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In The Washington State Supreme Court

5.

6. State of Washington

NO: 56761-0-II COA

7.

NO: New Supreme Court

8. Ronald BARTON JR

Motion: RAP Discretionary

9.

Defendant

Review of Interlocutory

10.

Decision - RAP 13.5(a),

11.

(b), (1), (2)

12.

**TREATED AS A PETITION
FOR REVIEW**

13.

I Motion

14.

15. Here Comes Now, Ronald BARTON JR, proceeding

16.

Pro Se, in Necessity hereby MOVES (this)

17.

Honorable Court to "GRANT" Discretionary

18.

Review of an interlocutory decision rendered

19.

by the Washington State Court of Appeals,

20.

Division II, that:

21.

22. (1) The Court of Appeals has committed an

23.

obvious error which would render further

24.

proceedings useless, and:

Motion: Discretionary Review
of Interlocutory Decision RAP 13.5

Page 1 of 11

1. (2). The Court of Appeals has committed
2. an obvious error (probable) and the decision
3. of the Court of Appeals substantially
4. vitiates the status quo and has limited
5. the freedom of the petitioner to act, and:
6.

7. (3). The Court of Appeals has so far departed
8. from the accepted and usual course of
9. judicial proceedings which call for
10. the exercise of revisionary jurisdiction
11. by this honorable Court, in addition
12. to a departure by the trial Court
13. from accepted judicial proceedings.
14.

15. The petitioner submits this motion for
16. Discretionary Review in accordance with
17. R.A.P. 13.5 and the principles of the
18. United States Constitutional Amendments,
19. "1st Redress the Government, 5th Right
20. to Remain Silent and the 14th Due Process,
21. and "Equal Protection in addition to the
22. 6th Effective Assistance of Counsel.
23.

24. * Supported By Affidavit *

1. I, Ronald BARTON, declare and state the
2. following statements are true and correct to
3. the best of my personal knowledge and belief
4. under penalty of perjury pursuant 28 U.S.C.
5. §1746, 18 U.S.C. 1621 and the laws of the
6. State of Washington, TO WIT:

7.
8. 1) Has the Court of Appeals committed
9. an obvious error which would render
10. further proceedings useless?

11.
12. Yes, the Court of Appeals has committed
13. an obvious error which makes further
14. judicial proceedings useless, void, and
15. erroneous. RCW 9A.44.020(1) "ZERO
16. CORROBORATION" to Convict statute is
17. "Unconstitutional" on its face as it
18. violates the Separation of Powers Doctrine.
19. The statute constitutes a severe state
20. Congressional encroachment on the state's
21. Courts "judicial power" which a
22. state court judge is prohibited from
23. applying the ordinary judicial
24. principles of "stare decisis" in

1. deciding the insufficiency of the state's
2. evidence involving defendants merely
3. "Accused" of sexual assault allegations,
4. thereby interfering with the state
5. Courts normal adjudicatory process.
6. and second, by requiring state Courts
7. to give effect to incorrect state
8. rulings that, in the state Courts'
9. independent judgment violate the
10. Constitution. Such a state
11. Congressional breach of the judiciary's
12. integrity and independence of the
13. duty to maintain the supremacy
14. of the defendant's U.S. Constitutional
15. Rights to "Due Process," "Equal Protection,"
16. "Effective Assistance of Counsel," and
17. the Right to Remain Silent, effecting
18. the Constitutional structure of the
19. defendant's trial and direct appeal
20. which should NOT go unchecked
21. by the Supreme Court. These issues
22. are clearly outlined in the defendant's
23. "Statement of Additional Grounds,"
24. "SAG" which has been signed by this Court.

1. and the defendant's counsel. The Court
2. of Appeals judges as in the trial
3. Court and the Supreme Court judges
4. are eliminated from the equation from
5. ruling on the insufficiency of the state's
6. evidence as the State Legislature
7. has ALREADY determined RCW 9A.44.020(c),
8. "ZERO CORROBORATION" through its creation,
9. an "unconstitutional" "BILL OF ATTAINDER"
10. prohibited by the U.S. Constitution, which
11. makes further judicial proceedings,
12. in fact all judicial proceedings from
13. the genesis of being charged by the
14. state useless.

15.
16. RCW 9A.44.020(c), targets the "Accused"
17. "INNOCENT" defendant in this case,
18. pre-determined his guilt as a "special"
19. class of crime the state has declared
20. devoid of no constitutional rights upon
21. accusation and charged, as the state inflicts
22. punishment without a judicial trial,
23. i.e. an "unfair ceremonial" trial - SEE:
24. United States v Lovett, 328, U.S. 303, 66
S. Ct. 1073, 90 L Ed 1252, 106 Ct. Cl 856, 1946
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of Interlocutory Decision RAP 13.5

1. U.S. LEXIS 228 (1946). The state of Washington
2. through its state courts have, "committed an
3. obvious error" in / at the appeals level
4. as statute RCW 9A 44.020 (1), has
5. inflicted punishment constitutionally
6. forbidden punishment against the
7. defendant;

8.
9. The statute falls within the historical
10. meaning of legislative punishment,
11. the state's intention is to punish
12. the "accused" "SEX OFFENDER" minus
13. constitutional safeguards as the state
14. operates in the open in excess of
15. competent jurisdiction and the
16. statute does not have any punitive
17. legislative purpose to "TREAT" AN
18. "ACCUSED" "INNOCENT" DEFENDANT
19. OF A SEXUAL ASSAULT AS THE ENEMY
20. OF THE STATE without a REAL TRIAL,
21. SEE: Whitney v. Heckler 780 F2d.
22. 963, 1986 U.S. App. LEXIS 21846 (11th Cir).
23. SEE ALSO: FORETICH V UNITED STATES,
24. 351, F3d. 1198, 359 US APP DC 54 2003
US App LEXIS 25375 (D.C. Cir 2003

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Affidavit: Discretionary Review RAP 13.5

1. 2) Yes, the Washington State Court of
2. Appeals has limited the ability of
3. the defendant to act substantially
4. altering the status quo as the
5. defendant is "singled out" in the
6. targeted "Criminal Class" - i.e. THE
7. ACCUSED "SEX OFFENDER" with the use
8. of "out of Court" statements NOT ROOTED
9. in facts but merely CONVERTED INTO
10. EVIDENCE by a police detective who
11. swore he/she heard the statements,
12. without any links "secondary"
13. CORROBORATING FACTS TO SUPPORT THE
14. INFORMATION - VIOLATING ARTICLE
15. 1559 Clause 3 of the Federal Constitution.
16. ONLY "ACCUSED" SEX OFFENDERS are
17. designated by the state as GUILTY
18. without a judicial - NON CRIMINAL
19. TRIAL - as the state use the unconstitutional
20. reasoning; act/or status to curb the
21. behavior which it regards as harmful
22. to the public welfare by putting
23. INNOCENT MEN AS THE DEFENDANT
24. IN PRISON FOR LIFE without
25. Constitutional safeguards, UNTENABLE
 GROUNDS.

1. Prohibitions on bills of attainder in
2. Art. I, ss 9 and 10 of Constitution,
3. prohibit the state legislature from
4. "SINGLING OUT" DEFAVORED
5. PERSONS AND METING OUT SUMMARY
6. PUNISHMENT in the creating of such
7. a Statute (a defenseless) statute as
8. RCW 9A.44.020(1) "ZERO CORROBORATION"
9. SEE: LANDGRAF V. USE FILM PRODS,
10. 511 U.S. 244, 114 S Ct 1483, 128 L. Ed 2d
11. 229, 8 FLA. L. WEEKLY Fed. S. 61 94 Cal.
12. DAILY Op. SERVICE 2869 94 D.A.R. 5525,
13. 94, D.A.R. 5625 64 EMP. PRAC. DEC
14. (CCH) 42947, 64 FAIR EMP. PRAC. LAW
15. (BNA) 820, 1994 U.S. LEXIS 3292 (1994)
16. This UNTENABLE pattern and practice by
17. the state courts has/is limited the
18. defendants' ability to act due to suspended
19. i.e. eliminated Constitutional safeguards
20. and judicial determination on the
21. insufficiency of the state's evidence
22. during pre-trial, Direct Appeal and
23. Post-Conviction Collateral Attacks, SEE:
24. Carmell v. Texas, 529 U.S. 513, 120
S. Ct. 1620, 146 L. Ed. 2d 577, 13 FLA. L.
Weekly Fed. S. 267, 2000

Affected: Disciplinary Review 13.5 RAP Page 8 of 11

1. Colo, J. C.A.R. 2312 2000 S.A.R. 4521, 2000

2. U.S. LEXIS 3004 (2000).

3.

4. 3) Yes. The Washington State Court of
5. Appeals has departed from the accepted
6. and usual course of judicial proceedings
7. which calls for the reversal of the
8. defendants charges and dismissal
9. of the case with prejudice.
10.

11. RCW 9A.44.020 (1) "ZERO CORROBORATION"

12. TO CONVICT has infringed on the

13. defendants ability to defend himself

14. against a statute that clearly lowers

15. the BAR for the burden of proof.

16. for the state, as the government subjects

17. presumption of innocence by threatening

18. such severe punishment so as to induce

19. a guilty plea "OR FACE LIFE UNDER

20. THE BOARD (ISRB) by going to trial or

21. plea guilty to lower charge - on top of

22. a - NON-Judicial trial and no pre-trial

23. challenges on the insufficiency of the states

24. evidence - UNTENABLE GROUNDS, SHOCKING

THE CONSCIENCE OF THE DEFENDANT.

Affidavit: Disciplinary Review RAP 13.5 Page 9 of 11

1. The state has made it easier to meet
2. the threshold for overcoming presumptions
3. while "LOWERING," AS A MATTER OF
4. LAW, amount of evidence necessary to
5. meet that burden i.e. burden of
6. proof and the law that reduce the
7. quantum of evidence necessary to meet
8. that burden, Violating 18 U.S.C. 1038
9. "False Information, As the deputy
10. prosecutor and defense Counsel "Conspired"
11. "TO SAVE" THE STATE'S CONVICTION
12. (See trial record) - Court transcripts and
13. defendant's SAG - engaged in conduct
14. with the intent to convey false
15. misleading information under circumstances
16. where such information may reasonably
17. be believed and where such information
18. indicates that the alleged incidents
19. took place - Constituting a violation
20. of Chapter 2, 10, 11B, 39, 40, 44, 111 or 113B
21. of this title (18 U.S.C. 5531 - Criminal
22. Violation of a state actor and contractor
23. for the state demonstrated in this case,
- 24.

Affidavit: Disciplinary Review 13.5 RAP

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1.

2.

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Conclusion

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For the foregoing reasons aforementioned the defendant should be granted Discretionary Review in accordance with RAP 13.5 (by this Honorable Court.

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Respectfully Submitted,

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7/12/23



14.

Date

Signature

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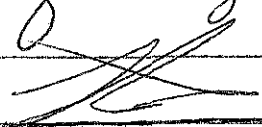
22.

23.

24.

I, Ronald BARTON JR declare and state all of the aforementioned statements are true and correct to the best of my personal knowledge and belief under penalty of perjury pursuant 28 U.S.C. 41746, 18 U.S.C. 1621 and the laws of Washington State.

7/12/23



Date

Signature

XAPP ↘

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June 27, 2023

Mr. Ronald Ray Barton Jr.
431278
Coyote Ridge Corr. Center
P.O. Box 769
Connell, WA 99326

RE: Court of Appeals Number 56761-0-II

Dear Mr. Barton:

The Court of Appeals issued its opinion in your case. Enclosed is a copy of the opinion. I regret to inform you that the court affirmed your conviction.

The court ruled that the trial judge did not abuse its discretion when it excluded the Instagram messages instead of dismissal of the charges. It ruled that because there was no showing your defense was prejudiced by the late disclosure of the messages, the exclusion of the messages was an appropriate remedy.

As far as the issues you raised in your SAG are concerned the court rejected those. It ruled the issue regarding your trial counsel's failure to retain an expert to testify about how long a hair follicle will test positive for methamphetamine, was unsupported because there is nothing in the trial court record indicating what the expert testimony would have been. It also ruled the issue regarding the Cellebrite operator was likewise unsupported by the record. The court also ruled your arguments the trial court did not have jurisdiction and that your constitutional due process and equal protection rights were violated were too vague, and your issue that appellate counsel was ineffective, based on the letter you received from counsel, was a matter outside the record on appeal. I understand you have a Personal Restraint Petition pending in the court of appeals. I don't know if you raised some of these same issues in that petition because we were not appointed to represent you in that matter.

I have carefully reviewed the Court's opinion. I regret to conclude the Court of Appeals has legal and factual justifications to support its decision and I do not believe there are grounds to request reconsideration. Therefore, I will not ask the panel of judges to reconsider its decision. However, you may file your own motion to reconsider the Court's decision, if you feel that the court has overlooked or misapprehended an important point of fact or law. If you plan to do so, you must file the motion within 20 days of the date of the Court's opinion (date of opinion June 27, 2023). The motion must be filed with the Court of Appeals.

You can also ask the Washington State Supreme Court to review your case. You do not need to file a motion for reconsideration first. The Supreme Court does not have to review a case and it only agrees to hear a very small fraction of the cases it is asked to review, and only where the court of appeals ruling conflicts with a Supreme Court ruling, a ruling of another division of the court of appeals, or if a unique constitutional issue of law is involved. It is my opinion the Supreme Court would not accept review because the court of appeals decision in

EXT #1

1. your case does not meet those criteria. However, if you plan to ask a federal court to review your case, you need to
2. exhaust your state court remedies and that means you must ask the state Supreme Court to review your case. If
3. you want to request the Washington Supreme Court to review your case, a petition for discretionary review stating
4. the grounds for review must be filed **within 30 days** of the enclosed opinion.

5. Even though I believe there is little hope the Washington Supreme Court would accept review in your case
6. because your case does not meet the criteria for review, I will file a petition asking it to review the issue of
7. whether the trial court abused its discretion when it denied the motion to dismiss based on the late disclosure of
8. the Instagram messages. I will not raise the issues in your SAG because there is no factual or legal support for
9. those issues. The Washington Supreme Court is strict about the 30 day timeline so I will need to know if you wish
10. me to request the Washington Supreme Court review your case within the next 10 days so that I have time to
11. prepare the petition.

12. If you do not want me to file a petition for discretionary review on the issue I noted above, you can file
13. your own petition to the Washington Supreme Court and request it review any of the issues raised in the appeal,
14. including the issue you raised in your SAG. The petition to the Washington Supreme Court should be filed with
15. the Court of Appeals.

16. Please contact me and let me know what you wish to do. I will not file a petition for discretionary review
17. requesting the Washington Supreme Court review your case unless I hear from you that is what you wish.

18. I know this is a lot of information, if you have any questions, you can contact me.

19. I am sorry the outcome of your appeal was not what you hoped for.

20. Sincerely,

21. 

22. *

23. "EXT # 2"

24. Eric Nielsen

25. Enclosure

26. RAP 13.5 "Discretionary to Supreme"

27. 1) Jurisdiction can be challenged at anytime
28. RAP 2.5 while this remains More evidence
29. of "Ineffective Appellate Counsel" for Not giving
30. "assistance" of Counsel to make the clearly
31. Meritorious Argument NOT "Vague" however the
32. Courts "admission" speak for itself they
33. See & Know & Refused to adress Clear Error,
34. 2) This Case is Clear RCW 9A.44.020(1) is
abused because evidence highly Credible to
the defense is forced under less wieght
on the Scale of Justice while the "Appeal"
Court "Cannot" offer Justice to "Set aside" or "Vacate"
a Judgment Under RCW 9A.44.020(1) No Corroboration Statute -

June 27, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

RONALD RAY BARTON, JR.

Respondent.

No. 56761-0-II

UNPUBLISHED OPINION

MAXA, P.J. – Ronald Barton Jr. appeals his three second degree child rape convictions. He argues that the trial court abused its discretion when it failed to dismiss the charges under CrR 8.3(b) after the State failed to produce images of Instagram messages between Barton and the victim until after the jury was sworn and Barton had given his opening statement. He also asserts claims in a statement of additional grounds (SAG) and two supplemental SAGs.

Although the trial court found that the State committed misconduct, the court's exclusion of the Instagram images prevented any potential prejudice. Therefore, we hold that the trial court did not abuse its discretion when it denied Barton's CrR 8.3(b) motion to dismiss. We do not consider Barton's SAG claims because they rely on evidence outside the record or are too vague. Accordingly, we affirm Barton's convictions.

EXT#3

FACTS

Background

Barton is KMS's grandfather. In the summer of 2021, 13-year-old KMS spent several weeks with Barton, his wife, and his mother at their home.

In September, KMS's stepmother discovered photographs and messages on a cell phone that was in KMS's purse. The photographs and messages suggested that Barton and KMS had been engaging in sexually inappropriate behavior while KMS was staying with him. After her stepmother confronted her with the material on her phone, KMS admitted that she and Barton had engaged in sexual activity.

KMS's stepmother reported the suspected sexual abuse, and KMS was interviewed by deputy Kevin Acdal. Acdal also examined KMS's cell phone and reviewed the messages between KMS and Barton. Some of these messages contained discussions of a sexual nature and pictures.

Acdal retained KMS's cell phone and placed it into evidence. KMS's cell phone was subjected to a cellular telephone forensic examination using a program known as Cellebrite, which extracts data from phones and other electronic devices. Although the Cellebrite forensic examination revealed several naked photographs of KMS, it did not contain any of the Instagram communications between KMS and Barton because Instagram was a third-party platform that could not be accessed using Cellebrite.

The State charged Barton with three counts of second degree child rape. The probable cause statement referenced and quoted some of the Instagram messages.

Opening Statements

The case proceeded to a jury trial. In the State's opening statement, the prosecutor described the testimony the State planned to present to the jury from KMS regarding her sexual relationship with Barton. The prosecutor told the jury that KMS's testimony alone was sufficient to convict Barton and that no corroboration of KMS's testimony was required in order to find Barton guilty. The prosecutor also commented that because of issues with the investigation in this case, the State might not be able to provide corroboration for all of the testimony regarding what KMS's stepmother found on KMS's cell phone.

In Barton's opening statement, he suggested that KMS's allegations were in retaliation for a disagreement and altercation that had happened between KMS's stepmother and Barton's wife at a family gathering shortly before the September disclosures. Barton acknowledged that messages proving a sexual relationship were alleged to have been found on KMS's phone and that KMS might testify about her communications with Barton.

But Barton stated,

The text messages on [KMS's] phone to [Barton's phone], with the sexually-explicit photographs where they discussed the sexual nature of their relationship? I would love to tell you, you get to see them. But they don't exist, either.

....

The Pacific County Sheriff's Department used Cellebrite to forensically examine [KMS's] phone. There is no question that there were sexually-explicit images on her phone. That was found. There's no question that there are other photographs and other data. But in that 179-page forensic analysis document, what is strikingly missing: there are no text messages from [KMS] to Ron Barton. There are no text messages from Ron Barton to [KMS]. *There's absolutely no forensic evidence whatsoever to determine that any of these messages that will be described for you ever existed. They cannot be produced.*

1 Report of Proceedings (RP) at 178-79 (emphasis added).

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Barton then commented that although law enforcement could have preserved the alleged messages in other ways, such as sending the cellular service provider a preservation letter and obtaining a search warrant for the phone records, these avenues never were pursued. Barton also emphasized other deficiencies in the investigation. For instance, Barton asserted that there was no evidence KMS had undergone a sexual assault examination, that the investigating officers never sought any DNA evidence, that the investigators did not examine the places where KMS alleged the sexual activity occurred, and that the police never attempted to examine KMS's or Barton's cell phone records to determine whether they could provide any corroborating evidence regarding where the assaults were alleged to have occurred.

Recovery of Instagram Communications

After the trial court released the jury for the day, the prosecutor met with KMS to prepare for her testimony. During this meeting, the prosecutor obtained KMS's cell phone. Using a password provided by KMS, the prosecutor was able access her Instagram account and locate Instagram messages between Barton and KMS. The prosecutor notified defense counsel that they had just recovered the Instagram messages.

CrR 8.3(b) Motion to Dismiss

The next morning, Barton moved to dismiss the case under CrR 8.3(b) due to governmental misconduct based on the recent disclosure of the Instagram messages. Barton characterized this late discovery as the State withholding evidence rather than discovering new evidence because the State was aware of the alleged Instagram messages and the phone had been in the State's possession since Barton was charged.

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Barton asserted that he had relied on the absence of evidence of the Instagram messages in his opening statement when he told the jury that any Instagram evidence was never recovered and that this was important because part of the defense case theory was that the State had conducted an incomplete investigation. Barton further asserted that if the State was permitted to present the newly recovered Instagram images, he would appear to be dishonest or incompetent in light of the opening statement. In addition, Barton asserted that the State's failure to discover and disclose the Instagram messages impeded his ability to provide effective representation because he was unaware of what evidence there was against Barton.

The State responded that the existence of the Instagram evidence was established in the probable cause statement, which had been provided to Barton. Therefore, the Instagram messages were not a surprise and the State had complied with its discovery obligations. The State also argued that Barton could not establish prejudice.

The trial court found that the new evidence was distinct from the witness statements about the evidence and that the State should have disclosed the actual messages. The court concluded that this was an instance of discovery mismanagement that amounted to governmental misconduct because there was no reason the State could not have located these messages earlier. The court also concluded that the disclosure of the new evidence after opening statements had been made could be prejudicial because the focus of Barton's opening statement was the lack of corroborating evidence in the case.

The trial court characterized the State's actions as a "discovery violation." 1 RP at 209. However, the court concluded that neither a continuance nor dismissal of the charges was the appropriate remedy. Instead, the trial court chose the "extraordinary remedy" of excluding the

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Instagram messages from evidence. 1 RP at 209. The court stated that Barton could not claim that the messages did not exist, but he could argue that no messages were placed into evidence.

Trial Testimony

At trial, KMS testified about the sexual contact that occurred with Barton. She stated that Barton had provided her with methamphetamine, marijuana, and alcohol and that they engaged in sexual relations on several occasions. KMS, her stepmother, and Acdal all testified about KMS's disclosures and the content of the Instagram messages between Barton and KMS that were found on KMS's cell phone. KMS confirmed that some of the messages and pictures on her cell phone were of a sexual nature and were inappropriate.

Acdal also testified that the Cellebrite report did not contain any information about the Instagram messages. And a certified Cellebrite operator testified that Cellebrite extracts data from cell phones but that Cellebrite cannot extract data from third-party applications such as Instagram. None of the witnesses testified about the recent recovery of the Instagram messages, and the State did not present the recovered images of these messages as exhibits.

Acdal further testified that shortly after her September 2021 disclosures, KMS submitted to a hair follicle test to test for the presence of methamphetamine and that this test was negative. Acdal testified that he did not know how long methamphetamine would be discoverable within a hair follicle. Barton did not present any evidence regarding how long methamphetamine would appear in a hair follicle.

Closing Arguments

In closing argument, the prosecutor described the messages between Barton and KMS. The prosecutor acknowledged that although the Cellebrite process did not extract any

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information about these messages from KMS's phone, KMS, her stepmother, and Acdal all had testified about the content of the messages. The prosecutor acknowledged various deficits regarding the investigation in this case but argued that these deficits did not mean that KMS was not sexually assaulted by Barton.

In his closing argument, Barton emphasized that this case depended on KMS's credibility. He argued that when evaluating KMS's credibility, the jury should consider the lack of forensic or medical evidence, the various deficits in the investigation, the fact KMS's disclosures followed on the heels of a family dispute, and the fact KMS could have obtained information about sex and drugs from other sources. Barton also discussed the Cellebrite report and asserted that the report did not implicate him or connect him to KMS in any way.

Barton argued that the State had taken the Instagram messages out of context. He asserted that the only way the messages could be probative is if the jury had the ability to examine and evaluate them in context, but this was not possible because the State had not presented any records from Instagram.

Barton concluded,

[The State is] wanting you to convict my client based on messages that maybe other people saw or have testified about that were taken out of context, but then the evidence stops. Rather than saying, "Here is the evidence, you can take a look at it for yourselves," make no mistake, what the State is saying to you right now is wink, wink, nod, nod. You can take our word for it. That's not sufficient. The evidence has to be provided to you for your consideration so you can assess: what was the meaning of that communication? Was it actually from Ron Barton? Was it actually to [KMS], or vice versa? What does that picture actually show? What does the message actually say? When was it sent? None of that evidence is here, it simply wasn't obtained.

2 RP at 681-82.

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The jury convicted Barton of three counts of second degree child rape. Barton appeals his convictions.

ANALYSIS

A. CrR 8.3(b) MOTION TO DISMISS

Barton argues that the trial court abused its discretion when it denied his motion to dismiss his charges under CrR 8.3(b) based on the State's misconduct and instead sanctioned the State by excluding the Instagram messages from evidence. We disagree.

1. Legal Principles

CrR 8.3(b) allows the trial court to dismiss a criminal prosecution due to "governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." Here, the trial court found that the State engaged in misconduct. However, to obtain a dismissal, the defendant must show by a preponderance of the evidence that the governmental misconduct resulted in actual prejudice affecting his right to a fair trial. *State v. Salgado-Mendoza*, 189 Wn.2d 420, 431-32, 403 P.3d 45 (2017). Dismissal pursuant to CrR 8.3(b) is an extraordinary remedy and should be ordered only as a last resort. *State v. Wilson*, 149 Wn.2d 1, 12, 65 P.3d 657 (2003).

We review a trial court's decision on a CrR 8.3(b) motion for abuse of discretion. *Salgado-Mendoza*, 189 Wn.2d at 427. The trial court abuses its discretion by making a decision that is manifestly unreasonable or based on untenable grounds. *Id.* However, the trial court's discretion must be exercised in light of the fact that dismissal is an extraordinary remedy. *See State v. Rohrich*, 149 Wn.2d 647, 653, 71 P.3d 638 (2003).

2. No Abuse of Discretion

Barton argues that the State's misconduct prejudiced him because the Instagram messages were disclosed after he had prepared his defense and presented his opening statement. Barton claims that the late disclosure impeded his ability to prepare and present his defense.

Barton may have been able to show prejudice if the Instagram messages had been admitted into evidence. However, the trial court did not allow the State to introduce this evidence. This ruling placed Barton in the exact position he would have been in if the messages had not been recovered. No previously undisclosed evidence was presented to the jury, and the record demonstrates that Barton was able to present his defense and to make closing arguments that were fully consistent with his opening statement.

Barton also may have been able to show prejudice if he had no knowledge of the Instagram messages before the trial started. But Barton knew the messages existed – they were quoted in the probable cause statement. He also knew that they existed because he had participated in them. And he was aware that the existence of and content of the messages would be established by testimony from KMS, her stepmother, and Acdal. Therefore, he was able to prepare to address this evidence at trial.

Barton also contends that the delayed disclosure prejudiced pretrial negotiations. But there is nothing in the record about any pretrial negotiations.

The trial court's choice of remedy prevented any potential prejudice. Accordingly, we hold that the trial court did not abuse its discretion when it denied Barton's motion to dismiss the charges.

B. SAG CLAIMS

In his SAG, Barton asserts that his defense counsel provided ineffective assistance by failing to call an expert to testify about how long a hair follicle will test positive for the presence of methamphetamine. He contends that an expert would have testified that a hair follicle test can detect methamphetamine and its metabolites for 90 days after the last use. And he asserts that the absence of methamphetamine in KMS's hair follicle would have undermined her credibility because the test was conducted within 90 days of KMS's alleged methamphetamine use.

But the record does not contain any information regarding how an expert would have testified. Because this claim is based on matters outside the record on appeal, we cannot consider it. *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). Issues based on matters that are outside of the appellate record are more properly raised in a personal restraint petition. *Id.*

Barton asserts that the certified Cellebrite operator was the subject of an internal affairs investigation at the time of his testimony and that this information was not disclosed to Barton in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Again, the record on appeal does not contain any information regarding his claim, so we cannot consider it. *Alvarado*, 164 Wn.2d at 569.

In his first supplemental SAG, Barton generally asserts that the trial court lacked jurisdiction and that his due process and equal protection rights were violated. But he does not explain the basis for these claims. RAP 10.10(c) requires that the appellant state the "nature and occurrence of alleged errors." Because these SAG claims are too vague to properly inform us of the nature and occurrence of the claimed errors, we cannot review them.

No. 56761-0-II

In his second supplemental SAG, Barton asserts that his appellate counsel's representation has been deficient on several grounds. He supports this argument with a letter from his appellate counsel. Because this claim is based on matters outside the record on appeal, we cannot consider it. *Alvarado*, 164 Wn.2d at 569.

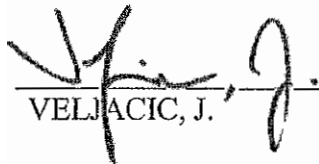
CONCLUSION

We affirm Barton's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


MAXA, P.J.

We concur:


VELJACIC, J.


PRICE, J.

March 20, 2023

Mr. Ronald Barton
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326-0769

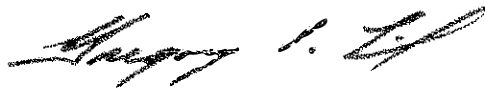
Re: Your Appeal

Dear Mr. Barton:

Enclosed is a copy of a motion to withdraw we have filed. We have filed the motion as we believe the addendum to your Statement of Additional Grounds alleging an ineffective assistance of counsel claim regarding Ms. Elliott's representation creates a conflict of interest that precludes us from continuing as your attorneys. That is because you are entitled to an attorney who can litigate that claim, and we obviously cannot.

If you have any questions about this, you are free to contact me.

Respectfully,



Gregory C. Link
Director

EXT#14

FILED
Court of Appeals
Division II
State of Washington
5/4/2023 4:26 PM

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

STATE OF WASHINGTON,)	No. 56761-0-II
Appellant,)	
)	
v,)	Motion to Withdraw as
)	Counsel for Appellant
RONALD BARTON,)	and for Appointment of
Respondent.)	New Counsel
_____)	

I. Identity of Party

Undersigned counsel and the Washington Appellate Project request the Court permit them to withdraw as counsel for the Appellant, Ronald Barton. In addition, the court should appoint new counsel to represent him.

II. Grounds for Relief

On May 2023, Mr. Barton filed an addendum to his Statement of Additional Grounds in which he asserts counsel's representation has been deficient. Moreover, he asserts this deficient performance has resulted in prejudice to him and his right to appeal.

EXT#15

Article I, section 22 guarantees both the right to appeal a criminal conviction and the right to the assistance of counsel on appeal. *See e.g. State v. Rafay*, 167 Wn.2d 644, 649-50, 222 P.3d 86 (2009). Washington goes further and provides persons appealing criminal convictions the ability to file a Statement of Additional Grounds. RAP 10.10.

Mr. Barton is entitled to have this Court fully address the claims raised in his Statement of Additional Grounds. It is not uncommon for the Court to direct the attorneys for the parties to address, either in a brief or at argument, claims raised in a Statement of Additional Grounds. It is not unheard of for the Court to grant relief on claims raised in a Statement of Additional Grounds. *State v. Benson*, 24 Wn. App. 2d. 1021, 2022 WL 16742920 (2022) (Unpublished, see GR 14.1). None of that can occur here as counsel is the subject of one of Mr. Barton's claims.

Counsel cannot continue to represent Mr. Barton on his claims their performance has been deficient and has resulted in


prejudice to his right to appeal. To ensure Mr. Barton is provided both his right to a meaningful appeal and the assistance of counsel on appeal, this Court must permit counsel to withdraw and appoint new counsel.

III. Conclusion

The Court should permit undersigned counsel to withdraw and appoint new counsel to represent Mr. Barton on appeal.

This pleading contains 315 words and complies RAP 18.17.

DATED this 4th day of May, 2023.



Gregory C. Link – 25228
Suzanne L. Elliott – 12634
Attorneys for Appellant
Washington Appellate Project-91052
greg@washapp.org



Washington State Court of Appeals Division Two

RECEIVED

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Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4

May 9, 2023

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CASE #: 56761-0-II State of Washigton, Respondent v. Ronald Ray Barton, Jr., Appellant

Counsel:

After a careful review of the issues raised in the above referenced appeal, the court has decided to review this case without oral argument. RAP 11.4(j). Any request to change this decision must be filed not later than ten (10) days after the date of this letter. Unless a panel of judges concludes that oral argument would benefit the court, this matter will be set for consideration on June 15, 2023 and a written opinion will be issued thereafter. If a panel of judges agrees that argument would be beneficial, a letter setting the date and time of oral argument will be sent. In most instances, the date set for oral argument will be the date specified above.

Note: In those cases in which this court must consider an affidavit of financial need in ruling on an attorney fees request, the affidavit of financial need must be filed no later than 10 days before June 15, 2023. *See* RAP 18.1(c).

Very truly yours,

Derek M. Byrne,
Court Clerk

EX-# 18



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

May 10, 2023

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Ronald Ray Barton, Jr.
DOC#431278
Coyote Ridge Corr Cntr
Sent Via Email

CASE #: 56761-0-II State of Washigton v. Ronald Ray Barton, Jr.
Case Manager: Jodie

Counsel:

On the above date, this Court entered the following notation ruling:

A RULING BY COMMISSIONER BEARSE:

For the reasons set out in the Motion to Withdraw and after review of the Statement of Additional Grounds, Mr. Link's Motion to Withdraw as appellate counsel is granted. Eric J. Nielsen of Nielsen, Broman, and Koch has been assigned to this matter.

Very truly yours,

Derek M. Byrne
Court Clerk

:jlt

EXT# 19

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent,)

v.)

Ronald Ray Barton, Jr.)

(your name))

Appellant.)

No. 56761-0-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Ronald Barton, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Ineffective Assistance of Counsel: In the discovery provided by the State was a forensic test result indicating that a drug test was performed on a hair follicle taken from the victim on September 15, 2021. That according to the victim's testimony, our last sexual contact occurred on or about August 6, 2021. That according to the victim's testimony, all sexual contact was accompanied by or preceded by her use of methamphetamine. That hair follicle tests will show the presence of amphetamines or its metabolites, including methamphetamine, for a period of 90 days after the last use. That the victim's hair follicle test was NEGATIVE for the presence of amphetamine. That my attorney did not call an expert to testify to these facts which would have undermined the credibility of the victim's testimony and was therefore ineffective in his representation of me.

Additional Ground 2

Discovery Violation: One of the witnesses who testified against me at trial was Pacific County Sheriff's Deputy Jesse Eastham. Deputy Eastham testified that he conducted a forensic examination of the victim's cell phone utilizing a cellbrite examination tool. Deputy Eastham, at the time of his testimony, had been investigated by internal affairs regarding an incident during which he had used the cellbrite tool without authorization in a different criminal investigation and subsequently lied about that misuse. This information was provided to the local newspaper after my conviction, but was not disclosed to the defense prior to my trial and Deputy Eastham's testimony. This is contrary to the discovery rules and the holding of *Brady v. Maryland* and prevented a fair trial and due process. If there are additional grounds, a brief summary is attached to this statement.

Date: _____

Signature: _____

INMATE

July 12, 2023 - 8:45 AM

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: 000000

DOC filing of BARTON Inmate DOC Number 431278

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- NEW_20230712084520SC218548_9804_InmateFiling.pdf {ts '2023-07-12 08:41:29'}

The Original File Name was doc1pcnl1171@doc1.wa.gov_20230712_075542.pdf

The DOC Facility Name is Coyote Ridge Corrections Center.

The Inmate The Inmate/Filer's Last Name is BARTON.

The Inmate DOC Number is 431278.

The CaseNumber is 000000.

The Comment is 10F1.

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