

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II  
2017 SEP 26 AM 8:46  
STATE OF WASHINGTON  
DELETED

In the Matter of the Personal Restraint of:

TOMAS MARCO KEEN,

Petitioner.

No. 50542-8-II

ORDER DISMISSING PETITION

Tomas Keen seeks relief from personal restraint imposed following his *Alford*<sup>1</sup> pleas of guilty in 2010 to first degree assault, first degree unlawful possession of a firearm and two counts of possession of a stolen vehicle. He argues that he has newly discovered evidence that the prosecutor committed a *Brady*<sup>2</sup> violation by not disclosing a motion to suppress filed by another defendant.

RCW 10.73.090(1) provides:

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.

Keen's judgment and sentence became final on May 28, 2010, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until December 27, 2016,

<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25, 37, 96 S. Ct. 2253, 27 L. Ed. 2d 162 (1970). See also *State v. Newton*, 87 Wn.2d 363, 373, 552 P.2d 682 (1976).

<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

more than one year later.<sup>3</sup> Unless he shows that one of the exceptions in RCW 10.73.100 applies or shows that his judgment and sentence is facially invalid, his petition is time-barred. *In re Personal Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

RCW 10.73.100(1) exempts from the time bar petitions based on “newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition.” For purposes of RCW 10.73.100(1), “newly discovered evidence” must (1) probably change the result of the trial, (2) be discovered since the trial, (3) could not have been discovered before the trial through the exercise of due diligence, (4) be material and (5) not be merely cumulative or impeaching. *In re Personal Restraint of Brown*, 143 Wn.2d 431, 453, 21 P.3d 687 (2001). The absence of any one of these factors is grounds for denial of a petition based on newly discovered evidence. *Id.*

Keen contends that he did not become aware of the motion to suppress in the other defendant’s case until encountering the other defendant in 2015. But the motion could have been discovered before trial through the exercise of due diligence. And the motion to suppress was never heard, because the other defendant entered into a plea agreement. Thus, Keen cannot show that disclosure of the motion to suppress probably would have changed the result of his case. The motion to suppress pertained to searches of the other defendant’s person and vehicle, not of Keen, so Keen does not show that the granting of a motion to suppress, had one been made, probably would have affected his case. Therefore, his petition does not fall within the exception contained in RCW 10.73.100(1).

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<sup>3</sup> Keen filed a motion to withdraw his guilty plea in the trial court. That court transferred the motion to us to be considered as a personal restraint petition under CrR 7.8(c).

Keen does not demonstrate that any of the exceptions in RCW 10.73.100 applies to his petition. Nor does he demonstrate that his judgment and sentence is facially invalid.

Therefore, his petition must be dismissed as untimely. Accordingly, it is hereby

ORDERED that Keen's petition is dismissed under RAP 16.11(b).



Acting Chief Judge Pro Tempore

cc: Tomas M. Keen  
Cowlitz County Prosecuting Attorney  
Cowlitz County Clerk  
County Cause No. 10-1-00182-1

FILED  
JUN 27 2018  
WASHINGTON STATE  
SUPREME COURT

## IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

TOMAS MARCO KEEN,

Petitioner.

No. 95126 - 8

Court of Appeals No. 50542-8-II

RULING DENYING REVIEW

Tomas Keen pleaded guilty in 2010 to first degree assault, first degree unlawful possession of a firearm, and two counts of possession of a stolen vehicle. In 2016 Mr. Keen filed an untimely motion in superior court to withdraw his guilty plea, arguing that the State violated *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), by failing to disclose a motion to suppress filed in a case in which the State was prosecuting Michael Sanders, an acquaintance arrested at the same time as Mr. Keen. The court transferred the motion to Division Two of the Court of Appeals for treatment as a personal restraint petition, and the acting chief judge dismissed the petition as untimely. Now represented by counsel, Mr. Keen seeks this court's discretionary review. RAP 16.14(c). The State has filed a response, and Mr. Keen has replied.

To obtain this court's review, Mr. Keen must show that the acting chief judge's decision conflicts with a decision of this court or with a published Court of Appeals decision, or that he is raising a significant constitutional question or an issue of

substantial public interest. RAP 13.4(b); RAP 13.5A(a)(1), (b).<sup>1</sup> And because Mr. Keen filed his current collateral challenge more than one year after his judgment and sentence became final, the challenge is untimely unless Mr. Keen demonstrates that the judgment and sentence is facially invalid or was entered without competent jurisdiction under RCW 10.73.090(1), or unless he asserts solely grounds for relief exempt from the one-year limit under RCW 10.73.100. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 422, 309 P.3d 451 (2013). If the postconviction petition is treated as timely, Mr. Keen must additionally show that he was actually and substantially prejudiced by constitutional error or that his trial suffered from a nonconstitutional error that inherently resulted in a complete miscarriage of justice. *In re Pers. Restraint of Gomez*, 180 Wn.2d 337, 347, 325 P.3d 142 (2014). If Mr. Keen ultimately fails to present an arguable basis for collateral relief in law or fact given the constraints of the personal restraint petition procedure, his collateral challenge must be dismissed as frivolous under RAP 16.11(b). *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

A more detailed background, as provided by Mr. Keen's pleadings, is necessary to understand his claim. According to Mr. Keen's plea agreement, he assaulted Eric Koski with a firearm and knowingly and unlawfully possessed a firearm on February 17, 2010. That same day, Mr. Keen knowingly possessed a stolen Mitsubishi Eclipse belonging to Erica Ouellette and a Toyota Scion belonging to Gina and Troy Rominger. The factual details of those crimes are not further illuminated by Mr. Keen's postconviction documents. Police arrested Mr. Keen and Michael Sanders on the evening of February 17, 2010.

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<sup>1</sup> Although Mr. Keen is represented by counsel, he does not explain in his motion for discretionary review why review is warranted under RAP 13.4(b).

According to the allegations in Mr. Sanders's motion to suppress, police stopped Mr. Keen driving a Dodge Durango away from a home that police were monitoring. Mr. Sanders was a passenger in the front seat. A silver Mazda was parked at the home that was registered to Mr. Sanders. Mr. Sanders refused to allow the officers consent to search the Mazda, and police refused to let Mr. Sanders leave in it, saying they had seized the Mazda. Officers later searched it and found a sawed-off shotgun and a .22 caliber rifle in the trunk.

Separately from Mr. Keen's case, police charged Mr. Sanders with first degree burglary with a firearm enhancement, three counts of theft of a firearm, three counts of first degree unlawful possession of a firearm, first degree theft, and possession of an unlawful firearm. Mr. Sanders moved to suppress, arguing that the search of the Mazda was improper. Mr. Sanders later told Mr. Keen that the prosecutor admitted the search was improper and dropped the charges and enhancements stemming from the weapons found in the Mazda. Mr. Sanders pled guilty to the remaining charges before the court could rule on his motion to suppress.

Mr. Keen asserts that his petition should be considered timely filed under the newly discovered evidence exemption because he only recently learned of the motion to suppress in Mr. Sanders's case. RCW 10.73.100(1). Specifically, he contends that the prosecution threatened that if Mr. Keen refused to plead guilty, it would add unlawful weapons charges related to the weapons found in the Mazda. He asserts that he never would have pleaded guilty had he known that these weapons would have been suppressed. The acting chief judge rejected this argument, applying the five-factor test for newly-discovered evidence and holding that Mr. Sanders's motion to suppress could have been discovered before Mr. Keen pled guilty. The acting chief judge also reasoned that Mr. Keen could not demonstrate that the motion to suppress would have changed the result of his case because no court ever ruled on the motion to suppress. And the

motion was based on a search of another person's vehicle, and thus was not material to Mr. Keen.

The law is not settled on whether the five-factor test is applicable in these circumstances. Under RCW 10.73.100(1), the one-year time limit on collateral review of a criminal judgment and sentence does not apply if the petition is based on "[n]ewly discovered evidence" and was brought with reasonable diligence. This court has held that a claim in a personal restraint petition based on newly discovered evidence "may be considered only when the petitioner establishes" the five-factor test for granting a new trial based on newly discovered evidence, which requires a showing that the evidence: (1) will probably change the result of the trial, (2) was discovered since the trial, (3) could not have been discovered before trial by the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching. *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 217, 76 P.3d 241 (2003) (*Stenson I*). In that case, the petitioner argued that many of his claims were not procedurally time-barred because of newly discovered evidence. *Id.* at 217. But this court determined that his evidence did not meet the five-factor test, and thus his claims were not exempt from the time limit on the basis of the newly discovered evidence exemption. *Id.* at 218-21.

In a subsequent petition, the same petitioner argued that the State had withheld materially exculpatory evidence, and that his claim was not time-barred because it was based on newly discovered evidence in the form of the evidence the State tardily disclosed. *In re Pers. Restraint of Stenson*, 174 Wn.2d 474, 485, 276 P.3d 286 (2012) (*Stenson II*). This court observed in a footnote that it had ordered a reference hearing to determine whether the petitioner met the five-factor test outlined above, but that the petitioner later clarified that he was not raising a "substantive" newly-discovered evidence claim but was instead asserting a *Brady* claim based on evidence newly discovered, *i.e.*, newly disclosed by the State. *Id.* at 480 n.5. In this circumstance, the

court did not apply the five-factor “substantive” test but held that Stenson’s claim was timely because it was brought with diligence and was based on newly discovered (newly revealed) evidence, satisfying the statutory exemption from the time limit. *Id.* at 485; see RCW 10.73.100(1) (newly discovered evidence exemption applies when “the defendant acted with reasonable diligence in discovering the evidence and filing the petition”). The court then went on to analyze petitioner’s claim under *Brady* standards.

This case is similar to *Stenson II* in that Mr. Keen raises a *Brady* claim based on evidence he recently discovered, and thus he may not need to meet the five-factor “substantive” newly discovered evidence test. *But see In re Pers. Restraint of Yates*, 183 Wn.2d 572, 576-77, 353 P.3d 1283 (2015) (applying five-factor test to claim of ineffective assistance of counsel based on allegedly recently discovered evidence). Nonetheless, this court’s further review under RAP 13.4(b) is unnecessary, since Mr. Keen’s claim fails both under the five-factor test and under a *Brady* analysis.

The components of a *Brady* claim are: the evidence at issue is favorable to the accused because it is exculpatory or impeaching, the evidence was suppressed by the State either willfully or inadvertently, and the accused was prejudiced (*i.e.*, the evidence was material). *Stenson II*, 174 Wn.2d at 486-87. As to prejudice, the defendant must show specifically that there is a reasonable probability that, had the evidence been timely disclosed, the result of the proceeding would have been different. *Id.* at 487.

Here, the motion to suppress Mr. Sanders had filed is simply too attenuated from Mr. Keen’s prosecution. Mr. Keen does not demonstrate that the motion to suppress constituted favorable evidence: it was merely an argument made in another case that the trial court did not rule upon. And Mr. Keen cannot demonstrate that the State withheld the motion to suppress given that it was publicly filed by Mr. Sanders and thus could have been readily identified and examined by counsel prior to Mr. Keen’s plea. Finally, Mr. Keen fails to provide competent, admissible evidence establishing that he

would not have pleaded guilty had the prosecutor not allegedly threatened to bring these additional charges. Indeed, Mr. Keen fails to explain how the unlawful weapons found in Mr. Sanders's Mazda could have even been tied to him. The "newly discovered" motion to suppress was not necessary to understand just how attenuated the weapons in the Mazda were from the prosecution of Mr. Keen.

Mr. Keen's *Brady* argument lacks any arguable basis in law or in fact. Thus, it merits dismissal under *Khan*. And in any event, as noted above, Mr. Keen fails to identify any express basis for review under RAP 13.4(b). This alone provides an independent basis to deny review given that Mr. Keen is represented by counsel.

The motion for discretionary review is denied.

  
COMMISSIONER

June 27<sup>th</sup> 2018

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
9/5/2018  
BY SUSAN L. CARLSON  
CLERK

## THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of

TOMAS MARCO KEEN,

Petitioner.

No. 95126-8

### ORDER

Court of Appeals  
No. 50542-8-II

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its September 4, 2018, Motion Calendar and unanimously agreed that the following order be entered.

#### IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied.

DATED at Olympia, Washington, this 5th day of September, 2018.

For the Court

Fairhurst, C.J.  
CHIEF JUSTICE

FILED  
SUPERIOR COURT

2010 MAY 28 P 2:32

COWLITZ COUNTY  
RONI A. BOOTH, CLERK

BY \_\_\_\_\_

**SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

TOMAS MARCO KEEN,

Defendant.

No. 10-1-00182-1

**Felony Judgment and Sentence --  
Prison  
(FJS)**

[X] Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3,  
5.5 and 5.7

[X] Defendant Used Motor Vehicle

SID: WA23723733

DOB: 10-26-1988

10 9 0 1 1 2 3 1

**I. Hearing**

- 1.1 The court conducted a sentencing hearing on MAY 28, 2010, the defendant, the defendant's lawyer, and the deputy prosecuting attorney were present.

**II. Findings**

- 2.1 **Current Offenses:** The defendant is guilty of the following offenses in the AMENDED information, based upon [X] guilty plea (date) MAY 14, 2010 [ ] jury-verdict (date) [ ] bench trial (date) :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	ASSAULT IN THE FIRST DEGREE WITH FIREARM ENHANCEMENT	9.94A.602, 9.94A.533(3), 9A.36.011(1)(a)	FA	02-17-2010
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9.41.040(1)(a)	FB	02-17-2010
III	POSSESSION OF A STOLEN VEHICLE	9A.56.068(1), 9A.56.140(1)	FB	02-17-2010
IV	POSSESSION OF A STOLEN VEHICLE	9A.56.068(1), 9A.56.140(1)	FB	02-17-2010

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

*Felony Judgment and Sentence (FJS) (Prison) (Nonsex Offender)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))*

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(21)

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Appendix D

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

☒ The defendant was armed with a **firearm** in the commission of the offense in Count I. RCW 9.94A.533; 9.94A.602.

☒ Count I, II, III, and IV are felonies in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

☐ Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.

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

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv	Type of Crime
1	ASSAULT IN THE THIRD DEGREE (DOMESTIC VIOLENCE)	01-04-2007	09-12-2007	COWLITZ, WA	A	
2	BURGLARY IN THE SECOND DEGREE	03-25-2007 – 03-26-2007	09-12-2007	COWLITZ, WA	A	
3	THEFT IN THE FIRST DEGREE	03-25-2007 – 03-26-2007	09-12-2007	COWLITZ, WA	A	
4	POSSESSION OF A STOLEN FIREARM	08-18-2008	01-07-2009	COWLITZ, WA	A	

☐ Additional criminal history is attached in Appendix 2.2.

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

☒ The prior convictions listed as numbers 2 AND 3 above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

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

## 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	6	XII	162 – 216 MONTHS	60 MONTHS (F)	222 – 272 MONTHS	LIFE
II	6	VII	57 – 75 MONTHS	N/A	57 – 75 MONTHS	10 YEARS
III	8	II	33 – 43 MONTHS	N/A	33 – 43 MONTHS	10 YEARS
IV	8	II	33 – 43 MONTHS	N/A	33 – 43 MONTHS	10 YEARS

- \* (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), (CSG) criminal street gang involving minor, (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (AE) endangerment while attempting to elude.  
☐ 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: THE STATE WILL RECOMMEND 240 MONTHS IN PRISON INCLUDING THE 5-YEAR MANDATORY MINIMUM UNDER RCW 9.94A.540(1)(b), 36 MONTHS COMMUNITY CUSTODY, AND ANTI-HARASSMENT ORDERS WITH ALL CHARGED VICTIMS.

- 2.4 ☐ Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:  
☐ 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/below 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 to by the defendant, ☐ listed in RCW 9.94A.535(2) and were found by the court, ☐ listed in RCW 9.94A.535(3) and were found by the court after the defendant waived jury trial as to the aggravating factors, ☐ listed in RCW 9.94A.535(3) and were found by jury, by special interrogatory.  
☐ within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_. 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): \_\_\_\_\_  
☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

### 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 \_\_\_\_\_ in the charging document.

### IV. Sentence and Order

It is ordered:

- 4.1 Confinement.** The court sentences the defendant to total confinement as follows:  
(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):  
240 months on Count I                      42 months on Count IV  
75 months on Count II  
42 months on Count III

☒ The confinement time on Count I contains a mandatory minimum term of 5 YEARS (20 years for murder in the first degree; 5 years for assault in the first degree or assault of a child in the first degree, where the offender used force or means likely to result in death or intended to kill the victim; 5 years for sexually violent predator escape).

☒ The confinement time on Count I includes 60 months as enhancement for ☒ firearm ☐ deadly weapon ☐ VUCSA in a protected zone ☐ endangerment while eluding ☐ manufacture of methamphetamine with juvenile present ☐ criminal street gang involving a minor.

Actual number of months of total confinement ordered is: \_\_\_\_\_

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

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

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: \_\_\_\_\_

- (b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court.
- (c) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. 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 confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody, see RCW 9.94A.701.)

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

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count	<u>    I    </u>	36 months for Serious Violent Offenses
Count(s)	<u>          </u>	18 months for Violent Offenses
Count(s)	<u>          </u>	12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. RCW 9.94A.703. If this conviction is for the crime of assault of a child in the first degree, the defendant is prohibited during the term of community custody from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen.

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

☐ consume no alcohol.

☒ have no contact with: ERIC KOSKI, ERICA OUELLETTE, GINA ROMINGER & TROY ROMINGER  
☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit:

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

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

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

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

☒ commit no new violations of the law.

☐ comply with the following crime-related prohibitions:

☐ Other conditions:

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC, and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562; 9.94A.703.

**4.3a Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment	RCW 7.68.035
PDV	\$	Domestic Violence assessment	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	\$ 773.49	Fees for court appointed attorney	RCW 9.94A.760
	\$ -738.00		
WFR	\$	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/PCD	\$	Drug enforcement fund of Cowlitz County Prosecutor.	RCW 9.94A.760
NTF/SAD/SDI			
MTH	\$	Meth/amphetamine Clean-up fine \$3000.	RCW 69.50.440;
		RCW 69.50.401(a)(1)(ii)	
	\$	DUI fines, fees and assessments	
CLF	\$ 400.00	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ 100.00	Felony DNA collection fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.7541
FPV	\$	Specialized forest products	RCW 76.48.140
	\$	Other fines or costs for:	

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 maximum) RCW 38.52.430

RTN/RJN \$ \_\_\_\_\_ Urinalysis cost  
\$ TBD / Restitution to: \_\_\_\_\_  
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)  
\$ 2123<sup>69</sup> 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.

[X] is scheduled for 8/10/10 1pm (date).

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

[ ] Restitution Schedule attached.

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

RJN 

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

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

[ ] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 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 orders the defendant to pay costs of incarceration at the rate of \$50.00 per day, unless otherwise specified here \_\_\_\_\_ (actual costs not to exceed \$100 per day). (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.

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

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

[ ] **HIV Testing.** The defendant shall submit to HIV testing (only applicable if convicted of a sexual offense under ch. 9A.44 RCW, offenses related to prostitution under ch. 9A.88 RCW, or drug offenses under ch. 69.50 RCW if the offense is one associated with the use of hypodermic needles). RCW 70.24.340.

**4.5 No Contact:**

☒ The defendant shall not have contact with ERIC KOSKI, ERICA OUELLETTE, GINA ROMINGER & TROY ROMINGER (name), including, but not limited to, personal, verbal, telephonic, written or contact through a third party FOR LIFE (which does not exceed the maximum statutory sentence).

☒ A separate Antiharassment No-Contact Order is filed concurrent with this Judgment and Sentence.

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

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

**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 Superior Court Collections Deputy, 312 SW First Avenue, Kelso, Washington 98626, (360) 414-5532 with any change in address or 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 a 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).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Community Custody Violation.**  
(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.714.
- 5.5 Firearms.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 Waiver of right to appeal:** Any failure to appear for any subsequent hearings in this matter or any noncompliance with community custody or probation could result in forfeiture, waiver or relinquishment of your right to appeal this judgment or sentence.

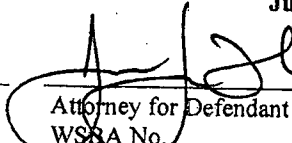
5.7 **Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must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

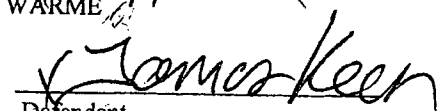
5.8 **Other:** \_\_\_\_\_

Done in Open Court and in the presence of the defendant this date: MAY 28, 2010.

  
Judge JAMES WARME

  
Deputy Prosecuting Attorney  
WSBA No. 29869  
MICHELLE L. SHAFFER

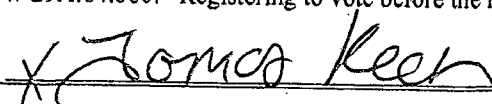
  
Attorney for Defendant  
WSBA No. \_\_\_\_\_  
JOSHUA BALDWIN

  
Defendant  
TOMAS MARCO KEEN

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

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

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

Defendant's signature: 

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: \_\_\_\_\_

## VI. Identification of the Defendant

SID No. WA23723733 /  
(If no SID complete a separate Applicant card  
(form FD-258) for State Patrol)

Date of Birth 10-26-1988

FBI No. 279749PC0 /

Local ID No. \_\_\_\_\_

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

Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

**Race:**

☐ Asian/Pacific Islander

☐ Black/African-American

☐ Caucasian

**Ethnicity:**

☐ Hispanic

**Sex:**

☒ Male

☐ Native American

☐ Other: \_\_\_\_\_

☐ Non-Hispanic

☐ Female

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

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

Dated: 5-28-10

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

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously

