*, and *Houston-Sconiers*.

¶131 *O'Dell*, in other words, is instructing us that the very characteristics that underlie *Miller* and *Houston-Sconiers* may persist well into one's 20s. With that, the same characteristics that led to the Eighth Amendment analyses and holdings of *Roper*, *Graham*, and *Miller* and to the constitutional and statutory analyses and holdings of *Houston-Sconiers*, would apply equally to crimes committed at age 20, when Moretti committed his first "strike" offense. That is the ineluctable result of *O'Dell*'s recognition of the psychological and neurological realities of the maturing mind.

¶132 The application of these principles to the POAA is more vexing. On one hand, these holdings apply to sentencing, and Moretti was sentenced under the POAA at age 32, well beyond the age at which *O'Dell* demands that we heed the characteristics of youth. However, Moretti was not sentenced to life without possibility of release for his last "strike" conviction or for any single "strike" conviction. Rather, his sentence rested equally on all three convictions, his first as indispensable as the rest to the POAA sentence. Without that first conviction, he could not have been sentenced under the POAA. His POAA sentence, therefore, was as much a punishment for his first "strike" offense at age 20 as it was for any of the others. [Underlining here added.]

¶133 In some ways, life imprisonment without possibility of release forfeits one's humanity more deeply than does execution. It condemns the prisoner to a captivity from which the only release is

> death. It disinherits the prisoner once and for all from the hope of freedom, the common inheritance that lies near the heart of what it is to be human.
>
> ¶134 Public safety may show the need for even that forfeit. *Miller* holds, though, that the mandatory imposition of that punishment for crimes committed while a juvenile is not tolerated by the Eighth Amendment. *Houston-Sconiers* holds that the Eighth Amendment requires that the characteristics of youth be considered in sentencing for crimes committed while a juvenile, whether or not mandatory. *O'Dell* requires that the same characteristics of youth that underlie *Miller* and *Houston-Sconiers* be considered in sentencing for crimes committed at an age these characteristics generally persist. The studies on which *O'Dell* relied show that range extends at least to age 20. *O'Dell*, 183 Wn.2d at 689, 691-92, 695.
>
> ¶135 Moretti was mandatorily sentenced to life imprisonment without possibility of release, a sentence that punished his offense at age 20 as much as did any other "strike" offense. His mandatory sentencing involved not a shred of human discretion or consideration of the individual. Nor did it require that any heed be paid to the characteristics of youth at the time of his offense at age 20. *O'Dell* recognized that the same characteristics of youth that led to *Miller*'s condemnation of mandatory life without parole and *Houston-Sconiers*' requirement that youth be considered in sentencing generally are also present in young adulthood, certainly including age 20. *O'Dell* thus demands the same conclusions as in *Miller* and *Houston-Sconiers* for crimes committed at age 20. Under the confluence of *Miller*, *Houston- Sconiers*, and *O'Dell*, Moretti's POAA sentence violated the Eighth Amendment.

State v. Moretti, Chief Justic Bjorgen dissenting, 2017 Wash. App. LEXIS 2491, ¶¶ 121-135.

Thus, based on the above three resources, the first being the fact established in item 1 above that petitioner was age 16 when he committed his first offense and the second and third being the legal principles discussed in items 2 and 3 above, the following is essentially what Petitioner's oral argument will be on the constitutional issue posed by the court:

Here, Petitioner, born on April 6, 1980 (PRP, App. A, p. 1), was sixteen (16) years of age on February 14, 1997 when he committed the first offense. (*See* PRP, App. F, p. 1.) Although this court's December 1, 2017 request for discussion of the question regarding the prohibition against cruel and unusual punishment does not distinguish between the Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution, both of which prohibit cruel punishment but the latter of which is more protective of the defendant than the former, it is respectfully suggested that Chief Justic Bjorgen's dissenting opinion in *State v. Moretti*, 2017 Wash. App. LEXIS 2491, ¶¶ 121-135 surely applies with more power to Petitioner, who was age 16 at the time of the first offense. While it may be argued, regarding Petitioner Williams here, here paraphrasing what was stated in *Nguyen, supra*, 2018 Wash. App. LEXIS 69 at ¶ 15, that "the trial court [in 2008] did not sentence [Williams] for his first strike offense that he committed when he was [16] years old" and, rather, that "the court sentenced [Williams] for his third strike offense that he committed when he was [28] years old" (compare at *Nguyen, supra*, 2018 Wash. App. LEXIS 69 at ¶ 15), here it should be held that Williams "was not sentenced to life without possibility of release for his last 'strike' conviction or for any single 'strike' conviction[, but] his sentence rested equally on all three convictions, his first as indispensable as the rest to the POAA sentence." (Compare *Moretti, supra*, Chief Justic Bjorgen dissenting, 2017 Wash. App. LEXIS 2491, ¶ 132.) "Without that first conviction, he could not have been sentenced under the POAA. His POAA sentence, therefore, was as much a punishment for his first 'strike' offense at age [16] as it was for any of the others." (*Id*.)

CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on February 26, 2018, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

Attorney for Respondent:

Tom Ladouceur
Tom.ladouceur@co.cowlitz.wa.us

☒ By Email
☐ By Fax
☐ By Fed Express
☐ By Hand Delivery
☐ By Messenger

/s/ Corey Evan Parker
Corey Evan Parker
WSBA #40006
1275 12th Ave., NW Suite 1B
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APPENDIX H

In re the Personal Restraint of
Raymond Mayfield Williams, Jr.,

Petitioner.

**DECLARATION OF
RAYMOND MAYFIELD WILLIAMS, JR.**

1. I, Raymond Mayfield Williams Jr., declare as follows:
    a. I am over the age of eighteen and am competent to testify in this matter.
    b. I am the Petitioner in this matter.
2. At the time of my first strike offense in 1997, I was sixteen years old. I was emotionally unstable and already had a long history up to that point of struggling with mental illness, trauma, and drug addiction.
3. My childhood was marked by adversity. By the age of 9, I had already attempted to run away from my abusive home. My father was incarcerated during most of my childhood, and my mother consistently struggled with substance abuse and addiction. By my early teens, I was on the path to becoming a state raised youth.
4. I initially thought that foster care was going to save me from the emotional and physical abuse I had suffered at home, but it only reinforced my worldview that adults could not be trusted, and that everyone was out to hurt me. I was placed in several foster homes and group homes, but all were abusive and hostile.
5. Because of these circumstances, I never finished middle school, completing only sixth grade.
6. Before the age of 16, I had been placed in lockdown mental health facilities three times. The first time was in 1993, when I was 13 years old, as an alternative sentence by Thurston County

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Juvenile Court. I was sentenced to spend three months at Pacific Gateway in Portland, Oregon and I served my time there.

7. The second time, I was sent to Kitsap County Mental Health, as requested by Clark County Juvenile Court. If memory serves me correctly, this placement was done instead of detention time for a probation violation. This was approximately in 1994 or 1995.
8. The third time I was put into a lockdown mental health facility I was placed again in Kitsap County Mental Health in 1995. This was a placement done as a hospital transfer after a suspected suicide attempt, where I had overdosed on prescription pills. In this instance, I had needed to be brought back to life with a resuscitator machine.
9. As a young teenager, I was hospitalized at least two other times for attempted suicide.
10. My inability to trust my well-being to adults or authority figures, I believe, played a large role in my desire to be left to my own devices as a teen. This meant that my life was spent homelessly wandering the streets of Olympia. In those streets I turned to crime for survival.
11. When I look back to my teenage years, I now understand that I was fighting against multiple disadvantages. I also now understand that I viewed everything in the world through an emotional, rather than a logical lens. I was several years behind my peers in mental and emotional maturity at that point in my life.
12. I was wholly incapable of thinking beyond my day to day struggle. When I was charged with my first strike offense for burglary of an unoccupied home, I know I would have benefitted from having my best interests as a child represented in juvenile court, rather than being declined to adult court. And I was wholly incapable of understanding the consequences of being tried in the adult system.

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13. What I distinctly remember was that I wanted out of Thurston County Juvenile Detention Center. I had spent many months there throughout the years of my teens. During these years I had suffered abuse at the hands of certain staff members. I had, for example, spent several weeks before in a cell where I had to use a small hole covered by a grate in the middle of the floor for bodily functions. Cell A-15, as I recall, and forever will, the place where I had to mush my own feces through the grate with little squares of toilet paper, being careful to not get any on my hands as there was no access to a sink with which to wash. I just wanted out of the juvenile facility. It was my understanding that if I was declined, I would be transferred immediately. At no point did my attorney or the Court discuss with me any of the potential consequences of being prosecuted in adult court.

14. Had the courts taken the time to consider and review my case through the declination process, these issues of my mental health, and what might have been in both society's and my own best interest could have been considered. I could have been tried in Juvenile Court, and placed into a facility that could have given me the opportunity to develop tools for life, which in turn could have prevented me from the continuance of my criminal behavior.

15. After serving my sentence for the first strike offense, I was released at the age of 19 into a homeless shelter in Port Angeles.

16. I sit here today, serving life without parole as a persistent offender. This sentence has been both the worst and the best thing to happen to me. Many people who receive such sentences lose themselves completely to the prison system, becoming involved with gangs, and a myriad of other negativities that prevail within these walls and fences. I have instead found myself, and I am today a completely different person than the one who was incarcerated multiple times as a child and young adult. A good person, maybe for the first time since early adolescence.

17. My record in the prison system reflects this. I am renowned for staying out of trouble, for being a good role model to other inmates and mentoring them to shed their criminal thought processes, as well as for being an outspoken proponent of violence prevention.

18. I have twenty credits left to receive my Associates degree. My GPA is currently 3.96, and I will graduate in 2020.

19. At Walla Walla, from 2009 until 2015, I served on the Earned Incentive Team. We were responsible for helping the prison administer incentive-based activities and programs as a violence reduction strategy.

20. I helped to start the State Raised Working Group in 2016. This group is dedicated to addressing systemic issues that lead to disproportionate representation of foster youth within the criminal justice system. As a founder of this group, I help train social workers from the University of Washington; conducted fundraising efforts that raised $15,000 dollars for studying the impact of the foster-care-to-prison pipeline in Washington State; conducted interviews and surveys with incarcerated former foster youth; held working sessions with Ross Hunter, Secretary of DCYF, on two separate occasions, to help our State better understand this social problem and implement solutions; and held a working session with Annie Blackledge, Executive Director of Mockingbird Society, in an effort to educate her organization on foster-care-to-prison issues.

21. I also hold a working relationship with Treehouse Executive Director Dawn Rains. The State Raised Working Group has just developed an expansion of the Treehouse Youth Advocacy model centered around interdiction strategies for foster youth who are especially vulnerable to criminal justice contact. On July 10, 2019 Ross Hunter agreed to implement this Youth Advocacy model, with a roll out scheduled for next year. He requested that our group sit on an advisory board regarding the Youth Advocacy program.

22. In 2012, I helped start the Sustainable Practices Lab at Walla Walla. The SPL provided jobs to the prison population and donated numerous items to the community. These items included bicycles, wheelchairs, quilts, teddy bears, clothing, woodworks, etc. Additionally, I started a sign shop within the SPL that provided quality signs to the State at a fraction of market cost. My sign shop also donated signs and banners to local high schools, churches, and youth soccer teams. I am personally credited by DOC for saving the department tens of thousands of dollars with my work there at the SPL Sign Shop.

23. I have led or assisted in leadership with a program called The Redemption Project since 2013, both at Walla Walla, Clallam Bay, and here at Monroe. Redemption is a prison culture change program based on a peer leadership model. The cornerstone of Redemption is a self-awareness course. My duties have been to facilitate the self-awareness course, serve as liaison for the program with prison administration, train facilitators for the program, speak to new prisoners at orientation, mentor those in need, and serve as a conflict mediator to the prison population.

24. I personally saved the life of Officer Terry Breedlove in January 2016, at Clallam Bay Corrections Center. Another prisoner was bludgeoning Mr. Breedlove in his head with a large piece of heavy steel. Mr. Breedlove was unconscious on the ground and I confronted the prisoner. I made the prisoner stop the assault, drop his weapon and turn himself in. My friend, who also was with me in confronting this, tended to the downed officer as I walked the assailant away from the scene where he turned himself in.

25. Since arriving at Monroe in 2016, I have provided live music for virtually every event held here throughout the last four years. I have played around twenty events, including graduations, cultural events, celebrations, etc. I am privileged to serve my community in this way. It is both

an honor and a sense of pride. I teach music theory and guitar lessons free of charge every Sunday morning.

26. Since 2017, I have served in a leadership capacity for the Concerned Lifer's Organization. We are a social justice/political organization that seeks sentencing reform in Washington State. On February 7, 2019, I was privileged to give testimony to the Senate Human Services, Reentry and Rehabilitation Committee regarding sentence reforms that could address the various systemic inequities creating imbalance in our justice system. I have also given two speeches at the annual CLO Conferences, and am scheduled to give another at this year's conference in September.

27. In early 2019, I was selected along with three other inmates to meet with a delegation from Japan to discuss Japan's transition from the death penalty to life without parole sentences.

28. In July 2019, I met with a group of approximately 30 Court Appointed Special Advocates to discuss the foster-care-to-prison pipeline, including my specific experiences in that pipeline.

29. I am ready to be a productive member of society outside of prison walls. I am ready to be a father to my son, a good neighbor, and someone who gives to the community around him.

30. I have strong family and community. I speak to my sister three to four times a week over the phone. We share extensive contact via email, and although she lives in California, she still visits.

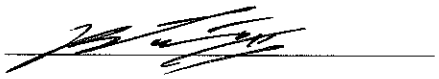
31. I receive a minimum of one visitor from my congregation every other Friday afternoon. I am both valued within and connected to a faith community that desperately wants me home.

32. As I write these things in this declaration, I don't know how they bear whatsoever on the legal process of my case. I would imagine that they do not. But I can't help the feeling that I must declare not just what or where or how, but also who brings forth this petition to the Court. Both

who I was then, which prevented me from understanding the ramifications of the events taking place around me at that age. And who I am now, with so much to offer the world, but as a consequence of the previous, prevented from doing so.

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

Executed this 13th day of September, 2019, at Monroe, Washington.



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September 20, 2019 - 4:56 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Trial Court Case Title:	State Vs Raymond Mayfield Williams Jr
Trial Court Case Number:	08-1-00735-6
Trial Court County:	Cowlitz Superior Court
Signing Judge:	Stephen Warning
Judgment Date:	10/15/2008

The following documents have been uploaded:

- PRP_Personal_Restraint_Petition_20190920165030SC669748_7372.pdf
  This File Contains:
  Personal Restraint Petition
  The Original File Name was PRP of Raymond Williams FINAL.pdf

A copy of the uploaded files will be sent to:

- changro@seattleu.edu
- levinje@seattleu.edu

Comments:

The Personal Restrain Petition is being filed as a single PDF with the verification, certificate of service, and appendices.

Sender Name: Jessica Levin - Email: levinje@seattleu.edu
Address:
901 12TH AVE
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SEATTLE, WA, 98122-4411
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