

FILED

JUN 18 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

6.15.14

To Whom it may concern:

I am writing this letter as ~~an~~ a statement of additional grounds to the brief that was filed in this court by my Attorney.

With this statement of additional grounds I am respectfully requesting to withdraw my plea of guilty based on the grounds that I believe my plea is involuntary and was made while incompetent, the facts within this (SAG) will support these claims and therefore should allow me to withdraw my plea of guilty.

After some extensive research, I have discovered that I should be allowed to withdraw my plea based on my plea of guilty being involuntary and therefore would make my plea invalid. I will be discussing the incompetence of my plea later in this (SAG), but first I would like to discuss some recently discovered information, which would be that my sentence holds a possibility of life. This is information I was not aware of at the time of me pleading guilty. I have been told that it was within my plea but I do not recall this ever being brought to my attention by my counsel or the courts. After reviewing my transcripts from my guilty plea hearing and my sentencing hearing I have discovered that I was never informed of this consequence. (Please review transcripts)

By me not having a full understanding of

the consequences of my plea this would make my plea involuntary. And with a possible life sentence being a possible consequence of my plea this would be a direct consequence and therefore cannot be overlooked or seen as a harmless error and would cause my plea to ~~be~~ be invalid since ~~it's~~ ^{it's a} direct consequence. (See state v. Ross NO 62847-5 which states: "Defendant moved to withdraw plea of guilty to three counts of second degree rape of child. The superior court, Chelan county, John bridges, J., denied motion. Defendant appealed. The court of appeals affirmed and the supreme court Dolliver, J. held that:

1) mandatory community placement term constitutes direct consequence of plea, and
2) failure to inform defendant of mandatory imposition of community placement term rendered plea invalid.") So with the court failing to inform me of a possible life sentence being a possible consequence to my plea and the record proves that I was not informed then my plea also should be rendered invalid.

And though I admitted to reading and understanding everything within the plea, Does not make my plea voluntary. (See state v. Ross NO 62847-5 which states: [18] "Even though record

shows defendant admits to reading, understanding, and signing a plea. This creates a strong presumption that the plea is Voluntary. [19] guilty plea is not truly Voluntary unless the defendant possesses an understanding of the law and facts. ")

And in this case by the courts failing to inform me of a possible Life sentence being a consequence of my plea, which the record shows, thus proves I clearly lacked ~~for~~ a full possession of an understanding of the law in relation to the facts of my plea. This also renders my plea invalid and involuntary.

(also see state v. S.M. No 23458-1-II which states: "The court of appeals, Seinfeld, J., held that: 1) defendant was denied effective assistance of counsel, and 2) record did not affirmatively show that defendant understood the law ~~of~~ in relation to the facts or entered the plea intelligently and voluntarily.")

So again with the lack of knowledge I had of all the consequences of my plea, my plea should be considered invalid and I should be allowed to withdraw my plea.

Also my plea should be considered invalid based on the fact that the court improperly accepted a factual

basis plea agreement, (see state v. Ross No 62847-5 which states: [21]" To satisfy the rule imposing a factual basis requirement for accepting a guilty plea there must be sufficient evidence for a jury to conclude that the defendant is guilty and this evidence must be developed on the record at the time the plea is taken:

It may not be deferred until sentencing.

[22] factual basis requirement for guilty plea may be satisfied by a recitation of facts the prosecutor would prove at trial; where the prosecutor's factual statement is orally acknowledged by the defendant or where the court orally interrogates the defendant and the defendant concerning his conduct, the constitutional requirements are satisfied and both society and the defendant are better served.

[23] where the court relies only on the written statement of the defendant on a guilty plea form, it must insure the facts admitted amount to the violation charged; anything less endangers the finality of the plea.")

In this case the record from my guilty plea hearing shows that none of the above was met, therefore my plea is invalid and I should be able to withdraw my plea of

guilty. The record shows from the guilty plea hearing on Nov 17, 2009 none of the factual findings the judge used to accept my plea of guilty were read on record nor did the prosecutor recite his factual basis on record and neither of the two were orally acknowledged by me nor was I orally interrogated on my conduct for findings of a factual basis, which the record shows. Also I never gave a written ~~state~~^{statement} for a factual basis.

So even though the record shows that the judge said he received probable cause reports, statements and other reports which he would use for factual basis none of the factual basis were read on record, which the record shows, so therefore there was no factual basis acknowledged on record at the guilty plea hearing and that means the court accepted my plea with no facts and this should render my plea invalid and allow me to withdraw my plea.

NEXT, I will be discussing the incompetence of my plea.

As a basis for the withdrawal of Mr. Arandas guilty plea, there are two of the exemplary indicia listed in Taylor that exist. The indicia for involuntary plea will be discussed here. The indicia for ineffective counsel

Will be discussed in part B, to follow.

A. Whether or not Mr. Aranda was entering into a knowing and voluntary plea at the time he entered into his guilty plea.

Mr. Aranda's guilty plea was unknowingly and involuntarily made, due to his incompetence at the time of his plea, which is the second indreere listed in the Taylor case that Mr. Aranda's motion satisfies.

On November 16 2009 at or around 7:00 am, while in segregation, the defendant had been off his medication for depression and attempted suicide (see Attach. A.) After Jail staff found the defendant attempting to hang himself, the defendant was placed on suicide watch. About an hour and a half later at or around 8:30 am the defendant's appointed counsel came to visit, and at that time was informed about the defendant's attempted suicide. The defendant's counsel then informed Jail staff that the defendant had court, after being escorted to the courtroom the defendant's counsel then agreed with the prosecutor to a plea agreement. After reaching an agreement the defendant's counsel and the prosecutor then informed the judge that a deal had been reached. At that time even after the judge had received a personally addressed suicide

note the judge put the defendant on court docket to plea guilty the next day, on November 17th 2009.

The morning of November 17th 2009, the defendant at or around 24 hours after his suicide attempt while still on suicide watch with no mental health evaluation was allow to enter a plea of guilty. And by the courts allowing the defendant to plead guilty this violates his right to due process, 14 Amend right violated.

After some extensive research it is clear that the defendants plea of guilty was not made competently and the defendant should be allowed to withdrawal his plea. See state v. Marshall 144 Wn2d 266 [3] which states;

"When a criminal defendant moves to withdrawal a guilty plea on the basis that the plea could not have been made knowingly, intelligently, and voluntarily because of mental incompetency and there is evidence before the trial court that calls into question the defendants competency at the time the plea was entered, the court may not deny the motion unless it first appoints experts to examine and report on the defendants competency question, under RCW 10.77.060."

In this case the defendant's attempt at suicide would clearly call into question his competency and due to those suicidal thoughts

and the defendant sending a suicide note personally addressed to the judge, should more than prove that the defendant was not of clear and sound mind and competent to plead guilty. Thus, would make the defendant's plea a manifest injustice - involuntary plea - , which would allow the defendant to withdraw his plea. see state v. Marshall 144 Wn2d. [5] which states;

"For purposes of CrR 4.2(F), under which a defendant may withdraw a guilty plea when necessary to correct a "manifest injustice", an involuntary plea of guilty to a criminal charge constitutes a "manifest injustice."

"In Marshall, Marshall had gone off his medication around the time of his plea of guilty and it was determined that he could not waive his constitutional rights and plea guilty. In Marshall the doctor said "Marshall's plea was a manifestation of his increasingly depressed and delusional state of mind and Marshall was suicidal at the time of his plea." Rp at 664."

Similar to this case where there is two competency evaluations prior to the defendant's suicide attempt, which stated the defendant suffered from Post traumatic stress disorder [PTSD], severe anti-social disorder and, paranoia that can reach delusional thoughts at times. Also the defendant has a family history of bipolar disorder and depression. All of these factors play a

part in questioning the defendant's competency at the time of his guilty plea. See *State v. Dodd* 70 Wn2d 513, 514, 424 P.2d 302 (1967) which states:

"The factors a trial judge may consider in determining whether or not to order a formal inquiry into the competence of an accused include the "defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statement of the defendant's counsel."

In *Personal Restraint of Fleming* 142 Wn2d 853 [6.7] It states:

"Procedures of the competency statute (chapter 10.77.RCW) are mandatory and not merely directory." *State v. Wickland* 96 Wn2d 798, 805, 638, P.2d 1241 (1982)"

"Thus, Once there is reason to doubt a defendant's competency, the court must follow the statute to determine his or her competency to stand trial." *City of Seattle v. Gordon*, 39 Wn App 437, 441, 693, P.2d 741 (1985)

"Failure to observe procedures adequate to protect an accused's rights not to be tried while incompetent to stand trial is a denial of due process. *State v. O'Neal* 23 Wn App 899, 901, 600 P.2d 570 (1979) (citing *Droppe*, 420 U.S. 162; *Pate*, 383 U.S. 375)"

In this case the defendants suicide attempt was clear reason to doubt his competency and the mandatory procedures should have been followed to determine if he was competent enough to enter a plea of guilty, and by the courts failing to follow the mandatory procedures, the defendants Due Process rights have been violated.

In this case the court abused its discretion by allowing the defendant to plead guilty, because there was information provided (i.e. the defendants suicide note to the judge and his suicide attempt) to the court regarding the defendants competence. Further, based on the information provided there was clear reason to doubt the defendants competence.

In Personal Restraint of Fleming 142 Wn2d 853 [11]

It states:

The court shall not accept a plea of guilty without first determining that it was made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea". CrR 4.2 (d)

In this case there is no way the defendant could have competently made a plea of guilty without any mental evaluation 24 hours after a suicide attempt if the petitioner clearly didn't understand the difference between life and death, And by the court allowing the defendant to do so, they have allowed him to enter an involuntary plea, and now, should allow the

defendant to withdraw his guilty plea to correct a manifest injustice.

B. Whether or not Mr. Aranda's right to effective representation of counsel, as protected by Art 122 of the WA state constitution and the VI Amend of the US Constitution has been violated.

Here, the defendant will prove ineffective by showing his counsel's representation fell below a professional standard of reasonableness. In this case the defendant can prove ineffective assistance of counsel, by his attorney not raising the issue of competency to the court and requesting an immediate mental evaluation after the defendant attempted suicide, but instead, allowed the defendant to agree to enter a plea of guilty. Thus, would prove that counsel was ineffective by not fulfilling his duty to assist the defendant "actually and substantially" in determining whether to plead guilty or not. See *In Re Rice*, 118 Wn 2d 876, 888-889 P.2d 1086 (1992) which states:

ⁱⁱ
The Strickland test applies to claims of ineffective assistance of counsel in the plea process. *Hill v. Lockhart* 474, US 52, 57, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985) During plea bargaining, Counsel has a duty to assist the defendant "actually and substantially" in determining whether to plead guilty. *State v. Osborne* 102 Wn 2d 87, 99, 694 P.2d 683 (1984) (quoting *State v. Cameron*, 30 Wn App. 229, 232, 633 P.2d 901, (1981))

Also the defendant refers to Strickland, 466 US at 687, which states:

"To sustain a claim of ineffective assistance of counsel, the defendant must show: 1) "Counsel's performance was deficient" and 2) "The defendant's performance prejudiced the defense."

In this case by the defendant's attorney not raising the immediate question of his competency, this proves counsel's performance deficient and prejudicial to the defendant's defense. Counsel's performance would be deficient because by not raising the question of the defendant's competency would mean that his representation fell below an objective standard of reasonableness, and counsel's actions were prejudicial to the defendant's case and defense because reasonable probability that, but for counsel's conduct of errors of not raising the issue of the defendant's competence, the results of his proceedings would have been different.

Therefore, the defendant's own attorney, who had the closest contact with him during the proceedings, should have raised the issue, that, due to the defendant's suicide attempt, the defendant was incompetent to stand trial, and should have moved for a competency hearing prior to the defendant's plea of guilty or sentencing, and

by not doing so thus proves ineffective. In
Personal restraint of Fleming 142 Wn2d 853

(It states:

"The supreme court determined that
by Flemings counsel not raising the issue of
competency, when there was clear evidence
and reason to doubt competency, he did not
receive effective assistance of counsel and
the courts vacated his plea")

I respectfully request that after reviewing
this (SAG) and the supporting documents in
Attachment A, that the court to allow me
to withdraw my plea of guilty, based on
my plea being incompetent, involuntary and
therefore invalid. I feel the only way to
correct this manifest injustice would be to
allow me to withdraw my plea or for the
court to vacate my convictions, After
reviewing this (SAG) it should be more than
evident that my rights have clearly been violated
which ~~is~~ ^{should warrant} nothing less. I would like to
thank the courts for their time and for reviewing
and considered this (SAG).

Respectfully submitted by

Thomas T. Aranda 6.15.14
~~Aranda~~ 6.15.14

~~Statement of Additional grounds~~
STATE V. ARANDA

ATTACHMENT - A

JNZINQE

CHELAN COUNTY REGIONAL JUSTICE CENTER

2/17/12 QPADEV001M

COMMENT INQUIRY

09:03:17 LESLIEC

Name ARANDA, THOMAS TYLER

MASTER ID# 116247

Cell

Booking Number 08-0170132

Comment Code G GENERAL COMMENT

Entry Officer 1193

LARSEN, SEAN M

Comment TODAY AT APPROX. 0707 MR. ARANDA ATTEMPTED SUICIDE WHILE
HOUSED IN 2B. INMATES IN 2A PRSSED THIER CALL LIGHT TO GET
STAFF RESPONSE. ARANDA'S TRIAL STARTS TOMORROW.

Entry Date 11/16/09 Time 8:13:56

Extended Exists

F3=Exit

F17=Extended Comments

F12=Previous

JNOLIQC

CHELAN COUNTY REGIONAL JUSTICE CENTER
OFFICERS LOG INQUIRY

2/17/12 QPADEV001M
09:09:01 LESLIEC

Date 11/16/09 Time 7:20 Shift 1

Officer 2562 KUBICHEK, SARAH

Record Type MH MENTAL HEALTH

LOG ENTRY

H2-ARANDA, THOMAS HAS BEEN PUT IN THE SUICIDE

SMOCK AND 15 MIN. CHECKS HAVE BEEN STARTED AT 0717

Entry Person SARAHK Date 11/16/09 Time 7:22:25

Extended Exists

F3=Exit

F17=Extended Comments

F12=Previous

JNOLIQC

CHELAN COUNTY REGIONAL JUSTICE CENTER
OFFICERS LOG INQUIRY

2/17/12 QPADEV001M
09:08:14 LESLIEC

Date 11/16/09 Time 9:22 Shift 1

Officer 1113 HUGHES, JEFF A

Record Type GI GENERAL INFORMATION

LOG ENTRY

CDMHP HERE TO EVALUATE ARANDA, THOMAS AFTER HIS
SUICIDE ATTEMPT. (CURRENTLY ON WATCH IN H2).

Entry Person JEFFH Date 11/16/09 Time 9:23:00

Extended Exists

F3=Exit

F17=Extended Comments

F12=Previous

JNOLIQC

CHELAN COUNTY REGIONAL JUSTICE CENTER
OFFICERS LOG INQUIRY

2/17/12 QPADEV001M
09:07:57 LESLIEC

Date 11/16/09 Time 10:03 Shift 1

Officer 2562 KUBICHEK, SARAH

Record Type MH MENTAL HEALTH

LOG ENTRY

H2 ARANDA, THOMAS REFUSING TO SPEAK WITH CDMHP
MARSHALL, LESLIE OR HIS ATTORNEY. HE SAYS HE JUST
WANTS TO BE LEFT ALONE. ADVISED MARSHALL AND CPL
HUGHES.

Entry Person SARAHK Date 11/16/09 Time 10:06:16

Extended Exists

F3=Exit

F17=Extended Comments

F12=Previous

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By _____

To Whom it may concern:

6.15.14

The following papers are a statement of additional grounds for Case # 313115 to be added with my attorney's opening brief.

Please respond to let me know these papers were received and added with that brief. Thank you for your time.

Sincerely



Thomas T. Aranda.

336060

H5 42L

SCCC

191 Constantine Way
Aberdeen, WA 98520