

70044-8

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STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

2013 OCT 14 PM 1:49  
STATE OF WASHINGTON  
COURT OF APPEALS  
CLERK

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 Jose A. Gabino )  
 (your name) )  
 )  
 Appellant. )

No. 70044-8-1

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, \_\_\_\_\_, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.


Additional Ground 1

see attached

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: OCTOBER 8, 13

Signature: 

No. 70044-8-I

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON, Respondent,

v.

JOSE GABINO, Appellant.

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APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS

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2013 OCT 14 PM 1:50  
STATE OF WASHINGTON  
COURT OF APPEALS

## **Statement of Additional Grounds**

### **State v. Gabino, No. 70044-8-I**

#### **Additional Ground 1.**

##### **Ineffective assistance of counsel.**

###### **A. Failure to investigate.**

Before trial, when the case was being investigated, I asked my attorney to please interview several eyewitnesses that attended the party where the assault allegedly occurred. These witnesses included, among others, Anna Gabino and Angel Gabino. They were both eyewitnesses to the events in questions and would have supported my defense. My Attorney never contacted these witnesses. They were not interviewed and they were not called at the trial. This failure to investigate the case made my attorney ineffective.

###### **B. Failure to allow me to assist with jury selection.**

At trial, during jury selection, my attorney would not let me see the juror questionnaires so that I could participate in jury selection. He would not allow me to participate in jury selection. There was one juror that I asked him to strike because the juror was a former police

officer. My attorney did not strike this juror and he sat on the jury. There was another juror that I wanted on the jury, but my attorney struck her over my objection.

Also, several jurors were questioned by the judge and the prosecutor and by my attorney in the judge's chambers. I was not permitted to be present during this questioning. I was not permitted to participate in this questioning. My lawyer was ineffective for allowing jury selection to be conducted in private in the judge's chambers.

**C. Failure to Object.**

My attorney repeatedly failed to object to the leading questions during the direct examination of the State's primary witness. The failure to object essentially allowed the prosecutor to put words into the victim's mouth. My attorney's failure to object to repeated leading questions was ineffective.

**D. Failure to cross-examine the victim's mother.**

My attorney failed to cross-examine the victim's mother, even though the facts she testified to were physically impossible. She testified that she drove from Longview, WA to Maple Falls, WA in just two hours. This is

physically impossible, as this is at least a five-hour drive. My lawyer failed to cross-examine this witness on this point despite the fact that it would have been easy to discredit her testimony.

**E. Failure to cross-examine the victim.**

My lawyer failed to question the victim about prior sexual abuse by her own father.

**F. Failure to present brother's testimony**

My lawyer failed to present the testimony of my brother, Noe Gabino, despite my repeated requests that he do so. My brother would have testified that he spoke to the victim just one hour after the alleged assault, and asked her if the allegations were true. She responded, "I don't know." This testimony would have cast doubt on the victim's testimony and would have supported the defense argument that the allegations were false.

**Additional Ground 2**

**I was sentenced under the wrong version of the SRA**

The court sentenced me under the 2012 version of the SRA, despite the fact that the crime for which I was being sentenced occurred in 2002. The sentencing law in

effect at the time the crime was committed should have been used to determine my sentence. To impose a sentence under the newer, more punitive statute violates my constitutional rights against ex post facto laws.