Supreme Court No. 101199-7
COA No. 82846-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

PAUL CHASE,

Petitioner.

PETITION FOR REVIEW

OLIVER R. DAVIS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER

Paul Chase was the defendant in Snohomish County No. 14-1-00413-8, and the appellant in COA No. 82846-1-I (decision issued July 25, 2022) (Appx.).

B. COURT OF APPEALS DECISION

Mr. Chase seeks Supreme Court review of the Court of Appeals decision which wrongly ruled that the trial court was justified in denying his motion for new counsel for purposes of his restitution and community service hearings, the denial of which violated his right to counsel under the Sixth Amendment to the United States Constitution, warranting review under RAP 13.4(b)(3).

C. ISSUES PRESENTED ON REVIEW

1. Mr. Chase's 2021 motion was made during post-plea litigation that was ongoing, and during which – as the trial judge itself recognized – the defense failed to timely present crucial documentation. Mr. Chase rightly complained, even before this time, that certain failures were repeatedly occurring

and resulted in a complete breakdown of the working relationship between client and counsel. The litigation continued until June 2021. Can the motion for a new lawyer be rejected as "untimely"?

2. A trustful, communicative, and properly functioning working relationship between attorney and client is vital to the defendant's right to a lawyer. Did the trial court fail to make an adequate inquiry into Mr. Chase's claims, and is reversal thus required, including because of the complete, irreconcilable breakdown of that relationship that was plainly shown regardless of the trial court's inadequate questioning?

D. STATEMENT OF THE CASE

1. Facts. The underlying background facts of the case are set forth in Mr. Chase's Appellant's Opening Brief. See AOB, at pp. 1-3. Mr. Chase owned Red Leaf Construction, a building contracting company. CP 260-61. The company was an ongoing concern – i.e., a lawful, operating enterprise, and was fully registered with the Department of Revenue. CP

262. However, a state investigator, Liz Gilman, accused the business of showing no payments of state sales tax from 2007 to 2010, despite "showing deposits in their business bank account at Banner Bank," as determined by a Department of Revenue audit. CP 262-63. The Department contacted the company to discuss the issue of sales tax remittance. CP 264-265.

Mr. Chase, as he was entitled to do, disputed the accusation of non-payment of sales tax, informing the State early on, seeking to show that the State should not convert the matter to criminal charges, because the particular construction projects in question had involved specific, provable contracts that assigned the ultimate responsibility for sales tax to the building owners. See 2/5/21RP at 455-68. Mr. Chase explained that the building projects his company completed during these years were with entities that arranged to withhold state sales tax, and to make the tax payments to the State directly, because Red Leaf was a newly-established

contractor. See 2/5/21RP at 351. For any large, influential corporation, this matter would simply be a question of determining if discrepancies existed, as they frequently do under the complex web of state tax laws. Red Leaf, owned by Mr. Chase and his wife Lynette Chase, was treated differently.

The State rejected Mr. Chase's explanations, and in 2014, Mr. Chase was charged with complicity to theft based on claims that the business had failed to pay state sales tax on amounts received on four construction projects. CP 244, 258, 260.

Ms. Chase, the bookkeeper for the business, passed away on September 8, 2019. CP 225; 4/16/21RP at 455-56, 3/19/21RP(pm) at 441-43. Her testimony had never been preserved as Mr. Chase repeatedly urged his counsel to do. Mr. Chase's wife, and business partner in the contracting business, passed away before Mr. Chase argues that his counsel failed to preserve her testimony by deposition at his insistence. 3/19/21RP RP at 385 (Mr. Chase's testimony that counsel "never once deposed what was going to be a key witness for the

State and myself, my now deceased ex-wife that was originally [implicated in the claims]." The absence of Ms. Chase's knowledge of the company's contracts and accounts was a material loss in Mr. Chase's ability to explain the business arrangements with its customers, a highly pertinent question in the hearings. See, e.g., 3/19/21RP at 432-34.

In October, the State secured Mr. Chase's guilty plea to second degree theft, along with an agreement from Mr. Chase that he would be liable for restitution amounts on the four contracts, to the extent, if any, that amounts were proved, and that he would not seek to withdraw his plea. 10/4/19RP at 3-7; CP 228, 238-41.

At sentencing on December 19, 2019, the prosecutor said that no jail time need be imposed, pursuant to the parties' agreed recommendation; however, the trial court sentenced Mr. Chase to 20 days confinement, converted to 160 hours of community service, to be completed by May 1, 2020. CP 212; 12/9/19RP at 20-26. The court ordered that the community

service hours would be converted back to jail time if not completed by May 1. CP 212, 217.

2. Motion for new counsel. As described supra and herein, because of counsel's failures leading to an inability to maintain even a semblance of a working relationship with his client to defend the post-plea issues in the case, Mr. Chase could no longer work with counsel and his relationship with counsel was one of lack of faith and distrust. But the trial court denied Mr. Chase's motion, deeming it untimely and contrary to counsel's general good performance during the overall criminal case. 3/19/21RP(am) at 382-83.

3. Ruling on restitution. In an oral ruling on April 16, 2021, and in a letter decision issued on June 11, 2021, the trial court found that Mr. Chase owed the State of Washington total amounts of restitution of $26,933.41. CP 13-16; 4/16/21RP at 454-68.

E. ARGUMENT

SUPREME COURT REVIEW OF MR. CHASE'S CASE IS WARRANTED UNDER RAP 13.4(b)(3).

1. Review is warranted under RAP 13.4(b)(3).

Criminal defendants have the constitutional right to assistance of counsel in their defense. U.S. Const., amend. VI (guaranteeing that, "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence."); Const. art. I, § 22; Strickland v. Washington, supra, 466 U.S. at 670. In this case, the Court of Appeals described Mr. Chase's motion for new appointed counsel as "last-minute." Appx., at p. 1. Mr. Chase argues that the Court of Appeals wrongly affirmed the trial court's ruling that his motion for a new lawyer was untimely, and did not merit substitute counsel.

The facts of what Mr. Chase holds was a deficient default of his trial counsel was indeed evident as early as December of

2018 of not before. Statement of Additional Grounds, at p. 2 The court record proves that as early as a month prior to the March 19 hearing, on which, following a span of lengthily spaced out hearings on the restitution issue, the court determined it would deny the motion, as done by ruling on April 16. These proceedings went forward on the topic as early as February. See 2/5/19RP at 372. The record reveals that the core of Mr. Chase's motion - the failure of counsel to effectively communicate with Mr. Chase about evidence he repeatedly told counsel was helpful to his case, and the resulting breakdown in trust and the lawyer/client relationship - was evident. 2/5/19RP at 372. It resulted in understandable displeasure of the trial court, highly justified. At one juncture, Mr. Chase noted that he had given his counsel important documents and emails five months previously, and in that context, even the trial judge rebuked the defense for not submitting these materials earlier. 2/5/19RP at 372.

> THE WITNESS [Mr. Chase]: I submitted this document to [counsel].
> THE COURT: When?
> THE WITNESS: Five months ago. He lost track of it. I did have a conversation with him during the lunch time break. He did say he lost track of it, but I do have it where I sent it to him. So I am trying to -- Judge, I understand your frustration --
> THE COURT: Mr. Chase, I don't think you understand my frustration. I don't think you understand my frustration. It was almost a year ago that I gave a very express order in this case for documents to be provided well in advance of our restitution hearing. The State complied. You did not. We have had what, three or four restitution hearings sessions in this case. It seems that new documents come in each one. I am genuinely interested in receiving all valuable information in this case. But the lack of follow through by the parties in this case makes it very difficult to actually complete this hearing[.]

2/5/19RP at 372. As set forth in Mr. Chase's Opening Brief, this incident exemplified the irreconcilable conflict by a failure to communicate effectively to offer evidence secured by great effort by Mr. Chase showing that the Chases' were not financially responsible for the amounts the State claimed. This

is a constitutional question. As Mr. Chase argued to the intermediate court,

> In his written motion, Mr. Chase explained that he believed appointment of new counsel was warranted, and necessary, and he raised several factual issues. CP 104-06. According to Mr. Chase, his counsel had not provided discovery documents to the State which would have borne substantially on the question of restitution. CP 105. Crucially, counsel had also failed with regard to proof of Mr. Chase's community service by informing him that his community service activities would be deemed acceptable by the trial court. CP 105, at p. 2.

Appellant's Opening Brief, at pp. 4-5. Mr. Chase's Statement of Additional Grounds pursuant to RAP 10.10 similarly notes that the breakdown in the required relationship between lawyer and client was created by counsel's failure or unwillingness to submit documentary evidence on the question of dollar restitution,[1] but also when counsel assured Mr. Chase that his

[1] Mr. Chase's Statement of Additional Grounds supports the argument on appeal of a complete breakdown between counsel and client, noting multiple events in the years leading to the restitution trial in which he argues his

community service hours - necessarily completed in non-traditional means in online classes during the pandemic, a scourge which risked the health of his elderly parents - would be accepted by the trial court. Mr. Chase was entitled to new counsel. The breakdown in the attorney and client relationship impinged on Mr. Chase's Sixth Amendment right to representation, warranting review under RAP 13.4(b)(3).

In addition, the Court of Appeals notes a difference between the entitlement to representation when the defendant is given a court-appointed lawyer, compared to a defendant who can afford to hire private counsel.

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counsel failed to properly submit documentation and prove the authenticity of documents originally digitally sent by email, and when counsel did communicate, he miscommunicated about community service. See SAG, at pp. 2-4. Mr. Chase remains entitled to file a Personal Restraint Petition, using that and all available documentation and sworn affidavits to address the different issue of ineffective assistance under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and RCW 10.73.090 within one year from the issuance of the mandate in the present case.

> A criminal defendant who pays for his own attorney generally has a right to counsel of his choice. State v. Roth, 75 Wn. App. 808, 824, 881 P.2d 268 (1994). But an indigent defendant has no right to choose his court appointed attorney and must show good cause before the trial court will discharge and substitute counsel. [State v. Stenson, 132 Wn.2d 668, 733-34, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998)].

Appx., at pp. 4-5. Nonetheless, Mr. Chase is impelled to contend that in a fundamental sense, the right to counsel cannot be denied him as it was here. See McCoy v. Court of Appeals of Wisconsin, Dist. 1, 486 U.S. 429, 435, 108 S.Ct. 1895, 100 L.Ed.2d 440 (1988) ("an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice.") (discussion in context of Anders v. California, 386 U.S. 738, 744, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967)). Under any standard, Mr. Chase could not be saddled with a counsel with whom he had an irreconcilable conflict, and where there was a complete breakdown in communication between the attorney

and the defendant. State v. Stenson, 132 Wn.2d 668, 733-34, 940 P.2d 1239 (1997).

This case presents significant questions regarding the defendant's constitutional right to representation. Again, review, by the Supreme Court of this State, is warranted under RAP 13.4(b)(3).

(2). Applicable legal standard.

Substitution of counsel is required where there is (1) a conflict of interest, (2) an irreconcilable conflict, or (3) a complete breakdown in communication between the attorney and the defendant. State v. Stenson, supra, 132 Wn.2d at 733-34.

(3). Court's ruling.

The trial court denied Mr. Chase's motion. The court reviewed the procedural history of the case, noting that the substantive question of guilt had been litigated for several years, including an interlocutory appeal. 3/19/21RP(am) at 390-91. The court also stated, in broad terms, that defense counsel

had been "actively engaged in all stages of the restitution proceedings." 3/19/21RP(am) at 392-93. However, the court ruled that Mr. Chase's motion was untimely, and "does not rise to the level of requiring court action to appoint another attorney to represent you in this case." 3/19/21RP(am) at 395-96.

(4). The trial court erred in denying new counsel, requiring automatic reversal.

When reviewing a trial court's refusal to appoint new counsel, courts consider: (1) the extent of the conflict, (2) the adequacy of the trial court's inquiry, and (3) the timeliness of the motion. A court abuses its discretion by failing to make an adequate inquiry into the attorney-client conflict, such as the one Mr. Chase complained of here. United States v. Lott, 310 F.3d 1231, 1249-50 (10th Cir. 2002); State v. Lopez, 79 Wn. App. 755, 767, 904 P.2d 1179 (1995).

Contrary to the Court of Appeals decision and the Respondent's argument, the motion for new counsel was timely, including as argued supra. See also Appx., at p. 1,

3. Mr. Chase's 2021 motion was made in the latter part of the proceedings following the guilty plea. The trial court did not issue a final ruling on the issue of restitution and community service until June 11, 2021, after multiple pleading and multiple additional hearings. CP 13-16 (written order of June 11, 2021).

Importantly, as to many of these failures, in particular the failure to present restitution evidence, the absence of the constitutionally-required working relationship between client and counsel was demonstrated by Mr. Chase's only learning of continued failures at the March 19, 2021 hearing which the Court of Appeals deemed untimely. Statement of Additional Grounds, at pp. 4-5; see also Part E.1, supra.

This case is not about a client's mere frustrations with counsel. The complete lack of a working relationship as a result of counsel's unwillingness to allow Mr. Chase to contribute to his own defense with pertinent materials, and other defaults, resulted in one obvious conclusion – there was no possibility the lawyer-client relationship could continue in a

manner that would meet the minimum requirements of the Sixth Amendment right to counsel. That complete collapse was attested to by Mr. Chase, who stated he had attempted with his best efforts to work with counsel:

> I cannot anymore. He frustrates me to no end. He doesn't respond. I tell him one thing. I provide documents. He doesn't give it to you, does not give it to the Attorney General, doesn't provide me documents just this week. This week alone is the proof. Tuesday he responds to my complaint that he has not talked to me. He sends me an email forwarded from Barbara Serrano, the Attorney General - the Assistant Attorney General, and he had it for 11 days, 11 days that it took him. I am tired. I do not want to be in the same room. I do want him representing me. I do not trust him. He does not have my best interests at hand. Now, it may not be a personal choice, but the man is overloaded. I have been in his office. I know what it is like. He does not have the task, time to handle this case, nor did he. And it has become blatantly obvious on a review of the file that he has missed and made absolute critical mistakes in this case. I want him gone. I do not want to deal with him. That's it.

3/19/21RP(am) at 388-89.

The problem at the Court of Appeals level was its failure to review the quality of the trial court's inquiry, which should

have focused on the specific defaults that broke the attorney-client relationship. Given Mr. Chase's representations, the trial court failed to make an adequate inquiry, and instead simply made generalizations about the quantity of counsel's work throughout the entire case.

Mr. Chase objects to the Court of Appeals' reasoning that, in effect, where the lawyer in question is a good lawyer who generally fought the case hard, appointment of new counsel can be denied. The Court of Appeals relied on the trial court's assessment that counsel had been active in his representation efforts:

> [Chase's counsel] has been actively engaged in all stages of the restitution proceedings, often asking to voir dire the State's witnesses regarding the providence of certain documents that were offered by the State, and challenging the premise upon which the State is seeking restitution.

Appx., at p. 7 (citing trial court's ruling). But a trial lawyer may make active efforts in a case, yet fail to represent the defendant to the level required by Mr. Chase's Sixth

Amendment rights, by making discrete, but significant, material errors. It has long been recognized that, in the context of prejudicial error, even a "single mistake of counsel" is ineffective assistance. (Emphasis added.); see U.S. ex rel. Burton v. Cuyler, 439 F. Supp. 1173, 1189 (E.D. Pa. 1977), aff'd, 582 F.2d 1278 (3d Cir. 1978).

In the case at bar, however, Mr. Chase was aggrieved by multiple failures of counsel and the breakdown that required a new lawyer. As he noted, "[t]ime and time again, [counsel]

> failed to provide substantive salient documentation during pretrial discovery, plea negotiations, and even during sentencing and restitution hearings to this Court, and the Attorney General's Office and myself. You, yourself, Your Honor had verbally pointed this out on multiple times for his actions.

3/19/21(am)RP at 383; see Statement of Additional Grounds, at pp. 1-5; see also 3/19/21(am)RP at 384 (Mr. Chase's testimony describing counsel's inability to successfully work with counsel because of repeated failures to introduce factual documents to dispute claims made by the Attorney General's office, including

as to restitution and community service); see also Statement of Additional Grounds, at pp. 4-5 (noting the absence of a communicative working relationship between Mr. Chase exemplified by failures to act on documents bearing on wrongful restitution claims, and requests to ensure validity of community service hours).

These questions not only warrant this Supreme Court taking review of Mr. Chase's case, but on review, should require reversal of the trial court's rulings against Mr. Chase. As to the financial documents – regarding which the State made the grave and serious accusation that they included emails that were altered - Mr. Chase explained to the trial court how his lawyer had the chance to bring "hard drives and data documents and prior court records to prove me right" on the issue of authenticity, but counsel did not do so, nor did he have the materials forensically analyzed. RP 3/19/21RP(am) at 383-84. Mr. Chase could not work with his counsel in any productive manner because of these failures.

With regard to community service, Mr. Chase's counsel also affirmatively failed him when Mr. Chase carefully sought pre-approval before engaging in the only community service activities he located, attempting to ensure that it would be deemed acceptable by the trial court, given the difficult circumstances of the pandemic that rendered more traditional community service to programs serving marginalized populations in live group settings unavailable and/or unsafe. CP 105. Logan Social Services, a non-profit 501(c)(3) organization where Mr. Chase conscientiously addressed personal improvement, was not approved by the court below as community service. See CP 87; see State v. Law, 154 Wn.2d 85, 106, 110 P.3d 717 (2005).

These issues are fully set forth in the Opening Brief and should be at issue if this Court accepts review of Mr. Chase's appeal, as he argues it should do under RAP 13.4.

Because Mr. Chase argues that these failures were ongoing over an extended period of time during the case, the

result was a complete breakdown in the attorney-client relationship, as also evidenced by Mr. Chase's frustrated, but thoroughly specific points of defaults and resulting breakdown, which was plain. In this case, there can be no question that Mr. Chase's differences with counsel represented a complete and total breakdown, that prevented adequate representation. Given Mr. Chase's precisely articulated concerns, the trial court failed to adequately examine "both the extent and nature of the breakdown in communication between attorney and client and the breakdown's effect on the representation the client actually receives." In re Pers. Restraint of Stenson, 142 Wn.2d 710, 724, 16 P.3d 1 (2001).

Without a corresponding precise inquiry, the trial court in Mr. Chase's case simply did not have a reasonable basis for reaching the decision it did. United States v. Adelzo-Gonzalez, 268 F.3d 772, 777 (9th Cir. 2001); United States v. McClendon, 782 F.2d 785, 789 (9th Cir. 1986). Short, generalized, "perfunctory inquiries" are insufficient when the right to

counsel is at issue. Adelzo-Gonzalez, at 778. Here, the trial court made no adequate inquiry into Mr. Chase's motion to discharge his appointed attorney – and the evidence that was proffered was enough that no court could, within its discretion, deny Mr. Chase's motion. The court erred in summarily dismissing the motion by simply reciting a narrative of the length and difficulty of the case.

Reversal is required. Where the trial court failed to make an adequate inquiry, or appoint new counsel, prejudice is irrefutably presumed. United States v. Musa, 220 F.3d 1096, 1102 (9th Cir. 2000).

F. CONCLUSION

Based on the foregoing, Mr. Chase respectfully requests that this Court accept review of his case under RAP 13.4(b)(3), reject the reasoning of the Court of Appeals decision, and reverse the post-trial judgment of the Superior Court regarding restitution and community service.

Respectfully submitted this 23rd day of August, 2022.

This brief is formatted in Times New Roman font 14 and contains 3,813 words.

/s/ Oliver R. Davis
Washington Bar Number 24560
Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98102
Telephone: (206) 587-2711
email: Oliver@washapp.org

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

STATE OF WASHINGTON, Respondent, v. PAUL TIMOTHY CHASE, Appellant.	)	No. 82846-1-I UNPUBLISHED OPINION

BOWMAN, J. — Paul Timothy Chase appeals the trial court's orders to pay criminal restitution of $26,933.41 and complete 160 hours of community service. Chase claims the court erred when it denied his last-minute motion to discharge his attorney and appoint new counsel. Finding no error, we affirm.

FACTS

In 2014, the State charged Chase with theft in the first degree because his construction company failed to pay retail sales tax on several projects between 2008 and 2011. The court appointed an attorney from the Snohomish County Public Defender Association to represent him.

As part of extensive pretrial litigation in 2016, defense counsel asked the trial court to suppress several bank records relating to Chase's finances. The trial court denied the motion and Chase petitioned for interlocutory review. We accepted review and affirmed the trial court's ruling in a published opinion. State

v. Chase, 1 Wn. App. 2d 799, 407 P.3d 1178 (2017), review denied, 190 Wn.2d 1024, 418 P.3d 802 (2018).

On remand, Chase's attorney successfully negotiated a resolution of the case. As a result, on October 4, 2019, Chase pleaded guilty to an amended charge of second degree theft.[1] On December 9, 2019, the court sentenced Chase to serve 20 days of confinement, which it converted to 160 hours of community service. The court also scheduled a restitution hearing for March 13, 2020.

The onset of COVID-19[2] forced the court to continue the restitution hearing several times between March and August 2020. The court held the first hearing on August 19, 2020 but "took the matter under advisement" to review additional materials before ruling.[3] The court gave defense counsel 2 weeks to provide more documentation and reserved resetting a restitution hearing. On September 27, 2020, the court issued a letter ruling granting some of the State's restitution requests. But the court gave the State 60 days to provide more materials and the defense 30 days to respond before it would finalize its ruling.

The State submitted additional materials and the court scheduled another round of restitution hearings to take testimony. The State presented witnesses

[1] As part of the plea agreement, the State agreed not to file more charges against Chase and to recommend that he receive credit for time served.

[2] COVID-19 is the World Health Organization's official name for "coronavirus disease 2019," first discovered in December 2019 in Wuhan, China. COVID-19 is a severe, highly contagious respiratory illness that quickly spread throughout the world.

[3] The court also delayed ruling on Chase's motion to approve 160 hours of community service he completed online. The State opposed the motion. The court requested defense counsel provide documentation showing "a specific breakdown of what specific programs" Chase completed.

on December 18, 2020, January 15, 2021, and February 5, 2021. Chase also testified at the February 5 hearing but because he had not finished by the end of the day, the court scheduled a final hearing for March 19, 2021.

On March 17, 2021, almost six weeks after the February hearing and just two days before the final hearing, Chase sent the court a "motion to Remove my Council [sic]" and "Statement in support" asking to discharge his lawyer because of ongoing issues of distrust and lack of communication. He also requested a continuance until he was "able to replace" his attorney. The State objected to Chase's request as untimely.

At the March 19 hearing, the court told Chase it read his motion and gave him a chance to talk about his concerns. The court then reviewed the lengthy procedural history of the case and denied his request to discharge and substitute counsel as untimely. The court also determined that Chase did not show good cause to discharge his attorney.[4] Ultimately, the trial court ordered Chase to pay restitution totaling $26,933.41.[5]

Chase appeals.

[4] Chase's attorney first joined in the motion for discharge, arguing the rules for professional conduct compelled his withdrawal. But after the court denied the motion, counsel conferred with Chase and told the court he no longer had concerns about his ability to continue representation.

[5] The court also rejected Chase's request to consider "online educational activities" as community service hours and ordered him to start his community service anew.

ANALYSIS

Chase argues the trial court erred because it "made no genuine inquiry into [his] motion to discharge his appointed attorney."[6] We disagree.

We review a trial court's denial of a motion to discharge counsel for abuse of discretion. State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998). A trial court abuses its discretion when its decision "is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons." State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993). "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).

The Sixth Amendment to the United States Constitution guarantees representation and the right to select one's preferred attorney. Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988). A criminal defendant who pays for his own attorney generally has a right to counsel of his choice. State v. Roth, 75 Wn. App. 808, 824, 881 P.2d 268 (1994). But an indigent defendant has no right to choose his court appointed attorney and must show good cause before the trial court will discharge and substitute counsel.

[6] Chase also assigns error to the trial court's determination that his request to discharge counsel was untimely. But he cites no legal authority in support of his argument. See RAP 10.3(a)(6). We need not consider an argument that a party does not develop in their brief or support with legal authority. State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990).

Stenson, 132 Wn.2d at 733-34; State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004). Good cause includes a conflict of interest, irreconcilable conflict, or a complete breakdown in communication. Varga, 151 Wn.2d at 200. To determine whether the trial court abused its discretion in denying a defendant's request to discharge and substitute counsel, we consider the (1) extent of the alleged conflict, (2) adequacy of the trial court's inquiry, and (3) timeliness of the request. In re Pers. Restraint of Stenson, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001).

In determining whether to discharge an appointed attorney, the court must inquire into the extent and nature of the breakdown in the relationship and its effect on the representation. State v. Schaller, 143 Wn. App. 258, 270, 177 P.3d 1139 (2007). A court conducts an adequate inquiry when it makes a thorough investigation, allows the defendant to present all concerns, and then provides a " 'sufficient basis for reaching an informed decision.' " State v. Thompson, 169 Wn. App. 436, 462, 290 P.3d 996 (2012)[7] (quoting United States v. Adelzo-Gonzalez, 268 F.3d 772, 777 (9th Cir. 2001)). Minimal inquiries do not suffice. See United States v. Moore, 159 F.3d 1154, 1160-61 (9th Cir. 1998).

Chase points to State v. Lopez, 79 Wn. App. 755, 767, 904 P.2d 1179 (1995), in support of his argument that the trial court failed to make an adequate inquiry.[8] In Lopez, the defendant told the court that he wanted " 'a different

[7] Internal quotation marks omitted.

[8] Chase also cites State v. Cross, 156 Wn.2d 580, 610, 132 P.3d 80 (2006), abrogated on other grounds by State v. Gregory, 192 Wn.2d 1, 427 P.3d 621 (2018), and State v. Dougherty, 33 Wn. App. 466, 471, 655 P.2d 1187 (1982), in support of his argument. But those cases discuss the adequacy of inquiries into a defendant's request to waive the right to counsel and proceed pro se. Cross, 156 Wn.2d at 607; Dougherty, 33 Wn. App. at 468. Chase did not seek to waive his right to counsel and proceed pro se so there was no need for the court to engage in that more detailed and thorough colloquy.

attorney because this one isn't helping me at all.' " Id. at 764. The trial court responded, " 'I'm not going to appoint you another attorney.' " Id. Division Three of our court determined that such a summary denial of a request to discharge counsel without inquiring into any of the reasons for the defendant's dissatisfaction with his attorney was an abuse of the court's discretion. Id. at 767.

Unlike the court in Lopez, the trial court here elicited and evaluated Chase's concerns before denying his motion to discharge counsel. The court reviewed Chase's three-page motion and "Statement in support" that explained why he believed his attorney was not adequately representing him or timely communicating with him. Then at the start of the March 19 restitution hearing, the court addressed Chase's motion and gave him five minutes to speak more about why he wanted to discharge his attorney. Chase complained about his attorney's lack of communication, inadequate investigation, and refusal to provide documents to the State during trial preparation several years before the restitution hearings.

After five minutes, the trial court interrupted Chase, asked him to focus his argument "on things that are salient to" the restitution proceedings, and offered him three more minutes to explain his dissatisfaction. Chase again complained about untimely pretrial communication from his attorney and said this conduct continued into the restitution phase. Chase claimed his attorney still did not quickly respond to his phone calls and, most recently, waited 11 days before forwarding him an e-mail from the State.

After the State argued in opposition, the court explained to Chase that when it received his motion on March 17, it "went back and looked through the court file to remind myself about the procedural history of this case." The court outlined three years of pretrial litigation beginning in 2014, the 2017 interlocutory appeal and 2018 mandate, another year of pretrial litigation and plea negotiations, sentencing in December 2019, and then the restitution and community service disputes since March 2020. It also noted that Chase's attorney had zealously advocated on his behalf throughout the restitution process:

> [T]his issue of restitution is one that has received more attention than I think any other restitution hearing I have presided over, either as a practicing attorney or as a judge, and I have been practicing law for more than 30 years. The parties have been prepared at hearings to examine the witnesses presented. There has been examination, cross examination, et cetera. [Chase's counsel] has been actively engaged in all stages of the restitution proceedings, often asking to voir dire the State's witnesses regarding the providence of certain documents that were offered by the State, and challenging the premise upon which the State is seeking restitution.

The record shows that the trial court made a thorough investigation into Chase's complaints and had a sufficient basis for reaching an informed conclusion about his motion to discharge and substitute counsel. It did not abuse its discretion in denying the motion.[9]

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[9] Chase filed a statement of additional grounds for review (SAG) under RAP 10.10. First, Chase cites additional facts and e-mails in support of his appellate attorney's argument that the trial court erred in denying his motion to discharge counsel. We decline to consider the new facts as we review only the record before us. See RAP 10.10(c) ("[o]nly documents that are contained in the record on review should be attached or referred to in the [SAG]"). Second, Chase appears to argue that the State did not timely serve him with the criminal "complaint." But he again cites to facts outside the record and provides no legal argument, so we do not consider this argument. Dennison, 115 Wn.2d at 629.

We affirm the orders on restitution and community service.

Brennan, J.

WE CONCUR:

Chung, J.

Andrus, C.J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 82846-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondents Kyle Wood and Barbara Serrano, AAGs
[kyle.wood@atg.wa.gov][barbara.serrano@atg.wa.gov]
Office of the Attorney General
[CRJSeaEF@atg.wa.gov]

☒ petitioner

☐ Attorney for other party

NINA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: August 23, 2022

WASHINGTON APPELLATE PROJECT

August 23, 2022 - 3:15 PM

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