

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
THIS IS A CAPITAL CASE  
EMERGENCY RELIEF REQUESTED  
P 12:03

BY RONALD R. CARPENTER

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

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In re the Personal Restraint	)	No. 73155-1
Petition of	)	
	)	APPLICATION FOR STAY
ROBERT LEE YATES,	)	OF EXECUTION UNDER
	)	RAP 16.24(c)
Petitioner.	)	

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A. IDENTITY OF PETITIONER

Robert Lee Yates, by and through his counsel, hereby moves this Court for the relief requested in Part B.

B. STATEMENT OF THE RELIEF SOUGHT

Robert Yates hereby moves this Court for a stay of execution pursuant to the provisions of RAP 16.24(c), as well as the appointment of counsel for the preparation of the personal restraint petition pursuant to RAP 16.25. Further, Mr. Yates seeks an order from this Court deeming this motion to be a first petition for relief with leave granted to amend the petition.

### C. FACTS RELEVANT TO THE MOTION

Robert Yates was charged in Pierce County Superior Court with two counts of aggravated first degree murder. The State filed a Notice of Special Sentencing Proceeding noting its intent in seeking a sentence of death. Following a jury trial, on September 19, 2002, Mr. Yates was found guilty as charged. Following the special sentencing proceeding, on October 3, 2002, the jury concluded there were insufficient mitigating circumstances to warrant leniency. As a result, on October 9, 2002, Mr. Yates was sentenced to death on both counts. A Notice of Appeal was thereby timely filed.

On September 27, 2007, a majority of this Court rejected the arguments made by Mr. Yates and affirmed the convictions and sentence. *State v. Robert Yates*, 161 Wn.2d 714; 168 P.3d 359 (2007). Thereafter, on June 23, 2008, the United States Supreme Court denied Mr. Yates's petition for a writ of certiorari. *Yates v. Washington*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2964, \_\_\_ L.Ed.2d \_\_\_ (2008). This Court issued its mandated on August 1, 2008.

On September 5, 2008, Pierce County Superior Court Judge John A. McCarthy signed a death warrant and set a date for execution of September 19, 2008. A copy of the Court's Judgment

and Sentence and the Death Warrant are attached in the Appendix.

Now, consistent with the provisions of RAP 16.24(c), Mr. Yates submits this Court must stay the execution allow Mr. Yates to litigate his personal restraint petition in this Court.

D. GROUND FOR RELIEF

RAP 16. 24 allows this Court to issue a stay of execution in capital cases before this Court for consideration of a properly filed personal restraint petition. Specifically, the rule provides:

(a) An application for stay of execution will be decided by the en banc court, except that a commissioner or the clerk may decide an application for a stay of execution in connection with a first petition for relief from restraint. No stay will be granted until after a death warrant has been issued. When any stay is granted, a commissioner or the clerk will immediately notify, in addition to the parties, the Superintendent of the Washington State Penitentiary and the Attorney General.

(b) The petitioner or his or her lawyer may file an application for a stay of execution in connection with a first petition for relief from restraint. This application shall be accompanied by a statement, describing one or more grounds for relief, which shall be deemed to be a petition for relief from restraint with leave granted to amend the petition upon appointment of counsel.

(c) Upon the filing of this application for stay of execution in connection with a first petition for relief from restraint and statement, a commissioner or the clerk shall issue a stay of execution, if the statement identified any ground for relief that is not patently frivolous.

RAP 16.24.

For the purpose of this rule, the instant motion is a “first petition for relief from restraint,” thus this Court must enter a stay of execution.

Mr. Yates will raise several non-frivolous grounds for relief in his personal restraint matter, among them, Mr. Yates will claim that his trial attorneys rendered ineffective assistance of counsel within the meaning of the Sixth Amendment to the United States Constitution, and that Washington’s method of administering its lethal injection procedure constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

1. TRIAL COUNSEL RENDERED  
CONSTITUTIONALLY DEFICIENT  
ASSISTANCE

A criminal defendant has a Sixth Amendment right to counsel. *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). “The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the

prosecution' to which they are entitled." *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 87 L.Ed.2d 268 (1942). If he does not have funds to hire an attorney, a person accused of a crime has the right to have counsel appointed. *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

The right to counsel necessarily includes the right to the effective assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771, n.14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); *Strickland*, 466 U.S. at 686. This right extends to all critical stages of the proceeding including capital sentencing. *Iowa v. Tovar*, 541 U.S. 77, 80-81, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004); *Silva v. Woodford*, 279 F.3d 825, 836 (9<sup>th</sup> Cir. 2002).

The proper standard for attorney performance is that of reasonably effective assistance. *Strickland*, 466 U.S. at 687; *McMann*, 397 U.S. at 771. When raising an ineffective assistance of counsel claim, the defendant must meet the requirements of a two prong-test:

First, the defendant must show counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not

functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Strickland*, 466 U.S. at 687.

It is well-established that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. The duty to investigate derives from counsel's basic function, which is "to make the adversarial testing process work in the particular case." *Kimmelman v. Morrison*, 477 U.S. 365, 384, 91 L. Ed. 2d 305, 106 S. Ct. 2574 (1986), quoting *Strickland*, 466 U.S. at 690. This duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence. *Bryant v. Scott*, 28 F.3d 1411, 1419 (5th Cir. 1994), citing *Henderson v. Sargent*, 926 F.2d 706, 711 (8th Cir. 1991) cert. denied, 502 U.S. 1050, 112 S. Ct. 915, 116 L. Ed. 2d 815 (1992). See also *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994) ("Counsel must, at a minimum, conduct a reasonable investigation enabling him to make informed decisions about how best to represent his client."). The scope of an attorney's pretrial

investigation necessarily follows from the decision as to what the theory of defense will be. *Soffar v. Dretke*, 368 F.3d 441, 473 (5th Cir. 2004). “[I]n assessing the reasonableness of an attorney’s investigation . . . a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” *Wiggins v. Smith*, 539 U.S. 510, 526, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003).

[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigations. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

*Strickland*, 466 U.S. at 690-91. In assessing defense counsel’s decision not to present evidence, the focus is on whether the investigation leading up to the decision not to present the evidence “was itself reasonable.” *Wiggins*, 539 U.S. at 526.

Further, counsel has a duty at the penalty phase “to conduct a thorough investigation of the defendant’s background.” *Terry Williams v. Taylor*, 529 U.S. 362, 396, 120 S.Ct. 1495, 146 L. Ed. 2d 389 (2000), *citing* 1 ABA Standards for Criminal Justice 4-4.1, comment. at p. 4-55 (2d ed. 1980). When it comes to the penalty

phase of a capital trial, “[i]t is imperative that all relevant mitigating information be unearthed for consideration.” *Caro v. Calderon*, 165 F.3d 1223, 1227 (9<sup>th</sup> Cir. 1999)(as amended).

Here, Mr. Yates will claim, among other things that trial counsel rendered ineffective assistance of counsel in failing to identify and present potentially favorable evidence at the guilt phase of the trial and failing to identify and present critical mitigating evidence regarding Mr. Yates at the penalty phase of the trial.

Counsel for the personal restraint petition has not yet been appointed in this case and has not yet had an opportunity to conduct a thorough investigation in order to present evidence supporting these issues as well as other issues to be determined.

2. WASHINGTON'S PROCEDURE FOR  
ADMINISTERING THE LETHAL INJECTION  
CONSTITUTE CRUEL AND UNUSUAL  
PUNISHMENT UNDER THE EIGHTH  
AMENDMENT

The Eighth Amendment to the Constitution, applicable to the States through the Due Process Clause of the Fourteenth Amendment, provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” A challenge to a state’s method of execution may be

raised in a post-conviction challenge. *Cf. Baze v. Rees*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 1520, 1529, 170 L.Ed.2d 420 (2008).

Cases from the United States Supreme Court have recognized that subjecting an individual to a risk of future harm -- not simply actually inflicting pain -- can qualify as cruel and unusual punishment. To establish that such exposure violates the Eighth Amendment, the conditions presenting the risk must be "sure or very likely to cause serious illness and needless suffering," and give rise to "sufficiently imminent dangers." *Baze*, 128 S. Ct. at 1530-1531, *quoting Helling v. McKinney*, 509 U.S. 25, 33, 34-35, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993). The Court has explained that to prevail on such a claim there must be a "substantial risk of serious harm," an "objectively intolerable risk of harm" that prevents prison officials from pleading that they were "subjectively blameless for purposes of the Eighth Amendment." *Baze*, 128 S. Ct. at 1530-1531, *quoting Farmer v. Brennan*, 511 U.S. 825, 842, 846, and n. 9, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)

In *Baze*, the petitioners' contended that they had identified a significant risk of harm that could be eliminated by adopting alternative procedures, such as a one-drug protocol that dispensed with the use of pancuronium and potassium chloride, and additional

monitoring by trained personnel to ensure that the first dose of sodium thiopental has been adequately delivered. *Baze*, 128 S. Ct. at 1531. The *Baze* Court noted that

proffered alternatives must effectively address a “substantial risk of serious harm.” *Farmer*, supra, at 842. To qualify, the alternative procedure must be feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain. If a State refuses to adopt such an alternative in the face of these documented advantages, without a legitimate penological justification for adhering to its current method of execution, then a State's refusal to change its method can be viewed as “cruel and unusual” under the Eighth Amendment.

*Baze*, 128 S. Ct. at 1532.

Mr. Yates will produce evidence that alternatives to the current method of execution exist which address the substantial risk of harm of the current method and the State's failure to adopt these alternatives and adherence to the current method are without a legitimate penological justification, thus demonstrating a violation of the Eighth Amendment.

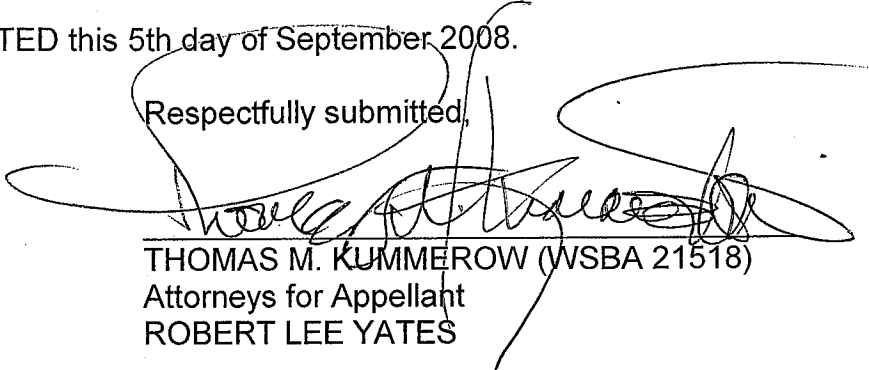
#### E. CONCLUSION

Mr. Yates submits this Court must grant his stay of execution and appoint counsel to litigate his personal restraint petition. Mr. Yates has identified non-frivolous claims which will be raised in his personal restraint petition. In addition, this application should be

deemed to be a petition for relief from restraint with leave granted  
to amend the petition upon appointment of counsel.

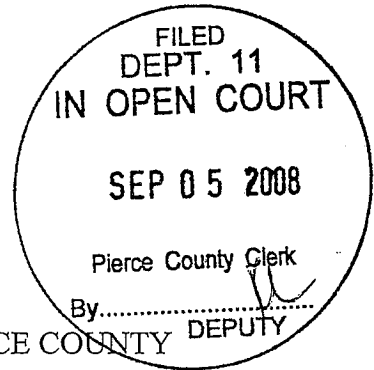
DATED this 5th day of September 2008.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Thomas M. Kummerow', is written over the typed name and extends upwards into the 'Respectfully submitted,' line.

THOMAS M. KUMMEROW (WSBA 21518)  
Attorneys for Appellant  
ROBERT LEE YATES

## APPENDIX A



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 00-1-03253-8

vs.

ROBERT LEE YATES, JR.,

Defendant.

DEATH WARRANT

THE STATE OF WASHINGTON to the Superintendent of Washington State Penitentiary: (Walla Walla)

ROBERT LEE YATES, JR., has been duly convicted of AGGRAVATED MURDER IN THE FIRST DEGREE, TWO (2) COUNTS, with special findings that there were not sufficient mitigating circumstances to merit leniency. Judgment and sentence have been pronounced against him ordering that he be punished by death. A certified copy of the judgment and sentence is attached and incorporated into this warrant by reference; Now, Therefore,

THIS IS TO COMMAND YOU that, on the 19 day of Sept., 2008, you shall execute the judgment and sentence of this court and that, within 20 days thereafter, you shall return this warrant to the clerk of this court with your return showing all acts and proceedings done by you hereunder.

ORIGINAL

Death shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death unless the United States Supreme Court or the Washington State Supreme Court declares that death by intravenous injection is unconstitutional or the defendant elects hanging by the neck no later than 7 days before the date set for execution by this warrant or pursuant to RCW 10.95.160. See RCW 10.95.180

DONE IN OPEN COURT this 5<sup>th</sup> day of September 2008

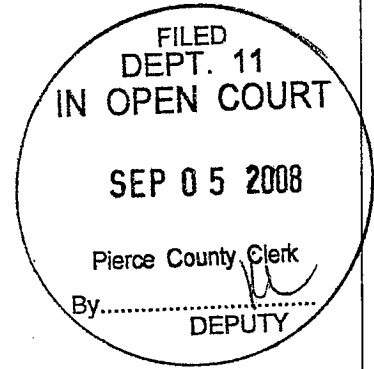
John A. McCarthy  
JUDGE John A. McCarthy

Presented by:

Gerald T. Costello  
Gerald T. Costello  
Deputy Prosecuting Attorney  
WSB# 15738

Copy Received:

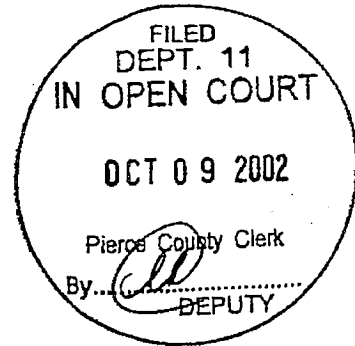
[Signature]  
Attorney for Defendant  
WSB# 21518



ATTEST: KEVIN STOCK  
Clerk of the Superior Court

By: \_\_\_\_\_  
Deputy Clerk.

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

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
ROBERT LEE YATES, JR.,  
Defendant.  
DOB: 05/27/1952  
SID NO.: WA20009302

CAUSE NO.00-1-03253-8  
JUDGMENT AND SENTENCE (JS)  
 Prison **OCT - 9 2002**  
 Jail One year or less  
 First Time Offender  
 Special Sexual Offender  
Sentencing Alternative  
 Special Drug Offender  
Sentencing Alternative  
 Breaking The Cycle (BTC)

I. HEARING

1.1 A sentencing hearing in this case was held on 10/9/02 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 the 19th day of September, 2002 by

plea  jury-verdict  bench trial of:

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

02-9-11828-4  
4537

00-1-03253-B

1  
2  
3 Count No.: I  
4 Crime: MURDER IN THE FIRST DEGREE WITH AGGRAVATING  
5 CIRCUMSTANCES, Charge Code: (D20)  
6 RCW: 9A.32.030(1)(a), 10.95.020(9)(10)(11), 9.41.010,  
7 9.94A.310, and 9.94A.370  
8 Date of Crime: 12/6/1997 - 12/7/1997  
9 Incident No.: PCSD 97-341-0469

10  
11 Count No.: II  
12 Crime: MURDER IN THE FIRST DEGREE WITH AGGRAVATING  
13 CIRCUMSTANCES, Charge Code: (D20)  
14 RCW: 9A.32.030(1)(a), 10.95.020(9)(10)(11), 9.41.010,  
15 9.94A.310, and 9.94A.370  
16 Date of Crime: 9/11/1998 - 9/19/1998  
17 Incident No.: TPD 98-286-0413

18 as charged in the Amended Information.

- 19  
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- A special verdict/finding for use of a firearm was returned on Count(s) I & II. RCW 9.94A.125, .310.
- A special verdict/finding for use of 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, or 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 government authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- 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.
- 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.

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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- 1
- 2
- 3  The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.129.
- 4  The crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence.
- 5  Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- 6
- 7

- 8  Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- 9
- 10

11 2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

12	<u>Crime</u>	<u>Date of Sentence</u>	<u>Sentencing Court (County &amp; State)</u>	<u>Date of Crime</u>	<u>Adult or Juv</u>	<u>Crime Type</u>
13						
14	MURDER 1° (13 COUNTS)	10/26/00	SPOKANE/WA	05/1996- 08/1998	ADULT	SV
15	ATT MURDER 1°	10/26/00	SPOKANE/WA	8/1998	ADULT	SV
16						

- 17  The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- 18  the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):
- 19
- 20  The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:
- 21

22 2.3 SENTENCING DATA:

23	<u>Count</u>	<u>Offender Score</u>	<u>Serious Level</u>	<u>Standard Range (w/o enhancement)</u>	<u>Plus Enhancement*</u>	<u>Total Standard Range</u>	<u>Maximum Term</u>
24	I		XVI	LIFE OR DEATH	FIREARM	LIFE OR DEATH	DEATH
25	II		XVI	LIFE OR DEATH	FIREARM	LIFE OR DEATH	DEATH

26 \*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

27 JUDGMENT AND SENTENCE (JS)  
28 (Felony)(6/2000)

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2.4 [ ] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] 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 [ ] as follows:

DEATH PENALTY BY JURY VERDICT

III. JUDGMENT

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

3.2 [ ] The Court DISMISSES Count(s) \_\_\_\_\_. [ ] The defendant is found NOT GUILTY of Count(s) \_\_\_\_\_.

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
(Name and Address-address may be withheld and provided confidentially to Clerk's Office).

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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2

3 \$ 500<sup>00</sup> Victim assessment RCW 7.68.035

4 \$ \_\_\_\_\_ Court costs, including RCW 9.94A.030, 9.94A.120,  
10.01.160, 10.46.190

5 Criminal filing fee \$ \_\_\_\_\_

6 Witness costs \$ \_\_\_\_\_

7 Sheriff service fees \$ \_\_\_\_\_

8 Jury demand fee \$ \_\_\_\_\_

9 Other \$ \_\_\_\_\_

10 \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.030

11 \$ \_\_\_\_\_ Court appointed defense expert and other defense  
costs RCW 9.94A.030

12 \$ \_\_\_\_\_ Fine RCW 9A.20.021 [ ] VUCSA additional fine waived  
due to indigency RCW 69.50.430

13 \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_  
RCW 9.94A.030

14 \$ \_\_\_\_\_ Crime Lab fee [ ] deferred due to indigency  
RCW 43.43.690

15 \$ \_\_\_\_\_ Extradition costs RCW 9.94A.120

16 \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular  
Homicide only, \$1000 maximum) RCW 38.52.430

17 \$ \_\_\_\_\_ Other costs for: \_\_\_\_\_

18 \$ \_\_\_\_\_

19 \$ \_\_\_\_\_ TOTAL RCW 9.94A.145

20  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 order may be entered. RCW 9.94A.142. A  
21 restitution hearing:  
22 [ ] shall be set by the prosecutor  
 is scheduled for to be set by the court at a later date.

23 [ ] RESTITUTION. See attached order.

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

27

28 JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

00-1-03253-8

NAME OF OTHER DEFENDANT	CAUSE NUMBER	VICTIM NAME	AMOUNT-\$

[ ] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, 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.

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

[X] 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 or DOC, 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 have contact with family members of victims, unless they initiate (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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4.4 OTHER: \_\_\_\_\_  
\_\_\_\_\_

4.4(a) Bond is hereby exonerated.

4.5 The defendant is sentenced as follows:

Defendant shall be put to death in accordance with RCW 10.95.030 and 10.95.080.

The sentence herein shall run concurrently with the felony sentence in Spokane County, cause number 00-1-01153-0, that was imposed subsequent to the commission of the crimes being sentenced under this cause. See RCW 9.94A.589(3).

(c) 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:

4.6 [ ] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:  
Count \_\_\_\_\_ for \_\_\_\_\_ months;  
Count \_\_\_\_\_ for \_\_\_\_\_ months;  
Count \_\_\_\_\_ for \_\_\_\_\_ months;

[ ] **COMMUNITY CUSTODY** (post 6/30/00 offenses) is ordered as follows:  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses-- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled

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substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[ ] The defendant shall not consume any alcohol.  
[ ] Defendant shall have no contact with: \_\_\_\_\_  
[ ] 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 undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

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

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated in Section 4.6.

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

#### V. NOTICES AND SIGNATURES

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

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

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 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 (defendant's 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.

5.6. FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard,

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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 if not applicable:**

5.7 ~~SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), 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.~~

~~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 leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 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 the 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 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give 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 also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.~~

~~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.~~

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Even if you lack 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 or within 14 days after ceasing to have a fixed residence. 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 in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

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.

5.8 OTHER: \_\_\_\_\_

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

10-9-02

John A. McCarthy  
JUDGE Print Name:

Gerald Costello  
Deputy Prosecuting Attorney  
Print Name: GERALD COSTELLO  
WSB# 1J738

Robert A. Hunko  
Attorney for Defendant  
Print name: Robert A. Hunko 9255  
WSB# 9295

Robert La Yates Jr.  
Defendant  
Print name:

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CERTIFICATE OF INTERPRETER

Interpreter 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.

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 00-1-03253-8

I, Bob San Soucie, 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 on this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No.: WA20009302 Date of Birth: 05/27/1952  
(If no SID take fingerprint card for WSP)

FBI No. 782308NB1 Local ID No. \_\_\_\_\_

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

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

Race:	Ethnicity:	Sex:
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male
<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female
<input checked="" type="checkbox"/> Caucasian		
<input type="checkbox"/> Native American		
<input type="checkbox"/> Other: _____		

trp

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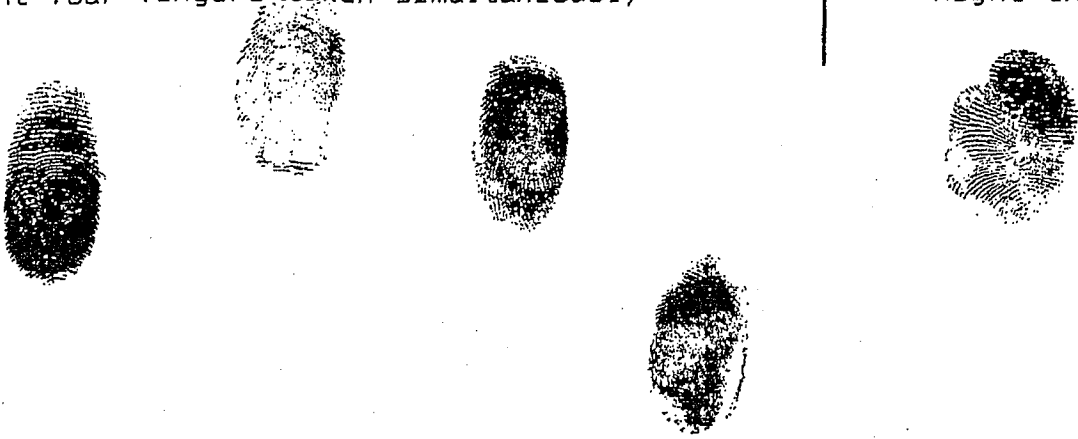


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FINGERPRINTS ROBERT LEE YATES, JR.

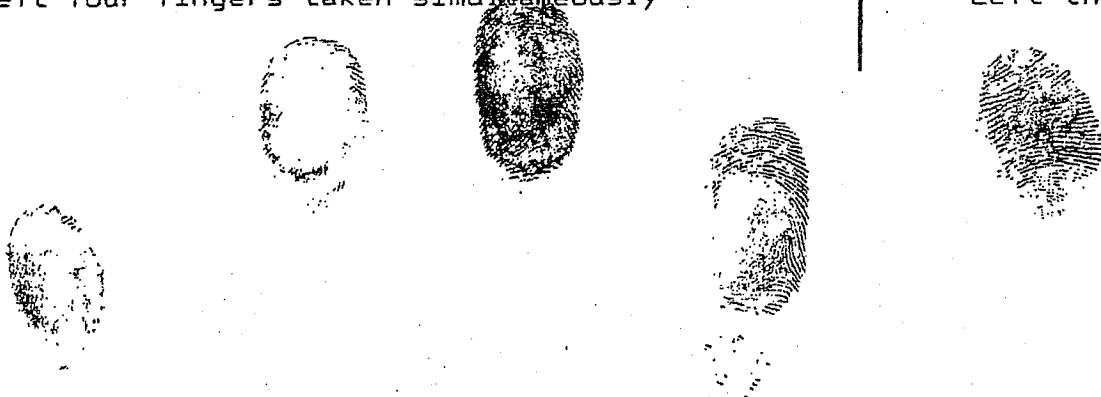
Right four fingers taken simultaneously

Right thumb



Left four fingers taken simultaneously

Left thumb



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, BOB SAN SOUCIE:

[Signature], Deputy Clerk.

Dated: Oct. 9, 2002

DEFENDANT'S SIGNATURE: Robert Lee Yates Jr

DEFENDANT'S ADDRESS: \_\_\_\_\_

\_\_\_\_\_

DEFENDANT'S PHONE#: \_\_\_\_\_

FINGERPRINTS

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