

**Case # 31641-6**

**Statement of Additional Grounds  
For Review**

**State of Washington**

**v.**

**Thomas Ralph Leviton**

**COPY**

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

**FILED**

DEC 16 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 THOMAS R LEUTTON )  
 (your name) )  
 )  
 Appellant. )

No. 111036066 (CASE # 316416)

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, THOMAS R LEUTTON, 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 DUE TO PUBLIC DEFENDERS USE OF INCORRECT INFORMATION TO COERCE DEFENDANT INTO PLEADING GUILTY, WHEN IN FACT, DEFENDANT WAS NOT GUILTY OF TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE.

Additional Ground 2

INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO PUBLIC DEFENDERS CONDUCT AND REFUSAL TO CONTEST DEFENDANT'S (APPELLANT'S) DEFENDER SCORE AT THE PLEA HEARING MAY 30, 2012.

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

Date: 12-13-13  
Form 23

Signature: Thomas R Leutton

## ADDITIONAL GROUND 1

APPELLANT WAS CHARGED WITH TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE. UPON INVESTIGATION OF THE OFFENSE TWO DETECTIVES INTERVIEWED THE APPELLANT. A REPORT WAS MADE.

APPELLANT'S COUNSEL INFORMED APPELLANT OF THESE REPORTS, BUT DECLINED TO ALLOW APPELLANT TO READ THEM DUE TO CONFIDENTIAL INFORMATION CONTENT.

COUNSEL STATED THAT THERE WERE TWO (2) DETECTIVE'S REPORTS AND BOTH DETECTIVES WOULD BE PRESENT TO TESTIFY THAT APPELLANT ADMITTED TO KNOWING THE LAPTOP (THE ITEM THAT WAS IN QUESTION) WAS STOLEN AT THE TIME OF THE OFFENSE, AS THAT WAS WHAT THE (2) TWO REPORTS STATED.

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IN EFFECT, AT TRIAL, IT WOULD BE TWO DETECTIVE'S TESTIMONY AGAINST APPELLANT'S; THAT WAS THE SCENARIO PRESENTED TO APPELLANT BY COUNSEL, AND THEREFORE APPELLANT OPTED TO ACCEPT A PLEA-AGREEMENT.

## ADDITIONAL GROUND 1 (CONT.)

APPELLANT MAINTAINS COERCION INTO PLEADING GUILTY DUE TO THE FOLLOWING FACTS:

APPELLANT WAS NOT GUILTY OF THE OFFENSE AND TRULY DID NOT ADMIT GUILT TO DETECTIVES; APPELLANT SIMPLY BELIEVED THE DETECTIVES WERE NOT BEING TRUTHFUL IN REPORTS. AGAIN, APPELLANT'S COUNSEL DID NOT PERMIT REVIEW OF REPORTS.

APPELLANT HIRED PRIVATE COUNSEL TO WITHDRAW GUILTY PLEA. AT THAT TIME IT WAS DISCOVERED THAT THERE WAS ONLY ONE (1) REPORT. PRIVATE COUNSEL ALLOWED APPELLANT TO REVIEW REPORT AND IT WAS FURTHER DISCOVERED THAT THE DETECTIVE DID NOT, IN FACT, PROVIDE INCORRECT INFORMATION. THE REPORT DID NOT STATE APPELLANT ADMITTED GUILT AS THE PUBLIC DEFENDER MAINTAINED.

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HAD THE APPELLANT INITIALLY BEEN PERMITTED TO READ THE DETECTIVE REPORT AND/OR HAD NOT BEEN MISINFORMED ABOUT ITS CONTENTS, APPELLANT WOULD NOT PLEAD GUILTY AS A DETECTIVE WOULD NOT HAVE PROVIDED FALSE TESTIMONY AT TRIAL.

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## ADDITIONAL GROUND 2

MAY 30, 2012 APPELLANT APPEARED FOR PLEA HEARING. IMMEDIATELY PRECEDING THE ACTUAL HEARING, WITH THE APPELLANT SEATED IN THE JUDGE'S BOX, THE ENTIRE COURT PROCEEDING WAITING, APPELLANT'S PUBLIC DEFENDER PRESENTED DOCUMENTATION FOR APPELLANT TO SIGN. THIS INCLUDED THE LISTING OF THE OFFENDER SCORE.

AT FACE VALUE, APPELLANT IMMEDIATELY NOTICED AN ERROR ON THE OFFENDER SCORE. APPELLANT POINTED OUT TO THE PUBLIC DEFENDER THAT THERE WAS A POINT OVERAGE, THIS DUE TO BEING POINTED TWICE FOR THE SAME OFFENSES. THE APPELLANT HAD A BURGLARY & THEFT CONVICTION IN 1997, IN MONTANA. THOSE OFFENSES AROSE AGAIN IN 1997 DUE TO THE PROBATIONARY PORTION OF THE SENTENCE BEING VIOLATED. THEY WERE NOT NEW BURGLARY & THEFT CONVICTIONS, SAME CAUSE NUMBERS.

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THIS ERROR WAS POINTED OUT TO THE PUBLIC DEFENDER. APPELLANT EXPRESSED A STRONG DESIRE TO CONTEST THE OFFENDER SCORE. THE PUBLIC DEFENDER HAD NEVER PREVIOUSLY DISCUSSED THE OFFENDER SCORE ISSUE WITH THE APPELLANT.

## ADDITIONAL Grounds 2 (Cont.)

THE DISCUSSION BECAME HEATED AS THE PUBLIC DEFENDER BECAME ANGRY AT APPELLANT'S RELUCTANCE TO SIGN THE DOCUMENTATION. THE JUDGE OVERHEARD THE ARGUMENT AND INQUIRED ABOUT IT.

FINALLY, THE PUBLIC DEFENDER STATED THAT APPELLANT SHOULDN'T BE "CONTESTING ANYTHING" DUE TO THE FACT THAT APPELLANT WASN'T BEING SENT TO PRISON, BUT INSTEAD WAS RECEIVING A SENTENCE CALLING FOR TREATMENT. THAT APPELLANT "SHOULD FEEL LUCKY" AND TO HURRY & SIGN AS THE WHOLE COURTROOM WAS WAITING.

APPELLANT, AT THAT POINT, FOOLISHLY SIGNED/STIPULATED TO THE INCORRECT OFFENDER SCORE. BOTH APPELLANT & COUNSEL WERE ANGRY AND IT WAS OBVIOUS TO THE COURT, THEREFORE, THE INQUIRY.

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LATER, AFTER EMPLOYING PRIVATE COUNSEL, IT WAS DISCOVERED THAT THERE WERE OTHER ERRORS WITH THE OFFENDER SCORE AND THAT APPELLANT WAS OVERSENTENCED. APPELLANT WAS COERCED INTO STIPULATING TO OFFENDER SCORE AND COUNSEL WAS CLEARLY INEFFECTIVE.