

FILED  
COURT OF APPEALS  
DIVISION II  
2018 NOV -5 AM 9:18  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

STATE OF WASHINGTON,  
Respondent,

v.

RONALD W. MCNEAL,  
Appellant.

No. 52091-5-II

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

A. INTRODUCTION

I, RONALD W. MCNEAL, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this STATEMENT OF ADDITIONAL GROUND FOR REVIEW when my appeal is considered on the merits.

B. ADDITIONAL GROUND:

1. Appellant McNeal was denied DUE PROCESS when the sentencing court refused to hold a proper hearing on his previously washed-out point calculation/determination.

It should be noted that if the original Judgment and

Sentence (under cause # 11-1-00816-3) would have contained the correct information; Mr. McNeal would have then been put on proper notice of what exactly the state was using to calculate his offender score. Furthermore, had Mr. McNeal of known then, what the state was going to purpose now (in the ORDER AMENDING JUDGMENT AND SENTENCE (SCRIVENER'S ERROR)), Mr. McNeal would have vigorously objected at the original sentencing hearing (as he did here).

Pursuant to the clear and specific mandates of our Washington State Supreme Court in State v. Ford, 137 Wn.2d 472, 480, 973 P.2d 452 (1999), DUE PROCESS requires a hearing on any disputed information objected to by Appellant. In this case, the objection was circumvented and went unanswered and ignored by the sentencing court because the state wrongfully convinced the COA that the error was nothing more than "a scrivener's error." However, as described herein, this offender score miscalculation is not simply just a scrivener's error; but more importantly, a violation of Mr. McNeal's CONSTITUTIONAL RIGHT to DUE PROCESS OF LAW. By imposition of incorrect information into the original Judgment and Sentence--so as to circumvent any meaningful objection to the use of the previously washed-out offender score points (so as to cause unlawful confinement)--denied Mr. McNeal DUE PROCESS OF LAW. Mr. McNeal has vigorously objected! The resulting unlawful additional prison term (based on the use of previously determined washed-out offender score points) to Mr. McNeal's sentence, is therefore imposed in violation of the STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW- [pg. 2 of 7]

DUE PROCESS clauses of our state and federal constitutions.

What is most noteworthy, is that this wrongfully imposed offender score points (based on previously washed-out offenses)--resulting in an unlawfully imposed sentence. This unlawfully imposed sentence (based off of an incorrect offender score [as described herein]) is a violation of the mandates of our State Supreme Court set forth in Ford Id., as well as our state and federal DUE PROCESS OF LAW RIGHTS. As described herein, Mr. McNeal could not have raised an objection at the original sentencing hearing when the incorrect information was first put into play in the original documentation of the original J&S. Then, to later amend that document--at the same time--bar Mr. McNeal from objecting to that new information (that was never properly contained in the original J&S) allowed the state to circumvent Mr. McNeal's well established DUE PROCESS RIGHTS (for a hearing on those disputed washed-out points). This is a gross violation of the DUE PROCESS OF LAW clauses, as set forth and defined by the mandates of our State Supreme Court in the mandates of Ford Id.

2. If a proper hearing, based off of Mr. McNeal's objection, would have been properly conducted, the court would have been presented with the evidence (see APPENDIX-1 hereto) that shows that 4 prior offenses "WASHE[D-OUT]."

APPENDIX-1 hereto is the relevant portion of a 2004 Cowlitz County JUDGEMENT AND SENTENCE (Cause No. 04-1-00674-8) that proves that a previous sentencing court already made the wash-  
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW- [pg. 3 of 7]

out determination on previously washed-out convictions.

What should be particularly taken into consideration are numbers 3 through 6, that read as follows:

"3. VUCSA-POSS (WASHES)," date of sentence: "01/03/90," out of "THURSTON CO., WA," with a date of crime for "07/31/89;

"4. UNLAWFUL POSS FIREARM (WASHES)," with a date of sentence for "01/03/90," out of "THURSTON CO., WA," with a date of crime of "08/31/89;"

"5. VUCSA-POSS (WASHES)," with a date of sentence of "07/08/93," out of "LEWIS CO., WA," with a crime date of "11/06/91;"

"6. VUCSA-POSS METH (WASHES)," with a sentencing date of "07/15/93," out of "LEWIS CO., WA," with a crime date of "02/25/92."

(See APPENDIX-1 hereto, part 2.2 of page 2).

APPENDIX-2 hereto shows the current ORDER AMENDING JUDGEMENT AND SENTENCE (SCRIVENER'S ERROR). On page 1, lines 18 through 21, listed as "Criminal History," numbers 2 through 5, are the very same washed offenses listed as "Criminal History" of part 2.2 of page 2 of the the Cowlitz County Judgment and Sentence of APPENDIX-A described above. This is prima facie evidence that the amended information set forth in the ORDER AMENDING

JUDGMENT AND SENTENCE (SCRIVENER'S ERROR) is not merely a scrivener's error; but more importantly, a gross violation of Appellant's constitutional right to DUE PROCESS OF LAW (that requires a proper hearing on the unlawful use of the previously washed-out offender score points used in the calculation of the current offender score [used to impose an unlawful sentence upon Mr. McNeal]).

The jurisprudence of our state associated with RCW 9.94A.525 clearly states that once a sentencing court has determined/held that certain previous offenses have washed-out, those offense can not be revived by the current sentencing court to be used in a subsequent sentencing. However, as demonstrated above, that is exactly what has taken place here. See RCW 9.94A.525; RCW 9.94A.500; In re Goodwin, 146 Wn.2d 861 (2002); State v. Ammons, 105 Wn.2d 17 (1986); State v. Hunley, 161 Wn.App. at 916-19 (2011); State v. Roach, 75 Wn.App. 500 (1994); In re LaChapelle, 153 Wn.2d 1 (2004); State v. Wilson, 170 Wn.2d 682 (2010); and State v. Ross, 152 Wn.2d 220 (2004).

3. Two "DWLS-3" offenses used in the current offender score were invalidated by the mandate of our State Supreme Court and should not have been included in the current offender score.

In City of Redmond v. Moore, 151 Wn.2d 664 (2004), our Washington State Supreme Court specifically held that revocation of one's licenses without an administrative hearing, effectively invalidates those offenses. Id.

Here, in the present case, APPENDIX-2 hereto, shows that a 1998, and 2002 "DWLS-3" were used to enhance Mr. McNeal's offender score. However, again, just as above, Mr. McNeal could not have made a proper objection at the original sentencing hearing because the information was not correct. Mr. McNeal did object at the hearing at the time this J&S was amended to now contain the incorrect offender score calculation described herein. Once again, Mr. McNeal's objects were ignored and went unanswered.

Mr. McNeal incorporates the same law and arguments in 1. and 2. above, as failing to conduct a hearing (to see if in fact the mandates of our Washington State Supreme Court in City of Redmond v. Moore Id., do in fact invalidate the 2 DWLS-3 offenses [in accordance with State v. Herzog, 48 Wn.App. at 834]). This is a gross violation of Mr. McNeal's well established CONSTITUTIONAL RIGHT to DUE PROCESS OF LAW.

### C. CONCLUSION

Based on the above facts and authority, Mr. McNeal's current offender score was unlawfully calculated.

Furthermore, the statutory sentencing laws, as well as Mr. McNeal's clearly established DUE PROCESS RIGHTS, have been violated by circumventing his objection and right to have those issues properly addressed in a proper sentencing hearing (because the state used incorrect information in the original J&S [by amending that incorrect information without allowing

Mr. McNeal to contest it]); when it would have been impossible to contest unknown information never previously presented in the original J&S documentation.

This court is RESPECTFULLY ASKED to remand this case back to the sentencing court for a proper sentencing hearing (in accordance with RCW 9.94A.500 & .525) on the issues described herein.

RESPECTFULLY SUBMITTED this 1st day of November, 2018.



RONALD W. MCNEAL  
Appellant, Pro Se

APPENDIX-1  
(2004 JUDGMENT AND SENTENCE [cause No. 04-1-00674-8])

- within 1000 feet of a school bus stop designated by the school district; or in a 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.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401, RCW 69.50.440.
  - The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
  - This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
  - The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.
  - The crime charged in Count(s) \_\_\_\_\_ involve(s) **domestic violence**.
  - The offense in Count(s) \_\_\_\_\_ was committed in a county jail or state correctional facility. RCW 9.94A.310(5).
  - A special verdict/findings determining aggravating circumstances was returned on Count(s) \_\_\_\_\_, as follows: \_\_\_\_\_ RCW 10.95.020.
  - Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
  - Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- 2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME V, SV, SO
1 VUCSA - POSS (WASHES)	10/16/80	LEWIS CO., WA		A	
2 TMVWP (5 YRS) PAROLED 12/10/81 (WASHES)	11/16/80	LEWIS CO., WA		A	
3 VUCSA - POSS (WASHES)	01/03/90	THURSTON CO., WA	07/31/89	A	
4 UNLAW POSS FIREARM (WASHES)	01/03/90	THURSTON CO., WA	08/31/89	A	
5 VUCSA - POSS (WASHES)	07/08/93	LEWIS CO., WA	11/06/91	A	
6 VUCSA - POSS METH (WASHES)	07/15/93	LEWIS CO., WA	02/25/92	A	

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.
  - \* The court finds that these prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360)(6)(a)(ii) and (iii) (Juvenile Offenses and offenses committed prior to July 1, 1986)
- The Court finds pursuant to the "same criminal conduct" analysis that the same lettered offenses (as indicated above) count as one offense. RCW 9.94A.360(6)(a)(I)
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS *	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	I	0 - 60 DAYS			CLASS C

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520,

Exhibit "1"

FILED  
SUPERIOR COURT

2004 OCT 19 P 12:33

COWLITZ COUNTY  
TERI A. NIELSEN, CLERK

*[Signature]*

SUPERIOR COURT OF WASHINGTON  
COUNTY OF COWLITZ

STATE OF WASHINGTON,

No. 04-1-00674-8

Plaintiff,

**JUDGMENT AND SENTENCE (JS)**

v.

Prison  RCW 9.94A.712 Prison Confinement

RONALD WILLIAM MCNEAL,

Jail One Year or Less

Defendant.

First-Time Offender

SID: WA11771863

Special Sexual Offender Sentencing Alternative

If no SID, use DOB: 09/16/60

Special Drug Offender Sentencing Alternative

Clerk's Action Required, para 4.15.2, 5.3, 5.6 (firearms revoked) and 5.8

**I. HEARING**

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1.1 A sentencing hearing was held on OCTOBER 19, 2004, and the defendant RONALD WILLIAM MCNEAL, the defendant's lawyer, LEONARD COPELAND, and the (deputy) prosecuting attorney were present.

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on OCTOBER 19, 2004 by  plea  jury-verdict  bench trial  Stipulated Facts of:

COUNT	CRIME	RCW	DATE OF CRIME
I	THEFT IN THE SECOND DEGREE	9A.56.020(1)(a) & 9A.56.040(1)(c)	05/12/2004

as charged in the ( ) AMENDED Information.

Additional current offenses are attached in Appendix 2.1.

The Burglary in Count # \_\_\_\_\_ involved a theft or intent of theft.

The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_, RCW 9.94A.125, .310.

A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) \_\_\_\_\_, RCW 9.94A.125, .310.

A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_, RCW 9.94A.127.

A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or

JUDGMENT AND SENTENCE (JS) (Felony)  
(RCW 9.94A.110, .120)(WPF CR 84.0400 (6/2000))

Page 1 of \_\_\_\_\_

Cowlitz County Prosecuting Attorney  
312 S.W. 1<sup>st</sup> Street, Kelso, WA 98626  
(360)577-3080 FAX (360)414-9121

0020

private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

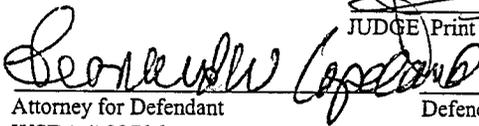
5.8  The Court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the Defendant's driver's license. RCW 46.20.285

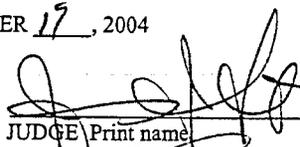
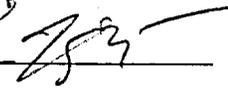
5.9 **IF AN APPEAL IS PROPERLY FILED AND APPEAL BOND POSTED, THE DEFENDANT WILL REPORT TO THE DEPARTMENT OF CORRECTIONS WHO WILL MONITOR THE DEFENDANT DURING THE PENDENCY OF THE APPEAL.**

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

DONE in Open Court and in the presence of the defendant this date: OCTOBER 17, 2004

  
Deputy Prosecuting Attorney  
WSBA # 7223  
Print name: ALYSSA P. ...

  
Attorney for Defendant  
WSBA # 23706  
Print name: LEONARD COPELAND

  
JUDGE Print name: \_\_\_\_\_  
  
Defendant  
Print name: \_\_\_\_\_

Interpreter signature/Print name: \_\_\_\_\_  
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

APPENDIX-2  
(ORDER AMENDING JUDGMENT AND SENTENCE (SCIVENER'S ERROR))

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IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON  
Plaintiff,

v.

RONALD WILLIAM MCNEAL,  
Defendant.

NO. 11-1-00816-3

ORDER AMENDING JUDGMENT  
AND SENTENCE  
(SCRIVENER'S ERROR)

IT IS HEREBY ORDERED that the Judgment and Sentence entered on March, 22, 2012, in the above-entitled cause is still in full effect but amended as follows:

1. Paragraph 2.2 Criminal History shall be amended as follows:

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County &amp; State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1	THEFT 2	05/12/2004	10/19/2004	COWLITZ CO	A	NV	
2	VUCSA - POSS	11/06/1991	10/08/1993	LEWIS CO	A	NV	
3	VUCSA - POSS	02/25/1992	07/15/1993	LEWIS CO	A	NV	
4	UPF	08/31/1989	08/15/1990	THURSTON CO	A	NV	
5	VUCSA - POSS	07/31/1989	08/15/1990	THURSTON CO	A	NV	
6	DWLS 3		01/09/1998	THURSTON CO	A	M	
7	DWLS 3		03/16/2002	LEWIS CO	A	M	
8	DWLS 3		06/27/2008	THURSTON CO	A	M	

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All other terms and conditions of the Judgment and Sentence remain unchanged  
and in full force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
JUDGE

Presented by:

Copy Received; Approved as to Form  
Notice of Presentation Waived:

\_\_\_\_\_  
SARA I. BEIGH, WSBA #35564  
Senior Deputy Prosecuting Attorney

\_\_\_\_\_  
RONALD WILLIAM MCNEAL

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No. 52091-5-II

PROOF OF SERVICE  
BY MAILING

I, RONALD W. MCNEAL, hereby certify/declare, under the laws of Washington State, by my signature below, under the penalty of perjury, swear that on this day, so dated below, served via U.S. mail, by using the internal LEGAL MAIL system here at Ceder Creek Correction Center, and served one copy of Appellant's: STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, to all counsel of record:

Sara I Beigh  
Lewis County Prosecutors Office  
345 W. Main St FI 2  
Chehalis, WA 98532-4802

Kevin A March, Attorney at Law  
NIELSEN, BROWMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122

SIGNED this 1st day of November, 2018.



Ronald W. McNeal  
Appellant, Pro Se

PROOF OF SERVICE BY MAILING