Court of Appeals No. 43448-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON

Plaintiff/Respondent,

v.

JOSEPH LEIF WOLF,

Defendant/Appellant.

BRIEF OF APPELLANT

Appeal from the Superior Court of Pierce County,
Cause No. 08-1-02972-9
The Honorable Elizabeth Martin, Presiding Judge

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violation of his due process rights. Assignments of Error Nos. 1, 2, 3, and 4.

III. STATEMENT OF THE CASE

On June 17, 2008, the Pierce County Sheriff's received a report from a foster parent that two of the foster children in her home had disclosed that they had been sexually assaulted by Joseph Leif Wolf, then 16 years old, who was also a foster child in the same home. CP 1; CP 4.

On June 23, 2008, Mr. Wolf was charged with five counts of Rape of a Child in the First Degree. On October 9, 2008, the State filed an Amended Information, reducing the charges to two counts of Rape of a Child in the First Degree. CP 6-7. The State also filed a Prosecutor's Statement Regarding Amended Information on October 9, stating:

> The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.090 for the following reasons: this resolution is the result of plea negotiations; the defendant is a juvenile in the foster care system who committed these acts against juvenile victims who are also in the foster care system. Due to the age of the defendant, past history of the defendant and the significant amount of time that will be suspended and imposed if he violates any conditions of the SSOSA, the State is in agreement of the resolution to allow him the opportunity to get treatment and still be held accountable. This resolution results in multiple victims not having to testify. Additional, the defendant disclosed his actions with A.O. and brought forth that information. A.O. has been interviewed and did not disclose the sexual assaults.

CP 8.

Mr. Wolf pled guilty to two counts of Rape of a Child in the First Degree. CP 9-20. Sentence was imposed on November 14, 2008, consisting of 131.9 months confinement with 119.9 months suspended. CP 38. Conditions imposed on Mr. Wolf included completion of a 3-year outpatient sex offender treatment program; service of twelve months in total confinement; obtaining and maintaining employment; and not residing in a community protection zone. CP 38-39.

On February 8, 2012, the State filed a Motion and Affidavit for Bench Warrant, alleging that Mr. Wolf had "violated Conditions of Sentence" (CP 643) "by admitting to use of methamphetamine over the past weekend (1/4 - 2/5/12) based on representations of CCO Arthur Williams." *Id.* On that same date, the Court entered an Order Authorizing Issuance of Bench Warrant, finding that the deputy prosecuting attorney has shown good cause for the issuance of a bench warrant for the defendant for the reason(s) that "D violated conditions of SSOSA." CP 644. A bench warrant was issued on February 8, 2012 (CP 645), and on February 9, 2012, an Order Establishing Conditions of Release Pending Pursuant to CrR 3.2 was entered, under which Mr. Wolf was "to be held in custody without bail." CP 646-647.

A violation report written by Mr. Wolf's community custody officer Arthur Williams was filed with the Court on February 9, 2012. CP

432-446. A Scheduling Order was also entered on February 9, 2012, scheduling a "SSOSA Review Hearing" for February 24, 2012. CP 648.

On February 24, 2012, the prosecutor told the court that the State had not filed a petition for revocation of Mr. Wolf's SSOSA sentence because "Defense counsel and I have spoken. We'll file a petition for the purposes of the actual, written documentation, but the violations are agreed upon." 2/24/12 RP 3-4. The following exchange took place between the defense counsel and the Court:

> MR. QUIGLEY . . . I would normally require that we have a petition filed before we proceed.
>
> THE COURT: I wasn't clear that we were doing revocation or review.
>
> MR. QUIGLEY: Right. Time is of the essence, from my perspective and I think Mr. Wolf's perspective, if the Court were to follow the recommendations that we're going to propose. I don't want to delay this matter.
>
> THE COURT: Okay.
>
> MR. QUIGLEY: What I've told Ms. Kooiman is that the State, of course, needs to file the petition that's consistent with the allegations that she laid out, whether it's I know it's late in the day on Friday, or at least by Monday morning.

2/24/12 RP 5.

Mr. Quigley then indicated that Mr. Wolf would not stipulate to the facts described by Ms. Kooiman, which Mr. Quigley characterized as more "expansive" than facts to which Mr. Wolf would stipulate. *Id.* at 6.

Prosecutor Kooiman then stated:

> Your Honor, maybe we should set it over. I contacted defense counsel yesterday anticipating it would be set over. He wanted to go forward with it, hoping the defendant would get out of custody and start school on Monday. If there's any issue with me being too expansive within the facts and the reports -- and that information was pulled directly from CCO Williams' report that was dated February 8th. If there's any issue with that, we can certainly set this over and have a full-blown revocation hearing with testimony.
>
> I don't want to have any issue of the defendant's rights being violated at all for these allegations, and that's why I contacted defense counsel yesterday, to see what his plans were with it.
>
> THE COURT: Well, at this point, it wasn't noted in front of me as a revocation hearing. The CCO report does not give a recommended sanction. So I don't know -- I didn't know until -- I didn't know whether I was being asked to revoke. I still don't know.
>
> MS. KOOIMAN: What was it noted as?
>
> THE COURT: A review.
>
> MS. KOOIMAN: It shouldn't be a review. He was in custody on a violation.
>
> THE COURT: There's a notice of violation. It's noted on my calendar. It says "SSOSA review hearing."
>
> MS. KOOIMAN: Okay.

> THE COURT: There is no petition for revocation that's filed.
>
> MS. KOOIMAN: I recognize that, Your Honor.
>
> THE COURT: Right. And in the CCO report, it says at the time of the hearing -- "I recommend the court schedule a noncompliance hearing and summons him to appear. At the time of the hearing, an appropriate sanction will be recommended."
>
> MS. KOOIMAN: Right.
>
> THE COURT: There's nothing that notifies the Court that this is a revocation hearing, only that it's a hearing basically on the violation. So I don't know what the recommendation is of the CCO. . . .
>
> . . . Perhaps we need to set it over for a revocation hearing because, as I say, the materials that I received indicated no recommended sanction. I have nothing from the State. So I didn't know in what posture this was coming before me.

2/24/12 RP 6-9.

Ms. Kooiman explained that, typically, a revocation hearing would have been set "directly in front of the judge" by "the CD's" when Mr. Wolf was picked up on the bench warrant. *Id.* at 9. However, defense counsel wanted the Court to conduct a revocation hearing instead of a review hearing, "[b]ecause of the schedule for the defendant's schooling, he wants to have him out on Monday, and the State's obviously, not in agreement with that." *Id.*

When the Court stated, "I don't yet know what the CCO's position is (2/24/12 RP 10), Mr. Williams responded:

> Well, your Honor, I had some specifics that we discussed, a lengthy protocol. One of my biggest concerns of my recommendation was testing of bath salts and the synthetic marijuana. The Department doesn't currently test for that illegal substance. We worked out an agreement to have Mr. Quigley or one of his representatives pay for that testing. I was going to make a recommendation of 30 days confinement, with testings, and some other protocols with regards to reporting frequently, on a weekly basis, and some other instances where he was going to report to his treatment provider. So that was going to be my recommendation.
>
> With the revocation pending, I would have some concerns with releasing Mr. Wolf.
>
> THE COURT: Okay. So I guess that brings me to where we are. Mr. Quigley, I don't know if you want to proceed with a revocation hearing today with no petition having been filed.
>
> MR. QUIGLEY: I am prepared to --
>
> THE COURT: Okay. All right.

Id.

When Mr. Quigley stated, "I know that you were, perhaps, caught off guard this was going to go forward as a revocation hearing," the Court replied:

> Only because it wasn't noted as such. There was nothing in the CCO report, nor did I receive any documentation from the prosecutor. There's nothing to notify the Court that this is a revocation hearing. If the three of you are

> willing to proceed with this as a revocation hearing, with the petition being filed after the fact, I'm willing to proceed. I want you to know that's not what was noted in front of me. This simply is report on a violation as far as I can tell.

2/24/12 RP 12.

Mr. Quigley responded that if the hearing were set over to permit the State to file a petition, Mr. Wolf would "lose schooling." *Id.*

The Court proceeded with a "revocation hearing," then revoked Mr. Wolf's SSOSA sentence based upon the facts stipulated to by defense counsel. *Id.* at 31. Mr. Wolf was committed to the Department of Corrections for a period of 131.9 months plus three years of community custody with credit for time served of 513 days. CP 482. A Petition for hearing to Determine Noncompliance With Condition or Requirement of Sentence and Motion for Bench Warrant was filed on February 27, 2012. CP 485-487.

A Motion to Reconsider was filed on March 9, 2012 (CP 491-515), based in part on the fact that Joseph Wolf was denied even the minimal due process to which he was entitled. CP 492-493. On April 27, 2012, the Court denied the Motion to Reconsider. CP 605.

Notice of Appeal was timely filed on May 18, 2012. RP 606-633.

IV. ARGUMENT

A. Mr. Wolf's due process rights were violated.

Alleged violations of due process are questions of law subject to de novo review. *State ex rel. Washington State Public Disclosure Com'n v. Permanent Offense* , 136 Wn. App. 277, 293, 150 P.3d 568 (2006), *review denied,* 162 Wn.2d 1003, 175 P.3d 1092 (2007) (citing *State v. Warner,* 125 Wn.2d 876, 882–83, 889 P.2d 479 (1995); *Conway v. DSHS,* 131 Wn.App. 406, 418, 120 P.3d 130 (2005)).

1. Persons facing SSOSA revocation have due process rights, although they are "minimal."

Because "revocation of a suspended sentence is not a criminal proceeding," "[a]n offender facing revocation of a suspended sentence has only minimal due process rights." *State v. Dahl,* 139 Wn.2d 678, 683, 990 P.2d 396 (1999) (citing *State ex rel. Woodhouse v. Dore,* 69 Wn.2d 64, 416 P.2d 670 (1966); *State v. Nelson,* 103 Wn.2d 760, 763, 697 P.2d 579 (1985)). Due process for individuals facing revocation of a SSOSA requires:

> (a) [W]ritten notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation.

Id. (citing *Morrissey v. Brewer,* 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)).

2. Mr. Wolf's "minimal" due process rights were violated.

Mr. Wolf's rights to written notice of the claimed violations and the right to confront and cross-examine witnesses were violated by his own attorney's conduct. Mr. Wolf's trial counsel stipulated to violations of SSOSA conditions even though he merely speculated about what one violation might be (*see* 2/24/12 RP at page 5, lines 22-25), and didn't agree that the facts underlying the alleged violations were "quite as expansive" as had been orally described by the prosecutor during the hearing. *Id.* at page 6, lines 2-3. The only evidence relied upon by the trial court was hearsay evidence in the absence of good cause to forego live testimony.

(a) Mr. Wolf did not receive written notice of the claimed violations and of the evidence against him before his SSOSA was revoked.

"**Before** a sentence can be modified, the defendant must be given, written notice of the claimed violations." *State v. Robinson,* 120 Wn. App. 294, 299, 85 P.3d 376, *review denied,* 152 Wn.2d 1031, 103 P.3d 200 (2004) (emphasis added) (citing *Morrissey,* 408 U.S. at 488, 92 S.Ct. 2593). While CCO Williams had filed a Notice of Violation, it did **not** include a recommendation for revocation. *See* 2/24/12 RP at page 10, lines 6-17.

The State did not file its Petition for Hearing to Determine Noncompliance With Condition or Requirement of Sentence and Motion for Bench Warrant until February 27, 2012, **after** the Court had revoked Mr. Wolf's SSOSA. Mr. Wolf's trial counsel acquiesced in the lack of proper written notice of the specific violations upon which the State's request to revoke his SSOSA was based. He told the Court "that the State, of course, needs to file the petition that's consistent with the allegations that she laid out, whether it's, I know it's late in the day on Friday, or at least by Monday morning." *Id.,* page 5, lines 14-18.

(b) The trial court based its decision to revoke the SSOSA on hearsay evidence.

Mr. Wolf's trial counsel urged that what the Court and the prosecutor believed was properly a review hearing should proceed as a revocation hearing (*see* 2/24/12 RP, page 5, lines 7-12; page 6, lines 21-25; page 7, lines 1-16; page 10, lines 20-23), then presented no witnesses to testify on Mr. Wolf's behalf. The State presented no witnesses to testify in support of revocation. Mr. Wolf's counsel conducted no cross-examination of any witnesses. Persons present at the hearing made informal comments, but were not sworn as witnesses. *See* 2/24/12 RP at page 10, lines 6-19; page 17, line 25; page 18, lines 1-25; page 19, lines 1-8; page 27, lines 17-25; page 28, lines 1-5.

Besides argument of counsel, which is "not evidence" (*Jones v. Hogan,* 56 Wn.2d 23, 31, 351 P.2d 153 (1960)), and unsworn, informal comments made by persons present at the hearing, the only evidence before the court was hearsay in the form of a violation report filed by CCO Williams (CP 432-446), letters from the TeamChild staff attorney, Paul Alig (CP 447-461) and Robert Parham, Mr. Wolf's substance abuse counselor (CP 478-479), and a declaration from attorney Kimberly N. Gordon in support of continuation of the SSOSA. CP 462-477.

"Hearsay evidence should be considered only if there is good cause to forego live testimony." *Dahl,* 139 Wn.2d at 686, 990 P.2d 396. Good cause is defined in terms of "difficulty and expense of procuring witnesses in combination with 'demonstrably reliable' or 'clearly reliable' evidence." *Id.* There was neither difficulty nor expense involved in procuring witnesses to testify in person. There was no "good cause" to forego live, **sworn** testimony in this case, and hearsay evidence was therefore not necessary, and should not have been considered by the trial court.

When a trial court improperly admits hearsay evidence, reversal of the revocation is required unless the error is harmless. *Dahl,* 139 Wn.2d at 688, 990 P.2d 775. "The prosecution bears the burden of showing that the error established by the defendant is harmless beyond a reasonable

doubt." *State v. Powell,* 126 Wn.2d 244, 267, 893 P.2d 615 (1995). In this case, the error was not harmless, because with the exception of a declaration filed by Kimberly Gordon supporting continuation of the SSOSA, the only evidence before the court was the hearsay evidence that should not have been considered in the absence of "good cause" to forego live testimony.

(c) The trial court found that Mr. Wolf had violated conditions of his SSOSA based on defense counsel's stipulation to unverified facts presented to the court without prior notice and on a legal conclusion he urged the court to reach.

The State had filed no petition giving notice of the facts upon which the alleged violations of Mr. Wolf's SSOSA were based prior to the revocation hearing. 2/24/12 RP, page 6, line 25 ("There's no petition before the court."). During the revocation hearing, the prosecutor asserted that certain facts constituted violations. *Id.,* page 4. Defense counsel stipulated that violations had occurred, although based on facts that weren't "quite as expansive" as those alleged by the prosecutor. *Id.,* page 5, lines 14-25; page 6, lines 1-5.

Defense counsel then speculated that the prosecutor would eventually identify dishonesty with Mr. Wolf's treatment provider as a SSOSA violation, and invited the court to find a violation on that basis,

stating, "That's a conclusion I think you need to reach." *Id.,* page 5, line 25; page 6, line 1.

In making its oral ruling, the court stated it found that the violations were stipulated to -- including that Mr. Wolf had not been truthful with his treatment provider -- based solely upon the facts alleged and stipulated to during the hearing. 2/24/12 RP, page 31, lines 10-20.

(d) The language of the Order Revoking Sentence confirms the lack of due process.

The Order Revoking Sentence entered by the trial court is a form with blank lines to be filled out with information about the underlying case. CP 482-484. The very language of the Order itself reveals that the minimal due process to which Mr. Wolf was entitled was not provided to him.

First, the Order states that the "matter" came on "regularly for hearing before the above entitled court on the petition of" a deputy prosecuting attorney for Pierce County. No petition had been filed when the Order was entered, and the revocation hearing did not come on "regularly" because it had been noted as a SSOSA review hearing, which is what the court believed it was intended to be. *See* 2/24/12 RP, page 7, lines 10-16.

Second, the Order states that "the court ... having read said

petition" and either hearing testimony in support of the petition or the defendant having stipulated to the violations, revoked the SSOSA. *Id.* Again, there was no petition that had been read by the Court, and no "testimony" was heard in support of the non-existent petition. The violations stipulated to by defense counsel were not described in a petition filed prior to the hearing. The Order Revoking Sentence includes false statements and does not reflect the proceeding that actually took place.

(e) Based upon de novo review, this Court should rule that Mr. Wolf was denied "minimal" due process.

The trial court was faced with a defense attorney urging it to proceed with a revocation hearing (1) in the absence of a petition setting out facts supporting a finding that the SSOSA conditions had been violated, (2) in the absence of a recommendation from the Department of Corrections regarding revocation, and (3) without any sworn live testimony or cross-examination. By permitting a revocation hearing to take place without these minimal due process safeguards, the Court acquiesced in the denial of Mr. Wolf's minimal due process, to which he was entitled by Washington law.

This Court should rule that Mr. Wolf's guaranteed "minimal" due process was violated, reverse the trial court's Order Revoking Sentence, and remand for a new hearing on the State's Petition for Hearing to

Determine Noncompliance with Condition or Requirement of Sentence which was filed on February 27, 2012, **after** the suspended sentence had been revoked.

B. Mr. Wolf's counsel rendered ineffective assistance.

An appellate court reviews claims of ineffective assistance of counsel de novo. *State v. Sutherby,* 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

To show ineffective assistance of counsel, a defendant must show

> (1) that defense counsel's conduct was deficient, i.e., that it fell below an objective standard of reasonableness; and (2) that the deficient performance resulted in prejudice, i.e., that there is a reasonable possibility that, but for the deficient conduct, the outcome of the proceeding would have differed.

State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004) (citing *State v. Thomas,* 109 Wn.2d 222, 225–26, 743 P.2d 816 (1987) (adopting test from *Strickland v. Washington,* 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

1. Defense counsel's conduct was deficient.

Where there is "no conceivable legitimate tactic explaining counsel's performance," there is "sufficient basis to rebut" the "strong presumption that defense counsel's conduct was not deficient." *Reichenbach,* 153 W.2d at 130, 101 P.3d 80 (citing *State v. Aho,* 137

Wn.2d 736, 745–46, 975 P.2d 512 (1999); *State v. McFarland,* 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)). Deficient performance is established by showing that given all the facts and circumstances, counsel's conduct failed to meet an objective standard of reasonableness. *State v. Huddleston,* 80 Wn.App. 916, 926, 912 P.2d 1068, *review denied,* 130 Wn.2d 1008 (1996).

Trial counsel made it clear during the hearing that the reason he did not object to the lack of a petition, lack of proper setting of a revocation hearing, lack of witnesses for live testimony and cross-examination, and stipulation to violations that had not identified by the prosecutor was "[b]ecause of the schedule for the defendant's schooling, he wants to have him out on Monday" following the hearing on Friday afternoon. *See* 2/24/12 RP, page 9, lines 10-25. Stipulating away a client's "minimal" due process rights in return for a possibility that he might not miss a day of school does not meet an objective standard of reasonableness, and was not a "legitimate tactic."

2. Defense counsel's deficient conduct was prejudicial to Mr. Wolf.

Trial counsel's deficient performance was prejudicial because there was a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different. *State v.*

Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). The court stated that she found "the violations were stipulated to," and couldn't "keep giving [Mr. Wolf] more chances" because she had "to honor what SSOSA is about." *Id.,* page 30, lines 13-18; page 31, lines 10-20. There is a reasonable probability that, had the Court received a written petition, had time to prepare for a revocation hearing, and heard sworn live testimony, including cross-examination, she would not have revoked the sentence. *See id.,* page 30, line 7 ("I don't want to revoke. I really do not.").

The Court was surprised by defense counsel's insistence that what the Court rightly believed was a review hearing should proceed as a revocation hearing, and that defense counsel wanted to proceed despite the fact that the State had not filed a petition. The Court was pressured by defense counsel's proclamation and posture that "time is of the essence" (*id.,* page 5, line 9) to make a quick decision regarding revocation based on hearsay evidence and informal statements. The deficient performance of defense counsel was highly prejudicial to Mr. Wolf. There is a reasonable probability that, absent the deficient performance, the Court would have imposed confinement and other conditions, but would not have revoked the SSOSA.

Because Mr. Wolf received ineffective assistance of counsel, the Court should vacate the Order Revoking Sentence and remand for a new

hearing on the State's Petition for Hearing to Determine Noncompliance With Condition or Requirement of Sentence filed on February 27, 2012.

C. The trial court abused its discretion.

This Court reviews a trial court's decision to revoke a SSOSA suspended sentence for an abuse of discretion. *State v. Miller,* 159 Wn.App. 911, 918, 247 P.3d 457, *review denied,* 172 Wn.2d 1010 (2011) (citing *State v. Partee,* 141 Wn.App. 355, 361, 170 P.3d 60 (2007)).

A trial court abuses its discretion when its decision is manifestly unreasonable. *Miller,* 159 Wn. App. at 918, 247 P.3d 457 (quoting *State ex rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard[.]" *Grandmaster Sheng-Yen Lu v. King County,* 110 Wn. App. 92, 99, 38 P.3d 1040 (2002).

1. It was an abuse of discretion to proceed with the revocation hearing absent any of the procedures that ensure "minimal" due process.

The trial court's decision to proceed with a revocation hearing absent any of the procedural safeguards that ensure minimal due process required by Washington law -- regardless of defense counsel's stipulations -- was manifestly unreasonable. Alternatively, the trial court's decision to proceed with a revocation hearing absent any of the procedural safeguards

to ensure minimal due process was an "error of law based on an untenable reason," which also "may constitute an abuse of discretion." *Miller,* 159 Wn. App. at 918, 247 P.3d 457.

2. It was an abuse of discretion to revoke Mr. Wolf's SSOSA based on hearsay evidence.

When a trial court improperly admits hearsay evidence, reversal of the revocation is required unless the error is harmless. *Dahl,* 139 Wn.2d at 688, 990 P.2d 775. Aside from a Declaration filed by attorney Kimberly Gordon supporting continuation of the suspended sentence (CP 462-477), the only evidence before the court at the time of the revocation hearing was hearsay, consisting of an unsworn Notice of Violation (CP 432-446) and letters from Mr. Alig, attorney for TeamChild (CP 447-461) and Robert Parham, Mr. Wolf's substance abuse counselor (CP 478-479). *See* 2/24/12 RP at page 3, lines 16-22. Although CCO Williams and Mr. Alig were permitted to address the court during the hearing, they were not sworn in as witnesses and were not cross-examined. *See* 2/24/12 RP at page 10, lines 6-19; page 17, line 25; page 18, lines 1-25; page 19, lines 1-8; page 27, lines 17-25; page 28, lines 1-5. The trial court's decision to revoke Mr. Wolf's SSOSA based on hearsay evidence where there was no good cause to forego live sworn testimony and cross-examination was also manifestly unreasonable, constituting an abuse of discretion.

This Court should vacate the Order Revoking Sentence and remand for a new hearing on the State's February 27, 2012 Petition for Hearing to Determine Noncompliance With Condition or Requirement of Sentence.

3. It was an abuse of discretion for the trial court to deny Mr. Wolf's motion to reconsider the revocation of his SOSA where Mr. Wolf's SSOSA was revoked without observation of his due process rights.

As discussed above, Mr. Wolf's minimal due process rights were violated when his SSOSA sentence was vacated. Mr. Wolf's trial counsel filed a motion to reconsider the revocation of Mr. Wolf's sentence specifically arguing that the revocation of Mr. Wolf's SSOSA sentence violated his due process rights. CP 491-493. The trial court denied the motion to reconsider. CP 605.

For the reasons stated above, the trial court abused its discretion in denying Mr. Wolf's motion to reconsider the revocation of his SSOSA sentence when Mr. Wolf's minimal due process rights were so clearly violated.

V. CONCLUSION

Mr. Wolf's "minimal" due process was violated by failure to follow the procedures that ensure such due process. Mr. Wolf received ineffective assistance of counsel, which resulted in an egregious violation

of Mr. Wolf's minimal due process rights. Finally, the trial court abused its discretion by dispensing with the procedures designed to ensure minimal due process and by basing its decision to revoke the suspended sentence upon hearsay evidence where there was no good cause to forego live, sworn testimony.

For any or all of these reasons, this Court should vacate the Order Revoking Sentence and remand for a new hearing on the Petition filed by the State on February 27, 2012.

DATED this 3rd day of December, 2012.

Respectfully submitted,

/s

Sheri Arnold, WSBA No. 18760
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on December 3 , 2012, she delivered by e-mail to the Pierce County Prosecutor's Office, pcpatcecf@co.pierce.wa.us Tacoma, Washington 98402, and by United States Mail to appellant, Joseph L. Wolf, DOC # 323839. Monroe Corrections Center, Post Office Box 777, Monroe, Washington 98272, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on December 3, 2012.

/s/

Norma Kinter

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