In The Supreme Court State of Washington

STATE OF WASHINGTON v JOEL PAUL REESMAN	SUPREME COURT NO. 92071-1 PETITION FOR REVIEW PURSUANT TO RAP13.4(b)

A) Joel Paul Reesman, petitioner pro se, respectfully asks this court to accept review of decision by the Court of Appeals described in Part B.

B) The Court of Appeals on July 7, 2015, rules that Mr. Reesman's statement of Additional Grounds 1-3 were outside the scope of review and Grounds 4-6 were meritless. To obtain a review under RAP13.4(b) Mr. Reesman must demonstrate that the Court of Appeals' decision conflicts with a decision of this court or another Court of Appeals' decision, or that he is raising a significant constitutional question or an issue of substantial public interest.

ISSUES PRESENTED FOR REVIEW

1) Whether the Court of Appeals' decision that Reesman's 2014 trial attorney's failures and ex parte contact with the court was not ineffective assistance of counsel under Strickland and whether that decision was based on an unreasonable determination of the facts. U.S.C.A. 28 sec. 2254(d)(2). Whether the threat to shoot a mentally ill defendant is

outside the scope of review or does it raise a significant constitutional question under RAP13.4(b)?

2) Whether the Court of Appeals' decision that Mr. Reesman failed to prove that the ex-parte contact with Reesman's defense attorney (Ramsay) was prejudicial and obstructed justice is an error under former Canon 3(b). Whether the Court of Appeals' decision that Reesman failed to show accumulated prejudice of multiple trial errors affecting the outcome of his trial violates the due process clause of Washington Article 1 sec. 3, U.S Constitution Fifth and Fourteenth Amendment? Is the 2008 trial court and prosecutor allowing David Kurtz to threaten to shoot a mentally ill Reesman outside the scope of review or does it raise a significant constitutional question under RAP13.4(b)? Is Mr. Reesman's restraint illegal under 28 U.S.C.A. 4 sec. 2254(d)(c)(1)?

3) Whether the Court of Appeals' decision to not rule on Reesman's SAG Ground Six "Ineffective Assistance of Appellate Counsel" violate due process and Reesman's Sixth Amendment right to counsel and an unreasonable determination of the facts? (U.S.C.A. 28 sec. 2254(d)(2).) Is Mr. Tiller's failure to argue Reesman's claims that the trial court and prosecutor allowed Kurtz to threaten to shoot a mentally ill Reesman outside the scope of review or does this Sixth Amendment claim raise a significant constitutional claim warranting review in this court under RAP13.4(b)?

STATEMENT OF FACTS

1) Motion hearing December 11, 2007, Judge Wulle addresses both cases one of which is now before this court. Wulle: "This is the State of Washington v. Joel Reesman 07-1-00090-9 and 07-1-01092-1. SAG. ver. Ct. trans. R.P. 22. During that hearing Mr. Reesman asks the court for mercy and tells the court three times that he is mentally ill and his son was recently murdered. No "mercy" was given. (Murder of Reesman's son SAG Ex. F)(SAG Ex. A-G) ver. Ct. trans. R.P. 22, 23, 24, 25. Since the court failed to sua sponte for determination of Reesman's mental deficiencies, Mr. Reesman since has made a prima facie showing that he was mentally ill during both trials above and that he has an extensive, significant 30 year history of mental illness. SAG exhibits A-G, SAG Affidavit of Joel P. Reesman dated January 18, 2015, Ex. H.

2) In 1984, Reesman is diagnosed as having Post Traumatic Stress Disorder and a chronic eating disorder "Bulimia" at a psychiatric hospital in Portland, Oregon. Ex. A-G.

3) In 1994, Reesman is shot five times in a murder attempt suffering two gunshot wounds to the head causing severe head trauma (See SAG Ex. A Doc. "Mental health appraisal"). Declaration of Marilyn D. Reesman (Ex. E), Affidavit of Joel P. Reesman (Ex. H).

4) In 2005 Mr. Reesman's son is murdered; shot in the head (SAG Ex. F).

5) On March 12, 2008, Judge John P. Wulle and prosecutor Scott Ikata allow Reesman's attorney to threaten to shoot him in open court if he changes his mind and chooses a jury trial. SAG ver. Ct trans. R.P. 65.

6) On March 19, 2008, Mr. Reesman utters an ambiguous request to plead guilty to the case at bar, seconds after Wulle sends him to prison life SAG ver. Ct. trans. R.P. 420, 421, 422, 423.

7) Mr. Reesman, in spite of counsel's claim that he sees a problem with the search warrant affidavit, Reesman requests to waive trial and plead guilty SAG R.P. 127-128 March 20, 2008.

8) On March 20, 2008, Judge Wulle case at bar asks Reesman, Wulle: Has anyone made any threats to you or made you any promises to get you to change your plea? SAG ver. Ct. trans. R.P. 126. Eight days earlier, Kurtz threatens to shoot Reesman over a jury waiver R.P. 65.

9) On June 12, 2014, after receiving a complaint from Reesman that the trial court has not acted on the motion sent to that court, Supreme Court Deputy Clerk advises the prosecutor's office to inquire about the motion. SAG Ex. I.

10) On June 24, 2015, the prosecutor advises this court that the Superior Court has appointed Christopher Ramsay to represent Mr. Reesman in this motion. "Mr. Ramsay will I presume, prepare a motion and briefing and cite the matter into the Superior Court for consideration" Ex. J.

11) On July 1, 2015, Mr. Reesman complains to this court that Mr. Ramsay called his family to tell them that he is representing Mr. Reesman, but does exactly the opposite SAG Ex. K.

12) On June 18, 2015, Mr. Ramsay send an ex part email to the trial court specifically resulting in the summarily dismissal of Reesman's motion.

13) On June 26, 2015, the trial court's ex-parte contact with Reesman's defense attorney. Email ended in Reesman's motion being summarily dismissed SAG Ex. L, M.

14) On February 8, 2015, Mr. Reesman in a letter to the Court of Appeals declares that his appellate attorney is providing ineffective assistance of counsel for numerous reasons and asks the court to order the Tiller Law Firm to address the issues raised in Reesman's Pro Se SAG See attached letter marked Ex.A1.

15) On January 11, 2015, Mr. Reesman files his own Motion For Discovery and Affidavit for materials relevant to his SAG because Mr. Tiller refused to argue Reesman's SAG claims. See SAG Motion for Discovery under Cook v. King County.

ISSUES FOR REVIEW

1) The Court of Appeals decision that Reesman's 2014 trial attorney's failures and ex parte contact with the court was not ineffective assistance of counsel under Strickland was based on an unreasonable determination of the facts before the court. 28 U.S.C.A. see 2254(d)(2).

Mr. Reesman in SAG Ground Four, claims numerous times that Ramsay illegally collaborated with the trial court. Not being a lawyer Reesman did not use the legal term ex-parte but that is exactly what he meant by illegal collaboration.

Ex-parte, "done or made at the instance and for the benefit of one party only, and without any regard for Mr. Reesman's right to have an advocate present sends an ex-parte email

to the trial court which directly resulted in the summary dismissal of his motion. Secondly, the ex-parte email was subjective, biased, and prejudicial. Under disciplinary rule prohibiting conduct that is prejudicial to the administration of justice, an attorney may violate the rule if he/she engages in conduct in the attorney's official capacity or advocacy role, violates practice norms or engages in conduct that obstructs justice. In re Disciplinary Proceeding against Dynan (2004) 152 Wash. 2d 601, 98 P.3d 444 Rule 3.5 "Impartiality and Decorum of the Tribunal" a lawyer shall not: (a) seek to influence a judge, a juror, prospective juror or other officials by means prohibited by law, (b) communicate ex-parte with such person during proceedings unless authorized by the court. Ramsay's ex-parte email violates his code of conduct as Mr. Reesman's advocate. Secondly the content of the email, "Mr. Reesman is confused about the two cases," and "How would the judge like to proceed?" (Ex. L). Clearly M. Ramsay is not only impeaching Reesman but argues that his motion is without merit. Mr. Ramsay's opinions were clearly prejudicial and he had no right to contact the trial court ex-parte. Mr. Ramsay ex-parte trial court contact and failure to argue the specific claim in Reesman's motion, that the trial court and prosecutor by allowing counsel to threaten to shoot Mr. Reesman in open court is a crime of assault two and obstruction of justice and no conviction after that threat is constitutional including the case at bar. Mr. Kurtz threatened to kill Reesman in private and shoot him in open court. See SAG. Mr. Ramsay fails to contact Mr. Reesman, fails to argue the threat to shoot the mentally ill Reesman, and fails to represent Mr. Reesman at any level. The failures are complete.

Mr. Ramsay's failures are a per se violation of right to counsel under "Cronic" See Ground 4, R.P. 26 and counsel performance was both deficient and prejudicial under "Strickland" (R.P. 26). Mr. Ramsay's conduct was clearly based on a Conflict of Interest and was so utterly inadequate as to be per se violation of right to counsel (Cronic) and was prejudiced enough to violate the Strickland standard. SAG Ground 4, R.P. 24-26. The threats by David S. Kurtz to kill Mr. Reesman in private and to shoot and kill him in open court on March 12, 2008, was meant to scare and coerce, the moment the trial court allows the assault any conviction that follows that threat is invalid on its face and unconstitutional. No 07-1-01092-1. Mr. Reesman has made a prima facie showing that Reesman was mentally ill when Kurtz threatened to shoot him. See Statement of Facts 1-5 herein.

"I'm going to shoot him"

"I'm going to shoot him" is a true threat as a category of unprotected speech under the First Amendment, Watts v. United States, State v. Knowles (SAG R.P. 12). Fighting words and the true threats are non-protected speech and their very utterance inflict injury or tend to incite an immediate breach of the peace. Chaplinsky v. State of New Hampshire (1942) SAG R.P. Resorts to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution and its punishment as a criminal act would raise no question under that instrument. Cantwell v. Connecticut R.P. 12.

Under Washington Title 9A – 94.72.110(1), "I'm going to shoot him" is an Obstruction of Justice, Intimidating a Witness. Witness intimidation statute prohibit only true threats, not constitutionally protected speech State v. King R.P. 12.

Limitations of Actions

Washington criminal code 9A.04.080(b) the Statute of Limitations to prosecute Judge Wulle, Scott Ikata, David S. Kurtz is ten (10) years if the commission of the crime was in connection with the duties of his/her office. "I'm going to shoot him" is a crime of assault two, obstruction of justice. Mr. Reesman is the victim of that crime as set out in his Motion to Withdraw Guilty Plea. All three "actor" violated the oath of office and the ten year statute of limitations apply. State v. Cook. SAG R.P. 13.

Assault Two

"An assault also an act with unlawful force done with the intent to create in another reasonable apprehension and imminent fear of bodily injury, even though the actor did not actually intend to inflict bodily injury. State of Washington v. Sarah Jane Smith, SAG R.P. 14. Second degree assault, an assault with a deadly weapon can be committed in three ways: (1) An attempt with unlawful force to inflict bodily injury upon another "Attempt Battery", (2) an unlawful touching with criminal intent "Actual Battery", and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting harm "Common Law Assault". Wests RCWA, 9A.36, 021(1) State v. Taylor, SAG R.P. 14. Reesman contends that "I'm going to shoot him" that the threat to shoot the mentally ill Reesman is not outside the scope of review because

counsel failed to argue the motions claim. Lastly, Mr. Reesman contends that the Court of Appeals' decision that the attorney's failures (above) is not ineffective assistance of counsel under "Strickland" is based on an unreasonable determination of the facts. 28 U.S.C.A. see 2254(d)(2) and Mr. Reesman's factual claims raises significant constitutional questions under RAP13.4(b).

2) The Court of Appeals argued that Reesman failed to prove that the ex-parte trial court contact with counsel was prejudicial and is a code of conduct violation under former Canon 3(D). The Court of Appeals' decision that Reesman failed to show accumulated prejudice of multiple trial errors did not have any effect on his March 19, 2008, request to waive trial and plead guilty is a due process violation under Washington Article 1 sec. 3, U.S. Constitution Fifth and Fourteenth Amendments. Mr. Reesman's ex parte, and cumulative error arguments are not meritless, warranting review in this court under RAP13.4(b).

When Ramsay sent an ex parte email to Judge Gregerson, the Judge under former Canon 3(D)(1) should have recused himself. Mr. Reesman's motion clearly put the trial court on notice that he intends to file criminal charges against a former judge in that very court. Nothing could be more prejudicial when Gregerson, knowing the content of Reesman's motion, summarily dismisses Reesman's motion based exclusively in an ex parte email from Ramsay. The rule for recusal is set forth in former Canon 3(D)(1) which provides in relevant part "that judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned." In determining whether recusal is

warranted, actual prejudice need not be proved. Sherman v. State, 128 Wash. 2d 164, 205, 905 P.2d 355 (1995). Nothing could be more biased than allowing Judge Gregerson to make any ruling on a motion that implicates a colleague in crimes of assault and obstruction. The Court of Appeals' decision that Reesman's claim on cumulative trial error is meritless, then Reesman asks this court to review "facts" 1-5 above. The Court of Appeals' decision ignore the trial records from 2007 and 2008 because they are outside the scope of review. Mr. Reesman argues that the serious trial errors and crimes are outside the scope of review because of ineffective assistance of 2014 trial and appellate counsel. Mr. Reesman is being held responsible for his attorney's failures to argue what Reesman has argued over and over; the threat to shoot the mentally ill Reesman had a direct impact and Reesman's ambiguous request to plead guilty in the case at bar on March 19, 2008. The Coup de Grau for Reesman was when Judge Wulle invited a teenager up on the bench during a life sentence bench trial. The Court of Appeals' decisions are based on an unreasonable determination of the facts (above) and Mr. Reesman has clearly proved cumulative trial errors starting on December 11, 2007, to June 26, 2014. Reesman has raised significant constitutional questions warranting review under RAP13.4(b) and Mr. Reesman's restraint is illegal under 298 U.S.C.A. sec. 2254(d)(c)(1). See SAG Ground 1-6 Ex. A through R, (Ex A1 letter), Affidavit of Joel P. Reesman, Facts 1-15 above.

3) The Court of Appeals' decision to not rule on SAG Ground 6 "Ineffective Assistance of Appellate Counsel" violates due process and Reesman's Sixth Amendment Right to

counsel under Strickland and is an unreasonable determination of the facts. 28 U.S.C.A. sec. 2254(d)(2) Mr. Tiller's performance was deficient and prejudicial when he failed to claim obvious ineffective assistance of counsel (Ramsay). Mr. Tiller failed to argue the treat to shoot mentally ill Reesman. Reesman's Sixth Amendment claim raises significant constitutional question warranting review by this court under RAP13.4(b). Mr. Reesman asks this court to review SAG Ground Six, letter to the Court of Appeals Ex. A1, Motion for Discovery under Cook v. King County, SAG Grounds One-Six. See above Facts 1-15. SAG Ex. A-R.

CONCLUSION

Mr. Reesman has proven his claims with factual records. None of Reesman's claims are outside the scope of this court's review. Mr. Reesman, in light of the facts, humbly asks this court to reverse his March 20, 2008, conviction and remand for jury trial.

Respectfully Submitted by,

Joel Paul Reesman Pro Se
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

Joel P Reesman

Dated this 2nd day of September 2015

Ex A-1

In The Washington Court of Appeals Division Two

Clerk, David Ponzoha
Re: Court of Appeals No. 46514-1-II

Dear Mr. Ponzoha, please find enclosed statement of Additional Grounds and ("Additional Ground Six", pg 1-3). I have timely motioned this court for discovery of corraborating evidence twice. Specifically, Audio/Video recording of the March 12, 2008 Open court "threat"; as well a Video of Act 1 March 17-19 2008 bench trial and numerous pages of verbatim transcripts. My SAG and all above evidence is crucial to my claim of a factual and legal "nexus" connecting 07-1-00090-9 and 07-1-01092-1. In my opinion the evidence I seek and my SAG is actually my pro se brief of appealant and my claims of trial court and prosecutor crimes and misconduct is exactly why the Washington Supreme Court sent my motion down to have the State answer those allegations.

Just as I predicted in letters to the Supreme Court (Ex. K), in the end it would be me, arguing my case, alone. The Tiller law firms 4 page 1 error "brief" is proof of that. Mr. Tillers brief is tactically designed so the state does not have to answer to the allegations set out in my "brief".

Under RAP 10.10(f) the appellate court may in the exercise of its discretion request additional briefing from counsel to address issues raised in the defendant/appellant SAG.

My brief contains numerous references to the above corraborating evidence which I tried to discover before I had to file my SAG. Because of time limit I had to send this court my brief without the evidence I seek. The evidence I seek for corraboration is part of the trial record. Therefore I ask this court to rule on my timely motion for discovery and further under RAP 10.10 (f) I request, in the interest of justice, order the Tiller law Firm address the issues raised in my pro se brief (SAG). Thank you,

Sincerely,
Joel P. Riesman Pro Se

Dated this 8th day of February, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOEL P. REESMAN, Appellant.	No. 46514-1-II UNPUBLISHED OPINION

MAXA, J. — Joel Reesman appeals the trial court's dismissal of his motion to withdraw his guilty plea, arguing that CrR 7.8(c)(2) required the trial court to either transfer his motion to this court as a personal restraint petition (PRP) or hold a hearing on the factual basis of his motion. The State concedes that the trial court did not comply with CrR 7.8(c). We accept the State's concession. In addition, Reesman presents multiple assertions of error in his statement of additional grounds (SAG). Because several of the SAG assertions do not pertain to the order Reesman appeals, they are outside our scope of review and we do not consider them. We hold that the remainder of Reesman's arguments are meritless.

We reverse the trial court's order denying Reesman's motion to withdraw his guilty plea and remand for proceedings consistent with this opinion.

FACTS

In January 2007, Reesman was charged with possession of a machine gun or short-barreled shotgun or rifle, two counts of unlawful possession of a firearm, and possession of

methamphetamine with a firearm enhancement under cause number 07-1-00090-9 (Case 1). Reesman's charge for possession of methamphetamine with a firearm enhancement was a third-strike charge, meaning it carried the penalty of life in prison without the possibility of parole. In June 2007, Reesman also was charged with unlawful possession of methamphetamine under cause number 07-1-01092-1 (Case 2).

On March 12, 2008, Reesman waived his right to a jury trial for the charges brought against him in Case 1. After a bench trial, the judge found Reesman guilty on each charge. The trial court sentenced Reesman to life in prison. Reesman apparently appealed this judgment and/or conviction, but the record does not show when or how the appeal was resolved.

On March 20, 2008, Reesman pled guilty to possession of methamphetamine in Case 2. Reesman was sentenced to a standard range of 12 to 24 months in confinement for the offense, which ran currently with Reesman's sentence of life in prison.

In December 2013, Reesman filed a PRP with our Supreme Court to withdraw his guilty plea in Case 2, asserting in part that his attorney threatened to shoot and kill him in private and in open court. In March 2014, our Supreme Court denied Reesman's other claims, [1] but transferred Reesman's motion to withdraw his guilty plea to the trial court for determination. Reesman was appointed counsel.

In June 2014, Reesman's counsel submitted an email to the trial court stating that the alleged threat occurred in Case 1, and that the motion to withdraw Reesman's guilty plea pertained to Case 2. The trial court reviewed the record and email representations by counsel,

[1] Reesman also made a motion to modify the acting commissioner's ruling, motion for appointment of counsel, motion to order the Clark County sheriff to investigate, and motion to join by nexus, which all were denied.

and it dismissed Reesman's PRP with prejudice. The trial court did not conduct a hearing on the issue.

Reesman appeals.

ANALYSIS

A. MOTION TO WITHDRAW GUILTY PLEA

Reesman argues that the trial court's order denying his motion to withdraw his guilty plea should be vacated and the case remanded because the trial court failed to comply with CrR 7.8's requirements. The State concedes that the trial court erred. We accept the State's concession.

If a motion to withdraw a plea is made after the judgment, it is governed by CrR 7.8(b). *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 595, 602, 316 P.3d 1007 (2014). CrR 7.8(c) establishes the procedure for addressing CrR 7.8(b) motions:

> (2) *Transfer to Court of Appeals.* The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.
>
> (3) *Order to Show Cause.* If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

Accordingly, the trial court may rule on the merits of a CrR 7.8(c) motion only when the motion is timely filed and either (a) the defendant makes a substantial showing that he is entitled to relief, or (b) the motion cannot be resolved without a factual hearing. *State v. Smith*, 144 Wn. App. 860, 863, 184 P.3d 666 (2008). If these prerequisites are absent, the trial court must transfer a timely petition to the Court of Appeals for consideration as a PRP. *Id.*

Here, the trial court did not find that the motion was timely filed, that Reesman made a substantial showing that he was entitled to relief, or that the motion could not be resolved

without a factual hearing. Nevertheless, the trial court denied Reesman's motion to withdraw his guilty plea on the merits. Under CrR 7.8(c)(2), the trial court did not have the authority to decide the motion on the merits. Accordingly, the trial court erred.

We vacate the trial court's order and remand to the trial court to enter an order complying with CrR 7.8(c).

B. SAG ASSERTIONS

1. Claims Outside the Scope of Review

Reesman asserts several claims in his SAG challenging the conduct of his defense counsel, the prosecutor, and the trial court in Case 1.[2] RAP 10.10(a) states that in a criminal case on direct appeal "the defendant may file a pro se statement of additional grounds for review to identify and discuss those matters related to *the decision under review that* the defendant believes have not been adequately addressed by the brief filed by the defendant's counsel." (Emphasis added.) We decline to address the claims relating to Case 1 because they are outside the scope of this court's review of Reesman's challenge of his post-conviction PRP motion to withdraw his guilty plea in Case 2.

[2] Reesman argues that (1) his attorney coerced him into waiving his right to a jury trial by threatening to shoot him, which the trial court allowed; (2) his attorney obstructed justice and committed the crime of assault when he threatened to shoot Reesman; (3) defense counsel, the prosecutor, and the trial court denied Reesman due process of law and a fair trial by allowing his defense counsel to threaten to shoot Reesman in open court; (4) the trial court erred in failing to sua sponte order an inquiry into Reesman's mental competency to stand trial; (5) the trial court obstructed justice and was an "actor" in Reesman's assault when it allowed Reesman's attorney to threaten to shoot him; (5) his guilty plea was not knowing, intelligent, or voluntary due to mental illness; and (6) his jury waiver and guilty plea were unconstitutional in light of the alleged threat to shoot Reesman. SAG at 4.

2. Ineffective Assistance of Counsel

Reesman argues that his defense counsel provided ineffective assistance because he collaborated with the trial court when he emailed the trial court. We disagree.

To prevail on his ineffective assistance of counsel claim, Reesman must show that (1) his attorney's performance was deficient, and (2) that deficiency was prejudicial. *State v. Grier*, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011). An attorney's performance is deficient if it falls below an objective standard of reasonableness. *Id.* at 33. Such deficient performance is prejudicial if there is a reasonable probability that the result of the proceedings would have been different in its absence. *Id.* at 34.

In June 2014, Reesman's defense counsel submitted an email to the trial court stating the following about Reesman's motion to withdraw his guilty plea: (1) Reesman's motion appeared to argue that he wanted to withdraw his guilty plea entered in Case 2; (2) Reesman pled guilty to the offense in Case 2, which ran concurrent to Reesman's sentence under Case 1; (3) Reesman based his argument for withdrawing his guilty plea on the basis that his attorney forced him to waive his right to a jury trial; (4) Reesman waived his right to a jury trial relating to the charges in Case 1; and (5) the purported justification for the withdrawal of Reesman's guilty plea did not exist in Case 2. Based on his review of the record, defense counsel wanted to know how the trial court wanted to proceed.[3]

Reesman argues that his counsel's conduct in emailing the trial court and explaining that the basis of Reesman's motion to withdraw his guilty plea was not in accordance with the facts

[3] It appears that this email was an ex parte communication with the trial court. We do not endorse or approve ex parte contacts. Reesman's argument goes to the substance, not the circumstances of sending the email. Therefore, we do not address whether sending the email was appropriate.

was deficient representation. This argument seems to suggest that defense counsel should have either deliberately or by silence misrepresented the facts underlying Reesman's guilty plea in Case 2. This suggestion is directly contrary to an attorney's duty of candor to the court, which obligates an attorney to inform the court of a client's allegations that the attorney believes to be false. RPC 3.3(a)(2) ("A lawyer shall not knowingly . . . fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client."). The failure of defense counsel to misrepresent the facts to the court is not deficient performance.

We hold that Reesman's ineffective assistance of counsel claim fails.[4]

3. Claim of Trial Court Collaboration

Reesman argues that the trial court collaborated with Reesman's defense counsel and obstructed justice under RCW 9A.72.110(1) when it dismissed Reesman's PRP petition in violation of his due process rights. Reesman fails to demonstrate the existence of any such collaboration. Therefore, we hold that this claim fails. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (the burden is on the appellant alleging ineffective assistance of counsel to establish deficient representation based on the record established in the proceedings below).

4. Cumulative Error

Reesman contends that the cumulative error doctrine entitles him to relief because the combined effect of the alleged errors denied him a fair trial. We disagree.

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[4] Reesman also argues that his attorney's email was a conflict of interest, a manifest constitutional error, and a due process violation. There is no evidence in the record to support these contentions. We decline to address these claims further. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Under the cumulative error doctrine, the court may reverse a defendant's conviction when the combined effect of trial errors effectively denies the defendant his or her right to a fair trial, even if each error alone would be harmless. *State v. Weber*, 159 Wn.2d 252, 279, 149 P.3d 646 (2006). The defendant bears the burden to show multiple trial errors and that the accumulated prejudice from those errors affected the outcome of his or her trial. *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 690, 327 P.3d 660 (2014). Because Reesman has failed to show any prejudicial errors affecting his conviction, we hold that Reesman failed to show that the accumulated prejudice of multiple trial errors affected the outcome of his trial.

We reverse the trial court's order denying Reesman's motion to withdraw his guilty plea and remand for proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

WORSWICK, P.J.

MELNICK, J.