92139-3

SUPREME COURT OF THE STATE OF WASHINGTON
JUSTICE TEMPLE, OLYMPIA, WASHINGTON

LAVELLE X. MITCHELL,, Appellant/Defendant, vs. STATE OF WASHINGTON, Plaintiff/Respondents.	No. 72222-1 **MOTION FOR BAIL ISSUANCE PENDING APPEAL AND STAY OF IMPOSITION OF SENTENCE PURSUANT TO 10.73.040 AND APPELLANT'S PRIOR PRP ON THE ISSUE OF BAIL PENDING APPEAL REQUESTED** CERTIFICATE OF SERVICE

Motion for an Order
Of Release Pending Appeal

Appellant/Defendant, Lavelle Xavier Mitchell, pro se in custody, w/o counsel, Cause Number 13-1-10170-6 SEA, CA 72222-1, confined in King County Regional Justice Center, 620 W. James, Kent, WA 98032, DOC # 375920, BA #214023613, moreover, listed as in Department of Corrections of the State of Washington custody, though factually and physically located at Kent, WA Regional Justice Center Jail, judgment was entered on July 18, 2014. The court that entered the judgment is the Judge Monica Benton of the Superior Court of Washington in and for King County, 516 Third Avenue S., Seattle, Washington 98104.

Appellant alleges that his custody is unlawful and without authority, the grounds are as follows:

1) State allows post-conviction release pending appeal, RCW 10.73.040 and to deny appellant the protections afforded by this law does not amount to "impartial" and "unbiased" ruling body, the Courts and the judges thereof are bound by the Constitution as the "supreme law of the land" and the notion that judges are not "bound thereby" once that body has created a "rule" that seems to have the effect of perpetrating a violation of the duty imposed by the Constitution to be ***"bound thereby"***. **RCW 2.04** and **CrR 4.2(h)** are not consistent and tend to capriciousness and arbitrary decisions that do not promote the smooth and consistent flow of the procedural rules for the process that a criminal defendant is due because they allow, as in this instant matter, that once a criminal defendant gives notice of appeal, motions for stay of imposition of sentence and a history of consistent appearance and compliance with the directives of the bail issued and continues to appear after conviction (demonstrated that such a person is not a flight risk, nor a danger to society) yet the court can and did summarily deny bail pending appeal and the only reason given was that **CrR 4.2(h)** allows a court ***"absolute" "right"*** to deny both the legislative intent of **RCW 10.73**, the meaning of its application this Court has said, ***"Once a criminal defendant has served notice of appeal upon the state, and if he be out on bail, he shall remain out on such surety, but is such defendant fails to post bail, then he remains as one NOT SERVING A SENTENCE, but as one who has not posted bail" [citation omitted, Black Letter Law]".***

2) While the case law is not a rule, it is however a ruling and that ruling, from 1958, has not been overturned. But it no longer has any legal application as the Courts have created a

"new" rule since that ruling by the Supreme Court of Washington with regard to the effects of a post-conviction service and notice of appeal where the case is not a capital case or one that has a high "public profile" because, as in this case, the Court simply denied both bail pending appeal, and did not comply with any of the standards for invoking the use of **CrR 4.2(h),** amounting to the appellant being denied "due process" within the meaning of "fair and impartial" clauses, phrases and sections of the laws of Washington State and its Constitution as well as the law of the United States of America and its Constitution which strictly prohibits and restricts all three branches of government from creating, what amounts to laws, that have the effect of "chilling" the rights conferred under the aforementioned.

3) Clearly there is a chilling of the right to ***"equal"*** usage of **RCW 10.73.040** for African Americans and they are hard pressed to make a showing such a "denial" of bail pending appeal is not a novelty or for the amusement of the court's judges, but rather a serious ***"duty" to*** assure that if it imposes any restrictions before the process has run its complete course, it must be with the idea in mind as set by **CrR 3.2,** which states, in pertinent part, that the purposes for which bail can be granted, for example, ***"In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule. (b) Showing of Likely Failure to Appear-Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions: (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused; (2) Place restrictions on the travel, association, or place of***

abode of the accused during the period of release; (3) Require the execution of an unsecured bond in a specified amount; (4) Require the execution of a bond in a specified amountand the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release; (5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; (6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or (7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance. (c) Relevant Factors-Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to: (1) The accused's history of response to legal process, particularly court orders to personally appear; (2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government; (3) The accused's family ties and relationships; (4) The accused's reputation, character and mental condition; (5) The length of the accused's residence in the community; (6) The accused's criminal record; (7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release; (8) The nature of the charge, if relevant to the risk of nonappearance; (9) Any other factors indicating the accused's ties to the community. (d) Showing of Substantial Danger-Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the

accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions: (1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons; (2) Prohibit the accused from going to certain geographical areas or premises; (3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused; (4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency; (5) Prohibit the accused from committing any violations of criminal law; (6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice. (7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused; (8) Place restrictions on the travel, association, or place of abode of the accused during the period of release; (9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or (10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community. (e) Relevant Factors-Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to: " and that shows

that the judicial branch of government is bestowed the duty to find methods for releasing person accused of crimes and while this is post-conviction, the principles here are those that show that the court is acting without bias and is behaving "fairly" having taken into consideration all these factors. The Court had made such a determination in granting bail to the appellant and the appellant has done nothing and the trial did not produce any "new" information with regard to deny appellant bail pending trial. It is clear than that the court's decision was arbitrary and capricious with regard to the invoking the limiting factor of release rule after conviction because the defendant had done nothing to make the court revoke the bail during the course of the almost two years of attending trial. The court never remarked or noted that appellant had become a danger to the community such that bail was ever revoked. The implication at the sentencing can only be that the court used capricious, arbitrary and prejudicial grounds for denying appellant motion to stay imposition of sentence and grant bail pending appeal." that members of the European American community but under the current creation of the Rules of Criminal Procedures the Court in, violated defendant's right to be free from biased and prejudice and the court failing to show impartiality.

4) The appellant has filed appeal based on fundamental rights violations and issues of law with regard to the operation of RCW 81.112.010. State argues that such authority of bus enforcement officers is vested in RCW 81.112.010, however, the statute provides only the following authority to "light rail" fare enforcement officers, and states, in pertinent part, that ***"It is therefore the policy of the state of Washington to empower counties in the state's most populous region to create a local agency for planning and implementing a high capacity transportation system within that region."*** RCW 81.112.020 defines the system reference for the law as ""***System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional***

transit authority." **RCW 81.112.210** provides, in pertinent part, that **"An authority is authorized . . . Request proof of payment from passengers; (ii) Request personal identification from a passenger who does not produce proof of payment when requested; (iii)(A) Issue a notice of infraction to passengers who do not produce proof of payment when requested. (B) The notice of infraction form to be used for violations under this subsection must be approved by the administrative office of the courts and must not include vehicle information; and (iv) Request that a passenger leave the authority facility when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.** . . .

Purpose -- Intent -- 1999 c 20: ***"The purpose of this act is to facilitate ease of boarding of commuter trains and light rail trains [emphasis added here] operated by regional transit authorities by allowing for barrier free entry ways. This act provides regional transit authorities with the power to require proof of payment;"*** and since this authority does not extend to "bus lines" operated under the transit authority, one King County Metro and the other, Puget Sound Light rail, the arrest and subsequent search, which produced the two hand guns, both arrest and search were without authority.

5) State treated defendant unfairly by denying him the right to use the defense of possession of a firearm out of necessity nor allowed such instructions to be given the jury, and did so at the day of commencement of the trial making all defense strategy and preparedness for naught unfairly depriving defendant to answer the charges against him.

6) State unfairly denied defendant's written medical expert report attesting to the fact that defendant suffered from childhood developmental cognition problems and forced

trial on a general denial defense, while at the same time knowing that the facts of the case could have been found in favor of the defendant acting out of necessity instead of simply being able to deny that it was ever defendant's intention to break the law.

7) State trial court unfairly and without cause denied defendant's rights under RCW 10.73.040, which provides, in relevant part, that ***"In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his or her behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his or her sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with."***

8) Trial Court abused its discretion in denying criminal defendant bail pending appeal. It made no findings of facts, nor any conclusions of law why it needed to invoke the harsh punishment found in CrR 3.2(h), which states, in relevant part, that "***Release***

after Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered. Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation." Moreover, such an application of this rule without any findings of facts that would support the denial of bail, leaves such a defendant to begin serving time when, in fact, and under the law of the case, no defendant having served notice of appeal and proof of service on the other party is subject to begin serving their sentence. In fact, this Court has said that a person under such circumstances is ***"not serving time but is in jail merely because he/she cannot post bail".*** (Citation Omitted), yet Department of Corrections of the State of Washington has no such facility for holding detainees or those who are merely there because they cannot post the bail imposed pursuant to post conviction statute RCW 10.73.040.

9) Moreover, the rule supersedes the law, yet it is not clear to the general public that rules in the State of Washington are even higher than the constitution of the state or the national one and thus had no way to make a showing along the trial that they will continue to appear in the event that they are found guilty even though they insist that they are innocent and allows for a legal "abridgment of the equal protection clause"

and the protections offered to other criminal defendants in the State of Washington to release pending appeal unless the court "finds" that such a defendant is a flight risk or that it serves as a deterrent to others similarly situated as the defendant.

10) Court's use of the **CrR 3.2(h)** is not subject to any form of monitoring for abuse and is readily used as a more sophisticated form of discrimination against Black defendant and those descended from slaves and thereby violates the **Emancipation Proclamation of 1863** and **42 U.S.C. section 1983**, as well as the well-established constitutional rights as bail, equal protection of the laws, equal protections of the laws and to be treated fairly. Trial court's decision to deny bail was not based upon anything other than the rule is there for the use of courts to deny bail where the law otherwise provided it should be granted. Such a rule is subject to abuse, inherently. Trial court judge was obviously not in favor of defendant receiving the protections of the law and said simply, ***"I am going to deny your bail because you have never been to jail and I think you need to go!"*** though it is done as a more sophisticated form of discrimination because a trial court will not have its ruling disturbed and even if it is disturbed, the punishment intended will have been meted out to one that is **"not serving time, but merely there because he cannot post bail". (Citation Omitted)**

11) Under the totality of conditions for a detainee there is no way for the State prison system to avoid meting out criminal punishment consistent with the laws meaning once judgment is pronounced and imposed, which violates Eight Amendment prohibition against "cruel and unusual punishment". It is unarguable that a person that is "not one serving time" cannot be punished and not be one that suffers from the violation of this right, and since the prison system is qualifiedly immune, if the prison

system contends that punishment is for security or safety of personnel, then the Court has held silent on most violations of civil rights committed by prison personnel. However, the Courts have consistently held that the right against "cruel and unusual punishment" is one wherein the Court will intervene in the prison system. This is such a case because in order for defendant to be afforded the process that he is due, the equal protections of the laws, including, but not limited to, **Constitution Article 1, 22; State v. Perry, 10 Wn. App. 159, 169, 516, P.2d 1104 (1973)**, which states, in pertinent part, that "***In criminal cases a stay is granted to protect an appealing defendant who claims to have been erroneously convicted from serving a possibly underserved sentence***", RCW 10.73.040, which states, in pertinent part, that "***In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his or her behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his or her sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section . . .***" and 8th amendment, which provides, in pertinent part, that **"Excessive bail shall not be**

required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.", and these protections, to be admitted to bail pending appeal, not suffer cruel and unusual punishment, not have an excessive bail imposed, this defendant must first serve out a sentence of punishment. And this is more problematic because under the current actions taken it matters not whether this defendant's case is still pending and he has meritorious defenses to the charge of unlawful possession of a firearm, the trial court has utilized the path that would ensure punishment though she acknowledged that the matter is on appeal and that other laws and cases ruled in favor of the defendant's release, she felt not bound by these prescript and laws to assure fairness and justice are done. Trial court was clearly more interested in punishment than justice and thereby violates "fair and impartial" mandate. Nor does it matter that defendant's meritorious defense to the charge of Unlawful Possession of a Firearm was/is based in law and pursuant to **RCW 9.41.047(1)** if the state failed to abide by the law, then such a defendant cannot later be said to be unlawfully possessing a firearm, as both statutory and rule, provide that this defendant, though he was only 15, would be given the limitations of his right in the future to no longer be able to bear arms, and the Court, bound by **RCW 9.41.047(1)**, which states, in pertinent part, that the law "***requires both written and oral notice. The Supreme Court emphasized that this statute is unequivocal in [this] mandate. A sentencing court cannot simply ignore these mandates, which the legislature has clearly required of it in fairness to a criminal defendant because an appellate court may not interpret any part of a statute as meaningless or superfluous . . .***" Thus while trial court conducted a hearing on the motion to dismiss based on state's failure to give a defendant the

required notice of his future right to bear arms it erroneously decided that the fact that there was no proof of the oral notice she was satisfied that it must have been done and denied the motion. State has failed, as a matter of record, to provide this defendant with such notice and thereby leaves such a defendant with but one remedy, dismissal with prejudice of the charge of unlawful possession of a firearm. Clearly, such a meritorious defense, if true, entitles such a "criminal defendant" to an order of dismissal and certainly not to be punished or prosecuted for exercising a right he was not aware had been taken. Thus he could not be held accountable for what the law and the state failed to instruct him was now prohibited conduct to him, yet he is serving out the sentence as a punishment issued under a rule. That law, **RCW 9.41.047(1)**, is the subject and the limitations placed by law and case law leaves the trial court clearly in violation the cruel and unusual punishment prohibitions of the two constitutions against the same. And as a consequence for the infliction of "cruel and unusual punishment" upon the defendant the judgment of the trial court to deny bail pending appeal and the conviction should be vacated and the defendant released, as a matter of right and to assure that government understands that crime cannot pay and the violation of a citizen's right is a crime worthy of enforcing with the most harsh penalty for those violating the same. In other words, defendant should be released and the trial court ordered to enter a judgment vacating the conviction and consistent with the holding of this court with regard to RCW 9.41.047(1), that a failure of the state to provide notice is found and to make such a finding of facts and conclusions of law consistent.

12) It was error for the court to hold that it is satisfied with just the written warning. No court has authority to do as they please and they must comply with all the laws and rules of court wherever they are not in conflict.

13) Trial court's entire actions were designed to prosecute defendant by overly assisting in the state prosecutor and making it obvious that she was once a prosecuting attorney herself and has an affinity for prosecutors. Trial court did not act without displaying her biases and that is unfair and illegal. Defendant did not have a fair and impartial court.

a) Thus, there was no speedy trial, right to counsel, to cross examine witnesses against one, indeed the very right to petition the government for a redress of grievances, all becomes meaningless because if a court finds that there is a rule that is contrary to the enforcement of the constitution or laws of the united states, which prohibits and restricts it, and simply make a rule that states, the rules controls, even where the rules, when in operation does indeed suspend the Writ, and supports laws made by legislature that are expressly prohibited by the constitution for them to have power to make, specifically, at the Fourteenth Amendment of the Constitution for the United States of America, which states, in pertinent part, that ***"No state shall make or enforce any[emphasis added here] law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".*** Thus, the same protections that are had for citizens under a federal conviction, right to habeas corpus without first going to the United States Supreme Court, must be afforded citizens under the

exact same conditions within the state and cannot be abrogated by rule. **Article VI of the US Constitution**, which states, in pertinent part, that ***"This constitution and the laws of the United States, and all treaties made or which shall be made under the authority of this constitution shall be the supreme law of the Land and the judges of Every state shall be bound thereby,*** anything to the contrary notwithstanding [where notwithstanding means, where there exist a conflict between states' laws and their constitution with this constitution they, not the constitution, cannot stand]".

b) This Petition is asking that this court address the issues directed at a habeas court as found, and not make ***"The question before us is whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute, 28 U.S.C. 2254, clearly provides a specific federal remedy."*** Indeed, the question before this court has only to do with the rights verses the rules as to where the authority is derived and which controls the actions of the state. Moreover, when the authority is derived from the same source but granting opposite authorities to actions and conduct, does it not fall squarely in the realm of impossibility? How can I "not be serving time" under the law, and serving time under the rule**, CrR 3.2(h),** which allows the court to ignore the clear legislative intent of **RCW 10.73.040**. Moreover, there is no argument against one serving time when they are now subject to DOC Policy and procedures and cannot assist in the very appeal they are seeking.

c) And if that is so, then is not this "rule" unenforceable because the source of its authority comes from a legislative enactment that is not enforceable under constitutional law at the **14th amendment** prohibition? This question should be of

considerable practical importance and thereby bring under the standard that makes it entitled to COA. Just as the Court said, ***"The question is of considerable practical importance. For if a remedy under the Civil Rights Act is available, a plaintiff need not first seek redress in a state forum. Monroe v. Pape, 365 U.S. 167, 183(1961); McNeese v. Board of Education, 373 U.S. 668, 671 (1963); Damico v. California, 389 U.S. 416(1967); King v. Smith, 392 U.S. 309, 312 n. 4 (1968); Houghton v. Shafer, 392 U.S. 639 (1968)."***

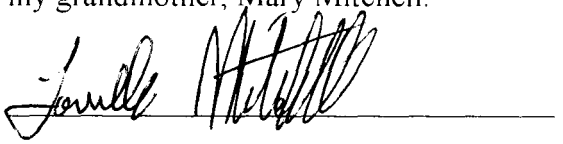
d) Finally, defendant asserts that defendant requests counsel at every stage consistent with ***"The remedy of habeas corpus found early expression in the Magna Carta, and was carried and embedded into our federal constitution by this nation's Founding Fathers. In the context of imprisonment in connection with criminal offenses, the writ of habeas corpus provides a speedy device to test the constitutionality of the detention. To insure its availability, both the federal constitution and this state's constitution prohibit suspension of the writ except under extreme circumstances. U. S. Const. art. 1, § 9; Const. art. 1, § 13. In this state, the writ, by legislative enactment, with certain reservations, is available to "Every person restrained of his liberty under any pretense whatever, . . ." RCW 7.36.010. Although, as heretofore indicated, the writ is frequently invoked as a method of challenging the constitutional validity of confinement growing out of criminal charges, habeas corpus proceedings have quite consistently been characterized as civil proceedings-i.e., a proceeding to enforce the civil right of personal liberty-as distinguished from criminal proceedings. Ex Parte Tom Tong, 108 U.S. 556, 27 L. Ed. 826, 2 S. Ct. 871 (1883); Fisher v. Baker, 203 U.S. 174, 51***

L. Ed. 142, 27 S. Ct. 135 (1906); State v. Fenton, 30 Wash. 325, 70 P. 741 (1902); State ex rel. Roberts v. Superior Court, 32 Wash. 143, 72 P. 1040 (1903); Ludwick v. Webb, 23 Wn.2d 115, *160 P.2d 504, 664 (1945); Summers v. Rhay, supra; Little v. Rhay,* 68 Wn.2d 353, *413 P.2d 15 (1966). In this latter vein, however, it is appropriate to note that, despite its earlier pronouncements, the United States Supreme Court, in denying applicability of the discovery provisions of the civil rules of procedure to habeas corpus proceedings, has observed that the label "civil" is inexact when considered in connection with post conviction litigation and that more appropriately the remedy in such context is unique, if not somewhat sui generis. Harris v. Nelson, 393 U.S. 814, 22 L. Ed. 2d 281, 89 S. Ct. 1082 (1969.)* . . . *By way of further preface, we would inject here the observation that, in instances where an indigent state prisoner's petition for a writ of habeas corpus satisfactorily appears to be nonfrivolous, urged in good faith, and deserving of an evidentiary hearing to resolve significant factual or legal issues, it is not an unprecedented procedure for the trial court before which the hearing is held to appoint counsel to assist the petitioner in the presentation of his claims at the hearing. This has been done either at the instance of this court or on the initiative of the trial court, as in the instant case, in the exercise of judicial discretion. E.g., Mocabee v. Rhay, Supreme Court Cause No. 37627, Order for Appointment of Counsel, February 8, 1965; Mason v. Cranor,* 42 Wn.2d 610, *257 P.2d 211 (1953). And, we have long held, in keeping with RCW* 7.36.250 *and Rules on Appeal 14 and 56, RCW vol. 0, that an appeal lies from a superior court denial or dismissal of an application for a writ of habeas corpus. In re Foye, 21 Wash. 250, 57 P. 825 (1899); In re Baker,*

21 Wash. 259, 57 P. 827 (1899); In re Sylvester, 21 Wash. 263, 57 P. 829 (1899). This right of appellate review, with some limitations, has also been afforded to impoverished penal petitioners pursuing a nonfrivolous application at public expense. Mason v. Cranor, supra.

e) Thus, defendant prays for relief from the orders denying admittance to bail and ordering punishment to commence in the State of Washington Department of Corrections and King County Jail and being violative of his constitutional rights as expressed and contained herein and throughout the two constitutions and the Court's history where the issues are revolving around rights, laws, and rules that are in conflict and which controls to do the most substantive justice.

I, Lavelle X. Mitchell, declares under the penalty or perjury that the forgoing is true and correct and that this petition was mailed via U.S. Postal Services, regular mail on this 20th day of August 2015 and mailed to be filed and served by private person not subject to or a party to this Petition, my grandmother, Mary Mitchell.



Lavelle X. Mitchell, Petitioner in Custody

WHEREFORE LAVELLE XAVIER MITCHELL, Petitioner, asks that the Court grant the following relief:

1. **Grant appellant release pending appeal.**

2. **Order trial court to release petitioner and admit him to bail or show good cause why he should not be granted his statutory right such that it is not based solely on the discretion of the trial judge.**

3. **Order that petitioner is released from all further proceedings as his arrest, search and detention was all without authority.**

4. **Take judicial notice that trial courts are not empowered by the rule, CrR 3.2, to deny without making a showing and findings and conclusions of laws that supports chilling the operation of laws and rights conferred by statute or constitution.**

5. **Any other relief this Court deems just and proper to carry out the orders of this Court.**

Respectfully Submitted,

Lavelle Mitchell

Lavelle X. Mitchell, Defendant
In Custody, DOC, 375920
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen. WA 98520-9504

Certificate of Service of Lavelle Mitchell
In Custody Pro Se without Counsel

I, Lavelle Mitchell, hereby declare that the above document has been served on the State of Washington, Attorney General for the State of Washington, attorney for Respondents, at 516 3rd Avenue S., W-554, Seattle, Washington 98104and that I have mailed a copy of the same to my

grandmother and caused it to be delivered by giving a copy to Mary Mitchell to serve Respondents or their counsel a true copy of this Motion for Release Pending Appeal on my behalf. This has been served on this 20th day of August 2015 by hand delivering a true copy of the same to the Respondent's attorney, King County Prosecuting Attorney, Attorney for State of Washington at the address listed above.

Lavelle X. Mitchell, Pro se w/Counsel
In Custody,
191 Constantine Way
Aberdeen, WA 98520-9504