

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

In re Personal Restraint	)	
Petition of	)	
	)	
	)	No. 63810-6-I
	)	
	)	KING COUNTY'S
	)	RESPONSE TO
	)	PERSONAL RESTRAINT
WAYNE NEWLUN,	)	PETITION
Petitioner.	)	
_____	)	

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

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

B. ISSUES PRESENTED.

Whether this personal restraint petition should be dismissed where petitioner's double jeopardy challenge was waived by his guilty plea.

C. STATEMENT OF THE CASE.

In December of 2006, Wayne Newlun was charged by information in King County Cause No. 06-1-10264-5 SEA with one

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STATE OF WASHINGTON  
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count of identity theft in the second degree. Appendix B and C.

The Certification for Determination of Probable Cause reflects that Newlun attempted to cash checks made out the Guy Randal at the Northgate Money Tree Branch. Appendix C. Newlun presented a Washington state driver license bearing Mr. Randal's name.

Appendix C.

In January of 2007, Newlun reached a plea agreement with State whereby he pled guilty as charged and the State agreed not to file additional charges of forgery, financial fraud or theft arising from the case. Appendix C. Newlun had 34 prior felony convictions. Appendix C. The State agreed to recommend a sentence at the low end of the standard range to run concurrently with Snohomish County Cause Nos. 06-1-00223-1, 06-1-00648-2, and 06-1-00241-0. Appendix C. The court imposed a sentence of 57 months concurrent with the Snohomish County cases.

Appendix A. Newlun did not appeal.

D. ARGUMENT.

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

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold

showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn. 2d 802, 813, 792 P.2d 506 (1990). In a personal restraint petition, petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). Bare allegations unsupported by citation to authority, references to the record, or persuasive reasoning cannot sustain this burden of proof. Brune, 45 Wn. App. at 363.

Pursuant to United States Supreme Court precedent, a guilty plea generally forecloses a collateral attack based upon double jeopardy grounds. Newlun's challenge to his King County conviction falls within the general rule. As such, his double jeopardy claim should be rejected.

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

clause offers the "same scope of protection" as the Fifth Amendment. Id. at 49.

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

By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of the substantive crime. . . . Just as a defendant who pleads guilty to a single count admits guilt to the specified offense, so too does a defendant who pleads guilty to two counts with facial allegations of distinct offenses concede that he has committed two separate crimes.

Id. at 570. The Court held that a defendant who pleads guilty may challenge his conviction as constituting double jeopardy only if the claim of double jeopardy can be "judged on its face", i.e. on the

basis of the record that was before the court at the time of the plea. Id. at 575. The Court held that because Broce could not prove his claim of double jeopardy by relying on the indictments and the existing record, then the double jeopardy claim was foreclosed by the guilty plea.

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

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

Newlun's collateral double jeopardy challenge is foreclosed by his guilty plea. Double jeopardy cannot be established on the face of the plea record. Newlun cannot show on the basis of the plea record that he was also punished in Snohomish County for the same acts. Because his double jeopardy claim cannot be established on the face of the plea record, it is foreclosed by his guilty plea.

E. CONCLUSION.

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

DATED this 5th day of October, 2009.

Respectfully Submitted,

DAN SATTERBERG  
King County Prosecuting  
Attorney

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

W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9650

## APPENDIX A

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2007 JAN 29 AM 11:36

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

COMMITMENT ISSUED JAN 29 2007

PRESENTENCING STATEMENT AND INFORMATION ATTACHED

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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

**I. HEARING**

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

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the court finds:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 01/04/2007 by plea of:

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

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

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

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

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S):**

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

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

**2.3 CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):  
 Criminal history is attached in **Appendix B**.  
 One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

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

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

**2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):**  
 Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.  
 The Court **DISMISSES** Count(s) \_\_\_\_\_

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
    - Date to be set.
    - Defendant waives presence at future restitution hearing(s).
  - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

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

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

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

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

57 months/days on count I; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_  
\_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts \_\_\_\_\_ are consecutive / concurrent.

The above terms shall run [ ] CONSECUTIVE [  ] CONCURRENT to cause No.(s) Snohomish City + 06-1-00223-1, 06-1-00678-2 & 06-1-05241-0

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

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

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

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

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

Credit is given for [  ] 39 days served [ ] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6).

4.5 **NO CONTACT:** For the maximum term of 5 years, defendant shall have no contact with \_\_\_\_\_  
Gregory Michael Randall & Doreen Randall

4.6 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.  
[ ] **HIV TESTING:** For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

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

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

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

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

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

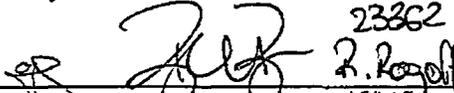
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

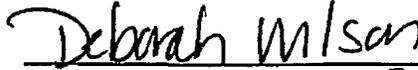
Date: 1-25-07

  
 JUDGE  
 Print Name: A. Darvas

Presented by:

 23362  
 Deputy Prosecuting Attorney, WSBA# 10000  
 Print Name: R. Rogoff

Approved as to form:

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

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE

RIGHT HAND  
FINGERPRINTS OF:

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

WAYNE ALLEN NEWLUN

DATED: *1-26-07*  
*Audrey Jarvis*  
JUDGE, KING COUNTY SUPERIOR COURT

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

CERTIFICATE

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

OFFENDER IDENTIFICATION

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

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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

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

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

NSF CHECKS  
NSF CHECKS

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

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

Date: 1-26-07

  
JUDGE, KING COUNTY SUPERIOR COURT

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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

---

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

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

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

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

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

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

Date: 1-26-07

  
\_\_\_\_\_  
JUDGE, King County Superior Court

## APPENDIX B

# Electronic Court Records

Case Selection Report Problems Security Login Help

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

Select Another Case

# 06-1-10264-5

Case Number: 06-1-10264-5 SEA

Case Title: STATE OF WASHINGTON VS NEWLUN, WAYNE ALLEN

Save Preferences

Activity Log

Filter by Group: All

View Selected Documents

Print

Clear All

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

## APPENDIX C



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

06-1-00223-1, 06-1-00648-2 and 06-1-00241-0  
No contact with Guy Randal, restitution to be determined  
State agrees not to file forgery, financial fraud or theft charges  
from 05-549468 SPD#, court costs, DNA fee, \$500 VPA, atty

The prosecutor will make the recommendation stated in the plea Agreement and State's costs.

Sentence Recommendation, which are 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 there is a finding of substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

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

~~(j) The crime charged in Count \_\_\_\_\_ includes a firearm / deadly weapon sentence enhancement of \_\_\_\_\_ months.~~

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

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

~~[If not applicable, this paragraph should be stricken and initialed by the defendant and judge~~

~~W. N.]~~

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

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

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

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

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

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

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

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

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

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

22

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

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

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

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

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

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

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

8  
9  
10 as charged in the information/ amended information. I have received a copy of  
11 that information.

12 8. I make this plea freely and voluntarily.

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

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

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

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

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

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

8 [Signature]  
DEFENDANT

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

13 [Signature] 31941  
PROSECUTING ATTORNEY  
14 Print Name: Kim Wyatt  
WSBA#

15 [Signature]  
DEFENDANT'S LAWYER  
16 Print Name: Deborah Wilson  
17 WSBA# 34013

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

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

and that the defendant understood it in full.

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

Dated this 14th day of Jan. 2007.  
[Signature]  
JUDGE

[Signature]

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
TRANSLATOR  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
INTERPRETER  
Print Name: \_\_\_\_\_



CAUSE NO. \_\_\_\_\_



**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-549468
UNIT FILE NUMBER	CF05-783

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

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

This belief is predicated on the following facts and circumstances:

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

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

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

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

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

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

*[Handwritten signature]* 5286

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

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

10 The State incorporates by reference the Certification for Determination of Probable  
11 Cause signed by Detective Randy Woolery in Seattle Police Department case number 05-  
12 549468.

13 REQUEST FOR BAIL

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

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

Terri R. Luken, WSBA #19554

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

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

FELONY PLEA AGREEMENT

Date of Crime: December 19, 2005

Date: 12/27/06

Defendant: Newlun, Wayne Allen

Cause No: 06-1-10264-5

SEA/KNT

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

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

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

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

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

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

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

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

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

OTHER: State agrees not to file charge, financial fraud & Debt from 05-549468

CRIMINAL HISTORY AND OFFENDER SCORE:

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

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

- (1) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_
- (2) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

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

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

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

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

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

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

Wayne Allen  
Defendant

[Signature]  
Deputy Prosecuting Attorney

Deborah Wilson  
Attorney for Defendant 34013

[Signature]  
Judge, King County Superior Court

Proffm.

**GENERAL SCORING FORM**

12/19/2005

**Nonviolent Offenses**

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

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

DOC # - 283750

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

**ADULT HISTORY:**

Enter number of felony convictions ..... 34 x 1 = 34

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions ..... \_\_\_\_\_ x 1 = \_\_\_\_\_

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

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

Enter number of other felony convictions ..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

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



**STANDARD RANGE CALCULATION\***

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

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

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

This criminal history compiled on: December 12, 2006

- |   |
|---|
| <input type="checkbox"/> None known. Recommendations and standard range assumes no prior felony convictions.              |
| <input type="checkbox"/> Criminal history not known and not received at this time. WASIS/NCIC last received on 12/07/2006 |

**Adult Felonies**

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

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

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

**Adult Felonies**

Offense	Score	Disposition
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-00241-0 forgery	11/16/2005	WA Snohomish Superior Court - Guilty 08/14/2006 cnt 1-first deg identity theft, cnts 2-5 forgert, cnts 6&7 unlawful possess of personal id device (all cnts include exceptional sentence guidelines); cnt 1,84 mos; cnts 2-5, 29 mos each cnt; cnts 6&7, 12 mos each cnt, all cnts to run
06-1-01542-1 possess stolen property 2nd d	10/04/2005	WA Thurston Superior Court - Guilty 10/24/2006 29 months confinement concurrent, 500 cvf, 200 file fee, 100 dna, 5503.00 resti tion
00-1-01721-3 residential burglary	03/28/2000	WA Snohomish Superior Court - Guilty 12/07/2000 residential burglary:84 mos prison to run concurr w/other;ineligible to possess firearms
00-1-00355-9 theft-1 (not firearm)	10/20/1999	WA King Superior Court - Guilty 09/22/2000 50m ct1, 29m ct2 doc conc.
00-1-00355-9 possess stolen property 2nd d	10/20/1999	WA King Superior Court - Guilty 09/22/2000 50m ct1, 29m ct2 doc conc.
99-1-07978-3 forgery	09/08/1999	WA King Superior Court - Guilty 09/22/2000 29m doc, conc w/00-1-00355-9.
95-1-07641-2 forgery	08/10/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty cti & ii. serve 29m cti & 29m ctii doc. conc w/95-1-00197-8, 95-1-08362-1 & 95-1-07009-1. pay rest. pay cv/pen asst \$100.00.
95-1-07641-2 forgery	08/10/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty cti & ii. serve 29m cti & 29m ctii doc. conc w/95-1-00197-8, 95-1-08362-1 & 95-1-07009-1. pay rest. pay cv/pen asst \$100.00.
95-1-08362-1 attempt theft-1 (not firearm)	07/17/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty. serve 36m doc. conc w/95-1-07009-1, 95-1-07641-2 & 95-1-00197-8. pay rest. pay cv/pen asst \$100.00.
95-1-07009-1 unlawful issuance of checks	02/23/1995	WA King Superior Court - Guilty 05/17/1996 p/guilty. serve 29m doc. conc w/95-1-07641-2, 95-1-00197-8 & 95-1-08362-1. pay rest. pay cv/pen asst \$100.00.

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

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

**Adult Felonies**

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

**Adult Misdemeanors**

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

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

Defendant: WAYNE A NEWLUN

FBI No.: 791412PA5

State ID No.: WA12176549

DOC No.: 283750

**Adult Misdemeanors**

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

**Juvenile Felonies - None Known**

**Juvenile Misdemeanors - None Known**

**Comments**

Prepared by: \_\_\_\_\_

Chanthavy San, CCA  
Department of Corrections

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

Defendant: W. Newlin

Cause No.: 06-1-1024-5 Date: 12/27/06 SEAKNT

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

43 months/days on Count I \_\_\_\_\_ months/days on Count \_\_\_\_\_  
\_\_\_\_\_ months/days on Count \_\_\_\_\_ \_\_\_\_\_ months/days on Count \_\_\_\_\_

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

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

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

This is an agreed recommendation.

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

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

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

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

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

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

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

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

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

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

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

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

[Signature]  
Deputy Prosecuting Attorney, WSBA No.

CERTIFICATION OF SERVICE

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

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

U Brame

10/5/09

Name

Date

Done in Seattle, Washington

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

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

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10/5/09

Name

Date

Done in Seattle, Washington

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