

**FILED**

**MAY 08 1998**

BY SIRI A. WOODS  
CHELAN COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CHELAN**

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JASON E. BUSH, )  
 )  
 Defendant. )

No. 98-1-00115-2

APPENDIX TO JUDGMENT  
AND SENTENCE

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
DETERMINING CRIMINAL  
HISTORY

**FINDINGS OF FACT**

1. The Court finds that a certified copy of Bonner County, Idaho, Case No. 27128-YR, is an order dismissing a criminal action.

2. The Court finds that a certified copy of Bonner County, Idaho, Case No. 29193-YR, is an order of disposition showing a criminal conviction for first degree burglary committed between January 1, 1990, and February 25, 1990.

3. The Court finds that a copy of Kootenai County, Idaho, presentence report in Docket No. CR-F93-88856, dated November 8, 1996, shows a self-reported burglary as a juvenile in Bonner County, Idaho, on January 1, 1989, which was verified.

4. The Court finds that a certified copy of Bonner County, Idaho, Case No. 29250-YR, is an order of disposition showing a criminal conviction for grand theft committed between December, 1989, and February 13, 1990.

5. The Court finds that a copy of Kootenai County, Idaho, presentence

1 report in Docket No. CR-F93-88856, dated November 8, 1996, shows a self-reported  
2 grand theft as a juvenile in Bonner County, Idaho, on February 2, 1989, which was  
3 unverified.

4  
5 6. The Court finds that a certified copy of Bonner County, Idaho, Case No.  
6 SP-90-00144, is an order of disposition showing a criminal conviction for burglary in the  
7 first degree, committed on October 18, 1990.

8  
9 7. The Court finds that a copy of Kootenai County, Idaho, presentence  
10 report in Docket No. CR-F93-88856, dated November 8, 1996, shows a self-reported  
11 burglary as a juvenile on October 22, 1990, which was verified.

12  
13 8. The Court finds that the criminal history presentence investigation in  
14 Chelan County Superior Court Cause No. 97-1-00435-8, dated March 17, 1998, shows  
15 a criminal conviction for issuing a check without funds as an adult in Bonner County,  
16 Idaho, Case No. CR-94-00301, on January 13, 1997.

17  
18 9. The Court finds that the criminal history presentence investigation in  
19 Chelan County Superior Court Cause No. 97-1-00435-8, dated March 17, 1998, shows  
20 a criminal conviction for two counts of issuing a check without funds as an adult in  
21 Kootenai County, Idaho, Case No. CR93-88856, on November 27, 1996.

22  
23 10. The Court finds that a copy of Cowley County, Kansas, Case No. 94-  
24 CR61-W, shows adult criminal convictions for: Count I - battery against a law  
25 enforcement officer, a misdemeanor, on May 2, 1994; Count II - traffic in contraband in  
26 a penal institution, a felony, on May 2, 1994; and, Count III - attempted aggravated  
27 escape, a felony, on May 2, 1994.

28 11. The Court finds that the criminal history presentence investigation in

1 Chelan County Superior Court Cause No. 97-1-00435-8, dated March 17, 1998, shows  
2 a criminal conviction for burglary as an adult in Cowley County, Kansas, Case No. 94-  
3 CR22-A, on March 7, 1994.

4  
5 12. The Court finds that the criminal history presentence investigation in  
6 Chelan County Superior Court Cause No. 97-1-00435-8, also shows additional  
7 dismissed charges, both for adult felony and for adult misdemeanor charges, and  
8 shows adult misdemeanor convictions, all of which are not relevant to the present  
9 offender score calculation.

10  
11 13. The Court finds that the defendant withdrew his objection to the  
12 inclusion of the juvenile criminal history felonies in the offender score calculation on the  
13 grounds that the juvenile history was sealed in Idaho and unconstitutionally obtained.  
14 The defendant reviewed the controlling Idaho law and indicated to this sentencing Court  
15 that Idaho code 20-525 provides that all findings, verdicts and judgments shall be open  
16 to the public unless the Court and the prosecutor agree that extraordinary  
17 circumstances exist which justify maintaining said records as confidential, so that the  
18 records can be used in the subsequent prosecution and sentencing.

19  
20 14. The Court finds that the defendant's sole objection at the time of the  
21 sentencing hearing was to the classification of the Cowley County, Kansas,  
22 misdemeanor conviction for battery against a law enforcement officer on May 2, 1994,  
23 as a felony to be included in the offender score calculation felony when classified  
24 according to the comparable Washington offense definitions and sentences.

25  
26 15. The Court finds that the defendant does not dispute the other felony  
27 convictions stated in the previously considered documents which are relied upon by the

1 Court, and that the defendant acknowledges the other prior felony convictions as  
2 included in the offender score calculation.

3 16. The Court finds that the current sentencing court determines the  
4 defendant's criminal history and that the burden of proof of the existence of criminal  
5 history is by a preponderance of the evidence. RCW 9.94A.110.  
6

7 17. The Court finds that criminal history information set forth in presentence  
8 reports will be considered admitted, unless specifically controverted by the defendant.  
9 State v. Ammons, 105 Wn.2d 175, 184 (1986).  
10

11 18. The Court finds that out-of-state convictions for offenses shall be  
12 classified according to the comparable offense definitions and sentences provided by  
13 Washington law. RCW 9.94A.360(3) and State v. Southerland, 43 Wn. App. 246, 249,  
14 716 P.2d 933 (1986).  
15

16 19. The Court finds that it is not obligated to defer to the State of Kansas'  
17 classification of crimes as either felonies or misdemeanors for purposes of this  
18 sentencing.  
19

20 20. The Court finds that there is no Washington law which requires this  
21 sentencing Court to consider the Kansas statutory classification of crimes as either  
22 felonies or misdemeanors for purposes of this sentencing.  
23

24 21. The Court finds that the Kansas Information charging the defendant with  
25 battery against a law enforcement officer reads, "that on or about the 13th day of  
26 March, 1994, in the County of Cowley, and State of Kansas, the defendant Jason  
27 Eugene Bush did then and there unlawfully, willfully and intentionally cause physical  
28 contact with another person, to-wit: Sandra J. Caulfield, a uniformed or properly

1 identified county law enforcement officer, while said officer was engaged in the  
2 performance of her duty and done in a rude, insulting, or angry manner." Contrary to  
3 KSA 21-3413(a)(1). Class A person misdemeanor.

4  
5 22. The Court finds that one of the Washington law definitions for assault is  
6 an unlawful touching of another person done with criminal intent. State v. Garcia, 20  
7 Wn. App. 401, 579 P.2d 1034 (1978), State v. Humphries, 21 Wn. App. 405, 408, 586  
8 P.2d 130, 133 (1978).

9  
10 23. The Court finds that one definition of assault in the third degree is, "a  
11 person is guilty of assault in the third degree if he...assaults a law enforcement officer  
12 or other employee of a law enforcement agency who was performing his or her official  
13 duties at the time of the assault." RCW 9A.36.031(1)(g).

14  
15 24. The Court finds that one of the definitions for custodial assault is, "a  
16 person is guilty of custodial assault if that person...assaults a full or part-time staff  
17 member or volunteer, any educational personnel, any personal service provider, or any  
18 vender or agent thereof at any adult corrections institution or local adult detention  
19 facilities who was performing official duties at the time of the assault." RCW  
20 9A.36.100(1)(b).

21  
22 25. The Court finds that the defendant pleaded guilty to Possessing Stolen  
23 Property in the First Degree and was sentenced on April 27, 1998, in Chelan County  
24 Superior Court Cause No. 97-1-00435-8.

25  
26 26. The Court finds that the defendant pleaded guilty to Unlawful  
27 Possession of a Firearm, Second Degree and was sentenced on May 4, 1998, in  
28 Chelan County Superior Court Cause No. 98-1-00114-4.

CONCLUSIONS OF LAW

1  
2           1. The Court concludes that the order of dismissal of a criminal action under  
3 Bonner County, Idaho, Case No. 27128-YR, is not relevant to the offender score  
4 calculation and will not be considered by this Court for sentencing.  
5

6           2. The Court concludes that the defendant's three prior juvenile convictions:  
7 first degree burglary, grand theft, and burglary in the first degree, shall be included in  
8 the offender score calculation as the defendant's objection to their inclusion as  
9 unconstitutionally obtained documents was withdrawn at the time of sentencing.  
10

11           3. The Court concludes that the defendant's adult convictions: issuing a  
12 check without funds, two counts of issuing a check without funds, trafficking in  
13 contraband in a penal institution, attempted aggravated escape, and burglary, shall be  
14 included in the offender score calculation as they were acknowledged and not objected  
15 to as presented in the criminal history presentence investigation of Chelan County  
16 Superior Court Cause No. 97-1-00435-8.  
17

18           4. The Court concludes that a comparison between the Kansas criminal  
19 statute for battery against a law enforcement officer and both the Washington criminal  
20 statute for assault in the third degree and custodial assault mirror each other in  
21 language and specific detail.  
22

23           5. The Court concludes that the Kansas battery against a law enforcement  
24 officer conviction shall be treated as a felony conviction for the purpose of offender  
25 score calculation in this sentencing.  
26

27           6. The Court concludes that the defendant's conviction for Possessing  
28 Stolen Property in the First Degree on April 27, 1998, shall be included in the offender


1 score calculation for this sentencing.

2 7. The Court concludes that the defendant's conviction for Unlawful  
3 Possession of a Firearm, Second Degree on May 4, 1998, shall be included in the  
4 offender score calculation for this sentencing.

5 8. The Court concludes based upon the preceding conclusions, that the  
6 defendant's offender score is "10 1/2", which rounds down to an "10", with the standard  
7 sentencing range of 22-29 months.

8 9. The Court concludes that the existence of the defendant's previous  
9 convictions were proved by the State by a preponderance of the evidence based upon  
10 the documented prior convictions as admitted into the record at the time of sentencing.

11  
12  
13 DONE IN OPEN COURT this 7<sup>th</sup> day of May, 1998.

14  
15  
16   
\_\_\_\_\_  
Judge of the Superior Court

17 Presented by:

18  
19   
\_\_\_\_\_  
20 KEVIN L. FORREST - WSBA #22552  
21 Deputy Prosecuting Attorney

22 Approved as to form and notice of  
23 Presentment waived

24  #20832  
\_\_\_\_\_  
25 RAYMOND S. GRIMM  
26 Attorney for Defendant