_____ Court of Washington, County/City of _____

_____ Plaintiff vs. _____ Defendant	**No**. _____ **Order on Petition Re: Vacating Conviction** [ ] **Granted** (in full or in part) (**ORVCJG**) [ ] **Denied** (**ORVCJD**) **Clerk's action required: [ ] 8**

Order on Petition Re: Vacating Conviction

I. Basis

1. This matter comes before the court on the defendant's petition for an order vacating misdemeanor or gross misdemeanor conviction/s under RCW 9.96.060 and RCW 9.96.080. The court heard the arguments of the parties and considered the case records, files, and pleadings submitted on the matter.

II. Findings

2. Adequate notice [ ] was [ ] was not given to the appropriate parties and agencies.

Offense Committed as a Victim of Certain Crimes

3. [ ] **Conviction as Victim.** The offense for which the defendant was convicted was a misdemeanor or gross misdemeanor, and the conviction was a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, and the following are true:

- [ ] The defendant provided to the sentencing court or the sentencing court's successor, the defendant's statement of the specific facts and circumstances that prove by a preponderance of the evidence that the offense was committed as a result of being a victim of one of the above offenses by affidavit.
- [ ] The defendant has no criminal charges pending in any court of this state or another state, or in any federal court for any crime other than prostitution.
- [ ] The offense for which the defendant was convicted was a misdemeanor, and the defendant has not been convicted of a new crime in this state, another state, or tribal court in the 3 years prior to date of the filing of this petition.
- [ ] The defendant provided proof that the crime victim penalty assessment (RCW 7.68.035) has been paid in full, except where the conviction being vacated is for the crime of prostitution, prostitution loitering, or stay out of the area of

prostitution.

[ ] Restitution owed to any victim, excluding restitution owed to any insurance provider under Title 48 RCW, has been paid in full by the defendant.

[ ] The offense was not any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), or chapter 9A.44 RCW (sex offense), except for failure to register as a sex offender under RCW 9A.44.132.

[ ] The offense was not a conviction as described in RCW 46.61.5055.

[ ] The offense was not patronizing a prostitute as described in RCW 9A.88.110.

Other Misdemeanor and Gross Misdemeanor Offenses

4. [ ] **Excluded Offenses**: The defendant is ineligible to vacate the offense because it is one of the following offenses below.

RCW 9.96.060(2)(c)-(e):

- A violation of chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132.
- A violation of chapter 9.68 RCW (obscenity and pornography).
- A violation of chapter 9.68A RCW (sexual exploitation of children).
- A violent offense as defined in RCW 9.94A.030, or an attempt to commit a violent offense.
- Driving while under the influence ("DUI") (RCW 46.61.502).
- Actual physical control while under the influence (RCW 46.61.504).
- Operating a railroad, etc. while intoxicated (RCW 9.91.020).

5. [ ] **Prior Offense**: The offense for which the defendant was convicted is considered a "prior offense" under RCW 46.61.5055 (see below), and the following are true:

[ ] The prior offense is not a DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504). Even if the conviction was originally filed as a DUI or Physical Control, the defendant was ultimately convicted of a different charge. RCW 9.96.060(2)(d).

[ ] The defendant completed all the terms of the sentence. All financial obligations for this case have been satisfied. RCW 9.96.060(2)(a).

[ ] The defendant has not been convicted of any new crimes in this state, another state, or federal or tribal court in the 3 years prior to the vacation application. RCW 9.96.060(2)(h).

[ ] At least 3 years have passed since the defendant was released from supervision or probation, from total and partial confinement, or since the defendant's sentencing date, whichever is later. RCW 9.96.060(2)(g).

[ ] The defendant has not had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense. RCW 9.96.060(2)(d).

[ ] More than 10 years has elapsed since the date of the arrest for the prior offense. RCW 9.96.060(2)(d).

[ ] There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal or tribal court as of the date the defendant filed the petition. RCW 9.96.060(2)(b).

[ ] The defendant is not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. The defendant was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

A "prior offense" means (RCW 46.61.5055(14)):

Original Convictions, including equivalent local ordinances, for:

- Driving Under the Influence (DUI) (RCW 46.61.502) or an equivalent out-of-state conviction.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504) or an equivalent out-of-state conviction.
- Commercial Vehicle DUI/Physical Control (RCW 46.25.110).
- Watercraft DUI (RCW 79A.60.040(2)).
- Aircraft DUI (RCW 47.68.220).
- Nonhighway vehicle DUI (RCW 46.09.470(2)).
- Snowmobile DUI (RCW 46.10.490(2)).

Amended Convictions:

- **Originally charged with** DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522), **but convicted of** Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), or Reckless Endangerment (RCW 9A.36.050) or an equivalent local ordinance. This section also applies for equivalent out-of-state convictions.
- **Originally charged with** Watercraft DUI (RCW 79A.60.040(2)) or an equivalent local ordinance, **but convicted of** Operating a Watercraft in a reckless manner (RCW 79A.60.040(1)) or an equivalent local ordinance.
- **Originally charged with** Aircraft DUI (RCW 47.68.220) or an equivalent local ordinance, **but convicted of** Operating an Aircraft in a careless or reckless manner (RCW 47.68.220) or an equivalent local ordinance.

Deferred Prosecution Granted for:

- Driving Under the Influence (DUI) (RCW 46.61.502), including local and out-of-state equivalents.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504), including local and out-of-state equivalents.
- Negligent Driving 1st (RCW 46.61.5249) or equivalent local ordinance if the charge under which the deferred prosecution was granted was originally filed as a violation of DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504), or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522).
- An equivalent out-of-state deferred prosecution for DUI or Physical Control, including a substance use disorder treatment program. (RCW 46.61.5055(14)(a)(xvi)).

Deferred Sentences for:
Originally charged with DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522), but deferred sentence was imposed for Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050), or an equivalent local ordinance.

6. [ ] **Domestic Violence**: The offense for which the defendant was convicted **<u>does</u>** involve domestic violence and the defendant complied with the following conditions (RCW 9.96.060(2)(f)) and the following are true:

[ ] The defendant provided the prosecuting attorney's office that prosecuted the offense with written notice of defendant's petition. RCW 9.96.060(2)(f)(i).
[ ] The defendant filed the original notice with this court. RCW 9.96.060(2)(f)(i).
[ ] The defendant has not been convicted of 2 or more domestic violence offenses stemming from different incidents. RCW 9.96.060(2)(f)(ii).
[ ] The defendant has never signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction. RCW 9.96.060(2)(f)(iii).
[ ] The defendant completed all the terms of the sentence. All financial obligations for this case have been satisfied. RCW 9.96.060(2)(a).
[ ] It has been at least 5 years since the defendant completed the terms of the original conditions of the sentence, including successful completion of any treatment ordered, but excluding the payment of financial obligations. RCW 9.96.060(2)(f)(iv).
[ ] The defendant has not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application.
[ ] There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal or tribal court as of the date the defendant filed the petition. RCW 9.96.060(2)(b).
[ ] The defendant is not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. The defendant was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

7. [ ] **Offenses not otherwise specified above, and the following are true:**

[ ] The defendant completed all the terms of the sentence. All financial obligations for this case have been satisfied. RCW 9.96.060(2)(a).
[ ] At least 3 years have passed since the defendant was released from supervision or probation, from total and partial confinement, or since the defendant's sentencing date, whichever is later. RCW 9.96.060(2)(g).
[ ] The defendant has not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to the vacation application. RCW 9.96.060(2)(h).
[ ] There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal or tribal court as of the date the defendant filed the petition. RCW 9.96.060(2)(b).
[ ] The defendant is not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. The defendant was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

III. Order

8. Based on the above findings, it is ordered:

[ ] The petition for order vacating conviction records of the following offense/s is/are granted.
Count No: _____ Offense: _____
Count No: _____ Offense: _____

Count No: _____ Offense: _____

IT IS ORDERED FURTHER that:
The defendant's guilty plea/s for the offense/s is/are withdrawn and a not guilty plea is entered, or the guilty verdict for the offense/s is/are set aside. The charging document is dismissed and the judgment and sentence is vacated for the offense/s listed above.

The defendant shall be released from all penalties and disabilities resulting from the offense/s listed above. For all purposes, including responding to questions on employment or housing applications, the defendant may state that they have never been convicted of that offense.

However, this order does not affect the requirements for restoring the right to possess a firearm under RCW 9.41.040.

The fact that the defendant has been convicted of the offense shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction, except that a vacated conviction qualifies as a prior conviction for the purpose of charging a later recidivist offense as defined in RCW 9.94A.030. A vacated conviction may be used for other purposes in a later criminal prosecution with the following exception: when a court vacates a record of domestic violence as defined in RCW 10.99.020, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) violating the provisions of a restraining order, a no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle; (ii) stalking; or (iii) domestic violence protection order or vulnerable adult protection order. RCW 9.96.060.

A vacated conviction for domestic violence is not considered a conviction of such an offense for the purposes of 27 C.F.R. § 478.11, regarding reinstatement of firearms or explosives rights.

The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to *(local law enforcement agency)* _____ _____ which agencies shall immediately update their records to reflect the vacation of the conviction of the offense listed in this section. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation (FBI). The Washington State Patrol and local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.96.060 to any person, except to other criminal justice enforcement agencies. RCW 9.96.060(8).

9. [ ] The petition for order vacating conviction records of the following offense/s is denied for the following reason/s:

_____
_____
_____
_____
_____.

Dated: _____

Judge/Commissioner

Submitted by:

Approved:

_____

Defendant/Attorney for Defendant/WSBA #

_____

Deputy Prosecuting Attorney/WSBA #

_____

Print Name

_____

Print Name