

REC'D

AUG 22 2013

King County Prosecutor  
Appellate Unit

No. 69393-0-I

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION ONE

KERO GIIR,

Appellant,

v.

STATE OF WASHINGTON,

Appellee.

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE  
AUG 22 PM 4:18  
*[Signature]*

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

name: KERO GIIR  
DOC# 312493, Unit GA214  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520-9504

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

KERO GIIR,  
Petitioner,  
  
vs.  
State of Washington  
Respondent

Case No.: 69393-0-1

STATEMENT OF ADDITIONAL  
GROUNDS, PURSUANT TO  
RAP 10.10

I, Kero Giir, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in the 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

I just want the court of appeal to consider an eligibility for a defense of insanity. There wasn't "failed mental defense" if the State acknowledged RCW 71.24.025 and 71.05; that condition is likely to have influenced the underlying offense. The finding is base on

1  
2 defense's presentence report, presentation at  
3 sentencing, and evaluation by Dr. Wheeler and  
4 Dr. Kriegler. Ordered from both demands by  
5 the trial judge.

6 During sentencing on November 9, 2007, at  
7 2:16 p.m. the Judge mentioned, "Mr. Warner  
8 has asked the court to go below that by about  
9 ten months. It's a symbolic request for an  
10 exceptional sentence downward based on a  
11 failed mental defense or mitigator. p 33

12 "The one positive thing I can say about  
13 this is you took responsibility. You pled guilty.  
14 and that is a positive thing that this community  
15 was spared an unnecessary trial in such a  
16 horrific murder and assault." Verbatim report of  
17 proceedings, p 35.

18 The state ignored my eligibility for defense  
19 of insanity, which made it reasonable ground for  
20 the Judge not to consider an exceptional sentence.  
21 It is a bias for the state to ignore legal defense  
22 that is in existence.

23 Whatever the state does on this case  
24 affected my right to fair sentence; I quoted  
25 my attorney, Mrs. Mattson during the motion  
26 Hearing on April 4, 2010.

1  
2 Mrs. Mattson: And your Honor, if there was  
3 ever a finding that Mr. Guir is mental illness  
4 influenced this offense, then I can't see  
5 how that would not be considered as a mitigating  
6 factor, but the fact of the matter is, and as  
7 Mrs. Berliner indicates, she steadfastly argued  
8 that this mental illness had nothing to do with  
9 this crime, and in the court's own findings,  
10 verbal findings, the court acknowledged that  
11 Mr. Guir took responsibility for his actions  
12 in this case. The court acknowledged that he  
13 might have PTSD, but the court never said that  
14 his mental illness was a consideration in the sent-  
15 ence that was given, and if that nexus isn't  
16 there, under the Jones case, which is also cited,  
17 it simply can't be a condition of community  
18 custody. It would be improper to do it. p 6-7

19 However, the court on the remands believed reason-  
20 able grounds exist to find mental illness influenced  
21 the offense, but did not legally grant an exceptional  
22 sentence as the court explained, "... we may not  
23 have had formal presentence reports, but we have  
24 significant mental health reports, and mental health  
25 evaluations that were provided by defense, and  
26 court can certainly incorporate those by reference,

1  
2 and does so today, a basis to find that there were  
3 the reasonable grounds to find that his PTSD inf-  
4 luenced the offense. It may not have met the  
5 legal threshold for purpose of going below and  
6 granting an exceptional sentence, as suggested  
7 by Mr. Warner, defense counsel at the time of  
8 sentencing, but when I look at Dr. Wheeler's  
9 report specifically, and also Julie Kriegler's  
10 report, there is no question for the court

11 I think that is surprising to the court today, ...  
12 and very thing that his defense attorney asked  
13 for is mind boggling to this court, ... since he  
14 didn't get an exceptional that there's nothing  
15 in record to support the fact there were reasonable  
16 grounds to find -- for a court to find that the  
17 PTSD influenced the offense. It certainly did,  
18 and no one took that away from Mr. Gurr." p 13-14.

19 The state ended up considering RCW 71.24.025  
20 and 71.05, but refused to acknowledge an  
21 eligibility for a defense of insanity. This sounds  
22 prejudicial; simply reflected manifest injustice.

23 The Judge seemed to contract during remand's;  
24 I quoted as she said, "we had expert on that,  
25 and that is perhaps the etiology of his PTSD that  
26 is clearly going to be a part of his psyche, because

1  
2 he can't escape his history, none of us can.  
3 But to suggest that somehow that doesn't meet  
4 the statutory definition of reasonable grounds  
5 that influenced the offense under 9.94A at that  
6 time or under the more broadened,..."

7 That isn't true. I believed I can escape my  
8 history to be better man if I get help to go under  
9 treatment and counseling, but the state seems to  
10 be in position of not helping me since it's denied  
11 the basic right for a defense of insanity. So I  
12 asked the court of appeal to consider my eligibility  
13 for a defense of insanity so long the state keep  
14 acknowledging RCW 71.24.025 and 71.05.

15 "Under CrR 4-2 (f), a court must allow  
16 a defendant to withdraw a guilty plea if neces-  
17 sary to correct a manifest injustice?"

18 Though the court of appeal had already  
19 denied my motion to withdraw a guilty plea,  
20 I noted that my right to fair sentence; to legal  
21 defense of insanity is coerced. Had RCW 71.24-  
22 025 and 71.05 been acknowledged during senten-  
23 cing as the Judge did on both remands, the nature  
24 of charges and the structure times would have  
25 been different.

26 I underwent mental health treatment in

Community custody for 2 1/2 years before sentencing. I was imposed to be put on treatment to take these below medications: Antidepressant, mirtazepine 15-30mg, anti nightmare and prazosin 1-6mg. Then after intensive treatment, the state refused to accept an exceptional sentence below down ward 15 years as my attorney asked during sentencing. The issue of mental illness had been returned, documented, but the state chose simply not to comply with statutory requirements, which constituted unfair eligibility for a defense of insanity.

On another hand, even if the court strike the condition of mental health treatment, there will be still the question about unfair sentence or manifest injustice because the court's ignorance of an existed mental illness can simply reflected bias and prejudice.

Regardless of whether the diminished capacity evaluations provided as a potential ground for a factual finding that I was a mentally ill person as defined by statute, the condition remains improper because the court did not find a mental illness condition influence the offense as required under RCW 9A.44.050(9).

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2 The court should be specific either to strike  
3 the condition of mental treatment upon release since  
4 its did not consider it during sentencing or accept  
5 an exceptional sentence based on what mr. warner  
6 (my former attorney) raised during sentencing, "that  
7 below downward 15 years sentence. This may res-  
8 olve the continuing error of community custody condition.

9 A doctor can't describe medications to a patient  
10 unless the symptom is diagnosed. Here, the symptom  
11 is mental illness based on RCW 71-24-025 and 71-05,  
12 and the description of mental is the state's demands.  
13 Another practical example is, if I'm sick I get  
14 treatment, but if I'm not sick I don't get treatment.

15 There is a great connection between an eligibility  
16 for a defense of insanity, and RCW 71-24-05 and 71-  
17 05 as well as RCW 9A-505(9). Also I had  
18 been treated; that treatment I went through had  
19 greatly changed my life today. This is a fact.

20 I can recall the worst side effects of mental  
21 illness, which had taken families' lives, and lives  
22 of minor soldiers who were serving with<sup>me</sup> in war  
23 zone, sudan. They have never been treated like me.  
24 They killed themselves and others. For examples,  
25 one of my cousins, who was a gunner one day  
26 woke up screaming; grabbed the gun killing his wife



1  
2 with 6 years old daughter. Then killed himself.

3 Another cousin took a spear blade; cut his  
4 wife into many pieces; dead two years later of  
5 chronic mental illness.

6 Also in Kakuma Refugee Camp, Kenya. one  
7 of the teachers, who was living with me became  
8 chronically mental ill; passed away shortly after  
9 I came to America in 2001.

10 I believed I can escape my history if I get  
11 better treatment, and counseling. I may as well one  
12 day become an advocate to help my colleagues, and  
13 families, who are still suffering of severe mental  
14 illness.

15 The truths reflected themselves because the  
16 court rejected the exceptional sentence request  
17 based on diminished capacity, while finding a  
18 mental illness likely influenced the offense on  
19 both remands. The court cannot have it both ways.

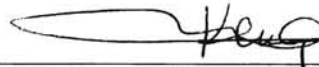
20 The court should acknowledge an eligibility  
21 for a defense of insanity base on defense's pre-  
22 sentence report, presentation at sentencing and  
23 evaluation by Dr. Wheeler and Dr. Kriegl. c p 88.  
24 also according to RCW 71.24.025 and 71.05, and that  
25 this condition is likely to have influenced the underlying  
26 offense.

In summary, The court of appeal should consider an eligibility for a defense of insanity if the Brief of Appellant is granted, to reverse the conditions of community custody and remand for further proceedings.

If there are additional grounds, a brief summary is attached to this statement.

DATED this 19<sup>th</sup> day of August, 2013.

2013 AUG 22 PM 4:18  
STATE OF WASHINGTON  
SUPERIOR COURT



(Appellant's Signature)

KERO R. GIR

(Appellant's Printed Name)

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