

70337-4

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IN THE STATE OF WASHINGTON COURT OF APPEALS
DIVISION I

FILED
May 8, 2014
Court of Appeals
Division I
State of Washington

CHARLES CHAPPELLE, Jr.,

Defendant,

v.

State of Washington,

Plaintiff.

No. 70337-4-I

STATEMENT OF ADDITIONAL
GROUNDS; RAP 10.10

1. OPENING STATEMENT

The Superior Court Chief Judge, Kessler denied Mr. Chappelle counsel of choice, three private attorneys were trying to represent him. Judge Kessler's order to deny counsel of choice, and all subsequent motions for substitution of counsel; based on ineffective assistance, barred Mr. Chappelle across the entire proceeding from any counsel other than Mr. Gonzalez. Mr. Chappelle was seriously injured during this proceeding, and that seriously effected his ability to comprehend the trial, and communicate with counsel and to the court. Mr. Chappelle was constantly ignored by Mr. Gonzalez and the courts. Mr. Chappelle attempted once again under a new Judge, the most honorable Hayden, to motion for substitution of counsel, but was denied. Mr. Chappelle's point to Judge Hayden is that he wants to be represented by counsel, but if the court is chaining him to Mr. Gonzalez it is the same as having no counsel. Judge Hayden interpreted that as a motion to go pro se, and erroneously reduced Mr. Chappelle to pro se status.

It is amazing that the lower court was set in stone against allowing the substitution of counsel, for a private counsel of choice, but so quickly & willingly reduced, the seriously injured, Mr. Chappelle to Pro Se status, without stand-by counsel.

Mr. Chappelle was also denied compulsory process, discovery, and forced to proceed in trial unprepared. This criminal proceeding is a mockery of democracy, and the U.S. Justice system. The public's best interest can only be served by reversing Mr. Chappelle's conviction.

Mr. Chappelle will incorporate the relevant facts into the applicable arguments. Mr. Chappelle asks that this Most Honorable gives these pleadings liberal interpretation. Maleng v. Cook, 490 U.S. 488, 493 (1989).

2. ARGUMENT

A. MR. CHAPPELLE WAS DENIED COUNSEL OF CHOICE

During a post trial Motions hearing on 4/30/13, Judge Hayden explained that "I know he wanted a new attorney, but Judge Kessler, our Chief judge, had already denied him change of counsel previously, it was sent to me for trial, and I told him there would be no new attorney. His only option would be to go pro se, and I asked him if that's what he wanted to do." 4/30/13 RP 10. Mr. Chappelle answered flat out no, that he did want counsel, "The Defendant: NO, I have actually had lawyers that try to take my case. I try to change counsel, and motion to deny -- was denied. All my motion to dismiss was denied. All my motions are never heard. Not given a chance to speak." RP 10. Judge Kessler and Judge Hayden jointly violated Mr. Chappelles right to counsel of choice, and forced him to go Pro Se against his will, this is a structural error that requires automatic reversal, for a new trial. UNITED STATES v. GONZALEZ-LOPEZ, 548 U.S. 140, 149 (2006).

The U.S. Supreme Court in Gonzalez-Lopez held that "A trial Court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to reversal of his conviction. The right to counsel commands not that a trial be fair, but that a particular guarantee of fairness be provided. That fairness being "that the accused be defended by the counsel he believes to be best. Crawford v. Washington, 541 U.S. 36, 61." Id.

It does not matter whether Mr. Gonzalez was ineffective, all that is required is that the courts denied Mr. Chappelle counsel of his choice. This is clearly established by the three separate private counsels being denied from representing Mr. Chappelle, and more importantly by the fact that Judge Kessler order to deny counsel was even carried out by Judge Hayden in his own words "I told him there would be no new attorney." 4/30/13 RP 10,

"Erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionable qualifies as 'structural error.'" Sullivan v. Louisiana, 508 U.S. 275, 282.

Conclusion

Mr. Chappelle is entitled to a new trial with counsel of his choice, free from being bullied from the courts to proceed pro se, with no discovery and unprepared for trial.

B. MR. CHAPPELLE WAS DENIED COMPULSORY PROCESS, THE RIGHT TO PRESENT A DEFENSE AND RIGHT TO FAIR TRIAL BECAUSE HE WAS NOT GIVEN DISCOVERY UNTIL AFTER TRIAL STARTED AND WAS NOT GIVEN ANY DISCOVERY TOOLS BESIDES THE COURT ALLOWING HIS FAMILY TOWARDS THE END OF TRIAL TO CALL WITNESSES FOR HIM.

Mr. Chappelle has a Substantive Due Process right to develop the facts in his case. The fundamental Due Process right to present Mr. Chappelles version of the facts can only be protected if presented to the jury, so they may decide where the truth lies. This element goes directly to the right to present a defense. State v. Burri, 87 Wn.2d 175, 550 P.2d 507, 513 (1976). The scope of this right covers timely discovery for trial preparation, subpoena power, private investigator, etc. The U.S. Supreme Court has instructed, "whether in the Due Process Clause ... or in the Compulsory Process or confrontation Clause of the Sixth Amendment, the constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Grana v. Kentucky, 476 U.S. 683, 690 (1986).

The ends of Justice would be defeated if judgments were to be founded on a partial or speculative representation of facts. The guarantee to develop all relevant facts in the adversary system is both fundamental and comprehensive. Taylor v. Illinois, 484 U.S. 400, 108 S.Ct. 646, 653-54 (U.S., Ill. 1988). The Courts must safeguard these rights with meticulous care because it can be violated by the actions of the prosecutor as well as the judge. Burri at 513.

These fundamental rights were repeatedly violated by the trial court. The very act of reducing Mr. Chappelle to pro se status violated all of the above mentioned rights, especially, when refusing to give stand-by counsel. U.S. v. Rindberger, 13 F.3d 1344; State v. Woods, 143 Wn.2d 561. Defense Counsel Gonzalez abandoned Mr. Chappelles self-defense, defense which is crazy, and then pursued a general denial defense. When Mr. Chappelle was reduced to pro se status, trial had already begun. Mr. Chappelle was stuck with this defense, which is functional to no defense. Mr. Chappelle was entitled to assert self-defense once attacked, and was deprived of presenting a defense at all when locked into the general denial path Mr. Gonzalez ineffectively took before leaving trial. Mr. Gonzalez also took all the discovery when he left Mr. Chappelle at trial, and Mr. Chappelle had never been provided discovery before that, and was given partial discovery, during trial. The best attorney could not effectively represent his client under these conditions, let alone, a criminal defendant forced to represent himself.

Mr. Chappelle was deprived of subpoena tools, not given a private investigator, and instead told by the judge that his family was responsible for doing the investigation. "MR. CHAPPELLE: Like I said, right now, like I said, for the record, I don't have any way of calling anybody. I'm incarcerated. They have me where pin codes can be activated where you can call your family and you can call anybody. I don't have any outside line connections. I don't have any way to contact the outside world." RP 153. Judge Hayden mistakenly believes that the law required no stand-by counsel to be appointed to assist in Mr. Chappelle's compulsory process, instead the Judge erroneously believed Farreta and McKaskle held that Mr. Chappelle's family are stand-by counsel:

"THE COURT: Mr. Chappelle, you have family members here and friends here, right? You may certainly give one of them the phone number to contact, the information, and ask them to assist you in getting a hold of this fella. You declined the service of a lawyer so you are on your own. But I have not deprived you of the opportunity to have your family make the contacts.... THE OFFICER: Your Honor, for the record, Officer Fischer from the record instructed both family and Mr. Chappelle that they can't have contact while they are in court ..." RP 154.

This is a complete denial of Mr. Chappelle's compulsory process, and the Judge admits he is depriving Mr. Chappelle for going pro se, this is bias of the highest degree. This also violates Mr. Chappelle's rights to self-representation. Frantz v. Hazez, No. 05-16024 (9th.Cir.2008).

Farreta established a criminal defendant's right to represent himself, "Provided only that he knowingly and intelligently foregoes his right to counsel and that he is able to willing to abide by rules of procedure and courtroom protocol." McKaskle, 465 U.S. at 173, 104 S.Ct. 944. Judge Hayden stated he knew

MR. Chappelle wanted counsel, and knew he did not know the court rule protocol or rules. Judge Hayden has a duty to not allow Mr. Chappelle to go pro se because he did not know the rules or protocol, this violated Mr. Chappelle's right to present a defense because he does not know how, or how to use his compulsory process, and in this sense was denied these rights.

The correct decision and duty of Judge Hayden, under these circumstances was to either appoint stand-by counsel to uphold the rights discussed above.

CONCLUSION

Mr. Chappelle's fundamental Due process rights were violated and he is entitled to a new trial.

RESPECTFULLY SUBMITTED.

THIS 29th Day of April,

x Charles Chappelle Jr. #

Charles Chappelle, Jr.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 70337-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Andrea Vitalich, DPA
King County Prosecutor's Office-Appellate Unit
- appellant
- Attorney for other party


MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: May 8, 2014