

No. 63810-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In re Personal Restraint Petition of
WAYNE NEWLUN,
Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT, KING COUNTY

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King County Prosecuting Attorney

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Senior Deputy Prosecuting Attorney
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COURT OF APPEALS
STATE OF WASHINGTON
FILED
MAR 26 2010

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A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Wayne Newlun is restrained pursuant to Judgment and Sentence in King County Superior Court No. 06-1-10264-5 SEA. Appendix A.

B. ISSUES PRESENTED.

Whether this personal restraint petition should be dismissed where petitioner pled guilty to one count of identity theft in the second degree and where the double jeopardy claim brought in this collateral attack cannot be established on the record.

C. STATEMENT OF THE CASE.

In December of 2006, Wayne Newlun was charged by information in King County Cause No. 06-1-10264-5 SEA with one count of identity theft in the second degree. Appendix B and C. The Certification for Determination of Probable Cause reflects that on December 19, 2005, Newlun attempted to cash checks made out to Guy Randal at the Northgate Money Tree Branch. Appendix C. Newlun presented a Washington state driver license bearing Mr. Randal's name. Appendix C. The information alleged that Newlun knowingly possessed or used the name, date of birth,

and driver's license of Guy Randal with the intent to commit a crime. Appendix C, Information.

In January of 2007, Newlun reached a plea agreement with the State whereby he pled guilty as charged and the State agreed not to file additional charges of forgery, financial fraud and theft arising from the police investigation of Newlun's activities.

Appendix C. Newlun had 34 prior felony convictions. Appendix C. The State agreed to recommend a sentence at the low end of the standard range to run concurrently with Snohomish County Cause Nos. 06-1-00223-1, 06-1-00648-2, and 06-1-00241-0. Appendix C. The Prosecutor's Understanding of Defendant's Criminal History reflected that Newlun had been found guilty of multiple counts of identity theft in the first and second degree, forgery, and unlawful possession of a personal identification device in those three Snohomish County cases. Appendix C. There was no other information before the court about the bases for the Snohomish County convictions at the time of the plea.

The court imposed a sentence of 57 months concurrent with the Snohomish County cases. Appendix A. Newlun did not appeal.

D. ARGUMENT.

PETITIONER WAIVED HIS DOUBLE JEOPARDY CLAIM, WHICH CANNOT BE ESTABLISHED ON THE FACE OF THE PLEA RECORD.

Pursuant to United States Supreme Court precedent, which has been followed by the state supreme court, a guilty plea forecloses a collateral attack based upon double jeopardy grounds unless the claim can be established on the record that was before the plea court. Newlun's double jeopardy challenge to his King County conviction cannot be established on that record. As such, his double jeopardy claim should be rejected.

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). In a personal restraint petition, petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). Bare allegations unsupported by citation to authority, references to the record, or persuasive

reasoning cannot sustain this burden of proof. Brune, 45 Wn. App. at 363.

The Fifth Amendment to the United States Constitution and article I, section 9, of the Washington Constitution prohibit a second prosecution for the same offense after acquittal or conviction, and prohibit multiple punishments for the same offense imposed in the same proceeding. In re Personal Restraint of Percer, 150 Wn.2d 41, 48-49, 75 P.3d 488 (2003). Washington's double jeopardy clause offers the "same scope of protection" as the Fifth Amendment. Id. at 49.

In United States v. Broce, 488 U.S. 563, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989), the Supreme Court considered the question of whether a defendant who pled guilty may assert a double jeopardy claim in a collateral attack. The Court held that Broce's double jeopardy challenge was foreclosed by his guilty plea. Broce had pled guilty to multiple counts of violating the Sherman Act. Id. at 565. Broce later brought a collateral attack against his convictions arguing that they constituted double jeopardy. Id. at 567-68. The Court held that Broce had relinquished the opportunity to challenge the multiplicity of the charges by pleading guilty. Id. at 571. The Court held that a

defendant who pleads guilty may challenge his conviction as constituting double jeopardy only if the claim of double jeopardy can be "judged on its face," i.e., on the basis of the record that was before the court at the time of the plea. Id. at 575. The Court held that because Broce could not prove his claim of double jeopardy by relying on the indictments and the existing record, then the double jeopardy claim was foreclosed by the guilty plea.

In United States v. Makres, 937 F.2d 1282 (7th Cir. 1991), the Seventh Circuit relied on Broce in holding that the defendant, who had pled guilty to five counts of interstate transportation of forged checks, could not collaterally attack those convictions on double jeopardy grounds. The court held that unless the defendant could show on the face of the record from the plea that double jeopardy was violated by the multiple convictions, then his guilty plea foreclosed the attack. Id. at 1285-86. The court held that Makres was not entitled to an evidentiary hearing to determine whether the convictions violated double jeopardy.

Recently, in State v. Knight, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008), the Washington Supreme Court recognized and applied the waiver rule set forth in Broce, stating "[a]fter a guilty plea the double jeopardy violation must be clear from the record

presented on appeal, or else be waived." The court cited Broce as standing for the proposition that "a guilty plea prevents a defendant from expanding the record to prove two convictions actually stem from a single conspiracy." Id. The court found that, in contrast, a double jeopardy violation that is clear from the record is not waived by a guilty plea. Id. The court found that Knight's convictions for conspiracy to commit second degree robbery and conspiracy to commit first degree burglary based on a single conspiracy violated double jeopardy based on the record on appeal. Id. at 812.

Newlun acknowledges that his double jeopardy claim must be established "on the record." Supplemental Brief of Petitioner, at 12. However, Newlun fails to acknowledge that "on the record" means based on documents that were before the plea court at the time of the plea. Broce, 488 U.S. at 576 (holding that petitioner's claim must be judged based on indictment on its face); see also United States v. Montilla, 870 F.2d 549 (9th Cir. 1989) (explaining that Broce limited the Blackledge-Menna doctrine to "cases in which the judge could determine at the time of accepting the plea, from the face of the indictment or from the record, that the government lacked the power to bring the indictment."). Newlun mistakenly attempts to establish his double jeopardy claim by

relying on facts from the Snohomish County case files that were not part of the record at the time of the plea. Pursuant to Broce and Knight, Newlun's double jeopardy challenge to his King County conviction must be established based on facts that were presented to the King County Superior Court at the time of the plea. He cannot rely on extrinsic documents from the Snohomish County files that were not before the plea court.

Newlun pled guilty to a single crime in King County Cause No. 06-1-10264-5 SEA: identity theft in the second degree. There are no facts in the record before the plea court from which Newlun can prove that he had already been punished for the same conduct in the Snohomish County cases. The only evidence in the record was the dates and the names of the crimes involved in the Snohomish County convictions. Double jeopardy cannot be established on the face of the plea record. Newlun cannot show on the basis of the plea record that he was punished in Snohomish County for the same acts. Because his double jeopardy claim cannot be established on the face of the plea record, it is foreclosed by his guilty plea pursuant to Broce and Knight.

E. CONCLUSION.

Newlun's double jeopardy challenge to his King County conviction was waived by his guilty plea because it cannot be established on the face of the plea record. His petition should be dismissed.

DATED this 21st day of March, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

ANN SUMMERS, WSBA #21509
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDIX A

FILED

2007 JAN 29 AM 11:36

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COMMITMENT ISSUED JAN 29 2007

PRESENTENCING STATEMENT AND INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
	)	No. 06-1-10264-5 SEA
)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY
WAYNE ALLEN NEWLUN)	
)	
	)	Defendant,

I. HEARING

I.1 The defendant, the defendant's lawyer, DEBORAH WILSON, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Guy Randal & Doreen Randal

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 01/04/2007 by plea of:

Count No.:	<u>I</u>	Crime:	<u>IDENTITY THEFT IN THE SECOND DEGREE</u>
RCW	<u>9.35.020 (1) (3)</u>	Crime Code:	<u>03042</u>
Date of Crime:	<u>12/19/2005</u>	Incident No.	

Count No.:		Crime:	
RCW		Crime Code:	
Date of Crime:		Incident No.	

Count No.:		Crime:	
RCW		Crime Code:	
Date of Crime:		Incident No.	

Count No.:		Crime:	
RCW		Crime Code:	
Date of Crime:		Incident No.	

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

Criminal history is attached in **Appendix B**.

One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	34	II	43 TO 57		43 TO 57 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in **Appendix C**.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

The Court **DISMISSES** Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
- Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ 10 per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____ m.

57 months/days on count I; _____ months/days on count _____; _____ months/day on count _____
_____ months/days on count _____; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts _____ are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) Snohomish Cty # 06-1-00223-1, 06-1-00644-2 & 06-1-08241-0

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 57 months.

Credit is given for 39 days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with _____
Greg Michael Randall & Doreen Randal

4.6 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, as ordered in APPENDIX G.
[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H** for Community Custody conditions is attached and incorporated herein.
 - APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

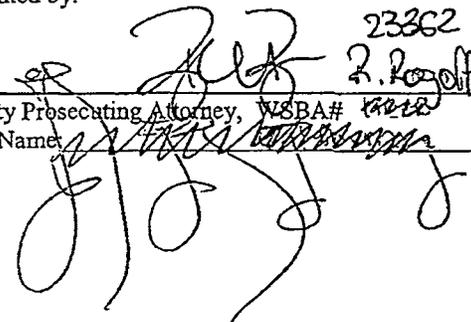
4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

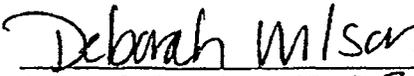
Date: 1-25-07


 JUDGE
 Print Name: A. Darvas

Presented by:


 Deputy Prosecuting Attorney, WSBA# 23362
 Print Name: R. Regoff

Approved as to form:


 Attorney for Defendant, WSBA # 134013
 Print Name: Deborah Wilson

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE

RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Wayne Allen Newlun
DEFENDANT'S ADDRESS: P.O. Box

WAYNE ALLEN NEWLUN

DATED: 1-26-07
Audrey J. Jansen
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: [Signature]
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

OFFENDER IDENTIFICATION

S.I.D. NO. WA12176549
DOB: DECEMBER 8, 1963
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	Plaintiff,	) No. 06-1-10264-5 SEA
)	
vs.	)	JUDGMENT AND SENTENCE,
	)	(FELONY) - APPENDIX B,
WAYNE ALLEN NEWLUN	)	CRIMINAL HISTORY
)	
	Defendant,)
)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

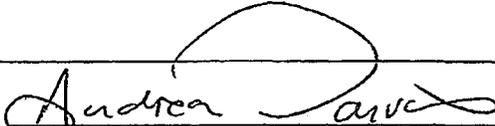
Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
IDENTITY THEFT 2	08/14/2006	ADULT	061002231	SNOH CO
FORGERY	08/14/2006	ADULT	061002231	SNOH CO
IDENTITY THEFT 2	08/14/2006	ADULT	061006482	SNOH CO
FORGERY	08/14/2006	ADULT	061006482	SNOH CO
IDENTITY THEFT 1	08/14/2006	ADULT	061002410	SNOH CO
FIN FRD-UNL POSS OF PERS ID	08/14/2006	ADULT	061002410	SNOH CO
FIN FRD-UNL POSS OF PERS ID	08/14/2006	ADULT	061002410	SNOH CO
FORGERY	08/14/2006	ADULT	061002410	SNOH CO
FORGERY	08/14/2006	ADULT	061002410	SNOH CO
FORGERY	08/14/2006	ADULT	061002410	SNOH CO
FORGERY	08/14/2006	ADULT	061002410	SNOH CO
POSSESSING STOLEN PROPERTY 2	10/24/2006	ADULT	061015421	THURSTON CO
RESIDENTIAL BURGLARY	12/07/2000	ADULT	001017213	SNOH CO
THEFT 1	09/22/2000	ADULT	001003559	KING CO
POSSESSING STOLEN PROPERTY 2	09/22/2000	ADULT	001003559	KING CO
FORGERY	09/22/2000	ADULT	991079783	KING CO
FORGERY	09/22/2000	ADULT	991079783	KING CO
FORGERY	05/17/1996	ADULT	951076412	KING CO
FORGERY	05/17/1996	ADULT	951076412	KING CO
ATTEMPTED THEFT 1	05/17/1996	ADULT	951083621	KING CO
UNLAWFUL ISSUANCE OF CHECKS	05/17/1996	ADULT	951070091	KING CO
VUCSA: POSSESS METH	05/17/1996	ADULT	951001978	KING CO
THEFT 1	06/01/1992	ADULT	951001978	KING CO
THEFT 1	06/01/1992	ADULT	881001391	MASON CO
UNLAWFUL ISSUANCE OF CHECKS	06/01/1992	ADULT	881001391	MASON CO
POSSESSING STOLEN PROPERTY 2	09/08/1989	ADULT	891036726	KING CO
THEFT 2	05/20/1987	ADULT	861016607	KING CO
BURGLARY 2	10/26/1982	ADULT	821006960	KING CO
THEFT 2	10/26/1984	ADULT	821024542	KING CO
BURGLARY 2	11/01/1984	ADULT	831019709	KING CO
THEFT 1	05/20/1987	ADULT	861038805	KING CO
UNLAWFUL ISSUANCE OF BANK CHECKS	05/20/1987	ADULT	861046417	KING CO
UNLAWFUL ISSUANCE OF BANK CHECKS	05/20/1987	ADULT	861046417	KING CO
WILLFUL FAILURE TO RETURN FROM WORK RELEASE	05/20/1987	ADULT	861007403	KING CO

NSF CHECKS
NSF CHECKS

03/30/1992 ADULT 92-00199 IDAHO
03/30/1992 ADULT 92-00199 IDAHO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 1-26-07



JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 06-1-10264-5 SEA
)	
vs.	)	APPENDIX G
	)	ORDER FOR BIOLOGICAL TESTING
WAYNE ALLEN NEWLUN	)	AND COUNSELING
)	
Defendant,)	
)	

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 1-26-07



 JUDGE, King County Superior Court

APPENDIX B

Electronic Court Records

Case Selection

Report Problems

Security Login

Help

Dept. of Judicial Administration, Office of the Superior Court Clerk's Office

Select Another Case

Get Case

06-1-10264-5

Case Number: 06-1-10264-5 SEA

 Save Preferences

Case Title: STATE OF WASHINGTON VS NEWLUN, WAYNE ALLEN

 Activity Log

Filter by Group: All

 View Selected Documents Print

Clear All

<input type="checkbox"/>	<u>select</u>	<u>sub#</u>	    <u>Date</u>	<u>Description</u>	<u>Pages</u>
<input type="checkbox"/>		1	12-06-2006	INFORMATION	3
<input type="checkbox"/>		2	12-06-2006	ORDER FOR WARRANT 25,000	5
<input type="checkbox"/>		3	12-06-2006	ORDER TO TRANSPORT	1
<input type="checkbox"/>		4	12-20-2006	NOTICE OF SCHEDULING	1
<input type="checkbox"/>		5	12-20-2006	DECLINATION VIENNA CONVENTN NOTICE	2
<input type="checkbox"/>		6	12-20-2006	NO CONTACT ORDER	1
<input type="checkbox"/>		7	12-22-2006	DISPOSITION REPORT RCV'D	1
<input type="checkbox"/>		8	12-28-2006	SHERIFF'S RETRN ON WARRANT OF ARREST	2
<input type="checkbox"/>		9	01-04-2007	GUILTY PLEA ONLY HEARING	2
<input type="checkbox"/>		10	01-04-2007	ASSIGNED TO PLEA JUDGE	1
<input type="checkbox"/>		11	01-04-2007	OR, OATH & APPR JDGE PRO TEM & STIP	1
<input type="checkbox"/>		12	01-05-2007	NOTICE OF HEARING	1
<input type="checkbox"/>		13	01-05-2007	STATEMENT OF DEFENDANT, PLEA GUILTY	21
<input type="checkbox"/>		14	01-16-2007	NOTICE OF HEARING	1
<input type="checkbox"/>		15	01-26-2007	STATEMENT OF GUY RANDAL RE SENTENCE	3
<input type="checkbox"/>		16	01-26-2007	NOTICE INELIGIBLE POSSESS FIREARM	1
<input type="checkbox"/>		17	01-26-2007	COURT ORAL NOTICE RIGHT OF APPEAL	1
<input type="checkbox"/>		18	 01-26-2007	SENTENCING HEARING CR JODI DEAN	4
<input type="checkbox"/>		19	01-29-2007	FELONY JUDGMENT AND SENTENCE	9
<input type="checkbox"/>		20	01-29-2007	STATEMENT OF PROSECUTING ATTORNEY	9
<input type="checkbox"/>		21	02-22-2007	NOTICE OF WITHDRAWAL OF ATTORNEY	1

APPENDIX C

FILED

2007 JAN -5 PM 3:03

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 06-1-10264-5
SEA

vs.

Wayne A. Newlun

Defendant.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO FELONY
NON-SEX OFFENSE (STTDFG)

1. My true name is Wayne Newlun

2. My date of birth is 12/8/63 43

3. I went through the 11th A.S.D. grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Deborah Wilson

(b) I am charged with the crime(s) of Identity Theft 2

The elements of this crime(s) are set forth in the information amended information, which is incorporated by reference and which I have reviewed with my lawyer.

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5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to testify and to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
1	43-57 MONTHS	—	5 years \$ 10,000
			_____ years \$ _____
			_____ years \$ _____

1 The crime of _____ is a most serious offense as defined by
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge ke.]

7 (b) The standard sentence range is based on the crime charged and my criminal history.
8 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
9 this state, in federal court, or elsewhere.

10 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement:
11 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is
12 correct and complete. If I have attached my own statement, I assert that it is correct and complete.
13 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
14 to tell the sentencing judge about those convictions.

15 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
16 history is discovered, both the standard sentence range and the prosecuting attorney's
17 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
18 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
19 charge is binding on me.

20 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
21 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to
22 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances

1 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,
2 attorney fees, and other costs and fees. Furthermore, the judge may place me on community
3 supervision, community placement or community custody and I will have restrictions and
4 requirements placed upon me.

5 (f) In addition to confinement, the judge will sentence me to a period of community
6 supervision, community placement or community custody.

7 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community
8 supervision for a period of up to one year; or (B) to community placement or community custody for
9 a period up to three years or up to the period of earned release awarded pursuant to RCW
10 9.94A.728; whichever is longer. [If not applicable, this paragraph should be stricken and initialed
11 by the defendant and the judge TL NL]

12 For crimes committed on or after July 1, 2000, the judge will sentence me to the community
13 custody range which is from _____ months to _____ months or up to the period of earned
14 release awarded pursuant to 9.94A.728, whichever is longer, unless the judge finds substantial and
15 compelling reasons to do otherwise. During the period of community custody I will be under the
16 supervision of the Department of Corrections, and I will have restrictions and requirements placed
17 upon me. My failure to comply with these conditions will result in the Department of Corrections
18 transferring me to a more restrictive confinement status or other sanctions being imposed. [If not
19 applicable, this paragraph should be stricken and initialed by the defendant and the judge TL NL.]

20 (g) The prosecuting attorney will make the following recommendation to the judge: _____

21 43 months in custody to run concurrent with time
22 being served on Snohomish County Superior Court cases

06-1-00223-1, 06-1-00648-2 and 06-1-00241-0
No contact with Guy Randal, restitution to be determined
State agrees not to file forgery, financial fraud or theft charges
from 05-549468 SPD#, court costs, DNA fee, \$500 VPA, atty
 The prosecutor will make the recommendation stated in the plea Agreement and State's costs.

3 Sentence Recommendation, which are incorporated by reference.

4 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge
5 must impose a sentence within the standard range unless there is a finding of substantial and
6 compelling reasons not to do so. If the judge goes outside the standard range, either I or the State
7 can appeal that sentence. If the sentence is within the standard range, no one can appeal the
8 sentence.

9 (i) The crime of _____ has a mandatory minimum sentence
10 of at least _____ years of total confinement. The law does not allow any reduction of this
11 sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the
12 judge W. N. [initials]].

13 (j) The crime charged in Count _____ includes a firearm / deadly weapon
14 sentence enhancement of _____ months.

15 This additional confinement time is mandatory and must be served consecutively to any
16 other sentence and any other enhancement I have already received or will receive in this or any other
17 cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the
18 judge W. N. [initials]].

19 (k) The sentences imposed on counts _____, except for any weapons enhancement,
20 will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.

21 [If not applicable, this paragraph should be stricken and initialed by the defendant and judge
22 W. N. [initials]].

1 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
2 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
3 46.61.5055(8). This additional confinement time is mandatory and must be served consecutively to
4 any other sentence and any other enhancement I have already received or will receive in this or any
5 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
6 the judge W. N.] lc.

7 (m) Counts _____ are serious violent offenses arising from separate and distinct
8 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
9 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
10 stricken and initialed by the defendant and the judge W. N.] lc.

11 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
12 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as
13 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I may
14 be sentenced up to two years of community supervision if the crime was committed prior to July 1,
15 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The
16 judge also may require me to undergo treatment, to devote time to a specific occupation, and to
17 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph
18 should be stricken and initialed by the defendant and the judge W. N.] lc.

19 (o) The judge may sentence me under the a special drug offender sentencing alternative
20 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001, or
21 RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
22 period of total confinement for one-half of the midpoint of the standard range and community

1 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions
2 described in paragraph (6)(e). The judge could impose a residential treatment-based DOSA
3 alternative that would include three to six months of residential chemical dependency treatment and
4 24 months of community custody, plus all the other conditions described in paragraph (6)(e).
5 During confinement and community custody under either alternative, I will be required to
6 participate in substance abuse evaluation and treatment, not to use illegal controlled substances and
7 to submit to testing to monitor that, and other restrictions and requirements will be placed on me.

8 (p) This plea of guilty will result in revocation of my privilege to drive under RCW
9 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not
10 applicable, this paragraph should be stricken and initialed by the defendant and the judge W.N.]

11 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
12 judge finds I used a motor vehicle in the commission of this felony.

13 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with
14 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
15 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
16 judge W.N.]

17 (s) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
18 crime under state law is grounds for deportation, exclusion from admission to the United States, or
19 denial of naturalization pursuant to the laws of the United States.

20 (t) I will be required to provide a biological sample for purposes of DNA identification
21 analysis.

1 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
2 minor, I will be required to register with the sheriff of the county of the state of Washington where I
3 reside, study, or work. The specific registration requirements are described in the "Offender
4 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the
5 defendant and the judge W. N. Ho]

6 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in
7 my control any firearm unless and until my right to do so is restored by a court of record.

8 (w) Because this is a crime of domestic violence, I may be ordered to pay a domestic
9 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court
10 may order me to participate in a domestic violence perpetrator program approved under RCW
11 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and
12 the judge W. N. Ho].

13 (x) Because this crime involves the manufacture, delivery, or possession with intent to
14 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,
15 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be
16 assessed. RCW 69.50.410. [If not applicable, this paragraph should be stricken and initialed by the
17 defendant and the judge W. N. Ho].

18 (y) Because this crime involves a violation of the state drug laws, my eligibility for state and
19 federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21
20 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant
21 and the judge W. N. Ho].

1 (z) Because the crimes I am pleading guilty to include both a conviction under RCW
2 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more
3 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the
4 sentences imposed for these crimes shall be served consecutively to each other. RCW
5 9.94A.589(c). [If not applicable, this paragraph should be stricken and initialed by the defendant
6 and the judge W N.A.]

7 7. I plead guilty to the crime(s) of Identity Theft 2°

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10 as charged in the information/ amended information. I have received a copy of
11 that information.

12 8. I make this plea freely and voluntarily.

13 9. No one has threatened harm of any kind to me or to any other person to cause me to make
14 this plea.

15 10. No person has made promises of any kind to cause me to enter this plea except as set
16 forth in this statement.

17 11. The judge has asked me to state briefly in my own words what I did that makes me
18 guilty of this (these) crime(s). This is my statement:

19 On or about 12/19/05, I did knowingly possess &
20 attempt to use the name, date of birth & driver's
21 license number of Guy Michael Randal, another
22 person, with the intent to commit a crime.

1 I attempted to use it to cash two checks but was
2 unsuccessful so obtained no money or anything
3 of value. This took place at the Northgate Money Tree
4 in Seattle, King County, Washington

5 12. My lawyer has explained to me, and we have fully discussed, all of the above
6 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on
7 Plea of Guilty." I have no further questions to ask the judge.

8 [Signature]
9 DEFENDANT

10 I have read and discussed this statement
11 with the defendant and believe that the
12 defendant is competent and fully
13 understands the statement.

14 [Signature] 31941
15 PROSECUTING ATTORNEY
16 Print Name: Kim Wyatt
17 WSBA#

18 [Signature]
19 DEFENDANT'S LAWYER
20 Print Name: Deborah Wilson
21 WSBA# 34013

22 The foregoing statement was signed by the defendant in open court in the presence of the
defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
 (b) The defendant's lawyer had previously read to him or her; or
 (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The
defendant understands the charges and the consequences of the plea. There is a factual basis for the
plea. The defendant is guilty as charged.

Dated this 4th day of Jan. 2007.

[Signature]
JUDGE

[Signature]

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I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 20__.

TRANSLATOR

Print Name: _____

INTERPRETER

Print Name: _____

CAUSE NO. _____



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-549468
UNIT FILE NUMBER	CF05-783

That R. Woolery is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 05-549468;

There is probable cause to believe that Wayne A. Newlun committed the crime(s) of Identity Theft.

This belief is predicated on the following facts and circumstances:

On or about 12-19-05, the defendant, identified by photomontage as Wayne A. Newlun, entered the Northgate Money Tree branch located at 551 NE Northgate Way in the City of Seattle, King County, Washington. The defendant approached employee Maria Nina C. De Luna and presented to be cashed, check number 1140 from the School Employees Credit Union account of Heather McKey. This check was dated 12-19-05, payable to Guy Randal, and listed on the "for" line the word "loan." Along with the check, the defendant presented a Washington State driver license in the name of Guy Michael Randal that was photo checked by the teller to the defendant. Ms. Luna processed this check and noted a notation that this was a stolen item and not to cash it. The account holder was called and a message left asking the status of the check. [Note: the next day the account holder called back and confirmed that this was a stolen item]. Ms. Luna declined to process this check.

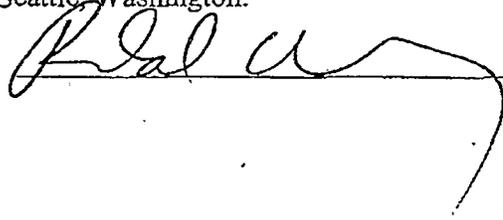
After having check number 1140 turned down, the defendant presented to Maria Nina C. De Luna check number 1534439 to be cashed. This check was from the Prudential Financial Computer Shareholder Services account and listed the date of 12-19-05. This check was payable to Michael G. Randal in the amount of \$400.56. This check had obvious signs of alteration to the payee name and payable amount. This check was also turned down and the next day verified as stolen.

Detective Woolery learned from Everett Police that Guy Michael Randal was the victim of a burglary and subsequent identity theft. The suspect in the Everett Police case was identified as Wayne A. Newlun. Detective Woolery obtained a past booking photo of the defendant and compared this photo to the photo of the person on the fraudulent Randal license presented to Money Tree, the match was positive.

Detective Woolery created a photomontage containing the defendant's past booking photo and the montage was provided to witness Luna at Money Tree. Ms. Luna identified the defendant's past booking photo as the person who presented checks number 1140 and 1534439 to her on 12-29-05 at Northgate Money Tree.

Detective Woolery made contact with identity theft victim Guy Randal. The victim's wife confirmed that Mr. Randal is a victim and that the defendant is not known and did not have permission to use his identity.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 18th day of Jan, 2006, at Seattle, Washington.

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7 CAUSE NO. 06-1-10264-5 SEA

8 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
9 CONDITIONS OF RELEASE

10 The State incorporates by reference the Certification for Determination of Probable
11 Cause signed by Detective Randy Woolery in Seattle Police Department case number 05-
549468.

12 REQUEST FOR BAIL

13 The State requests a no contact order with Maria Nina C. DeLuna, Guy M. Randal,
14 Heather McKey, and all Money Tree branches.

15 The State requests bail in the amount of \$25,000 based on the defendant's lengthy
16 criminal history showing him to be a flight risk and threat to the community. His criminal
17 history includes the following convictions: **Felonies:** Identity Theft in the Second Degree (two
18 convictions--2006, 2005), Forgery (nine convictions--2006, 2005, 2005, 2005, 2005, 2005, 1999,
1995, 1995), Identity Theft in the First Degree (2005), Financial Fraud--Unlawful Possession of
20 Personal ID (two convictions--2005, 2005), Residential Burglary (2000), Theft in the First
21 Degree (three convictions--1999, 1989, 1986), Possession of Stolen Property in the Second
22 Degree (two convictions--2000, 1989), Attempted Theft in the First Degree (1995), Unlawful
23 Issuance of Bank Checks (four convictions--1995, 1989, 1986, 1986), VUCSA (1995), Theft in
the Second Degree (two convictions--1986, 1982), Failure to Return from Work Release (1985),
Burglary in the Second Degree (1983), and Burglary in the Second Degree (Deferred Sentence--
1982); **Misdemeanors:** Deposition of Refuse on Pub/P (1998), Public Indecency (1996),
Driving with License Suspended in the Second Degree (1995), Refuse to Give
Information/Cooperate (1995), Attempted Forgery (1995), Bad Check (Utah--1994), and Theft in
the Third Degree (1989).

Terri R. Luken, WSBA #19554

Prosecuting Attorney Case
Summary and Request for Bail
and/or Conditions of Release - 1

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

FELONY PLEA AGREEMENT

Date of Crime: December 19, 2005
Defendant: Newlun Wayne Allen

Date: 12/27/06
Cause No: 06-1-10264-5 (SEAKNT)

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I of the original amended information.

With Special Finding(s): deadly weapon - firearm, RCW 9.94A.510(3); deadly weapon other than firearm, RCW 9.94A.510(4); sexual motivation, RCW 9.94A.835; protected zone, RCW 69.50.435; domestic violence, RCW 10.99.020; other _____; for count(s): _____

DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss: _____

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in Appendix C; _____

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and

- agrees to pay restitution in the specific amount of \$ 1000 for cell loss to victim + on
- agrees to pay restitution as set forth in Appendix C; Uncharged Forgery, Fraud & Rest.

OTHER: State agrees not to file
Charge, financial fraud & Theft from 05-549468

CRIMINAL HISTORY AND OFFENDER SCORE:

a. The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s) and if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

- (1) Conviction: _____ Basis: _____
- (2) Conviction: _____ Basis: _____

c. The parties agree that neither party will seek an exceptional sentence.

Maximum on Count(s) 1 is not more than 5 years each and \$ 10,000 fine each.

Maximum on Count(s) _____ is not more than _____ years each and \$ _____ fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: _____

Mandatory weapon sentence enhancement for Count(s) _____ is _____ months each; for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

[Signature]
Defendant

[Signature]
Deputy Prosecuting Attorney

Deborah Wilson
Attorney for Defendant 34013

[Signature]
Judge, King County Superior Court

Pro. Jm.

GENERAL SCORING FORM

12/19/2005

Nonviolent Offenses

Use this form only for the following offenses: Abandonment of Dependent Persons 1 and 2; Abstract of Driving Records - Intentional Use; Advancing Money or Property for Extortionate Extension of Credit; Assault 3; Assault by Watercraft; Assault of a Child 3; Bail Jumping with Class A Felony; Bail Jumping with Class B or C Felony; Bribe Received by Witness; Bribery; Bribing a Witness; Commercial Bribery; Computer Trespass 1; Counterfeiting - 3rd Conviction & Value Greater Than \$10,000; Counterfeiting - Endangering Public Health & Safety; Criminal Gang Intimidation; Criminal Mistreatment 1; and 2; Custodial Assault; Domestic Violence Court Order Violation; Delivery of Imitation Controlled Substance by Person 18 or Over to Person Under 18; Digital Signatures Fraud; Extortion 2; Extortionate Extension of Credit; Extortionate Means to Collect Extensions of Credit; False Verification for Welfare; Forged Prescription (Legend Drug); Forged Prescription for a Controlled Substance; Forgery; Harassment; Health Care False Claims; Hit and Run with Vessel - Injury Accident; Improperly Obtaining Financial Information; Identity Theft 1 and 2; Inciting Criminal Profiteering; Indecent Exposure to Person under Age 14; Influencing Outcome of a Sporting Event; Intimidating a Judge; Intimidating a Juror; Intimidating a Public Servant; Intimidating a Witness; Intentional Infliction of Injury or Death to Guide Dog; Introducing Contraband 1 and 2; Malicious Explosion 3; Malicious Harassment; Malicious Injury to Railroad Property; Malicious Mischief 1 and 2; Malicious Placement of Explosives 2 and 3; Malicious Placement of Imitation Device 1 and 2; Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance; Perjury 1 and 2; Persistent Prison Misbehavior; Possession of a Stolen Firearm; Possession of a Controlled Substance that is Heroin or a Narcotic from Schedule I or II or Flunitrazepam from Schedule IV; Possession of a Controlled Substance that is a Narcotic from Schedule III-V or a Nonnarcotic from Schedule I-V (Except PCP or Flunitrazepam); Possession of Incendiary Device; Possession of Machine Gun or Short-Barreled Shotgun or Rifle; Possession of Phencyclidine (PCP); Possession of Stolen Property 1 and 2; Promoting Prostitution 1 and 2; Reckless Burning 1; Rendering Criminal Assistance 1; Securities Act Violation; Stalking; Taking Motor Vehicle Without Permission; Tampering with a Witness; Telephone Harassment; Theft 1 and 2; Theft of Anhydrous Ammonia; Theft of a Firearm; Theft of Livestock 1 and 2; Theft of Rental, Leased, or Lease-purchase Property-Class B and C; Threats to Bomb; Trafficking in Insurance Claims; Trafficking in Stolen Property 1 and 2, Unlawful Imprisonment; Unlawful Issuance of Checks or Drafts; Unlawful Possession of a Firearm 1 and 2; Unlawful Practice of Law; Unlawful Storage of Anhydrous Ammonia; Unlawful Use of a Professional Title; Unlawful use of Building for Drug Purposes; Unlawful Use of Food Stamps; Unlicensed Practice of a Profession or Business; Unused Property Merchant; Use of Proceeds of Criminal Profiteering; Vehicle Prowl 1; Voting Violation-Mail Ballot.

OFFENDER'S NAME WAYNE A. NEWLUN	OFFENDER'S DOB 12/08/1963	STATE ID# WA12176549
JUDGE	CAUSE# 06-1-10264-5 SEA	FBI ID# 791412PA5

DOC # - 283750

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.525).

ADULT HISTORY:

Enter number of felony convictions 34 x 1 = 34

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 1 =

Enter number of other nonviolent felony dispositions x 1/2 =

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other felony convictions x 1 =

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point + 1 =



STANDARD RANGE CALCULATION*

Identify Theft 2nd CURRENT OFFENSE BEING SCORED	II SERIOUSNESS LEVEL	34 OFFENDER SCORE	43 TO 57 LOW HIGH STANDARD SENTENCE RANGE
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- If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-20 to calculate the enhanced sentence.
- Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation under RCW 9A.28. For Possession of a Controlled Substance or Forged Prescription of a Controlled Substance, see RCW 69.50.407.

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

This criminal history compiled on: **December 12, 2006**

- None known. Recommendations and standard range assumes no prior felony convictions.
 Criminal history not known and not received at this time. WASIS/NCIC last received on 12/07/2006

Adult Felonies

Offense	Score	Disposition
06-1-00223-1 identity theft 2nd	01/21/2006	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-second deg identity theft, cnt 2-forgery: cnt 1, 57 mos prison; cnt 2, 29 mos prison, to run consec w/06-1-00241-0 (also states min term of confinement of all 3 cause numbers cumulatively is 57 mos/max term is 141 mos); ineligible
06-1-00223-1 forgery	01/21/2006	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-second deg identity theft, cnt 2-forgery: cnt 1, 57 mos prison; cnt 2, 29 mos prison, to run consec w/06-1-00241-0 (also states min term of confinement of all 3 cause numbers cumulatively is 57 mos/max term is 141 mos); ineligible
06-1-00648-2 identity theft 2nd	12/14/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-second deg identity theft, cnt 2-forgery: cnt 1, 57 mos prison; cnt 2, 29 mos prison, both cnts to run consec w/06-1-00241-0; ineligible to possess firearms.
06-1-00648-2 forgery	12/14/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-second deg identity theft, cnt 2-forgery: cnt 1, 57 mos prison; cnt 2, 29 mos prison, both cnts to run consec w/06-1-00241-0; ineligible to possess firearms.
06-1-00241-0 identity theft 1st	11/16/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 fin frd-unl poss of pers id	11/16/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 fin frd-unl poss of pers id	11/16/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 forgery	11/16/2005	1 WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

Adult Felonies

Offense	Score	Disposition
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-01542-1 possess stolen property 2nd d	10/04/2005	WA Thurston Superior Court - Guilty 10/24/2006 29 months confinement concurrent, 500 cvf, 200 file fee, 100 dna, 5503.00 resti tion
00-1-01721-3 residential burglary	03/28/2000	WA Snohomish Superior Court - Guilty 12/07/2000 residential burglary:84 mos prison to run concurr w/other;ineligible to possess firearms
00-1-00355-9 theft-1 (not firearm)	10/20/1999	WA King Superior Court - Guilty 09/22/2000 50m cti, 29m ct2 doc conc.
00-1-00355-9 possess stolen property 2nd d	10/20/1999	WA King Superior Court - Guilty 09/22/2000 50m cti, 29m ct2 doc conc.
99-1-07978-3 forgery	09/08/1999	WA King Superior Court - Guilty 09/22/2000 29m doc, conc w/00-1-00355-9.
95-1-07641-2 forgery	08/10/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty cti & ii. serve 29m cti & 29m ctii doc. conc w/95-1-00197-8, 95-1-08362-1 & 95-1-07009-1. pay rest. pay cv/pen asst \$100.00.
95-1-07641-2 forgery	08/10/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty cti & ii. serve 29m cti & 29m ctii doc. conc w/95-1-00197-8, 95-1-08362-1 & 95-1-07009-1. pay rest. pay cv/pen asst \$100.00.
95-1-08362-1 attempt theft-1 (not firearm)	07/17/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty. serve 36m doc. conc w/95-1-07009-1, 95-1-07641-2 & 95-1-00197-8. pay rest. pay cv/pen asst \$100.00.
95-1-07009-1 unlawful issuance of checks	02/23/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty. serve 29m doc. conc w/95-1-07641-2, 95-1-00197-8 & 95-1-08362-1. pay rest. pay cv/pen asst \$100.00.

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

Adult Felonies

Offense	Score	Disposition
95-1-00197-8 vucsa-possession meth	01/01/1995	1 WA King Superior Court - Guilty 05/17/1996 convicted by court. serve 29m doc. conc w/95-1-07009-1, 95-1-08362-1 & 95-1-07641-2, pay rest. pay cv/pen asst \$100.00.
88-1-00139-1 theft-1 (not firearm)	03/13/1989	1 WA Mason Superior Court - Guilty 06/01/1992 29 months
88-1-00139-1 unlawful issuance of checks	03/13/1989	1 WA Mason Superior Court - Guilty 06/01/1992 18 months
89-1-03672-6 possess stolen property 2nd d	03/03/1989	1 WA King Superior Court - Guilty 09/08/1989 4 months
86-1-01660-7 theft-2 (not firearm)	12/12/1985	1 WA King Superior Court - Guilty 05/20/1987 13 months
82-1-00696-0 burglary 2nd	09/11/1981	1 WA King Superior Court - Guilty 10/26/1982 10 years
82-1-02454-2 theft 2nd	07/27/1982	1 WA King Superior Court - Guilty 10/26/1984 6 years jail 5 suspended
83-1-01970-9 burglary 2nd	05/18/1983	1 WA King Superior Court - Guilty 11/01/1984 10 years
86-1-03880-5 theft 1st	06/13/1986	1 WA King Superior Court - Guilty 05/20/1987 22 months
86-1-04641-7 unlawful issuance banks check	05/15/1986	1 WA King Superior Court - Guilty 05/20/1987 13 months
86-1-04641-7 unlawful issuance banks check	05/15/1986	1 WA King Superior Court - Guilty 05/20/1987 13 months
86-1-00740-3 willful fail to return to wr	12/11/1985	1 WA King Superior Court - Guilty 05/20/1987 3 years
92-00199 nsf checks	02/01/1992	1 ID 6th District Court - Pocatello - Guilty 03/30/1992 determinate 1 year, indeterminate 3 years
92-00199 nsf checks	02/01/1992	1 ID 6th District Court - Pocatello - Guilty 03/30/1992 determinate 1 year, indeterminate 3 years

Adult Misdemeanors

Offense	Score	Disposition
97-1-05149-1 attempt forgery	07/18/1995	1 WA King Superior Court - Guilty 11/26/1997 12m suspended. 12m jail. 12m comm supv. conc w/95-1-08362-1, 95-1-07009-1, 95-1-07641-2.
4889 BO deposition of refuse on pub/p	08/01/1998	1 WA Bothell Municipal Court - Guilty
CP37987KC KC public indecency	01/10/1996	1 WA Shoreline Div King Co District Ct - Guilty

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

Adult Misdemeanors

Offense	Score	Disposition
1684 BO dwls 2nd degree	11/30/1995	WA Bothell Municipal Court - Guilty
1684 BO refuse to give info/cooperate	11/30/1995	WA Bothell Municipal Court - Guilty
47703 theft 3rd	02/08/1989	WA Des Moines Municipal Court - Guilty
921002434 bad check	01/24/1994	UT 3rd Circuit Salt Lake Court - Guilty 02/08/1994 365 days confinement, 18 months probation

Juvenile Felonies - None Known

Juvenile Misdemeanors - None Known

Comments

Prepared by: _____

Chanthavy San, CCA
Department of Corrections

STATE'S SENTENCE RECOMMENDATION
(USE FOR NON-SEX OFFENSE, NON-DOSA SENTENCES OF OVER ONE YEAR ONLY)

Date: 12/27/06

Defendant: W. Newlin

Cause No.: 06-1-1024-5 SEA/KNT

The State recommends that the defendant be sentenced to a term of total confinement in the Department of Corrections as follows:

43 months/days on Count I _____ months/days on Count _____
_____ months/days on Count _____ _____ months/days on Count _____

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: King County 06-1-00223-1, 06-1-00649-2
06-1-00241-0 Term to be consecutive to any other term(s) not specifically referred to in this form.

WEAPONS ENHANCEMENT - RCW 9.94A.510: The above recommended term(s) of confinement do not include the following weapons enhancement time: _____ months for Ct. _____, _____ months for Ct. _____, _____ months for Ct. _____; which is/are mandatory, served without good time and served consecutive to any other term of confinement.

TOTAL LENGTH OF CONFINEMENT recommended in this cause, including all counts and enhancements is 43 months.

- This is an agreed recommendation.
- Defendant is legally eligible for WORK ETHIC CAMP - RCW 9.94A.690 (range at least 12 months + 1 day, not more than 36 months, current offense is not VUCSA or VUCSA Solicitation for crimes after July 25, 1999; no current or prior sex or violent offense) and State recommends WEC.
 - Work Ethic Camp is not recommended because _____

NO DRUG OFFENDER SENTENCE ALTERNATIVE (DOSA) - RCW 9.94A.660:

- Defendant is not legally eligible for DOSA because current or prior sex or violent offense; weapon enhancement; subject to final deportation order; not small quantity of drugs.
- Defendant is eligible but DOSA is not recommended because _____

EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form or brief.

NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: Guy Michael Randa

MONETARY PAYMENTS: Defendant shall make the following monetary payments under the supervision of the Department of Corrections for up to 10 years pursuant to RCW 9.94A.753 and RCW 9.94A.760.

- Restitution as set forth in the "Plea Agreement" page and Appendix C.
- Court costs; mandatory \$500 Victim Penalty Assessment; recoupment of cost for appointed counsel; \$100 DNA collection fee.
- King County Local Drug Fund \$ _____; \$100 lab fee (RCW 43.43.690).
- Fine of \$ _____; \$1,000 fine for VUCSA; \$2,000 fine for subsequent VUCSA.
- Costs of incarceration in K.C. Jail at \$50 per day (RCW 9.94A.760(2)).
- Emergency response costs \$ _____ (RCW 38.52.430); Extradition costs of \$ _____; Other _____

COMMUNITY CUSTODY - RCW 9.94A.715: for qualifying crimes committed on or after July 1, 2000, the defendant shall serve a term of community custody for the period set forth below, or the entire period of earned early release, whichever is longer.

- Serious violent offense: 24-48 months Crimes against persons: 9-18 months
- Violent offense: 18-36 months Violation of Ch. 69.50 or .52: 9-12 months

Community Custody includes mandatory statutory conditions as well as discretionary conditions set by the court or Dept. of Corrections. The State recommends the court impose these discretionary conditions:

- Obtain an alcohol/substance abuse evaluation and follow all treatment recommendations; not possess or use alcohol.
- Enter into, make reasonable progress in, and successfully complete Domestic Violence Batterer's treatment, per WAC 388-60.
- Other: _____

MANDATORY CONSEQUENCES: HIV blood testing (RCW 70.24.340) for any prostitution related offense, or drug offense associated with needle use. DNA testing (RCW 43.43.754). Revocation of right to possess a FIREARM (RCW 9.41.040). DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420). REGISTRATION: Persons convicted of some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.44.130.

[Signature]
Deputy Prosecuting Attorney, WSBA No. _____

CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Wayne Newlun, at the following address: DOC# 283750, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326, the petitioner, containing a copy of the Supplemental Brief of Respondent, King County, in In re Personal Restraint of Newlun, No. 63810-6-I, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

UBrame 3/26/10
Name Date
Done in Seattle, Washington

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Mary Webber, at the following address: Snohomish County Prosecuting Attorney's Office, Admin. E 7th Fl M/S 504, 3000 Rockefeller Ave., Everett, WA 98201-4046, the respondent, containing a copy of the Supplemental Brief of Respondent, King County in In re Personal Restraint of Newlun, No. 63810-6-I, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

UBrame 3/26/10
Name Date
Done in Seattle, Washington

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Maureen Cyr, Washington Appellate Project, at the following address: 1511 Third Avenue, Suite 701, Seattle, WA 98101, attorneys for the petitioner, containing a copy of the Supplemental Brief of Respondent, King County in In re Personal Restraint of Newlun, No. 63810-6-I, in the Court of Appeals of the State of Washington.

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