

COURT OF APPEALS
DIVISION II

FILED - 1 APR 05

STATE OF WASHINGTON

NO. 37704-7-II

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

STATE OF WASHINGTON, Respondent

v.

MATTHEW SCOTT PENA, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE BARBARA D. JOHNSON
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-00595-1

BRIEF OF RESPONDENT

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I. STATEMENT OF THE FACTS

On May 9, 2007, the defendant pled guilty to one count of Identity Theft in the Second Degree. A copy of the Statement of Defendant on Plea of Guilty to Non-Sex Offense (CP 3) is attached hereto and by this reference incorporated herein.

In the Statement of Defendant on Plea of Guilty on Page 2, the defense has handwritten into Section 6 the standard sentencing range. They indicate that his offender score is 7, that the standard range actual confinement is 22 to 29 months, that there are no enhancements, that the total actual confinement is 22 to 29 months. Also, as part of that standard sentence range filled out by the defense, the community custody range is 9 to 18 months and the final block is the maximum term and fine is 5 years/\$10,000.

On Page 5 of the Statement of Defendant on Plea of Guilty under Section (g) the prosecutor's recommendation is set forth as follows: Upon a plea to Count 1, the State shall move to dismiss Counts 2 and 3, recommend 22 months, credit time served 37 days, 9-18 months community custody, and other provisions concerning costs and prohibitions.

The defendant on Page 10 of the Statement of Defendant on Plea of Guilty sets forth what he did that makes him guilty of the crime. It does not appear that this is a Newton plea, but rather a straight plea to the crime charged. The defendant's name then appears on Page 11, which also contains the prosecutor's signature and the defense attorney's signature. Also on Page 11 the sections are checked indicating that "the defendant had previously read the entire statement above and that the defendant understood it in full" and also under sub (b) the defendant's lawyer "had previously read to him or her the entire statement above and that the defendant understood it in full". The plea was then accepted by Judge Barbara Johnson of the Clark County Superior court with a finding that it was knowingly, intelligently, and voluntarily made.

The transcript of the Change of Plea has been included for the appellate court. The defendant is asked by the Judge whether he has gone through the plea form with his attorney and he replies that he has. The court then asked him if he understood everything in it and he said that he did. The court then asked him, do you have any questions and the defendant said no. (RP 3). The court then went through his rights with him that he was giving up in exchange for his plea of guilty and also his criminal history and offender score. (RP 4).

The court indicates as follows:

THE COURT: The prosecuting attorney has agreed to make a recommendation, and the recommendation is set out on page 5 there in paragraph (g). Do you understand what the State is recommending?

THE DEFENDANT: Yes.

THE COURT: And do you also understand that I don't have to follow that; sentence is up to the judge?

THE DEFENDANT: Uh, yes, ma'am.

-(RP 5, L12-20)

The Judge then has him read into the record what he did that made him guilty of the crime and she accepts the plea, making a finding of guilty. (RP 5-6).

The parties then enter into sentencing at which time the trial court indicates to the defense that it will follow the recommendations. (RP 9).

Felony Judgment and Sentence (CP 17) was entered at that time. As indicated in the appellant's brief, the sections dealing with community custody/community placement were not checked in the original Judgment and Sentence.

This oversight was brought to the trial court and attorneys' attention on November 20, 2007 by a letter from the Department of Corrections (CP 39). In regard to that, the trial court then wrote a letter to the attorneys on December 20, 2007 (CP 57). In that letter she refers to the

DOC letter that she has received indicating that they had failed to impose the 9-18 months of community custody. The court felt that it was necessary to have an additional hearing concerning this and the defendant was brought back from prison for the purpose of resentencing.

That resentencing took place on April 2, 2008. At that time the defendant had been returned from the Department of Corrections and had also filed with the court a pro-se brief concerning this matter. The defense attorney was also present for this particular hearing.

The State took the position that the defendant was on notice that the community custody range applied. Also, the prosecutor made mention that the court was following the State's recommendation in its entirety. (RP 14-15). The State took the position that this was, in effect, a clerical error and needed to be corrected to reflect the court's true ruling.

The defense took the position that if the court wanted to impose community custody on him it should have done so at the time of sentencing. His position is that this was not merely an oversight or a clerical error but the court's conscious decision to not impose that condition. (RP 18).

After listening to both sides argue this matter, the court indicates as follows:

THE COURT: All right, thank you, Mr. Phelan.

Well, this – in referring to that last issue, this was a case, unlike some we've had, in which the community custody was indicated in the change of plea form, so it does indicate that Mr. Pena was informed at the time of the plea negotiations and the entry of the plea of guilty of the community custody range.

If that were not the case, then we would have the issue of whether Mr. Pena wished to move to set aside his plea of guilty, but he was informed and it does appear to me and in conclusion that it was an error on the part of the court.

I would note the argument being that the court's decision was not to impose the community custody, of course, I can't recall precisely what my thinking was at the time, but it certainly is the requirement of a judge to follow the mandatory laws that are in effect and when the mandatory law is to impose community custody, that would have been the court's intent.

In any event, we would have been back here for the same reason anyway because the Department of Corrections surprisingly is provided the right to come back and ask that the court correct things that were not imposed correctly or omitted by the court.

So in that – for those reasons, I do conclude that it was the oversight of the court, that it was the intent of the court to follow the mandatory law, and this being a prison sentence that I will correct the judgment and sentence to impose the community custody.

- (RP 21, L20 – 23, L2)

The court then had Findings of Fact, Conclusion of Law, and Order Amending Judgment and Sentence entered in this matter to reflect her ruling. (CP 93). The Findings of Fact ultimately boil down to the

court's finding that the failure to impose the community custody in this case was a clerical error.

II. RESPONSE TO ASSIGNMENTS OF ERROR 1 AND 2

Under the first assignment of error the defendant claims that the trial court erred in entering a various number of findings because they were not supported by substantial evidence. In the second assignment of error the defendant further makes claim that the modification of the sentence was not authorized because in effect it created an exceptional sentence.

Due process requires that a defendant knowingly, intelligently, and voluntarily enters a guilty plea. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). CrR 4.2(f) provides that “the court shall allow a defendant to withdraw his guilty plea whenever it appears that the withdrawal is necessary to correct a manifest injustice. The manifest injustice standard is demanding, and requires “an injustice which is obvious, directly observable, overt, and not obscure. State v. Mendoza, 157 Wn.2d 582, 586, 141 P.3d 49 (2006). The defendant has the burden of showing that a manifest injustice has occurred. State v. Smith, 137 Wn. App. 431, 437, 153 P.3d 898 (2007); State v. Turley, 149 Wn.2d 395, 398, 69 P.3d 338 (2003).

A guilty plea is voluntary if the defendant is advised of all direct consequences of that plea. In re Personal Restraint of Isidore, 151 Wn.2d 294, 300, 88 P.3d 390 (2004). Mandatory community placement is a direct consequence of a plea. State v. Mendoza, 157 Wn.2d at 588; State v. Turley, 149 Wn.2d at 399.

The majority of cases that deal with the nature of this type of claim usually involve misinformation being given to the defendant regarding a direct consequence on a plea. These misrepresentations will most often constitute the manifest injustice. State v. Mendoza, 157 Wn.2d at 591; In re Isidore, 151 Wn.2d at 302.

In our situation, this defendant is not dealing with an unexpected sentence provision, nor has he been misinformed. In fact, the defense having written in the language in on the Statement of Defendant on Plea of Guilty, has clearly indicated that the crime carries a 9 to 18 month community custody range. In fact, that's exactly what the defendant was pleading to. He understood that this was going to be a recommendation of 22 months with credit for 37 days having been served plus the 9 to 18 months community custody. This is set out on pages 2 and 5 of his Statement of Defendant on Plea of Guilty. It is true that the Judge did not specifically go through each element of the recommendation of the State. Apprising the defendant of the nature of the charges does not necessarily

mean describing every element orally on the record at the plea hearing. If the colloquy at the plea hearing does not include every word necessary to insure the voluntariness of the plea, clear and convincing written evidence can remedy the defect. Wood v. Morris, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976). The Judge is justified in relying on facts admitted in the plea statement which establish knowledge of the nature of the charge and also the nature of recommendations that are being made. She does not have to go through each and every element of the recommendation. That is especially true when the defendant has completed and filled out the form, and has verbally indicated to the court that he understands all the provisions and also that he understands the recommendation that's being made. In re Personal Restraint of Keene, 95 Wn.2d 203, 204-209, 622 P.2d 360 (1980). In Keene, the court concluded that the trial judge could rely on the written plea agreement when the defendant told the court he had read the agreement and that the statements contained therein were truthful. Keene, 95 Wn.2d at 206-207. The Keene court emphasized that neither CrR 4.2 nor prior case law explicitly required oral inquiries. Keene, 95 Wn.2d at 206. Knowledge of the direct consequences of the plea can be satisfied by the plea documents themselves. In re Personal Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001). Thus, when a defendant fills out a written plea statement under CrR 4.2 and

acknowledges that he has read and understands it and that its contents are true, the appellate court presumes that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.3d 810 (1998).

It is true, therefore, that failure to inform a defendant that he will be subject to mandatory community placement if he pleads guilty will render the plea invalid. If the defendant was not informed that the charge was subject to the mandatory community placement, the defendant is entitled to a remedy. State v. Ross, 129 Wn.2d 279, 280-284, 916 P.2d 405 (1996). In our situation though, the defendant was informed that he was subject to mandatory community placement. This is clearly spelled out in the documentation that he prepared and presented and gave to the court as his Statement of Defendant on Plea of Guilty. The Statement of Defendant on Plea of Guilty is prepared on the defense attorney's stationery. Clearly, this documentation was prepared and presented to the court as the defendant's request for the deal being offered by the State with a clear understanding of the consequences and ramifications of this plea. Those ramifications included a mandatory community placement condition. This is not one of those situations where there has been misinformation of sentencing consequences. That triggers an entirely different set of case law, but the State submits that that case law does not operate in this particular setting. The reason it doesn't is because there was no failure to

inform the defendant of sentencing consequences upon a plea of guilty. He understood that, prepared that, and submitted it to the court indicating that he understood all of its provisions and wished to take advantage of the opportunity of the deal to avoid greater risk and potential incarceration.

For example, our case can be differentiated from In re Personal Restraint of Murillo, 134 Wn. App. 521, 142 P.3d 615 (2006). In that case the court at the time of change of plea and time of sentencing did not say anything about community custody at those hearings. In addition to that however (and this is what distinguishes it from our case) the community custody terms were not set out on Page 2 of the Statement on Plea of Guilty (it was left blank) and did not include any of the necessary language anywhere else in the Statement of Defendant on Plea of Guilty. Murillo, 134 Wn. App. at 531. The court found that that was error and the State submits that the court rightfully found that that was error. However, that is totally distinguishable from the situation we have before us. In our situation the defendant is entering a plea with a correct understanding of the consequences of his plea.

The State has submitted that this in effect is a clerical error. The Judge made quite clear in her Findings of Fact that she intended to follow the recommendation and also intended to follow the law. The recommendation as set forth on the Statement of Defendant on Plea of

Guilty includes the community placement. Community placement is mandatory pursuant to statute.

As indicated in State v. Rooth, 129 Wn. App. 761, 770, 121 P.3d 755 (2005):

To determine whether a clerical error exists under Criminal Rule 7.8, we use the same test used to determine clerical error under CR 60(a), the Civil Rule governing an amendment of judgments. State v. Snapp, 119 Wn. App. 614, 626, 82 P.3d 252, review denied, 152 Wn.2d 1028 (2004). In Presidential Estates Apartment Associates v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996), the court set forth the review necessary to determine whether an error is clerical or judicial. The court looks at “whether the judgment, as amended, embodies the trial court’s intention, as expressed in the record at trial” to determine if the error is clerical. Presidential, 129 Wn.2d at 326. If it does, then the amended judgment merely corrects the language to reflect the court’s intention or adds the language the court inadvertently omitted. Presidential, 129 Wn.2d at 326. If it does not, then the error is judicial and the court cannot amend the judgment and sentence. Presidential, 129 Wn.2d at 326.

The State submits that the court is merely correcting a clerical error to reflect what it truly intended at the time of change of plea and sentencing. The Findings of Fact entered by the court have substantial evidence supporting them which includes the recitation by the court as to her thinking and a clear indication by her that she had every intention to follow the mandatory community placement provisions.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that the trial court erred when it imposed community custody conditions concerning anger management treatment.

The State has no opposition to the case law as set forth by the defendant. In reviewing the file, it does not indicate any necessary reason for anger management to have been ordered in this case. Nor, was it part of the bargained for plea by the defendant. It appears that the deputy prosecutor used one of our older forms in our office (before we went to the statewide forms) which had pre-checked boxes concerning anger management. With that in mind, the State agrees with the defense that these provisions should be stricken.

IV. CONCLUSION

The change of plea was properly done by the trial court. The Judge went through the necessary criteria and the defendant indicated that he understood all the provisions of his plea. That plea included not only the 22 months that the court gave but also the 9 to 18 months of community custody afterwards. The State submits that there is no error in this.

Concerning the anger management treatment indications on the Judgment, the State concurs with the defense that those matters need to be stricken.

DATED this 24 day of Nov, 2008.

Respectfully submitted:

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By:


MICHAEL C. KINNE, WSBA#7869
Senior Deputy Prosecuting Attorney

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Sherry W. Parker, Clerk, Clark Co.
Sherry W. Parker, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

Matthew Scott Pena
Defendant.

No. 07-1-08595-1

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

- 1. My true name is: Matthew Scott Pena
- 2. My age is: 21
- 3. The last level of education I completed was 12th

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
My lawyer is: Thomas C. Phelan.

(b) I am charged with:
Identity Theft in the Second Degree

The elements are:
In Clark County, WA, possessing or using or transferring a personal identification of another person with the intent to commit a crime in the permission of my court.

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1 **5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE**
 2 **THEM ALL UP BY PLEADING GUILTY:**

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

14 **6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I**
 15 **UNDERSTAND THAT:**

- 16 (a) Each crime with which I am charged carries a maximum sentence,
 17 a fine, and a **STANDARD SENTENCE RANGE** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 8(f))	MAXIMUM TERM AND FINE
01	7	23-29	0/0	23-29	9-18	54RS/ \$10,000
02						
03						
04						

23 * (F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom,
 24 see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, 9.94A.533(8).

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- 1 (b) The standard sentence range is based on the crime charged and my
2 criminal history. Criminal history includes prior convictions and juvenile
3 adjudications or convictions, whether in this state, in federal court, or
4 elsewhere.
- 4 (c) The prosecuting attorney's statement of my criminal history is attached to
5 this agreement. Unless I have attached a different statement, I agree
6 that the prosecuting attorney's statement is correct and complete. If I
7 have attached my own statement, I assert that it is correct and complete.
8 If I am convicted of any additional crimes between now and the time I am
9 sentenced, I am obligated to tell the sentencing judge about those
10 convictions.
- 8 (d) If I am convicted of any new crimes before sentencing, or if any additional
9 criminal history is discovered, both the standard sentence range and the
10 prosecuting attorney's recommendation may increase. Even so, my plea
11 of guilty to this charge is binding on me. I cannot change my mind if
12 additional criminal history is discovered even though the standard
13 sentencing range and the prosecuting attorney's recommendation
14 increase or a mandatory sentence of life imprisonment without the
15 possibility of parole is required by law.
- 13 (e) In addition to sentencing me to confinement, the judge will order me
14 to pay \$500.00 as a victim's compensation fund assessment. If this
15 crime resulted in injury to any person or damage to or loss of property,
16 the judge will order me to make restitution, unless extraordinary
17 circumstances exist which make restitution inappropriate. The amount
18 of restitution may be up to double my gain or double the victim's loss.
19 The judge may also order that I pay a fine, court costs, attorney fees
20 and the costs of incarceration.
- 18 (f) ~~For crimes committed prior to July 1, 2000:~~ In addition to sentencing me
19 to confinement, the judge may order me to serve up to one year of
20 community supervision if the total period of confinement ordered is not
21 more than 12 months. If this crime is a drug offense, assault in the
22 second degree, assault of a child in the second degree, or any crime
23 against a person in which a specific finding was made that I or an
24 accomplice was armed with a deadly weapon, the judge will order me to
25 serve at least one year of community placement. If this crime is a
26 vehicular homicide, vehicular assault, or a serious violent offense, the
27 judge will order me to serve at least two years of community placement.
28 The actual period of community placement, community custody or
29 community supervision may be as long as my earned early release
30 period. During the period of community placement, community custody,

1 or community supervision, I will be under the supervision of the
2 Department of Corrections, and I will have restrictions and requirements
3 placed upon me.

4 For crimes committed on or after July 1, 2000: In addition to sentencing
5 me to confinement, under certain circumstances, the judge may order me
6 to serve up to one year of community custody if the total period of
7 confinement ordered is not more than 12 months. If the crime I have
8 been convicted of falls into one of the offense types listed in the following
9 chart, the court will sentence me to community custody for the community
10 custody range established for that offense type unless the judge finds
11 substantial and compelling reasons not to do so. If the period of earned
12 release awarded per RCW 9.94A.728 is longer, that will be the term of
13 my community custody. If the crime I have been convicted of falls into
14 more than one category of offense types listed in the following chart, then
15 the community custody range will be based on the offense type that
16 dictates the longest term of community custody.

11 OFFENSE TYPE	COMMUNITY CUSTODY RANGE
12 Serious Violent Offenses	24 to 48 months or up to the period of 13 earned release, whichever is longer.
14 Violent Offenses	18 to 36 months or up to the period of 15 earned release, whichever is longer.
16 Crimes Against Persons as 17 defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of 18 earned release, whichever is longer.
18 Offenses under Chapter 69.50 or 19 69.52 RCW (not sentenced under 20 RCW 9.94A.660)	9 to 12 months or up to the period of 21 earned release, whichever is longer.

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

1 (g) The prosecuting attorney will make the following recommendation
2 to the judge:

3 ~~Upon a plea to CUI, State will move to dismiss~~
4 ~~Counts 2 & 3, recommend 22 months, CTZ 37 days~~
5 ~~9-18 months community control, WAF #5113~~
6 ~~A 7000 AA, 4100 DNA, 500 fine, 1000000 to be set~~
7 ~~up cost w/ with District Attorney for 5000, no~~
8 ~~possession of other person's identification.~~

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

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

- 15 (i) The judge may impose an exceptional sentence below the
16 standard range if the judge finds mitigating circumstances
17 supporting an exceptional sentence.
- 18 (ii) The judge may impose an exceptional sentence above the
19 standard range if I am being sentenced for more than one crime
20 and I have an offender score of more than nine.
- 21 (iii) The judge may also impose an exceptional sentence above the
22 standard range if the State and I stipulate that justice is best
23 served by imposition of an exceptional sentence and the judge
24 agrees that an exceptional sentence is consistent with and in
25 furtherance of the interests of justice and the purposes of the
26 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.

I understand that if a standard range sentence is imposed, the sentence
cannot be appealed by anyone. If an exceptional sentence is imposed
after a contested hearing, either the State or I can appeal the sentence.

- 1 (i) If I am not a citizen of the United States, a plea of guilty to an offense
2 punishable as a crime under state law is grounds for deportation,
3 exclusion from admission to the United States, or denial of naturalization
4 pursuant to the laws of the United States.
- 5 (j) I understand that I may not possess, own, or have under my
6 control any firearm unless my right to do so is restored by a court
7 of record and that I must immediately surrender any concealed
8 pistol license. RCW 9.41.040.
- 9 (k) I understand that I will be ineligible to vote until that right is restored
10 in a manner provided by law. If I am registered to vote, my voter
11 registration will be cancelled. Wash. Const. art. VI, § 3,
12 RCW 29A.04.079, 29A.08.520.
- 13 (l) Public assistance will be suspended during any period of imprisonment.
- 14 (m) I understand that I will be required to have a biological sample collected
15 for purposes of DNA identification analysis. For offenses committed on
16 or after July 1, 2002, I will be required to pay a \$100 DNA collection fee,
17 unless the court finds that imposing the fee will cause me undue
18 hardship.

19 **NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING**
20 **PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY**
21 **THE DEFENDANT AND THE JUDGE.**

- 22 (n) This offense is a most serious offense or strike as defined by
23 RCW 9.94A.030, and if I have at least two prior convictions for most
24 serious offenses, whether in this state, in federal court, or elsewhere,
25 the crime for which I am charged carries a mandatory sentence of life
26 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
two years community supervision if the crime was committed prior to
July 1, 2000, or up to two years of community custody if the crime was
committed on or after July 1, 2000, 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.

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- (p) If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- (q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100. 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.
- (r) 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.
- (s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider 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 at least 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.715.

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

- 9 (t) If I am subject to community custody and the judge finds that I have a
10 chemical dependency that has contributed to the offense, the judge may
11 order me to participate in rehabilitative programs or otherwise to perform
12 affirmative conduct reasonably related to the circumstances of the crime
13 for which I am pleading guilty.
- 13 (u) If this crime involves the manufacture, delivery, or possession with the
14 intent to deliver methamphetamine, including its salts, isomers, and salts
15 of isomers, or amphetamine, including its salts, isomers, and salts of
16 isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be
17 assessed. RCW 69.50.401(2)(b).
- 16 (v) If this crime involves a violation of the state drug laws, my eligibility for
17 state and federal food stamps, welfare, and education benefits may be
18 affected. 20 U.S.C. § 1001(r) and 21 U.S.C. § 862(a).
- 18 (w) If this crime involves a motor vehicle, my driver's license or privilege to
19 drive will be suspended or revoked.
- 19 (x) If this crime involves the offense of vehicular homicide while under
20 the influence of intoxicating liquor or any drug, as defined by
21 RCW 46.61.502, committed on or after January 1, 1999, an additional
22 two years shall be added to the presumptive sentence for vehicular
23 homicide for each prior offense as defined in RCW 46.61.5055(8).

- 1 (y) The crime of _____ has a mandatory minimum
2 sentence of at least _____ years of total confinement. The law does not
3 allow any reduction of this sentence. This mandatory minimum sentence
4 is not the same as the mandatory sentence of life imprisonment without
5 the possibility of parole described in paragraph 6(n).
- 6 (z) I am being sentenced for two or more serious violent offenses arising
7 from separate and distinct criminal conduct and the sentences imposed
8 on Counts _____ and _____ will run consecutively unless the
9 judge finds substantial and compelling reasons to do otherwise.
- 10 (aa) I understand that the offense(s) I am pleading guilty to include a Violation
11 of the Uniform Controlled Substances Act in a protected zone
12 enhancement or manufacture of methamphetamine when a juvenile was
13 present in or upon the premises of manufacture enhancement. I
14 understand these enhancements are mandatory and that they must run
15 consecutively to all other sentencing provisions.
- 16 (bb) I understand that the offense(s) I am pleading guilty to include a deadly
17 weapon, firearm, or sexual motivation enhancement. Deadly weapon,
18 firearm, or sexual motivation enhancements are mandatory, they must be
19 served in total confinement, and they must run consecutively to any other
20 sentence and to any other deadly weapon, firearm, or sexual motivation
21 enhancements.
- 22 (cc) I understand that the offenses I am pleading guilty to include both a
23 conviction under RCW 9A.41.040 for unlawful possession of a firearm in
24 the first or second degree and one or more convictions for the felony
25 crimes of theft of a firearm or possession of a stolen firearm. The
26 sentences imposed for these crimes shall be served consecutively to
each other. A consecutive sentence will also be imposed for each
firearm unlawfully possessed.
- (dd) I understand that 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 6 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.

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(ee) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than 12 months and less than 36 months, I can not currently be either pending prosecution or serving a sentence for violation of the Uniform Controlled Substance Act and I can not have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

Count I Identity Theft in the Second Degree

Count _____

Count _____

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

8. I make this plea freely and voluntarily, of my own decision after consulting with my lawyer.

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 April 2, 2007

In Clark County, WA, I had in my possession
a credit card with the name of Gordon Holbeck
on it. I did not use the card, but did provide
it knowing someone else would use it
to change items without permission.

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

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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 and believe that the defendant is competent and fully understands the statement.

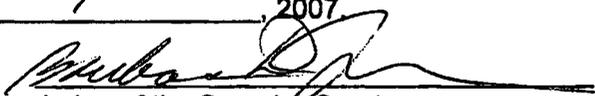

Prosecuting Attorney, WSBA # 15379
S. HANNON
Print Name


Thomas C. Phelan, WSBA# 11373
Attorney for Defendant

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

- (a) The defendant had previously read 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 attached.

I find the defendant's plea 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: May 9, 2007

Judge of the Superior Court
Barbara D. Johnson

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
MATTHEW SCOTT PENA,
Defendant

No. 07-1-00595-1

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
TAKE MOTOR VEHICLE W/O PERMISSION	CLARK/WA 03-8-00215-7	2/25/2003	3/3/2003	5
TAKE MOTOR VEHICLE W/O PERMISSION	CLARK/WA 03-8-00768-0	8/3/2003	8/6/2003	5
TAKE MOTOR VEHICLE W/O PERMISSION	CLARK/WA 03-8-00962-3	9/25/2003	10/1/2003	5
IDENTITY THEFT 2	CLARK/WA 05-1-00077-5	12/1/2004	2/9/2005	1
FORGERY	CLARK/WA 05-1-00077-5	12/1/2004	2/9/2005	1
FORGERY	CLARK/WA 05-1-00077-5	12/1/2004	2/9/2005	1
FORGERY	CLARK/WA 05-1-00077-5	12/1/2004	2/9/2005	1
IDENTITY THEFT	WASHINGTON/OR C060749CR	3/14/2006	4/17/2006	1
TAKE VEHICLE W/O OWNER'S CONSENT/VEHICLE THEFT	SISKIYOU/CA YKCRF 06-392	2/9/2006	7/11/2006	1

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

7

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

DATED this 27 day of May, 2007.

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Defendant

Thomas C. Phelan, WSBA#11373
Attorney for Defendant

Jeannie M. Bryant, WSBA#17607
Deputy Prosecuting Attorney

