NO. 19429-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHRIS ALLEN FORTH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Waldo F. Stone

SUPPLEMENTAL BRIEF OF APPELLANT

VALERIE MARUSHIGE
Attorney for Appellant

23619 55th Place South
Kent, Washington 98032
(253) 520-2637

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

TABLE OF AUTHORITIES

Page

FEDERAL CASES

RULES, STATUTES, OTHER

A. ASSIGNMENTS OF ERROR[1]

1. Appellant was denied his constitutional right to effective assistance of trial counsel.

2. Appellant was denied his constitutional right to effective assistance of appellate counsel.

3. Appellant was denied his constitutional right to a complete and effective review on appeal.

Issues Pertaining to Assignments of Error

1. Is reversal required where defense counsel's performance was deficient in mistakenly stipulating to the admissibility of child hearsay and appellant was prejudiced by counsel's deficient performance?

2. Is reversal required where appellate counsel's performance was deficient in failing to obtain the entire verbatim report of proceedings on appeal and appellant was prejudiced by counsel's deficient performance?

3. Is reversal required where appellant was denied his right to a complete and effective review on appeal because appellate counsel failed to obtain the entire verbatim report of proceedings?

---

[1] Appellant has assigned error to two other issues argued in appellant's opening brief.

B. STATEMENT OF THE CASE [2]

1. Procedural Facts

On July 14, 1993, the State charged appellant, Chris Allen Forth, with one count of child molestation in the first degree. CP 60. The State amended the information on August 17, 1994, additionally charging Forth with one count of bail jumping. CP 61-63. Following a child hearsay hearing and trial before the Honorable Waldo F. Stone, a jury found Forth guilty as charged. CP 84-85. On March 29, 1995, the court sentenced Forth under the Special Sex Offender Sentencing Alternative (SSOSA), suspending a sentence of 75 months in confinement. CP 93-103.

Forth filed a notice of appeal on April 26, 1995. CP 104. The Court of Appeals, Division Two docket reflects that Forth's appointed appellate counsel filed an opening brief on October 9, 1995. The State filed a motion to dismiss on April 23, 1996, and a Commissioner conditionally dismissed Forth's appeal on June 5, 1996. Appellate counsel filed a motion to modify the Commissioner's ruling which was denied on August 1, 1996. This Court terminated review on August 8, 1996 and issued a mandate on November 18, 1996.

---

[2] There are seven volumes of verbatim report of proceedings: 1RP - 10/31/94; 2RP - 11/01/94; 3RP - 11/02/94; 4RP - 11/03/94; 5RP - 11/07/94; 6RP - 11/08/94; 7RP - 03/29/95.

Forth filed a motion to recall the mandate on April 12, 2012. This Court denied the motion on June 27, 2012, and Forth filed a motion for discretionary review on July 27, 2012. On October 13, 2012, the Washington Supreme Court granted review and remanded to this Court to recall the mandate. On December 4, 2012, a Commissioner entered a ruling for the Clerk to return the mandate and consolidated this case with Case No. 43041-0-II (revocation of SSOSA sentence).

2. Substantive Facts

a. Child Hearsay Hearing

The trial court held a child hearsay hearing where the complaining witness C.F., her mother, and a caseworker testified. After considering the testimony and argument from counsels, the court admitted the hearsay statements. 2RP 3-59. The facts are set forth in appellant's opening brief at 3-6

b. Trial [3]

Chris Forth was born and raised in Pendleton, Oregon. 4RP 111. After graduating from high school, he married Tina Bennett in 1982 and they had two children, Jason and C.F. (d.o.b. 4/2/85). 2RP 63; 4RP 112. Forth and Tina got divorced in 1988 and she married Donald Bennett. 2RP 62-63. The Bennetts live in Pendleton. 2RP 62.

[3] Tina and Donald Bennett will be referred to by their first name for clarity.

Tina testified that under the terms of the dissolution, the children visited Forth for four weeks in the summer and every other holiday. 2RP 63-64. The children stayed with Forth in Puyallup in the summer of 1991. She and Donald drove up to Seattle with the children in mid-July and met Forth at a ferry dock where he picked up the children. 2RP 65-68.

One evening in August 1992, when Tina and Donald were sitting on the couch, C.F. climbed up on her husband's lap and asked for "special attention." 3RP 7-8. They asked her what she meant and she said, "special attention like her daddy Chris gives her." 3RP 8. When they asked her again what she meant, C.F. got frustrated and stomped off to her bedroom. 3RP 8. Tina went to the bedroom and asked C.F. what she meant by special attention, and C.F. said she could not tell her. After Tina assured C.F. that she could tell her anything, C.F. told her what happened in the summer of 1991 when she visited her father. C.F. said he touched her breasts and private parts and played a "toilet game," where he laid on the floor and she sat on his face "until she peed in his mouth." 3RP 11. Tina talked to her husband about what C.F. said and they contacted Children's Services. 3RP 12.

Tina admitted that after she filed for divorce in 1988, she took C.F. to a doctor to be examined for sexual abuse, which "proved to be untrue."

3RP 25-26. The doctor told her there was no evidence of abuse and she did not tell Forth because "[i]t didn't seem important." 3RP 32-33.

Prior to Donald Bennett's testimony before the jury, the prosecutor and defense counsel asked the court to rule on the admissibility of C.F.'s hearsay statements to Donald. After direct and cross-examination of Donald, without any argument, defense counsel stipulated to the admissibility of the statements. 3RP 58-65. Donald testified that C.F. came out of her bedroom and "wanted to know if she could have some special attention." 3RP 71. Donald asked her what she meant and she said, "Like I get at Daddy Chris' or like Daddy Chris." 3RP 72. When Donald told C.F. he did not know what she meant, she returned to her bedroom and Tina went to talk to C.F. 3RP 72.

Linda Olson, a caseworker with Oregon Children's Services Division, testified that she interviewed C.F. on August 21, 1992. 3RP 37. Using anatomically correct drawings of a child and a male, C.F. circled the nipples and private parts of the child as areas that her daddy touched and the hand and mouth of the male. C.F. said the touching occurred on a bed in daddy's bedroom and they played "the toilet game" in the bathroom. 3RP 44-46. C.F. said this happened at her grandma and grandpa's house when she was visiting her daddy during the summer of 1991. 3RP 46, 53-

54. Olson also interviewed C.F.'s brother who is two years older and he said he never experienced any type of touching. 3RP 49-50.

C.F. testified that she last saw Forth when she visited him in the summer. She stayed at his "trailer house" in Puyallup for a month. 4RP 9-10. Forth's mother and stepfather, as well as C.F.'s brother and Colton and Cory also stayed at the house. Forth usually worked so Colton and Cory or babysitters, James and Celeste, would watch her during the day. 4RP 12-13.

C.F. had a bad dream one night and went to Forth's room where he told her to go back to bed. "A little bit later he called me back," so she returned to his room. C.F. could not remember if Forth said he "would give her special attention. 4RP 18-19. While she was in bed with Forth, he touched her private parts with his hand and touched her nipples with his mouth. 4RP 16-17. On another night, Forth got her out of bed and took her to his room and touched her the same way. 4RP 19-20. On a different night, she went to the bathroom and Forth came in and "arched his back and put his head over the seat of the toilet." 4RP 22-23. Then he told her to pee in his mouth. 4RP 24. C.F. did not tell anyone about what happened for a long time because she thought she would get in trouble, but she finally told her mother in 1993. 4RP 25, 32.

Myrna Coan, Forth's mother, and William Coan, Forth's stepfather, owned a trailer in a Mobile Home Park in 1991, where they lived with their sons Chris, Colton, and Cory. 4RP 63-65, 86. Mrs. Coan testified that Forth went to Pendleton in June 1991 to his grandparents' home before a family reunion planned for July 7th. 4RP 67-68. By prior arrangement, Tina dropped off C.F. and Jason at the grandparents' house on the day of the reunion. 4RP 67-68. Mrs. Coan identified a photograph of the entire family taken on that day where she was situated in front of C.F. 4RP 68.

Mrs. Coan, her husband, and their son Cory and his fiancée drove home to Puyallup on July 8th. 4RP 69. Mr. Coan's daughter and son-in-law and their two children arrived on July 8th and stayed with them until August. 4RP 73-75. Forth came home with the children on July 9th. 4RP 69. Mrs. Coan's son, Joe, flew in from Boston on July 11th and slept on a sofa in Forth's room until he left on July 14th. 4RP 75. The Coans improvised to accommodate everyone in the trailer that was less than a thousand square feet. 4RP 70-75. On July 17th, Forth left for Pendleton to attend his 20th class reunion and take the children home. 4RP 79.

Mr. Coan also recalled the "big family reunion" on July 7, 1991 and that Tina brought the children over on that day. 4RP 89. Mr. Coan testified that he and his wife drove home to Puyallup on the 8th and Forth

and the children arrived on the 9th. 4RP 90. Forth left on 17th to take the children back to Pendleton. 4RP 92.

Forth's older brother, Joe, works for the Department of Mental Health, Commonwealth of Massachusetts. 4RP 45. Joe testified that after visiting his sister in L.A. in June 1991, he drove to Pendleton on July 5th for a family reunion to celebrate his grandmother's 80th birthday. 4RP 48-49. Forth and his children were at the reunion which took place on July 7th. 4RP 50. Joe was certain of the dates because he kept all his yearly calendars on file in his office and he referred to his 1991 calendar. 4RP 47-48. On July 11th, he drove up to his mother's home in Puyallup. Forth had driven home with his children two days earlier. 4RP 51. Joe slept on a couch in Forth's room. He did not recall Christina coming in the room or Forth getting up at night. 4RP 56. The trailer had a very small bathroom and it would be impossible for someone his brother's size to sit on the floor. 4RP 56, 61.

Cory Haugsted, Forth's half-brother, last saw his nephew Jason and niece, C.F., in July 1991. 4RP 105. Haugsted testified that they came with Forth to a family reunion and then stayed at the house in Puyallup. 4RP 105. Whenever the children visited, they were spoiled by their father and everyone in the family with presents and toys. 4RP 110. James Julien, Forth's brother-in-law, testified that he and his wife and their children

stayed with the Coans from July 8, 1991 to August 3rd. 5RP 5-8. Julien recalled that the trailer was very crowded:

> Bill Coan, Myrna Coan, Chris Forth, Cory Haugstead, Colt Haugstead, myself, my wife Celeste, Nathaniel, Daniel, Jason, [C.F.], my other brother-in-law Joe was there one day while I was there. We got to meet him before he flew back to Boston, however many that was. I lost track. There was a lot of people in very tight quarters.

5RP 12.

Forth testified that after six and a half years of marriage, he and Tina got divorced in 1988. When Tina filed for divorce, she made an allegation of child sexual abuse against him, which was subsequently proven to be false. Tina attempted to allow only supervised visitation, but Forth obtained unsupervised visitation rights for four weeks during the summer and holidays. 4RP 112-14. Tina married Donald Bennett a couple months after the dissolution. 4RP 117.

On July 7, 1991, Tina dropped the children off at Forth's grandmother's house in Pendleton, where he was staying since the end of June. 4RP 117. Forth's relatives had a big family reunion to celebrate his grandmother's 80th birthday. 4RP 118. After the reunion, he drove back to Puyallup with the children, arriving home on July 9th. 4RP 119. On July 17th, he left with the children to attend his class reunion in Pendleton. Forth and the children stayed with his grandparents and after his reunion,

he took the children to Tina's house on July 24th, the last time he saw his children. 4RP 123-26.

C. ARGUMENT

1. FORTH WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHERE DEFENSE COUNSEL'S PERFORMANCE WAS DEFICIENT IN MISTAKENLY STIPULATING TO THE ADMISSIBILITY OF CHILD HEARSAY AND FORTH WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE.

Reversal is required because Forth was denied his right to effective assistance of trial counsel where defense counsel's performance was deficient in stipulating to the admissibility of child hearsay that was not admissible under the child hearsay exception statute and Forth was prejudiced by counsel's deficient performance.

Both the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. The right to effective assistance of counsel is "fundamental to, and implicit in, any meaningful modern concept of ordered liberty." State v. A.N.J., 168 Wn.2d 91, 96, 225 P.3d 956 (2010). "The purpose of the requirement of effective assistance of counsel is to ensure a fair and impartial trial." State v. Thomas, 109 Wn.2d 222, 225, 743 P.2d 816 (1987).

To demonstrate ineffective assistance of counsel, a defendant must show that (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced defendant, i.e. there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceedings would have been different. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)(citing Thomas, 109 Wn.2d at 225-26)(applying the two-prong test in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984)).

Here, before Donald Bennett testified at trial, the prosecutor informed the court that his testimony would include child hearsay:

> MR. GORBATY: Thank you. Your Honor, as I indicated earlier, the next witness, Don Bennett, would be testifying under the child hearsay rule as well and I believe we need to qualify him.
>
> THE COURT: Well, now is he expected to testify to something the child told him or just the scenario that got everybody's attention?
>
> MR. GORBATY: Just what you've heard, the scenario that got everyone's attention.
>
> THE COURT: Does the Court need to make a ruling on the hearsay there?
>
> MR. GORBATY: What the child said was I want you know, she requested special attention the way her daddy

> Chris gives her. Now that alone is not a sexual statement. I think given what the Court knows now it does refer to sexual contact and the child hearsay rule as I see it states that the child hearsay of a sexual nature is the only kind of hearsay that's admissible.
>
> THE COURT: Mr. Chin?
>
> MR. CHIN: Well, Your Honor, special attention is a very ambivalent term. The Court should make some determination whether or not that incorporates some sexual act.
>
> THE COURT: Well, are you asking that the Court conduct testimony outside the presence of the jurors?
>
> MR. CHIN: I believe that's required under the rule.

3RP 58-59.

The court proceeded to hear testimony outside the presence of the jury. 3RP 59. Donald testified that on an evening in August 1992, C.F. came out from her bedroom and "wanted to know if she could have special attention." 3RP 60-61. Donald asked her what she meant and she said, "You know, like, well like what I get at daddy Chris'." 3RP 62. C.F. never told him what she meant by special attention and Donald never had a conversation with C.F. about any sexual contact between herself and Forth. 3RP 62.

After Donald's testimony, the prosecutor said he had no argument and defense counsel replied, "I waive argument. I'll stipulate." 3RP 65. The court therefore allowed Donald to testify that in a conversation with

C.F. in August 1992, she "wanted to know if she could have some special attention." 3RP 70-71. When he asked C.F. what she meant, she said, "Like I get at Daddy Chris' or like Daddy Chris." 3RP 72.

The child hearsay exception statute provides in relevant part:

> A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings in the court of the state of Washinton. . . .

RCW 9A.44.120 (emphasis added).

In State v. Hancock, 46 Wn. App. 672, 731 P.2d 1133, (1987), the trial court held a hearing to determine if out-of-court statements B made to his mother were admissible under RCW 9A.44.120. B's mother testified that B told her that Hancock messed with his private parts and "messed with [L] too." B said Hancock asked him if B liked it when he put his hand in B's shorts and told him "my son does." Hancock, 46 Wn. App. at 673-74. The trial court ruled that the statements were admissible, but Division One of this Court held that the court erred. The Court determined that the statute creates an exception to the hearsay rule, but limits that exception to "[a] statement made by a child when under the age of ten describing any act of sexual conduct performed *with* or on the *child* by another." Id. at 678. Accordingly, the Court held that because B's

statement did not describe an act of sexual contact performed *with or on B*; rather it refers to an act performed on L, the statements did not fall within the purview of RCW 9A.44.120. Id. The Court applied the same analysis in State v. Harris, 48 Wn. App. 279, 738 P.2d 1059 (1987), holding that the child hearsay exception statute is limited to statements describing an act of sexual contact performed *with or on* the child. 48 Wn. App. at 284-85.

Clearly, the alleged out-of-court statements C.F. made to Donald were not statements describing an act of sexual contact performed with or on C.F. Therefore, under Hancock and Harris, the statements did not fall within the limited scope of RCW 9A.44.120 and were inadmissible. Consequently defense counsel was ineffective in stipulating to the admissibility of the statements and his error was not harmless where "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." State v. Cunningham, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980).

Unlike in Hancock, 46 Wn. App. 679 and Harris, 48 Wn. App. at 285, where the admission of the statements was harmless error because the victims testified about the same statements, C.F. never testified that Forth said he would give her special attention. When the prosecutor asked C.F. if Forth said anything to her, she replied, "No." 4RP 19. Then the

prosecutor asked her if Forth told her "he would give her special attention," and C.F. said she did not remember. 4RP 19.

Furthermore, Donald's testimony was prejudicial because it corroborated Tina's claim that C.F. asked for "special attention like her daddy Chris gives her." 3RP 8. Donald validated Tina's testimony thereby undermining the defense's theory of the case, which was apparent from defense counsel's argument against admission of the statements C.F. allegedly made to Tina:

> As to the mother, the statement made to Tina Bennett, we should note to the Court that it is, I think, very, very clear that this is a product of the mother's motive to establish exclusive jurisdiction, exclusive custody of this child. When we listen to what she says in terms of the events and how they occur, they occur in the child's bedroom away from the father. Although the initial so-called disclosure was made in the presence of the stepfather, now we find the child in the bedroom alone, one-on-one with the mother, and allegedly the statement was made. We don't know what questions were asked. We don't know whether or not the mother at this point determined this to be another opportunity to establish some false incident to establish her exclusive custody.

2RP 57.[4]

The defense's theory that Tina had a motive to obtain exclusive custody is supported by the fact that she admitted under cross-examination

[4] Presumably, defense counsel made a similar argument during closing but the verbatim report of proceedings of closing argument was not obtained by appellant's first appellate counsel and is no longer available. 5RP 24.

that after she filed for divorce, she took C.F. to a doctor to be examined for sexual abuse which "proved to be untrue." 3RP 25-26. Moreover, Forth testified that Tina made an allegation of child sexual abuse against him which was subsequently proven to be false, and she attempted to allow only supervised visitation. 4RP 112-14. Forth and five other witnesses testified that Forth and the children were in Pendleton for a family reunion on July 7, 1991 and they stayed at his home in Puyallup until July 17th. Their testimony raised reasonable doubt as to Tina's claim that Forth picked up the children in Seattle in mid-July for their summer visit and whether the alleged acts could have happened with so many people in a small trailer that was less than a thousand square feet. 2RP 65-67; 4RP 47-56, 67-79, 89-92, 105-06, 117-26; 5RP 5-12. Donald's testimony was absolutely critical because it bolstered Tina's credibility.

Under Hancock and Harris, C.F.'s alleged statements to Donald did not fall within the purview of RCW 9A.44.120 and consequently defense counsel's performance was deficient in stipulating to the admissibility of the statements which undermined the defense's theory. Forth was prejudiced where the record substantiates that but for defense counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different.

Reversal is required because Forth was denied his constitutional right to effective assistance of counsel at trial.

2. FORTH WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND DENIED HIS CONSTITUTIONAL RIGHT TO A COMPLETE AND EFFECTIVE REVIEW ON APPEAL.

Reversal is required because Forth was denied his right to effective assistance of appellate counsel and denied his right to a complete and effective review on appeal.

A criminal defendant has a right to effective assistance of counsel on his first appeal of right. In re Personal Restraint of Dalluge, 152 Wn.2d 772, 787, 100 P.3d 279 (2004) "The right to appeal includes a defendant's right to *effective* assistance of counsel." State v. Rolax, 104 Wn.2d 129, 135, 702 P.2d 1185 (1995)(emphasis added by the court)(citing Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985). To prove ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and he was prejudiced by defense counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Article I, section 22 of the Washington Constitution provides in part: "In criminal prosecutions the accused shall have . . . the right to appeal in all cases. . . ." Washington holds the distinction of being the

first state in the nation to include in its Constitution an express right to appeal among the rights of the accused. James E. Lobsenz, A Constitutional Right to an Appeal: Guarding Against Unacceptable Risks of Erroneous Conviction, 8 U. Puget Sound L.Rev. 375, 376 (1985). At the Washington State Constitutional Convention of 1889, the Committee on the Constitutional Preamble and Bill of Rights submitted a Declaration of Rights which contained a provision guaranteeing all criminal defendants an absolute right to appeal. Id. at 379.

In State v. Entsminger, 386 U.S. 748, 87 S. Ct. 1402, 18 L. Ed. 2d 501 (1967), the United States Supreme Court granted certiorari where the petitioner's appointed attorney failed to file the entire record of petitioner's trial on appeal. Id. at 1402-03. The Supreme Court emphasized that it has "held again and again, an indigent defendant is entitled to the appointment of counsel to assist him on his first appeal" and that "counsel must function in the active role of an advocate." Id. at 1403.

The Attorney General of Iowa conceded that petitioner did not receive adequate appellate review. Id. at 1403. The Supreme Court held that without a full record, petitioner was precluded from obtaining a complete and effective review of his conviction. Id. at 1404. The Supreme Court reversed, holding that petitioner was did not receive the

benefit of a first appeal with a full record as was his right under the law. Id.

Here, the trial court entered an order of indigency providing that Forth is entitled to a "verbatim report of proceeding" at public expense. Supp. CP ____ (Order of Indigency, 04/26/95). The order does not exclude any portion of the verbatim report of proceedings. The verbatim report of proceedings obtained by Forth's first appellate counsel indicate that the court conducted voir dire on 10/31/94 and 11/01/94; the State and defense presented opening statements on 11/01/94; and the State and defense made closing arguments on 11/07/94. 1RP 9; 2RP 2, 60; 5RP 24. The Memorandum of Journal Entry also reflects when voir dire, opening statements, and closing arguments occurred. CP 86-92. However, appellate counsel failed to obtain a verbatim report of proceedings of voir dire, opening statements, and closing arguments.[5]

As in Entsminger, appellate counsel's failure to obtain the entire verbatim report of proceedings, authorized by the court in the order of indigency, denied Forth his constitutional right to a complete and effective review on appeal. The record reflects that the jurors were required to fill out questionnaires. Defense counsel noted that if any of the jurors did not

[5] Current appellate counsel located the court reporter who has since retired. She informed counsel that she no longer has her notes for the trial held in 1994 because they were destroyed after fifteen years. See RCW 36.23.070 (reporters' notes in criminal cases must be preserved for at least fifteen years).

want to discuss any matters on the questionnaire, they could be "voir dired outside the presence of the other jurors," which potentially implicates the right to a public trial. 1RP 2-3; CP 64-67. Furthermore, it is not uncommon for reversal based on prosecutorial misconduct during closing argument. See In re Personal Restraint of Glasman, 175 Wn.2d 696, 286 P.3d 673 (2012). Without a complete record, this Court cannot afford Forth his right to a meaningful review. The verbatim report of proceedings without voir dire, opening statements, and closing arguments is insufficient because by court order, Forth was entitled to the entire verbatim report of proceedings at public expense. As the Attorney General conceded in Entsminger "with most commendable fairness," Forth is entitled to an appeal "free from constitutional doubt." 87 S. Ct. at 1403.

Reversal is required because Forth was denied his constitutional right to effective assistance of counsel on appeal and he was denied his constitutional right to a complete and effective review on appeal.[6]

---

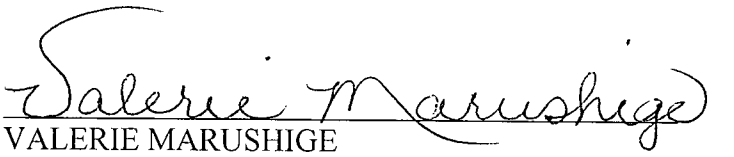
[6] The decision of the framers of the Washington Constitution to constitutionalize a criminal defendant's right to an appeal marked a distinct and radical break with the common-law past. As the first state in the Union to recognize a fundamental right to meaningful appellate review, Washington occupies a unique historical position. It would contravene the intent of the framers to permit this constitutional right to appeal to be eroded, diluted, or restricted. 8 U. Puget Sound L.Rev. at 409.

D. CONCLUSION

For the reasons stated here, and in appellant's opening brief, this Court should reverse Mr. Forth's conviction.

DATED this 8th day of February, 2013.

Respectfully submitted,



VALERIE MARUSHIGE
WSBA No. 25851
Attorney for Appellant, Chris Allen Forth

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue, Tacoma, Washington 98402 and Chris Allen Forth, DOC # 728948, Airway Heights Corrections Center, P.O. Box 2049, Airway Heights, Washington 99001-1899.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of February, 2013 in Kent, Washington.

Valerie Marushige

VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851