

No. 45377-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Alan Heckard,**

Appellant.

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Pacific County Superior Court Cause No. 13-1-00038-3

The Honorable Judge Michael Sullivan

**Appellant's Opening Brief**

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## ISSUES AND ASSIGNMENTS OF ERROR

1. Mr. Heckard's guilty plea was entered in violation of his Fourteenth Amendment right to due process.
2. The trial court erred by accepting Mr. Heckard's guilty plea.
3. The court lacked an adequate factual basis for Mr. Heckard's guilty plea.

**ISSUE 1:** A guilty plea is invalid if the record of the plea hearing fails to set forth a sufficient factual basis for the charge. Here, Mr. Heckard's plea statement does not indicate that he knowingly attempted to extort property from Walker. Must Mr. Heckard be permitted to withdraw his guilty plea?

4. The record does not affirmatively establish that Mr. Heckard entered a knowing, intelligent, and voluntary guilty plea.
5. The record of the plea hearing does not prove Mr. Heckard understood the state's obligation to prove a *mens rea* element in order to obtain a conviction for first-degree extortion.
6. The record of the plea hearing does not prove that Mr. Heckard understood the relationship between the elements of the charged crime and the facts alleged by the prosecution.

**ISSUE 2:** The record of a plea hearing must affirmatively establish the accused person's understanding of the law, the facts, and the relationship between the two. The record of Mr. Heckard's plea hearing does not indicate that he had the necessary understanding. Was Mr. Heckard's guilty plea entered in violation of his Fourteenth Amendment right to due process?

**ISSUE 3:** A guilty plea is not knowing, intelligent, and voluntary if the accused does not understand the constitutional rights s/he is waiving. Here, the court did not engage Mr. Heckard in any colloquy about his waiver of the rights associated with a jury trial. Did Mr. Heckard's guilty plea violate his Sixth and Fourteenth Amendment rights to due process and to a jury trial?

7. The record of the plea hearing does not prove that Mr. Heckard had a complete understanding of the direct consequences of his guilty plea.
8. Mr. Heckard entered his guilty plea without a “meeting of the minds.”

**ISSUE 4:** A guilty plea is invalid unless the pleading party understands all the direct consequences of the plea. When Mr. Heckard pled guilty, he was not advised as to the potential scope of the state’s restitution request. Did his guilty plea violate due process because he did not understand the direct consequences of the plea?

**ISSUE 5:** A knowing, voluntary, and intelligent guilty plea requires a meeting of the minds. Here, the plea agreement states that Mr. Heckard would pay restitution for “Charged Counts and Uncharged Counts,” but did not clarify what uncharged crimes would be encompassed by the court’s restitution order. Does the parties’ disagreement about the meaning of the restitution term render Mr. Heckard’s guilty plea invalid?

9. The trial court erred by accepting Mr. Heckard’s jury waiver without an affirmative showing that he understood all of his rights under Wash. Const. arts. I, §§ 21, 22.

**ISSUE 6:** The state constitutional right to a jury trial is “inviolable” and more extensive than the federal right. Mr. Heckard was not informed of the nature of the state right to a jury trial when he pled guilty. Was Mr. Heckard’s waiver of the state constitutional right to a jury trial invalid?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

The state filed several charges against Alan Heckard. After some plea negotiations, the state agreed to dismiss all but one count of Extortion in exchange for a plea of guilt. The three-page written offer filed by the prosecution indicated that Mr. Heckard was to pay restitution for charged and uncharged counts. CP 6-8. The plea form itself indicated “restitution to be determined.” CP 12.

The court reviewed the plea with Mr. Heckard before accepting it. No mention was made of restitution at all. RP (4/26/13) 2-13. The crime at issue was defined in the plea document:

by means of a threat to cause bodily injury in the future to the person threatened or to any other person and/or to cause physical damage to the property of a person other than the Defendant, and/or to subject the person threatened to any other person to physical confinement or restraint; did knowingly attempt to obtain or did obtain property or services from the owner thereof, to wit: Leif Walker....”.  
CP 1-2.

The judge did not review the elements of the crime with Mr. Heckard during the colloquy. RP (4/26/13) 2-13.

Mr. Heckard’s written statement was:

On or about March 3, 2013, in Pacific County, Washington, I threatened to cause property damage to the property of Leif Walker. I left the threat on the telephone answering machine. I threatened him that if he didn’t pay me \$3000, I was going to damage his property.

CP 16.

At sentencing, the alleged victim Leif Walker told the judge that Mr. Heckard had committed several crimes in addition to the extortion. RP (5/3/13) 2-7. The judge noted: "Well, I don't know about any other crimes. I'm looking at a plea to Extortion First Degree. That's the only crime that I'm aware of that's -- that's before the Court." RP (5/3/13) 11-12.

Three months later, the court held a restitution hearing. The judge heard testimony from Walker, who described several different sources for damages that he attributed to Mr. Heckard. RP (9/16/13) 2-21, 32-36. He claimed that Mr. Heckard shot out twenty-one windows with a pellet rifle, broke his steel garden cart, damaged his wheelbarrow, cut four tires on a truck and two tires each on two additional vehicles, shot out taillights in a trailer, cut television cables, and damaged cedar siding. RP (9/16/13) 2-15. He admitted that he had not seen Mr. Heckard do all this damage, but alleged that he had witnesses who could establish Mr. Heckard's responsibility. RP (9/16/13) 15-18, 32-36.

Mr. Heckard took the stand at the restitution and denied causing all of the alleged damage. RP (9/16/13) 22-31. Mr. Heckard said that he did not agree to pay for uncharged conduct as part of restitution. RP (9/16/13) 24. He denied responsibility for two of the truck tires, the damage to the

wheelbarrow or garden cart, 18 of the broken windows, the television cable and the shake siding. He admitted only that he had broken three windows and six tires. RP (9/16/13) 22-31.

The prosecutor argued for a total restitution order of \$5279.52. RP (9/16/13) 40. The court ordered \$4279.52. CP 42.

Mr. Heckard timely appealed. CP 44-45.

### **ARGUMENT**

#### **I. MR. HECKARD'S GUILTY PLEA VIOLATED HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.**

##### **A. Standard of Review.**

Constitutional violations are reviewed *de novo*. *McDevitt v. Harbor View Med. Ctr.*, --- Wn.2d ---, 316 P.3d 469, 472 (Wash. 2013). The voluntariness of a guilty plea may be raised for the first time on appeal. *State v. Mendoza*, 157 Wn.2d 582, 589, 141 P.3d 49 (2006); *State v. Walsh*, 143 Wn.2d 1, 4, 17 P.3d 591 (2001). The state bears the burden of proving the validity of a guilty plea. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996).

##### **B. Mr. Heckard must be allowed to withdraw his guilty plea because the record does not affirmatively establish its validity.**

Due process requires an affirmative showing that an accused person's guilty plea is knowing, intelligent, and voluntary. U.S. Const.

Amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969); *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004).

Absent an affirmative showing that a guilty plea is knowing, intelligent, and voluntary, the plea must be vacated. *See, e.g., State v. Sandoval*, 171 Wn.2d 163, 176, 249 P.3d 1015 (2011).

1. The record does not set forth a sufficient factual basis for Mr. Heckard's guilty plea.

The factual basis for a guilty plea must be developed on the record at the time the plea is taken. *State v. S.M.*, 100 Wn. App. 401, 415, 996 P.2d 1111 (2000). The factual basis for a plea is insufficient if it fails to satisfy all the elements of the offense. *State v. R.L.D.*, 132 Wn. App. 699, 706, 133 P.3d 505 (2006). Failure to sufficiently develop facts on the record at the time of a guilty plea requires vacation of the conviction and dismissal of the charge with prejudice. *Id.*

To be guilty of extortion, a person must “*knowingly* [] obtain or attempt to obtain by threat property or services of the owner.” RCW 9A.56.110 (emphasis added).

The factual basis for Mr. Heckard's plea reads as follows:

On or about March 2, 2013 in Pacific County, Washington I threatened to cause property damage to the property of Leif Walker. I left the threat on the telephone answering machine. I threatened him that if he didn't pay me \$3,000 I was going to damage his property.  
CP 16.

The written factual basis for Mr. Heckard's plea did not mention the *mens rea* element. CP 16. The court did nothing at the plea hearing to supplement the factual basis as it was written on the plea form. RP (4/26/13) 2-14. The factual basis for Mr. Heckard's guilty plea is insufficient because it is silent as to an element of the offense. *R.L.D.*, 132 Wn. App. at 706.

Mr. Heckard's guilty plea was not voluntary because it was not supported by a factual basis meeting each of the elements of the offense. *Id.* at 706. Mr. Heckard's plea must be vacated and the charge dismissed with prejudice. *Id.* at 707.

2. The record does not establish that Mr. Heckard made a knowing, intelligent, and voluntary waiver of his trial rights.

A guilty plea is not knowing unless the accused has validly waived the constitutional rights inherent in a trial, including: the privilege against self-incrimination, the right to trial by jury, and the right to confront adverse witnesses. *Boykin*, 395 U.S. at 243; U.S. Const. Amends. V, VI, XIV. A court cannot presume knowing, intelligent, and voluntary waiver of these rights from a "silent record." *Id.*

The court erred by finding that Mr. Heckard' made a knowing, voluntary, and intelligent plea simply because he had gone over the nine-

page plea form with his attorney. The court did not inform Mr. Heckard of his privilege against self-incrimination, right to a jury trial, or right to confront adverse witnesses. RP (4/26/13) 2-14. Likewise, the court did not ask Mr. Heckard whether he understood the rights he was waiving. RP (4/26/13) 2-14. This “silent record” is insufficient to establish that Mr. Heckard waived his constitutional rights. *Boykin*, 395 U.S. at 243.

Mr. Heckard’s guilty plea was not knowing, intelligent, and voluntary. *Boykin*, 395 U.S. 238. The plea must be vacated. *Id.*

3. The record does not establish that the parties reached a meeting of the minds regarding all of the essential terms of the plea agreement.

A knowing, voluntary, and intelligent guilty plea requires a “meeting of the minds.” *Mendoza*, 157 Wn.2d at 590. Two parties have not reached a meeting of the minds if an agreement is silent as to an essential term. *See e.g. Taufen v. Estate of Kirpes*, 155 Wn. App. 598, 606, 230 P.3d 199 (2010).

The written plea agreement filed with the court indicated that restitution would include “Charged Counts and Uncharged Counts.” CP 8. The agreement did not specify what was meant by “uncharged counts.” CP 8.

At the restitution hearing, the state did not allege that the parties had specifically agreed on the scope of restitution. RP (9/16/13) 2-47.

Mr. Heckard argued vociferously that he had not agreed to pay restitution for the numerous expenses submitted by the state. RP (9/16/13) 15-17, 22-31, 38-39, 41.

The “uncharged counts” language is too vague to establish what the state contemplated when it made the plea offer, or what Mr. Heckard thought he was agreeing to when he pled guilty. The phrase “uncharged counts” could be interpreted to mean only those charges that had been dismissed as part of the plea agreement. It could also be interpreted to include any damage caused by Mr. Heckard, regardless of whether or not charges had ever been filed. The language could also be read to include damage caused by other persons during the relevant timeframe, or restitution for uncharged conduct years in Mr. Heckard’s past.

The parties did not reach a meeting of the minds. Mr. Heckard’s guilty plea was not knowing, intelligent, and voluntary *Mendoza*, 157 Wn.2d at 590. The guilty plea must be vacated. *Id.*

4. The record does not establish that Mr. Heckard understood the direct consequences of his guilty plea.

An accused person must understand all of the direct consequences of a guilty plea. *State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011). Restitution is a direct consequence of a guilty plea. *State v. Tracy*, 73 Wn. App. 386, 388, 869 P.2d 425 (1994). Ordinarily, restitution

requires “the existence of a causal relationship between the crime charged and proven and the victim's damages.” *State v. Dauenhauer*, 103 Wn. App. 373, 378, 12 P.3d 661 (2000). The scope of restitution may be broadened when the accused person enters “a guilty plea with an express agreement... to pay restitution for crimes for which the defendant was not convicted.” *Id.*

In this case, Mr. Heckard’s statement on plea of guilty does not contain an express agreement to pay restitution for uncharged crimes.<sup>1</sup> CP 9-17. Neither the court nor the parties mentioned the issue at the plea hearing. RP (4/26/13) 2-14. Although Mr. Heckard signed the written plea agreement (which sets forth the “uncharged counts” language), the record does not establish that he read the document before signing, or that his attorney explained its terms.<sup>2</sup> CP 6-8; RP (4/26/13) 2-14.

Under these circumstances, the record does not establish that Mr. Heckard understood a direct consequence of his guilty plea. The record does not show that he understood he’d be required to pay restitution for charges in addition to first-degree extortion.

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<sup>1</sup> The statement on plea of guilty indicates, *inter alia*, that “the prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.” CP 9-13. The plea agreement is not attached to the statement.

<sup>2</sup> In fact, the plea agreement itself does not include language indicating that Mr. Heckard reviewed it before signing.

Mr. Heckard must be allowed to withdraw his guilty plea.

*Sandoval*, 171 Wn.2d at 176. In the alternative, the restitution order must be vacated. *Tracy*, 73 Wn. App. at 389.

**II. MR. HECKARD’S GUILTY PLEA WAS ENTERED IN VIOLATION OF HIS STATE CONSTITUTIONAL RIGHT TO A JURY TRIAL.**

A. Standard of Review.

Constitutional questions are reviewed *de novo*. *McDevitt*, 316 P.3d at 472.

B. The state constitutional right to a jury trial is broader than its federal counterpart.

The right to a jury trial under the Washington State Constitution is broader than the federal right.<sup>3</sup> *See, e.g., City of Pasco v. Mace*, 98 Wn.2d 87, 97, 653 P.2d 618 (1982). Because the right is broader and more highly valued under the state constitution, a waiver of the state constitutional right must be examined more carefully than a waiver of the corresponding federal right.<sup>4</sup>

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<sup>3</sup> The Sixth Amendment to the U.S. Constitution (applicable to the states through the Fourteenth Amendment) guarantees a criminal defendant the right to a jury trial. U.S. Const. Amend. VI; U.S. Const. Amend. XIV; *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

<sup>4</sup> Waiver of the federal jury trial right must be made knowingly, intelligently and voluntarily; the waiver must either be in writing, or done orally on the record. *State v. Treat*, 109 Wn. App. 419, 427-428, 35 P.3d 1192 (2001); *see also Taylor v. Illinois*, 484 U.S. 400, 418 n. 24, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988).

- C. Waiver of the state constitutional right to a jury trial requires affirmative evidence that the accused person had a complete understanding of the right.

The scope of a provision of the state constitution is determined with respect to the six nonexclusive factors set forth in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). Under *Gunwall*, waiver of the state constitutional right to a jury trial is valid only if the record shows that the defendant is fully aware of the meaning of the state constitutional right. This includes (among other things) an understanding of the right to participate in the selection of jurors, the right to a fair and impartial jury, the right to a jury of twelve, the right to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.

10. The language of the state constitution.

The constitution provides that “[t]he right of trial by jury shall remain inviolate.” Art. I, § 21. The strong, simple, direct, and mandatory language (“shall remain inviolate”) implies a high level of protection. The provision requires strict attention to the rights of individuals. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711 (1989).

Furthermore, the provision allows the legislature to authorize waivers in civil cases, but does not mention waiver in criminal cases. This suggests that the jury right in criminal cases must be stringently protected. In

keeping with this, a separate provision protects the right to a jury trial in criminal cases. Art. I, § 22.

11. Significant differences in the texts of parallel provisions of the federal and state constitutions.

The provision declaring the jury trial right “inviolable” and limiting the legislature’s ability to authorize waiver of the right has no federal counterpart. Wash. Const. art. I, § 21. This difference is significant. *Mace*, 98 Wn.2d at 99-100.

12. Common law and state constitutional history.

The constitution “preserves the [jury trial] right as it existed at common law in the territory at the time of its adoption.” *Mace*, 98 Wn.2d at 96. In 1889, when the state constitution was adopted, an accused person could not waive trial by jury in felony cases.<sup>5</sup> This tradition was rooted in the common law. *Harris v. People*, 128 Ill. 585, 590-591 (Ill. 1889) (citing 4 Black. Com. 349; 1 Chitty’s Crim. Law, 505; 2 Hale’s Pleas of the Crown, 161; Bacon’s Abridg. tit. Juries, A.; 2 Bennett & Heard’s Lead.

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<sup>5</sup> See e.g., *State v. Lockwood*, 43 Wis. 403, 405 (1877) (“The right of trial by jury, upon information or indictment for crime, is secured by the constitution, upon a principle of public policy, and cannot be waived”); *State v. Larrigan*, 66 Iowa 426 (1885); *Cordway v. State*, 25 Tex. Ct. App. 405, 417 (1888) (A defendant “may waive any... right except that of trial by jury in a felony case”); *United States v. Taylor*, 11 F. 470, 471 (C.C.Kan. 1882) (“This is a right which cannot be waived, and it has been frequently held that the trial of a criminal case before the court by the prisoner’s consent is erroneous”); *United States v. Smith*, 17 F. 510, 512 (C.C.Mass. 1883) (“The district judges in this district have thought that it goes even beyond the powers of congress in permitting the accused to waive a trial by jury, and have never consented to try the facts by the court...”)

Cas. 327) *overruled in part by People ex rel. Swanson v. Fisher*, 340 Ill. 250 (1930).

The constitutional prohibition against waiver of the jury right was thought to be based in “the soundest conception of public policy.” *State v. Carman*, 63 Iowa 130, 131 (1884). It was also viewed as a natural limitation on an accused person’s power to shape the proceedings. *Territory v. Ah Wah*, 4 Mont. 149, 168-173 (1881) (“[T]he prisoner’s consent cannot change the law. His right to be tried by a jury of twelve men is not a mere privilege; it is a positive requirement of the law...”)  
(citations and internal quotation marks omitted).

Although the territorial legislature enacted a statute allowing the parties in a criminal case to waive jury,<sup>6</sup> this experiment did not survive the passage of the constitution. The framers did not include language permitting the legislature to provide for waivers in criminal cases. Instead, they adopted the language of art. I, § 21, which allowed the legislature to permit waiver only in civil cases.<sup>7</sup>

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<sup>6</sup> Laws of Washington, Chapter 23, Section 249 (1854-1862).

<sup>7</sup> Furthermore, the 1854 statute was repealed by the adoption of Wash. Const. art. I, § 21, because the statute was repugnant to that provision of the constitution. *See* Wash. Const. art. XXVII, § 2 (“All laws now in force in the Territory of Washington, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature...”)

Prior to 1889, the U.S. Supreme Court had ruled that “every reasonable presumption should be indulged against [a] waiver” of the fundamental right to a jury trial. *Hodges v. Easton*, 106 U.S. 408, 412, 1 S.Ct. 307, 27 L.Ed. 169 (1882). Even by 1900 there was still disagreement in Washington on whether or not a defendant could waive her or his right to a jury trial. *See State v. Ellis*, 22 Wash. 129, 60 P. 136 (1900), *overruled in part by State v. Lane*, 40 Wn.2d 734, 246 P.2d 474 (1952).

These authorities suggest that the drafters of the constitution would have been loathe to permit a casual waiver of this important right.

### 13. Pre-existing state law.

The fourth *Gunwall* factor “directs examination of preexisting state law, which ‘may be responsive to concerns of its citizens long before they are addressed by analogous constitutional claims.’” *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 809, 83 P.3d 419 (2004) (quoting *Gunwall*, 106 Wn.2d at 62).

As noted previously, the Territorial Legislature provided for jury waivers in noncapital criminal cases. Laws of Washington, Chapter 23, Section 249 (1854-1862). A similar statute (RCW 10.01.060) remains in effect, and is echoed in CrR 6.1. None of these authorities outline the requirements for such a waiver.

Historically, defendants were statutorily prohibited from waiving jury. *State v. Karsunky*, 197 Wash. 87, 84 P.2d 390 (1938); *State v. McCaw*, 198 Wash. 345, 88 P.2d 444 (1939). Subsequently, the Court held that a defendant could waive the right to a jury trial by pleading guilty. *Brandon v. Webb*, 23 Wn.2d 155, 160 P.2d 529 (1945). It was not until 1966 that the Supreme Court recognized that a defendant could waive jury and proceed to trial. *State v. Forza*, 70 Wn.2d 69, 70-71, 422 P.2d 475 (1966).

Preexisting state law confirms that the Washington Constitution places a high value on the right to a jury trial.

14. Differences in structure between the federal and state constitutions.

This factor always weighs in favor of an independent state constitutional analysis. *State v. Young*, 123 Wn.2d 173, 180, 867 P.2d 593 (1994).

15. Matters of particular state interest or local concern.

The protection afforded a criminal defendant contemplating a waiver of state constitutional rights in state court is a matter of state concern. There is no need for national uniformity on the issue. *See State v. Smith*, 150 Wash.2d 135, 152, 75 P.3d 934 (2003).

16. Conclusion: all six *Gunwall* factors favor Mr. Heckard's interpretation of the state constitutional right to a jury trial, and impose a heavy burden when the state seeks to show a waiver.

All six *Gunwall* factors favor an independent application of art. I, §§ 21, 22 of the Washington constitution in this case. Each factor establishes that our state constitution provides greater protection to criminal defendants than does the federal constitution. To sustain a waiver, a reviewing court must find in the record proof that the defendant fully understood the right under the state constitution—including the right to participate in selecting jurors, the right to a fair and impartial jury, the right to a jury of twelve, the right to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.<sup>8</sup>

D. The record does not affirmatively establish that Mr. Heckard waived his state constitutional right to a jury trial with a full understanding of the right.

Mr. Heckard’s statement on plea of guilty referred to a “speedy and public trial by an impartial jury.” CP 9. It did not make any reference

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<sup>8</sup> Division II has previously held that *Gunwall* analysis does not apply to waiver of state constitutional rights: “*Gunwall* addresses the extent of a right and not how the right in question may be waived.... The issue here is waiver. Although Washington’s constitutional right to a jury trial is more expansive than the federal right, it does not automatically follow that additional safeguards are required before a more expansive right may be waived.” *State v. Pierce*, 134 Wn. App. 763, 770-773, 142 P.3d 610 (2006) (citations omitted). *Pierce* should be reconsidered. Although “it does not *automatically* follow that additional safeguards are required,” *Gunwall* provides the appropriate framework for determining when such additional safeguards are required. *Pierce*, 134 Wn. App. at 773. The *Pierce* court did not articulate *any* test for determining the requisites of a valid waiver under the state constitution. Because *Pierce* fails to outline any test for determining the validity of a state constitutional right, it should be reconsidered.

to his right to participate in selecting jurors, his right to a fair and impartial jury, his right to a jury of twelve people, or his right to a unanimous verdict. Nor did the court's colloquy with Mr. Heckard address these rights. *See* RP (4/26/13) 2-14.

In the absence of an affirmative showing that Mr. Heckard fully understood his state constitutional right to a jury trial, his guilty plea is invalid. The case must be remanded to the trial court to allow him to withdraw his plea.

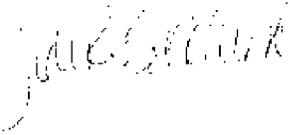
### **CONCLUSION**

Mr. Heckard's guilty plea was not knowing, intelligent, and voluntary. The plea does not set forth sufficient factual basis for the charge. The record does not establish that he understood the constitutional rights he was waiving. He was not advised that he would be required to pay restitution for uncharged conduct. The court must permit Mr. Heckard to withdraw his guilty plea.

Additionally, the state constitutional right to a jury trial is more extensive than the federal right. The court did not advise Mr. Heckard of the nature of the state right he was waiving. Mr. Heckard must be permitted to withdraw his guilty plea.

Respectfully submitted on February 18, 2014,

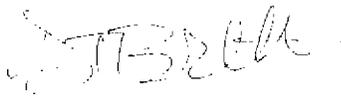
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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Alan Heckard, DOC #873755  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584

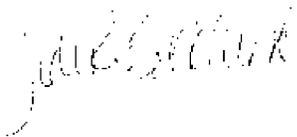
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pacific County Prosecuting Attorney  
dburke@co.pacific.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on February 18, 2014.



Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

# BACKLUND & MISTRY

**February 18, 2014 - 1:45 PM**

## Transmittal Letter

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