

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	Supreme Court No. 96743-1
)	
Respondent,)	MOTION TO WITHDRAW
)	(RAP 18.3(a)(1))
vs.)	
)	
WILLIAM ALVAREZ-CALO,)	
)	
Petitioner.)	
_____)	

1. Identity of Moving Party. Attorney Lisa E. Tabbut, appointed counsel for the petitioner, requests the relief designated in Part 2.

2. Statement of Relief Sought. Permission to withdraw as counsel and to clarify the record before this Court.

Under RPC 1.6(b), A lawyer to the extent the lawyer reasonably believes necessary...

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client

and

RPC 3.3(a), A lawyer shall not knowingly: ...

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;

3. Facts Relevant to Motion.

I am appointed counsel on appeal. I filed an opening brief on behalf of Mr. Calo on November 6, 2017. Mr. Calo filed a 41-page, multiple-issue RAP 10.10 Statement of Additional Grounds for Review on January 19, 2018. His SAG, Ground 13, claimed I provided ineffective assistance of counsel on appeal.

On November 26, 2018, I filed a supplemental brief to address recent changes to legal financial obligations.

The appellate court issued its 61-page opinion on December 27, 2018. On December 28, 2018, I mailed a copy of the opinion to Mr. Calo with a letter asking him to call me on January 10, 2019. I provided information about moving for reconsideration and a petition for review and the due dates for both. The letter included this paragraph.

We have not talked about who will file a petition for review. I can file it, but I would not include your claims of ineffective assistance of appellate counsel as raised in your statement of additional grounds for review (SAG). If you want to raise those claims in your petition for review, you will have to file the petition yourself. The court accepts only one petition.

Mr. Calo wrote me a letter dated January 6, 2019, saying he wanted me to move for reconsideration and file a petition for review. In the letter, he claimed he had no interest in pursuing the ineffective assistance of appellate counsel claim.

As of the January 10, 2019 phone conference, I had not yet received Mr. Calo's January 6 letter.

Between sending the opinion letter to Mr. Calo on December 28, 2018, and talking to him on January 10, 2019, I thought about everything I had learned about Mr. Calo throughout my representation. One thing that stood out was Mr. Calo's tendency to change

his mind or act impulsively. I felt very strongly that if I did not include argument on the SAG issues, especially the ineffective assistance of appellate counsel issue, Mr. Calo would soon regret the omission.

Mr. Calo called on January 10, 2019. We talked about filing a petition for review. I told him that given his history of changing his mind, I felt it was better if he filed the petition for review so he could raise his IAC claim. I did not want to stand in his way and have him suffer lingering regrets. I had every reason to believe, based on my history with Mr. Calo and his changeability, that he would later regret not raising his IAC claim or being prevented from raising his IAC claim by my filing the petition for review. Mr. Calo asked me about the appointment of counsel, and I told him the court is not obliged in Washington to appoint counsel for filing a petition for review. There was, however, nothing preventing him from asking for the appointment of counsel and the court would at least consider his request. I also told him I would file a motion with this court for an extension beyond 30 days to file the petition. I told him I could not guarantee the court would grant my request and he ought to start working on the petition. Mr. Calo had filed reasoned and adequate briefing throughout his appeal. He was capable of writing and filing a petition for review.

I filed the extension motion on January 16, 2019, and the court responded with extended due dates in a January 17 letter. I mailed a copy of the letter to Mr. Calo.

On January 22, 2019, I received a letter from Mr. Calo dated January 14, 2019. In the letter Mr. Calo was adamant that I had a duty to write and file his petition for review. If I did not do so he would file complaints against me with WSBA, the ABA, and file a civil lawsuit against me for malpractice. He included with this sentiment:

I guess at this point you need to ask yourself, which is the easier path – proceeding with the two motions, or fighting off bar association complaints and a lawsuit? I have nothing but time. How about you?

He also wrote that he did not want to talk to me on the phone but preferred written correspondence.

After consulting with colleagues on the latest development, I decided to abide by Mr. Calo’s directive, i.e., file a petition for review. I wrote his petition and filed it on January 25. I mailed Mr. Calo a copy.

I received a letter from Mr. Calo on February 7, 2019. His letter was dated January 28, 2019. In the letter, Mr. Calo ordered me to,

... cease and desist your misrepresentations about being my attorney. You are not empowered to act as my counsel. You have no right to file documents with the court in my name. Your actions are unauthorized and illegal. ... You need to notify the court that no document you filed was authorized, and that you are not my attorney.


To clarify and summarize, just two weeks earlier, by his January 14, 2019, letter, Mr. Calo ordered me, on the threat of prolonged litigation – “*I have nothing but time. How about you?*” - to file the petition for review. Yet two weeks later, after I filed the requested petition, Mr. Calo asserts I had no authority to file the petition for review.

By this motion, I ask the Court’s permission to withdraw as counsel for Mr. Calo.

4. Grounds for Relief and Argument. RAP 18.3(a)(1) permits counsel for a defendant in a criminal case to withdraw upon showing good cause. After an appeal is concluded, appointed counsel need not continue representation. *State v. Folden*, 53 Wn. App. 426, 430-31, 767 P.2d 589 (1989).

Mr. Calo requests I withdraw as counsel. I agree.

Dated February 22, 2019.



LISA E. TABBUT, WSBA #21344

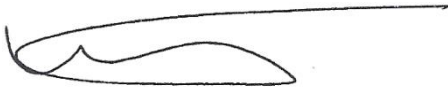
DECLARATION OF SERVICE

Lisa E. Tabbut declares:

On today's date, I filed this document to (1) the Supreme Court; and (2) Pierce County Prosecutor's Office at pcpatcecf@co.pierce.wa.us and (3) mailed to William Alvarez-Calo, DOC#395946, Washington State Penitentiary, 1313 North 13th Avenue, Walla Walla, WA 99362.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed February 22, 2019, in Winthrop, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney at Law

LAW OFFICE OF LISA E TABBUT

February 22, 2019 - 3:24 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96743-1
Appellate Court Case Title: State of Washington v. William Alvarez-Calo
Superior Court Case Number: 13-1-02553-3

The following documents have been uploaded:

- 967431_Motion_20190222152337SC659092_6843.pdf
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