

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

WAYNE ALLEN NEWLUN,

NO. 63810-6-1

PERSONAL RESTRAINT PETITION

REPLY TO RESPONDENT

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 OCT 19 AM 11:12

A. ARGUMENT.

PETITIONER DID NOT WAIVE HIS DOUBLE JEOPARDY CLAIM, WHICH CAN BE ESTABLISHED ON THE FACE OF THE RECORD.

The State and the indictment all point to the fact that I was convicted for 2nd Degree Identity Theft regarding Guy Randall. The respondent has failed to mention the holding regarding (State V. Leyda 157 Wn. 2d 335;138 P.3d 610.)

Criminal Law & Procedure > Criminal Offenses > Property Crimes > Larceny & Theft > Elements

A separate unit of prosecution may be charged where the accused has either possessed, obtained, used, or transferred multiple means of a single individual's financial information or identification with the requisite intent.)

The identification used was a Driver's License bearing the name of Guy Randall. In KING County and Snohomish County. This is where the State's position fails. The evidence is clear from the record. I was on Direct Appeal for the Identity Theft of Guy Randall. During this time I was charged and summoned to KING County for an additional count of identity theft regarding Guy Randall. The State concedes that a Driver's License was used in the case at bar.

How Can I run the gauntlet again when the identical elements of both crimes in KING and Snohomish County are identical? One case will prove the other. I am forced to pick my poison. And whatever I drink will be the death of me. I am forced to submit rather than run the gauntlet again and risk multiple exceptional sentences for *one unit of prosecution*. Certainly, one would not risk trial, when one has already pled guilty to the same offense in a different county within the same State.

It appears the respondent has failed to examine State V. Leyda. Additionally the respondent's reliance upon State V. Knight is a bit intriguing. As Knight refers to the issue of double jeopardy.

(Quoting State V. Knight 162 Wn.2d 806;174 P.3d 1167) (2008)

(OVERVIEW: The State argued that the court of appeals was unable to vacate a single conviction stemming from an indivisible plea agreement. The supreme court noted that the double jeopardy clause precluded the State from haling a defendant into court on a charge and was not waived by a guilty plea. Where a double jeopardy violation was clear from the record, a conviction violated double jeopardy even where the conviction was entered pursuant to a guilty plea. Defendant's guilty plea did not waive the double jeopardy violation, and the conviction for conspiracy to commit burglary in the first degree was appropriately vacated. Defendant fulfilled the terms of the plea agreement even as she attacked her subsequent convictions. *The terms of the agreement did not require her to waive double jeopardy protections, and her pleas entered pursuant to the plea agreement did not waive double jeopardy protections.*

10 A guilty plea generally insulates the defendant's conviction from collateral attack. See Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973). Since the guilty plea bypasses trial, it also waives "constitutional rights that inhere in a criminal trial, including the right to trial by jury, the protection against self-incrimination, and the right to confront one's accusers." Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004). "[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case." Menna v. New York, 423 U.S. 61, 62 n.2, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975) (per curiam). Thus constitutional protections surrounding the determination of factual guilt are generally irrelevant because a guilty plea ensures the defendant is in fact guilty of the crime charged. Id.

11 However, claims which go to "the very power of the State to bring the defendant into court to answer the charge brought against him" are not waived by guilty pleas. Blackledge v. Perry, 417 U.S. 21, 30, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974). The double jeopardy clause precludes the State from "haling a defendant into court on a charge" and is not waived by a guilty plea. Menna, 423 U.S. at 62. After a guilty plea the double jeopardy violation must be clear from the record presented on appeal, or else be waived. See United States v. Broce, 488 U.S. 563, 575-76, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989) (a guilty plea prevents a defendant from expanding the record to prove two convictions actually stem from a single conspiracy). But where a double jeopardy violation is clear from the record, a conviction violates double jeopardy even where the conviction is entered pursuant to a guilty plea.

Here, Knight's guilty plea did not waive the double jeopardy violation, and the conviction for conspiracy to commit burglary in the first degree was appropriately vacated.)

I, at no time, waived my right to double jeopardy protection.

The respondent argues that my claim of double jeopardy is not clear from the record.

However, one may examine the Judgment and Sentence from Snohomish County and King County and the *Statement of the plea regarding King County*.

The *Statement of the plea Page (4)* reflects that the State was fully aware of the

Snohomish County Superior Court cases. (See Respondent's Appendix C)

Page (5) of this document presents the victim as **Guy Randall** which is a reflection of the Snohomish County cases.

The King County Prosecutor's Office has embarked on a vindictive mission to prosecute me for the 'same unit of prosecution' as the Identity Theft Counts in Snohomish County, long after State V. Leyda was decided and implemented as law in 2006.

Also, it appears that King County has continued in their response, as they continued my prosecution in January of 2007, to ignore the holding in LEYDA.

CONCLUSION:

My Double Jeopardy claim is valid, I did not waive this Constitutional Protection. And the claim is clear from the record. Due to this manifest injustice I respectfully request that the Court grant my petition.

DATED this 15th day of October, 2009

Respectfully Submitted,



Wayne A. Newlun
#283750

Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA. 99326

{ DIVISION ONE
P.R.P. # 63810-6-1 }

CERTIFICATE OF SERVICE

I, WAYNE ALLEN NEWLUN, being first duly sworn on oath,
deposes and says:

That I am a citizen of the United States over the age of eighteen years and
competent to be a witness herein.

That on the 15 day of OCTOBER, 2009, I delivered true and correct
copies of the following documents in the above-entitled cause, to which this certificate is
attached, by US Mail:

Reply To Respondent's Reply Brief.
Also ~~to~~ to COURT OF APPEALS DIVISION ONE
↓
c/c KANE COUNTY CASE # 06-1-10264-5
(# 4 PAGES)

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 OCT 15 AM 11:12


Signed WAYNE ALLEN NEWLUN
283750