

No. 45377-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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**STATE OF WASHINGTON,**

Respondent,

v.

**ALAN HECKARD,**

Appellant.

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Pacific County Superior Court Cause No. 13-1-00038-3  
The Honorable Judge Michael J. Sullivan

**STATE'S REPLY BRIEF**

DAVID BURKE  
PACIFIC COUNTY PROSECUTOR'S OFFICE  
P.O. BOX 45  
SOUTH BEND, WASHINGTON 98586  
(360) 875-9361

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A.

**STATE'S RESPONSE TO APPELLANT'S  
ISSUES AND ASSIGNMENTS OF ERROR**

1. Mr. Heckard's guilty plea was not entered in violation of his Fourteenth Amendment right to due process.
2. The trial court did not err by accepting Mr. Heckard's guilty plea.
3. The trial court did not lack an adequate factual basis for Mr. Heckard's guilty plea.

**State's Response to Appellant's Issue No. 1:** Mr. Heckard's plea statement implies that he knowingly attempted to extort property from the victim, Mr. Walker. Thus, no constitutional violation occurred; Mr. Heckard should not be allowed to withdraw his guilty plea.

4. The record establishes that Mr. Heckard entered a knowing, intelligent, and voluntary guilty plea.
5. The record of the plea hearing shows that Mr. Heckard understood the elements that embody first-degree extortion.
6. The record of the plea hearing shows that Mr. Heckard understood the elements of the charged crime and the facts alleged by prosecution.

**State's Response to Appellant's Issue No. 2:** The record of Mr. Heckard's plea hearing indicates that Mr. Heckard's attorney thoroughly discussed with Mr. Heckard the Plea Agreement and the Statement of Defendant on Plea of Guilty. In addition, the colloquy on the record establishes that Mr. Heckard's plea did not violate Mr. Heckard's right to due process.

**State's Response to Appellant's Issue No. 3:** Mr. Heckard's Statement of Defendant on Plea of Guilty complied with CrR 4.2(g). The Statement of Defendant on Plea of guilty advised Mr. Heckard of his right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed. Therefore, Mr. Heckard's guilty plea did

not violate Mr. Heckard's Sixth and Fourteenth Amendment rights to due process and to a jury trial.

7. The record of the plea hearing shows that Mr. Heckard understood the direct consequences of his guilty plea.
8. Mr. Heckard understood the details of his plea bargain with the State when he entered his guilty plea.

**State's Response to Appellant's Issue No. 4:** When Mr. Heckard pled guilty, he was advised of the potential scope of the State's restitution request. The State indicated that it would seek restitution for "Charged Counts and Uncharged Counts." Mr. Heckard's plea did not violate his right to due process; Mr. Heckard understood the direct consequences of his guilty plea.

**State's Response to Appellant's Issue No. 5:** The State indicated on the Plea Agreement that it intended to seek restitution for "Charged Counts and Uncharged Counts." This language is not so ambiguous as to invalidate any part of Mr. Heckard's guilty plea.

9. The trial court did not err by accepting Mr. Heckard's jury waiver without engaging in colloquy about Mr. Heckard's rights under Wash. Const. arts. section 21, 22.

**State's Response to Appellant's Issue No. 6:** While the State constitutional right to a jury trial is more extensive than the federal right, this enhanced right does not extend to the question of a waiver of this right. Therefore, pursuant to State v. Pierce, 134 Wash. App. 763, 142 P.3d 610 (2006), Mr. Heckard experienced no deprivation of a State constitutional right; Mr. Heckard's guilty plea was not invalid.

**B.**

**STATEMENT OF THE CASE**

The State filed several charges against Mr. Alan Heckard stemming from an incident that occurred on or about March 3, 2013. Mr. Heckard threatened to damage property belonging to Leif Walker if Mr. Walker did not pay Mr. Heckard \$3000.00. See Appendix No. A, Plea Agreement. After plea negotiations, the parties agreed that Mr. Heckard would plead guilty to one count of Extortion in the First Degree, a “strike” offense under the State’s “three strikes” law. The standard range sentence for Mr. Heckard was 13 to 17 months, but the parties jointly agreed to recommend an exceptional sentence downward of twelve months plus one day. The plea agreement indicated that Mr. Heckard would be responsible for restitution for “Charged Counts and Uncharged Counts.” See Appendix No. A.

At the plea hearing on April 26, 2013, Mr. Heckard’s attorney, David Hatch, indicated that he had reviewed with Mr. Heckard the Plea Agreement, The Statement of Defendant on Plea of Guilty, and the Waiver of Apprendi Right. RP (4/26/13) at 1. See Appendix B, Statement of Defendant on Plea of Guilty. Mr. Hatch also indicated on the record that he had explained the consequences of a “strike” offense to Mr. Heckard. RP (4/26/13) at 1-2. Mr. Heckard indicated that he had clearly heard what

his attorney had told the court. RP (4/26/13) at 2. Mr. Heckard told the court that he had enough time to ask his attorney all the questions that he wanted to ask and that he had received answers to his questions. Id. Mr. Heckard also indicated that he signed The Statement of Defendant on Plea of Guilty based on his own free will. RP (4/26/13) at 3. The court then apprised Mr. Heckard of his legal financial obligations under the Plea Agreement. RP (4/26/13) at 3-4. The court told Mr. Heckard that he would be going to prison and that he would be subject to 12 months of community custody RP (4/26/13) at 4,8. The court also informed Mr. Heckard that he would lose his right to possess firearms and that he would lose his right to vote. RP (4/26/13) at 5-6, 8. Mr. Heckard indicated that no one had coerced or threatened him to plead guilty RP (4/26/13) at 8.

At sentencing on May 3, 2013, the court imposed the sentence that had been recommended in the Plea Agreement. See Appendix No. C, Judgment and Sentence. Mr. Heckard received a prison term of 12 months plus one day. He was ordered to serve 12 months of community custody. The issue of restitution was deferred until a future date.

A restitution hearing was held on August 16, 2013. The court heard testimony from the victim, Mr. Walker, who described several different sources for damages that he attributed to Mr. Heckard. RP (8/16/13) at 2-21, 31-35. 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. Mr. Heckard denied causing all of the alleged damage. RP (8/16/13) at 22-31. Mr. Heckard said that he did not agree to pay for uncharged conduct as part of restitution. RP (8/16/13) at 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 (8/16/13) at 22-31.

The prosecutor argued for a total restitution order of \$5279.52. RP (8/16/13) 40. The court ordered \$4279.52. See Appendix No. D, Restitution Order.

### C.

#### ARGUMENT

1. **Mr. Heckard's guilty plea did not violate his Fourteenth Amendment right to due process.**
  - a. **Standard of Review.**

Mr. Heckard did not move to withdraw his guilty plea at the trial court level, but he requests this remedy for the first time on appeal. The Court

of Appeals may consider an argument raised for the first time on appeal where the Appellant raises a “manifest error affecting a constitutional right.” RAP 2.5(a)(3). When the voluntariness of a plea is at issue, the matter can be raised for the first time on appeal. State v. Walsh, 143 Wash.2d 1, 6, 17 P.3d 591 (2001). In deciding whether a manifest error has occurred, the court must determine whether there is a showing of actual prejudice. Id. at 8. “The court previews the merits of the claimed constitutional error to determine whether the argument is likely to succeed.” Id.

While the State bears the burden of proving the validity of a guilty plea, State v. Ross, 129 Wash.2d 279, 287, 916 P.2d 405 (1996), a defendant must meet a demanding standard to demonstrate a manifest injustice, i.e., “an injustice that is obvious, directly observable, overt, not obscure.” State v. Taylor, 83 Wash.2d 594, 596, 521 P.2d 699 (1974). “A written statement on plea of guilty in compliance with CrR 4.2(g) provides prima facie verification of its constitutionality, and when the written plea is supported by a court’s oral inquiry on the record, ‘the presumption of voluntariness is well-nigh irrefutable.’” State v. Davis, 125 Wash.App. 59, 68, 104 P.3d 11 (2004) (quoting State v. Perez, 33 Wash.App. 258, 261-262, 654 P.2d 708 (1982)).

- b. **Mr. Heckard should not be allowed to withdraw his guilty plea.**

Due process mandates that a guilty plea must be knowing, voluntary, and intelligent. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1209, 23 L.Ed.2d 274 (1969); In Re Pers. Restraint of Stoudmire, 145 Wash.2d 258, 266, 36 P.3d 1005 (2001). The record in this case does not show that Mr. Heckard's guilty plea was anything but knowing, intelligent and voluntary. The Appellant asserts that there was not a factual basis for the guilty plea. Appellant's Brief at 6-9. In particular, the Appellant argues that the factual basis for the plea was insufficient because there was no showing that Mr. Heckard knowingly attempted to obtain by threat property or services of the owner.

This argument is specious. The Plea Statement that Mr. Heckard entered 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.

See Appendix A, Plea Statement.

While this statement does not use the word "knowingly," it is obvious that this statement implies knowledge on the part of Mr. Heckard. Mr. Heckard's statement contains language that he acted intentionally. Acting intentionally presumes that a person acted with knowledge of his actions. See WPIC 10.02. The Appellant's reference to State v. R.L.D.,

132 Wash.App. 699, 133 P.3d 505 (2006), is misplaced. Appellant's Brief at 7. R.L.D. involved a situation where there was insufficient evidence to support a theft conviction involving a car, because the State could not show that the respondent had dominion and control over the motor vehicle. The facts in the present case are qualitatively different. Mr. Heckard's Plea Statement encompasses all of the elements that are necessary to sustain a conviction for Extortion in the First Degree. Since there was a sufficient factual basis for the guilty plea, Mr. Heckard should not be allowed to withdraw his plea based on insufficient factual record.

Similarly, the court did not err in taking Mr. Heckard's guilty plea. The Appellant complains that there is a silent record which is "insufficient to establish that Mr. Heckard waived his constitutional rights." Appellant's Brief at 8. The Appellant takes issue with the fact that "[t]he court did not inform Mr. Heckard of his privilege against self-incrimination, right to a jury trial, or right to confront adverse witnesses." Id. While the court did not specifically refer to these rights orally in court, these rights were listed on the Statement of Defendant on Plea of Guilty. Moreover, the court engaged in the following colloquy with Mr. Heckard:

THE COURT: Thank you. Did you sign this document?  
[Statement on Defendant of Plea of Guilty]

THE DEFENDANT: Yes, sir.

THE COURT: Okay, thank you. Did you sign this document of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Did you sign only after you reviewed it with your attorney so you knew what you were signing?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you. Now, there's a paragraph – because this is a strike offense, on page five of nine there's a paragraph, paragraph (n), lower case (n) as in “number” that you initialed that talks about the strike offense. Do you remember reading that paragraph –

THE DEFENDANT: Yes, sir.

THE COURT: -- with your attorney or your attorney reviewed it for you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about that strike offense?

THE DEFENDANT: No.

THE COURT: Would you ask if you did?

THE DEFENDANT: Yes.

THE COURT: Thank you. Paragraphs that are crossed off obviously don't apply to you. Is that also your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you. There's a paragraph on page 11 that states, “In your own words, what makes you guilty of this crime?” You initialed that paragraph. Do you remember doing that?

THE DEFEDANT: Yes, sir.

THE COURT: Very well. Do you understand that paragraph?

THE DEFENDANT: Yes, sir.

THE COURT: Are you adopting that paragraph, each word as if you wrote it yourself? Because your attorney wrote it for you, correct?

THE DEFENDANT: Right.

THE COURT: Okay, and he read it to you?

THE DEFENDANT: Yes, sir.

THE COURT: And reviewed it so – so – did you understand it?

THE DEFENDANT: Yes.

THE COURT: Very well. So by initialing it – that's what I'm saying, by initialing it, it means that you're accepting that paragraph as if you wrote it yourself; that it's accurate and true. Is that your – is that –

THE DEFENDANT: Yes, sir.

THE COURT: Very well. Thank you. Did you read this document, your attorney read it to you, or both?

THE DEFENDANT: Both.

THE COURT: Thank you.

RP (4/26/13) at 8-11.

It is particularly noteworthy that the court asked Mr. Heckard if he signed the Statement on Plea of Guilty only after he had reviewed it with his attorney so that he knew what he was signing. Mr. Heckard responded

“yes sir.” RP (4/26/13) at 9. Also, Mr. Heckard indicated that he had read the Statement on Defendant on Plea of Guilty and that his attorney had read this document to him. RP (4/26/13) at 11. In this instance, the court orally inquired as to whether Mr. Heckard knew what was contained in the Statement on Defendant on Plea of Guilty. The court on the record went over with Mr. Heckard the most salient provisions. Mr. Heckard signed the Statement on Defendant on Plea of Guilty which complied with CrR 4.2(g) and acknowledged that he knew what he was signing. Under such circumstances, Mr. Heckard’s guilty plea passes constitutional muster. See In Re Pers. Restraint of Keene, 95 Wash.2d 203, 206-207, 622 P.2d 360 (1980); State v. Perez, 33 Wash.App. 258, 261-262, 654 P.2d 708 (1982); and State v. Hystad, 36 Wash.App. 42, 45, 671 P.2d 793 (1983). Mr. Heckard’s guilty plea should not be vacated.

Next, the Appellant contends that the parties did not reach a “meeting of the minds” regarding all of the essential terms of the plea agreement. Appellant’s Brief at 8. In particular, the Appellant asserts that there was no agreement concerning restitution because the plea agreement states that restitution would include “Charged Counts and Uncharged Counts,” but it does not indicate what was meant by “uncharged counts.” Appellant’s Brief at 8-9. Although the colloquy on the record pertaining to the Plea Agreement does not specifically mention restitution, the

colloquy does demonstrate that Mr. Heckard knew the parameters of his plea bargain. At the outset, Mr. Heckard's attorney, David Hatch, indicated that he had reviewed the Plea Agreement with Mr. Heckard RP (4/26/13) at 1. The trial court then engaged in the following discussion with Mr. Heckard:

THE COURT: Thank you. Mr. Heckard, did you hear everything clearly that your attorney just told the court?

THE DEFENDANT: Yes, sir.

THE COURT: Did you have enough time to ask your attorney all the questions you wanted to ask?

THE DEFENDANT: Yes, sir.

THE COURT: Did you receive answers to your questions?

THE DEFENDANT: Yes.

THE COURT: Did you sign the Plea Agreement? It's the deal you reached with the State. Did you sign that?

THE DEFENDANT: Yes, sir.

THE COURT: And did you sign your signature, did you sign of your own free will?

THE DEFENDANT: Yes.

RP (4/26/13) at 2-3. When the court asked Mr. Heckard whether he wanted the court to review the rest of the agreement, Mr. Heckard responded by saying that he remembered most of it. RP (4/26/13) at 3. The court then reviewed the following aspects of the Plea Agreement:

1. The legal financial obligations that Mr. Heckard would owe (not including potential restitution), and the payment schedule to which Mr. Heckard would be subject;
2. The recommended sentence of 12 months plus one day which was a downward departure from the standard range of 13-17 months;
3. The period of community custody that Mr. Heckard would serve;
4. The prohibition against the possession, ownership or control of firearms;
5. The fact that the offense constitutes a “strike” under the Persistent Offender Accountability Act;
6. The waiver Apprendi right; and
7. The loss of the right to vote.

RP (4/26/13) at 3-8.

The Appellant focuses on the various meanings that could be ascribed to the phrase “uncharged counts.” Appellant’s Brief at 9. However, a reasonable reading of “uncharged counts” would limit the scope to matters addressed in the police reports associated with this case. While it would have been preferable to have listed the relevant police case files in the Plea Agreement, this requirement is not mandated under the holdings in State v. Kinneman, 155 Wash.2d. 272, 286, 119 P.3d 350

(2005); State v. Woods, 90 Wash.App. 904, 907-908, 953 P.2d 834 (1998); and State v. Miszak, 69 Wash.App. 426, 428, 848 P.2d 1329 (1993). All that is required is that a defendant must expressly agree to pay restitution for crimes for which the defendant was not convicted. And that is exactly what happened in this case. Mr. Heckard agreed to pay restitution for “Uncharged Counts.” In this vein, it is important to note that the Plea Agreement refers to “Uncharged Counts” rather than “Uncharged Crimes.” By referring to the word “counts” rather than “crimes” the Plea Agreement should be construed to limit the potential restitution award to matters addressed in the relevant police reports pertaining to the guilty plea of Extortion in the First Degree. Thus, the language in the Plea Agreement and in the associated colloquy on the record does not render plea so vague as to merit vacating Mr. Heckard’s guilty plea.

Finally, Mr. Heckard argues that he should be allowed to withdraw his guilty plea because he did not understand the restitution language in the Plea Agreement. Appellant’s Brief at 9-11. According to Mr. Heckard, since restitution is a direct consequence of a guilty plea, State v. Tracy, 73 Wash.App. 386, 388, 869 P.2d 425 (1994), his misunderstanding with regard to restitution is a sufficient ground to allow him to withdraw his guilty plea. Mr. Heckard asserts that the record does

not show that he read the Plea Agreement before signing this document or that his attorney explained its terms. Appellant's Brief at 10. This assertion is incorrect. During the plea colloquy, Mr. Heckard's attorney, David Hatch, indicated that he reviewed the Plea Agreement, the Statement on Defendant of Plea of Guilty and the Waiver of Apprendi right with Mr. Heckard. RP (4/26/13) at 1. The record also indicates that Mr. Heckard affirmatively told the trial court that he had enough time to ask his attorney all the questions he wanted to ask and that he received answers to his questions. RP (4/26/13) at 2. This oral record, along with the fact that Mr. Heckard's plea of guilty complies with CrR 4.2(g), provides sufficient information to sustain the constitutionality of Mr. Heckard's guilty plea.

In short, no due process violation occurred in this case. See State v. Raleigh, 50 Wash.App. 248, 253, 748 P.2d 267 (1988) ("Before entering a plea of guilty, the defendant must be advised of all the direct consequences of his plea, including the possibility of restitution"). Because Mr. Heckard was apprised of the possibility of restitution prior to entering his guilty plea, his argument fails.<sup>1</sup>

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<sup>1</sup> Pursuant to the holding in Tracy, when there is a failure to advise a defendant of the possibility of restitution, the appropriate remedy is to strike the order of restitution. 73 Wash.App. at 389. Thus, Mr. Heckard's

**2. Mr. Heckard's guilty plea was not entered in violation of his State constitutional right to a jury trial.**

Mr. Heckard asserts that the State constitutional right to a jury trial is broader than its federal counterpart. Appellant's Brief at 11. Pursuant to the holding in City of Pasco v. Mace, 98 Wash.2d. 87, 99, 653 P.2d 618 (1982), the State agrees with the Appellant's statement. However, the Appellant then proceeds to analyze the six factors listed in State v. Gunwall, 106 Wash.2d. 54, 720 P.2d 808 (1986), in an effort to show that Mr. Heckard's State constitutional right to a jury trial was violated. Appellant's Brief at 12-18. Unfortunately for the Appellant, this claim already has been rejected in State v. Pierce, 134 Wash.App. 763, 142 P.3d 610 (2006). Pierce specifically held that no Gunwall analysis is necessary because "Gunwall addresses the extent of a right and not how the right in question may be waived." Pierce, 134 Wash.App. at 773. Pierce rejected the notion that additional safeguards must be put in place before a more expansive right can be waived. Id. Since the issue raised by the Appellant has been squarely rejected by Division II of the Court of Appeals, the State urges the Court of Appeals to decline the Appellant's invitation to

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argument pertaining to his purported confusion with regard to restitution does not provide a basis for allowing the withdrawal of his guilty plea.

relitigate this issue. The State constitutional claim raised by the Appellant should be denied pursuant to the holding in Pierce.

**D.**

**CONCLUSION**

For the reasons delineated above, Mr. Heckard should not be allowed to withdraw his guilty plea. The relief requested by Mr. Heckard should be denied. The judgment and sentence of the trial court including the restitution order should be upheld.

Respectfully submitted this 18<sup>th</sup> day of April, 2014.

*David J. Burke*

DAVID J. BURKE, WSBA#16163  
Pacific County Prosecuting Attorney

APPENDIX A

FILED

2013 APR 26 PM 3: 28

CLERK OF SUPERIOR COURT  
PACIFIC COUNTY, WA  
DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON,

Plaintiff

Case No. **13-1-00038-3**

vs.

PLEA AGREEMENT

ALAN J. HECKARD,

Defendant.

**I. PLEA AGREEMENT**

The State of Washington and the above 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:

1.1 PLEA: The defendant shall plead guilty to Count(s) I- **EXTORTION IN THE FIRST DEGREE.**

1.2  SPECIAL FINDING: The defendant agrees that there should be a special finding pursuant to RCW 9.94A.533(3)(a) for use of a firearm on Count I. \_\_

1.3  DISMISS: **COUNTS II - IV** Upon disposition of the above Count(s) the State moves to dismiss.

1.4  CRIMINAL HISTORY: The defendant agrees that the attached Prosecutor's Statement of Defendant's Criminal History is accurate, and that the defendant was represented by counsel or waived counsel at the time of each prior conviction.

1.5  SENTENCING DATA: The defendant agrees that the attached Sentencing Data in Paragraph 2.2 of Appendix B is accurate.

1.6  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties agree that the court, in sentencing, may consider as real and material facts, the information set forth in Paragraph 1.6 of Appendix B is attached.

1.7  OTHER: \_\_\_\_\_

PLEA AGREEMENT

27

- 1 1.8  SENTENCE RECOMMENDATION:  
2 (a) The State makes the following recommendation:  
3  Court costs \$ **200.00**  
4  Confinement: 12 MONTHS AND 1 DAY SENTENCE AS OUTLINED BELOW:  
5       COUNT I – **AGREED EXCEPTIONAL SENTENCE DOWNWARD 12 MONTHS**  
6       **AND 1 DAY**  
7  Forfeit the firearm used in the commission of the offense.  
8  \_\_\_ days of jail time converted to \_\_\_ hours of community service work.  
9  Collection Fee \$ \_\_\_\_\_  
10  Community custody: **12 MONTHS**  
11  Victim/Witness Assessment: **\$500.00**  
12  Public Defender Fee : **\$250.00**  
13  Mandatory Drug Fine  
14  First time offender waiver.  
15  Special sexual offenders sentencing.  
16  Exceptional Sentence  
17  DNA Mandatory **\$100.00**  
18  ~~Lab Fee RCW 43.43.690 \$~~  
19       **Total: 1,050.00**  
20  Prohibition from possession, ownership or control of firearms pursuant to RCW9.41.040.  
21  Predicate offense under RCW 9.94A.030 and RCW 9.94A.570 - Persistent Offender  
22 Accountability Act.  
23  Defendant may lose his driver's license for a period of up to one year.

24 (b)  The defendant disputes the Prosecutor's Statement of Defendant's Criminal History,  
25 and the State makes no agreement with regard to a sentencing recommendation and may make a  
26 sentencing recommendation for the full penalty allowed by law.

27 1.9 The State's recommendation will increase in severity if additional criminal convictions are  
28 found or if the defendant commits any new crime(s), fails to appear for sentencing or violates  
29 the conditions of his or her release.

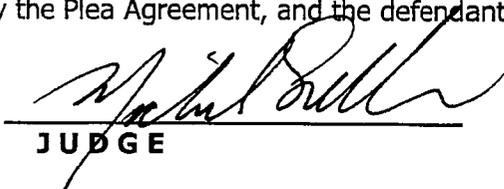
## 30 II. COURT APPROVAL (RCW 9.94A.090)

31 The Court, having reviewed the above Plea Agreement and having heard the statements of counsel  
32 regarding the reasons for the above Plea Agreement, finds:

33 (a)  The Plea Agreement is consistent with the interest of justice and the prosecutorial  
34 standards.

35 (b)  The Plea Agreement is not consistent with the interest of justice and prosecutorial  
36 standards. Neither party is bound by the Plea Agreement, and the defendant may withdraw the plea  
37 of guilty.

38 Date: 4/26/13

  
39 \_\_\_\_\_  
40 JUDGE

1 **2.1 PROSECUTOR'S STATEMENT OF DEFENDANT'S CRIMINAL HISTORY (RCW**  
 2 **9.94A.525):**

| Crime                              | Date of Crime      | Date of Sentence | Sentencing Court (County & State) | A or J Adult, Juv. | Type of Crime | DV* Yes |
|------------------------------------|--------------------|------------------|-----------------------------------|--------------------|---------------|---------|
| 1 DELIVERY OF MARIJUANA (2 COUNTS) | 4/25/08<br>4/29/08 | 11/14/08         | PACIFIC CO                        | A                  |               |         |
| 2 UNLAWFUL POSS FIREARM            | 7/7/04             | 8/6/04           | PACIFIC CO                        | A                  |               |         |
| 3 THEFT 1 <sup>ST</sup>            | 3/31/94            |                  | CLATSOP CO                        | A                  |               |         |
| 4 FELON IN POSS FIREARM            | 2/26/92            |                  | CLATSOP CO                        | A                  |               |         |

8  Prior Convictions counted as one offense in determining the offender score (RCW  
 9 9.94A.360(11)):

10 **2.2 SENTENCING DATA:**

| Count No. | Offender Score | Seriousness Level | Standard Range (not including enhancements) | Plus Enhancements* | Total Standard Range (including enhancements) | Maximum Term       |
|-----------|----------------|-------------------|---|--------------------|---|--------------------|
| I         | 2              | V                 | 13-17 MONTHS                                |                    |   | 10 YRS<br>\$20,000 |

16 **2.3**  Real and material facts establishing elements of a higher crime/more serious crime or  
 17 additional crimes to be considered at sentencing are:

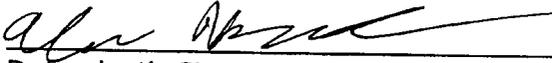
18 **3.1 (a)  RESTITUTION (includes Charged Counts and Uncharged Counts)**

19

| <u>Name</u>      | <u>Address</u> | <u>Amount</u> |
|------------------|----------------|---------------|
| TO BE DETERMINED |                |               |

20

21

22 Date: 4-26-13   
 23 Defendant's Signature

24 Date: 4-26-13   
 25 DAVID HATCH, WSBA#21310  
 26 Attorney for Defendant

27 Date: 4-26-13   
 28 MARK MCCLAIN, WSBA#30909  
 29 Chief Deputy Prosecuting Attorney

30 PLEA AGREEMENT

APPENDIX B

FILED

2013 APR 26 PM 3:28

*[Handwritten signature]*

DEPUTY

|  |           |
|--|-----------|
| <b>Superior Court of Washington<br/>For PACIFIC COUNTY</b> |           |
| <u>State of Washington</u>                                 | Plaintiff |
| vs.  |           |
| <u>ALAN J. HECKARD,</u>                                    | Defendant |

No. 13-1-00038-3

**Statement of Defendant on Plea of Guilty to Non-Sex Offense (Felony) (STTDFG)**

1. My true name is: ALAN J. HECKARD

2. My age is: 47

3. The last level of education I completed was 14<sup>TH</sup>

**4. I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with: EXTORTION IN THE FIRST DEGREE

The elements are: The defendant, ALAN J. HECKARD, on or about March 3, 2013, in the State of Washington, by means of a threat to cause bodily injury in the future to the person threatened or to any other person ad/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: Lief Walker, in violation of RCW 9A.56.120, 9A.56.110 and 9A.04.110(25)(a),(b), or (c).

**5. I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

(a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly 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 hear and question the witnesses who testify against me;

- (d) The right at trial to testify and 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 unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

| COUNT NO. | OFFENDER SCORE | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancements* | COMMUNITY CUSTODY | MAXIMUM TERM AND FINE |
|-----------|----------------|--|--------------------|-------------------|-----------------------|
| 1         | 2              | 13-17 MONTHS   |                    | 12 MONTHS         | 10 YRS<br>\$20,000    |
|           |                |  |                    |                   |                       |
|           |                |  |                    |                   |                       |

\* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude, (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or

double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

[ ] For offenses committed after July 1, 2000 but prior to July 26, 2009, the court may impose a community custody range as follows: for serious violent offenses, 24 to 36 months; for crimes against persons, 9 to 12 months; for offenses under 69.50 and 69.52, 9 to 12 months.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

| OFFENSE TYPE   | COMMUNITY CUSTODY TERM |
|--|------------------------|
| Serious Violent Offenses   | 36 months              |
| Violent Offenses   | 18 months              |
| Crimes Against Persons as defined by RCW 9.94A.411(2)  | <u>12 months</u>       |
| Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)  | 12 months              |
| Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate | 12 months              |

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge: **AGREED EXCEPTIONAL SENTENCE DOWNWARD OF 12 MONTHS AND 1 DAY IN PRISON; \$200 COURT COSTS; \$500 CVC; \$250 PUBLIC DEFENDER FEE; \$100 DNA FEE; RESTITUTION TO BE DETERMINED AND 12 MONTHS COMMUNITY CUSTODY. COUNTS II - IV SHALL BE DISMISSED.**

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm, and under federal law any

firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Government assistance may be suspended during any period of confinement.
- (m) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

**Notification Relating to Specific Crimes: *If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.***

- (n) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- (p) The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.
- (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- (s) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I

will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

- (t) The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

- (u) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

- (v) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).

- \_\_\_\_\_ (w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- \_\_\_\_\_ (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.
- \_\_\_\_\_ (y) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor, or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- \_\_\_\_\_ (z) If I am pleading guilty to felony driving under the influence of intoxicating liquor, or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor, or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with the Department of Licensing ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.
- \_\_\_\_\_ (aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.
- \_\_\_\_\_ (bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, or vehicular assault while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.
- \_\_\_\_\_ (cc) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- \_\_\_\_\_ (dd) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

- \_\_\_\_\_ (ee) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- \_\_\_\_\_ (ff) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- \_\_\_\_\_ (gg) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.
- \_\_\_\_\_ (hh) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- \_\_\_\_\_ (ii) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count I - EXTORTION IN THE FIRST DEGREE DEGREE.

in the Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

ON OR ABOUT MARCH 3, 2013 IN  
PACIFIC COUNTY, WASHINGTON I THREATENED

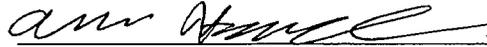
TO CAUSE PROPERTY DAMAGE TO THE  
PROPERTY OF LEIF WOLKON. I LEFT THE

THREAT ON THE TELEPHONE ANSWERING MACHINE.

Statement on Plea of Guilty (Non-Sex Offense) (STDFG) - Page 8 of 9  
CrR 4.2(g) (07/2012) I THREATENED HIM  
THAT IF HE DIDN'T PAY ME \$3,000. I  
WAS GOING TO DAMAGE HIS PROPERTY.

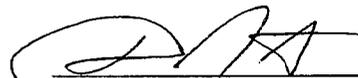
[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

  
Defendant

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

  
MARK MCCLAIN WSBA#30909  
Chief Deputy Prosecuting Attorney

  
DAVID HATCH, WSBA#21310  
Defendant's Lawyer

The defendant signed the foregoing statement 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 the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

**Interpreter's Declaration:** I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands. I have interpreted this 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.

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

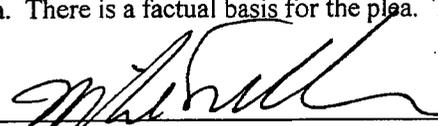
\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. 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: \_\_\_\_\_

4/26/2013

  
Judge

APPENDIX C

2013 MAY -3 PM 3:18

*[Signature]*  
CLERK

Superior Court of Washington  
County of PACIFIC

13 9 00188 5

State of Washington, Plaintiff,

No. 13-1-00038-3

vs.

Felony Judgment and Sentence --  
Prison  
(FJS)

ALAN J. HECKARD, 06/05/1966  
Defendant. DOB  
PCN:  
SID: WA21729497

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline  Mandatory  Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present. *DA*

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
 guilty plea (date) 4-26-13  jury-verdict (date) \_\_\_\_\_  bench trial (date) \_\_\_\_\_

| Count | Crime                         | RCW<br>(w/subsection) | Class | Date of<br>Crime |
|-------|-------------------------------|-----------------------|-------|------------------|
| I     | EXTORTION IN THE FIRST DEGREE | 9A.56.120             | B     | 3/3/13           |
|       |                               |                       |       |                  |

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count I AND II. RCW 9.94A.602, 9.94A.533.
- For the crime(s) charged in Count \_\_, **domestic violence** was pled and proved. RCW 10.99.020.
- Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

*Jain*  
*Sent guidelines ✓*

31

- The defendant committed a crime involving the manufacture of methamphetamine including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count \_\_\_\_\_ . RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang member** or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.\_\_\_\_\_.
- The defendant committed  **vehicular homicide**  **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540)
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

|    | <b>Crime</b> | <b>Cause Number</b> | <b>Court (county &amp; state)</b> | <b>DV*<br/>Yes</b> |
|----|--------------|---------------------|-----------------------------------|--------------------|
| 1. |              |                     |                                   |                    |
| 2. |              |                     |                                   |                    |

\* DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.1 PROSECUTOR'S STATEMENT OF DEFENDANT'S CRIMINAL HISTORY (RCW 9.94A.525):**

|   | <b>Crime</b>                            | <b>Date of Crime</b>       | <b>Date of Sentence</b> | <b>Sentencing Court (County &amp; State)</b> | <b>A or J Adult, Juv.</b> | <b>Type of Crime</b> | <b>DV*<br/>Yes</b> |
|---|---|----------------------------|-------------------------|--|---------------------------|----------------------|--------------------|
| 1 | <b>DELIVERY OF MARIJUANA (2 COUNTS)</b> | <b>4/25/08<br/>4/29/08</b> | 11/14/08                | PACIFIC CO                                   | A                         |                      |                    |
| 2 | <b>UNLAWFUL POSS FIREARM</b>            | <b>7/7/04</b>              | 8/6/04                  | PACIFIC CO                                   | A                         |                      |                    |
| 3 | <b>THEFT 1<sup>ST</sup></b>             | <b>3/31/94</b>             |                         | CLATSOP CO                                   | A                         |                      |                    |
| 4 | <b>FELON IN POSS FIREARM</b>            | <b>2/26/92</b>             |                         | CLATSOP CO                                   | A                         |                      |                    |

\* DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

### 2.3 Sentencing Data:

| Count No. | Offender Score | Seriousness Level | Standard Range (not including enhancements) | Plus Enhancements* | Total Standard Range (including enhancements) | Maximum Term       |
|-----------|----------------|-------------------|---|--------------------|---|--------------------|
| I         | 2              | V                 | 13-17 MONTHS                                |                    |   | 10 YRS<br>\$20,000 |
|           |                |                   |   |                    |   | 5 YRS<br>\$10,000  |
|           |                |                   |   |                    |   |                    |

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12)

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are  attached  as follows: \_\_\_\_\_.

**2.4 Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

below the standard range for Count(s) I.

above the standard range for Count(s) \_\_\_\_\_.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury, by special interrogatory.

within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.

Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

The defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

### III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [X] The court **dismisses** Counts II - IV in the charging document

#### IV. Sentence and Order

**It is ordered:**

**4.1 C onfinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

12 + 1 day months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_

The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

The confinement time on Counts \_\_\_ include \_\_\_ months as enhancement for  firearm  deadly weapon  VUCSA in a protected zone

manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 12 months + 1 day

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(c)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

**4.2 Community Custody .** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_ 18 months for Violent Offenses

Count(s) I \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition;

(7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

consume no alcohol.

have no contact with: \_\_\_\_\_

remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.

participate in the following crime-related treatment or counseling services: \_\_\_\_\_

undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management, and fully comply with all recommended treatment. \_\_\_\_\_

comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions: \_\_\_\_\_

**SEE ATTACHED APPENDIX H**

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

|            |               |                              |               |
|------------|---------------|------------------------------|---------------|
| <i>PCV</i> | \$ <u>500</u> | Victim assessment            | RCW 7.68.035  |
| <i>PDV</i> | \$ _____      | Domestic Violence assessment | RCW 10.99.080 |
| <i>CRC</i> | \$ <u>200</u> |                              | Court         |

costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

|                    |               |  |                 |
|--------------------|---------------|--|-----------------|
|                    |               | Criminal filing fee \$200 _____  | FRC             |
|                    |               | Witness costs \$ _____   | WFR             |
|                    |               | Sheriff service fees \$ _____  | SFR/SFS/SFW/WRF |
|                    |               | Jury demand fee \$ _____   | JFR             |
|                    |               | Extradition costs \$ _____   | EXT             |
|                    |               | Other \$ _____   |                 |
| <i>PUB</i>         | \$ <u>250</u> | Fees for court appointed attorney  | RCW 9.94A.760   |
| <i>WFR</i>         | \$ _____      | Court appointed defense expert and other defense costs   | RCW 9.94A.760   |
| <i>FCM/MTH</i>     | \$ _____      | Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430 |                 |
| <i>CDF/LDI/PCD</i> | \$ _____      | Drug enforcement fund of _____   | RCW 9.94A.760   |
| <i>NTF/SAD/SDI</i> | \$ _____      | DUI fines, fees and assessments  |                 |
| <i>CLF</i>         | \$ _____      | Crime lab fee <input type="checkbox"/> suspended due to indigency  | RCW 43.43.690   |
|                    | \$ <u>100</u> | DNA collection fee   | RCW 43.43.7541  |
| <i>FPV</i>         | \$ _____      | Specialized forest products  | RCW 76.48.140   |

\$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_  
 RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI  
 only, \$1000 maximum) RCW 38.52.430  
 \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 (Name and Address--address may be withheld and provided  
 confidentially to Clerk of the Court's office.)  
 \$ 1050 Total RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by  
 later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution  
 hearing:

shall be set by the prosecutor.  
 is scheduled for \_\_\_\_\_ (date).

~~\_\_\_\_\_~~ The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

**Restitution** Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant      Cause Number      (Victim's name)      (Amount-\$)

RJN

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule  
 established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets  
 forth the rate here: Not less than **\$35.00** per month commencing **one month after entry of this Judgment  
 and Sentence or one month after release from custody; unless the defendant enters into a time  
 payment agreement with the Clerk of the Court**. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual  
 costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of  
 incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.4 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. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

The defendant shall not have contact with LEIF WALKER (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until March 29, 2023 (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within 300 FEET (distance) of:  
 LEIF WALKER'S  home/ residence  work place  school  (other location(s))  
\_\_\_\_\_, or  
 other location: \_\_\_\_\_,  
until \_\_\_\_\_ (which does not exceed the maximum statutory sentence)

A separate Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed concurrent with this Judgment and Sentence.

4.6 Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.7 Off -Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

### V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

#### 5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5 Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any

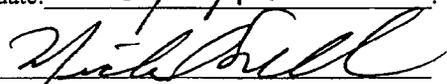
concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Reserved

5.7 **Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 **Other:** \_\_\_\_\_

Done in Open Court and in the presence of the defendant this date: 5/3/13

  
Judge MICHAEL SULLIVAN:

 MARK MCCLAIN WSBA#30909  
Chief Deputy Prosecuting Attorney

 DAVID HATCH, WSBA#21310  
Attorney for Defendant

 ALAN J. HECKARD  
Defendant

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: 

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

\_\_\_\_\_  
Interpreter Print Name

## VI. Identification of the Defendant

SID No. WA21729497  
 (If no SID complete a separate Applicant card  
 (form FD-258) for State Patrol)

Date of Birth 06/05/1966

FBI No. 127102LA2

Local ID No. \_\_\_\_\_

**Race:**

Asian/Pacific Islander     Black/African-American     Caucasian  
 Native American     Other: \_\_\_\_\_

**Ethnicity:**

Hispanic

Non-Hispanic

**Sex:**

Male

Female

**Fingerprints:** I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, *Shirley Hart*

Dated: 5/3/2013

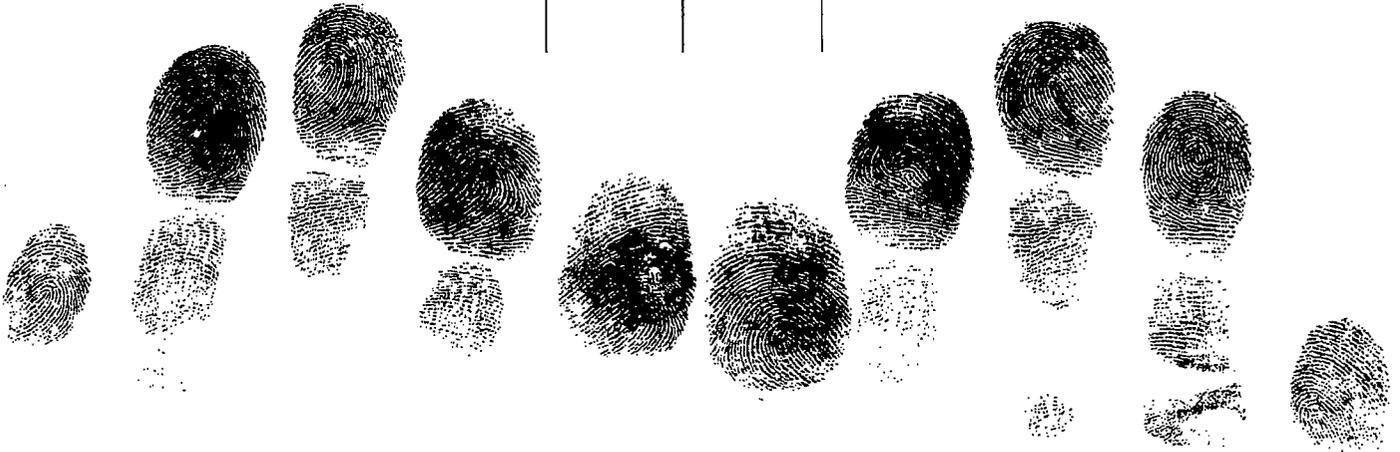
**The defendant's signature:** *Sam DeLeon*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

|                     |   |                        |
|---------------------|---|------------------------|
| STATE OF WASHINGTON | ) | NO. 13-1-00038-3       |
| Plaintiff           | ) |                        |
| vs.                 | ) | JUDGMENT AND SENTENCE  |
|                     | ) | (FELONY) APPENDIX 2.4, |
| ALAN J. HECKARD,    | ) | FINDINGS OF FACT AND   |
| Defendant           | ) | CONCLUSIONS OF LAW FOR |
|                     | ) | EXCEPTIONAL SENTENCE   |

2.4 An exceptional sentence **below** the standard range should be imposed based upon the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

The Court hereby finds beyond a reasonable doubt that the following facts exist to justify an exceptional sentence:

1. The defendant is willing to stipulate to an exceptional sentence consisting of **12 MONTHS AND 1 DAY IN PRISON.**
2. The basis for the exceptional sentence is that it is part of the settlement of this case.
3. Under Personal Restraint Petition of Breedlove, 138 Wash 2d 298, 979 p.2d 417 (1999), the defendant may settle his case under certain terms and conditions, including a stipulated exceptional sentence, provided this is acceptable to the Court, even if the facts and standard sentence associated with the amended charge would not ordinarily be the same as what is being agreed to in his case.
4. The defendant intelligently and voluntarily entered into his plea agreement. The defendant understands the consequences of the plea.
5. The defendant agrees, and the Court finds, that pursuant to RCW 9.94A.535(1)(e) the defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his conduct to the requirements of the law, was significantly impaired. The impairment did not result from the voluntary use of drugs or alcohol.

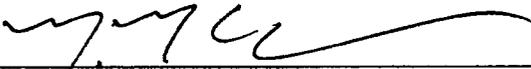
1 Based upon the aforementioned Findings of Fact the Court makes the following Conclusions of  
2 Law.

3 **II. CONCLUSIONS OF LAW**

- 4
- 5 1. The Court has jurisdiction of the parties and subject matter of this action.
  - 6 2. The plea agreement is consistent with the interest of justice and is in  
7 conformance with the State's prosecuting standards.
  - 8 3. There are substantial and compelling reasons to impose a sentence outside the standard  
9 range. In particular, the plea agreement itself is a substantial and compelling reason which  
10 justifies an exceptional sentence beyond a reasonable doubt.
  - 11 4. A sentence above the standard range is in the interest of justice and is consistent with the  
12 purposes of the Sentencing Reform Act.
  - 13 5. A sentence of **12 MONTHS AND 1 DAY** is appropriate to ensure that punishment is  
14 proportionate to the seriousness of the offense.

15 Dated this 6 day of May 2013  
~~September, 2012.~~

16  
17   
18 JUDGE

19   
20 MARK MCCLAIN, WSBA#30909  
Senior Deputy Prosecuting Attorney

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22 DAVID HATCH, WSBA#21310  
23 Attorney for Defendant.

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29 APPENDIX 2.4

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON )  
Plaintiff, )  
  
vs. )  
  
**ALAN J. HECKARD,** )  
Defendant. )

NO. **13-1-00038-3**  
  
JUDGMENT AND SENTENCE  
(FELONY) APPENDIX H  
ADDITIONAL CONDITIONS  
OF SENTENCE

4.3 Continued: Additional conditions of sentence are:

[X] Defendant shall serve **12 MONTHS** Defendant shall report to the Department of Corrections, by phone at (360)533-9758 or (360)942-4817, within **72 hours** of the commencement of community custody and the defendant shall comply with all rules, regulations and requirements of the Department of Corrections, and any other conditions of community custody stated in this Judgment and Sentence;

[X] Must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of residence, in which the offender lives or has exclusive/joint control/access.

[X] Defendant shall report to and be available for contact with the assigned community corrections officer as directed;

[X] Defendant shall work at department-approved education, employment, or community restitution, or any combination thereof;

[X] Defendant shall not possess any controlled substances except pursuant to lawfully issued prescriptions;

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[X] Defendant shall pay supervision fees as determined by the Department;

[X] The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement;

[X] The Defendant shall remain within, or outside of, a specified geographical boundary.

[X] The defendant shall not have direct or indirect contact with the victim of the crime, Leif Walker, or a specified class of individuals.

[X] The defendant shall comply with any crime-related prohibitions.

[X] Defendant shall submit to urinalysis/breathalyzer at the request of his CCO.

[X] Defendant shall obtain drug/alcohol evaluation and follow recommended treatment within 45 days of release.

Date: \_\_\_\_\_

5/3/13



\_\_\_\_\_  
JUDGE

APPENDIX H

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON,

Plaintiff

vs.

ALAN J. HECKARD,

Defendant.

13-1-00038-3

WARRANT OF COMMITMENT

STATE OF WASHINGTON

TO: The Sheriff of Pacific County.

The defendant **ALAN J. HECKARD** pled guilty in the Pacific County Superior Court of the State of Washington of the crime of **EXTORTION IN THE FIRST DEGREE** the Court has ordered that the defendant be punished by serving the determined sentence of:

**Count I** 124 Day months; **Count III** - \_\_\_\_\_ months, and **Count VI** \_\_\_\_\_ months; **Count VII** \_\_\_\_\_ (month(s));

\_\_\_\_\_ (day(s) (month(s)) of partial confinement in the County jail.

\_\_\_\_\_ (month(s)) of total confinement in the Pacific County jail.

Defendant shall receive credit for time served to this date.

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, x confinement and placement as ordered in the Judgment and Sentence in the Pacific County Jail.

1 [ ] YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper  
2 officers of the Department of Corrections; and

3 YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE  
4 COMMANDED to receive the defendant for classification, confinement and placement as  
5 ordered in the Judgment and Sentence.

6 [ ] The defendant is committed for up to thirty (30) days evaluation at Western State Hospital or  
7 Eastern State Hospital to determine amenability to sexual offender treatment.

8 YOU THE SHERIFF ARE COMMANDED to take and deliver the defendant to the proper  
9 officers of the Department of Corrections pending delivery of the proper officers of the  
10 Secretary of the Department of Social and Health Services.

11 YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF  
12 SOCIAL AND HEALTH SERVICES, ARE COMMANDED, to receive the defendant for  
13 evaluation as ordered in the Judgment and Sentence.

14 DATED this 3rd day of May, 2013.

15 By Direction of the Honorable

16 MICHAEL SULLIVAN

17 JUDGE

18 VIRGINIA LEACH

19 BY: [Signature]  
20 CLERK  
21 DEPUTY CLERK



22 cc: Prosecuting Attorney  
23 Defendant's Lawyer  
24 Defendant  
25 Jail  
26 Institutions (3)



1  
2 DATED this 16<sup>th</sup> August  
3 day of 2013.

4   
5 JUDGE

6  
7 Presented by:

8   
9 MARK MCCLAIN WSBA#30909  
10 Chief Deputy Prosecuting Attorney

David J. Burke 16163  
Prosecutor

11 Approved by:

12  AS TO FORM  
13 ~~DAVID HATCH~~, WSBA#21310 23026  
14 Attorney for Defendant

15 Harold Karlsnik  
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29 ORDER OF RESTITUTION

30 Page 2 of 2

31 DAVID BURKE  
Pacific County Prosecutor  
300 Memorial Drive  
South Bend, WA 98586  
Phone (360) 875-9361  
FAX (360) 875-9362  
32

**PACIFIC COUNTY PROSECUTOR**

**April 18, 2014 - 3:33 PM**

**Transmittal Letter**

Document Uploaded: 453771-Reply Brief.pdf

Case Name: State of Washington vs Alan Heckard

Court of Appeals Case Number: 45377-1

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

State's Reply Brief

Sender Name: Brandi Huber - Email: [bhuber@co.pacific.wa.us](mailto:bhuber@co.pacific.wa.us)

A copy of this document has been emailed to the following addresses:

[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)

[dburke@co.pacific.wa.us](mailto:dburke@co.pacific.wa.us)