

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

State of Washington,
Respondent

COA No. 71856-8-I

v.
Adrian Sassen Vanelsoo,
Appellant.

RAP 10.10 Statment Of
Additional Grounds For Review

I, Adrian Sassen Vanelsoo, have recieved 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.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAY 29 AM 11:21

ADDITIONAL GORUND #1

Did the trial judge abuse its discretion, demonstrate bias, and violate the Appearance of Fairness Doctrine when it violated Mr Sassen-Vanelsoo's right to counsel of choice under the Sixth Amendment by refusing to allow paid counsel a continuance in order to be able to take over the case from appointed counsel, which then forced Mr Sassen-Vanelsoo to proceed with unwanted appointed counsel, then repeatedly granting the State several continuences, beyond the scope of what Counsel of Choice requested to the State's advantage and Appellant's disadvantage?

I. EVIDENCE PRESENTED

Appellant, Adrian Sassen-Vanelsloo bases this Additional Ground For Review on the following evidence:

(1) Verbatim Report of Proceedings;

(2) Declaration in Support of Appellant, Adrian Sassen-Vanelsloo.

II. ARGUMENT

Appellant, Adrian Sassen Vanelsloo incorporates by reference all facts, law, and argument presented by his appointed Appellate Attorney, Casey Granis' Opening Brief as if fully argued herein. He furthermore submits and alleges that:

The Trial Judge Put His Thumb
On The Scales Of Justice Demonstrating Bias And
Violating The Appearance Of Fairness Doctrine?

Judges must not only be impartial, but also must appear impartial because judicial fairness is violated when the appearance of fairness is ignored. State ex rel. McFarren v. Justice Court of Evangeline Starr, 32 Wn2d 544, 549, 202 P.2d 927 (1949) ("The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of

courts'" (quoting State ex rel. Bernard v. Bd. of Educ., 19 Wash. 8, 17, 52 P. 317, 320 (1898)); Diimmel v. Campbell, 68 Wn2d 697, 699, 414 P.2d 1022 (1966)("It is incumbent upon members of the judiciary to avoid even a cause for suspicion of irregularity in the discharge of their duties"). This is more than idealistic sentiment. "Deference to the judgements and rulings of courts depends upon public confidence in the integrity and independence of the judges." CJC, Cannon 1, cmt.

The United States Supreme Court's repeatedly articulated these principles. When the high Court held, "every procedure which would offer a possible temptation to the average man as a judge... not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law," it did not intend its holding to be limited to the facts of that case. In re Murchison, 349 US 133, 136, 75 Sct 623, 99 LEd2d ____ (1955)(emphasis added)(quoting Tumey v. State of Ohio, 272 US 510, 532, 47 Sct 437, 444, 71 LEd 749 (1927)). See also e.g., Sanders County Republican Central Committee v. Bullock, 698 F.3d 741 (9th Cir 2012)("citing Wolfson v. Brammer, 822 F.Supp.2d 925, 931 (D.Ariz 2011)("Public confidence in the independence and impartiality of the judiciary is eroded if judges... are perceived to be subject to political influence.");(Siefert v. Alexander 608 F3d 974, 985-86 (7th Cir 2010)("Due Process requires both fairness and the appearance of fairness in the tribunal.")).

This Is Called The Appearance Of Fairness Doctrine
And Is Judged By An Objective Standard

See e.g., GMAC v. Everett Chevrolet, 179 WnApp 126, 317 P.3d 1074, 1987 (2014) where Division 1 said:

"It is 'fundamental to our system of justice' that judges are fair and unbiased. Moreover, '[t]he appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice.' 'The law goes further than requiring an impartial judge; it also requires that a judge appear to be impartial.' Even a mere suspicion of irregularity, or an appearance of bias or prejudice' should be avoided by the judiciary... The critical concern in determining whether a proceeding satisfies the appearance of fairness doctrine is how it would appear to a reasonable prudent and disinterested person.'" (citations and footnotes omitted).

See also e.g., State v. Gamble, 168 Wn2d 161, 167-68, 225 P.3d 973 (2010)(to like effect). Division II of the Court of Appeals has ruled similarly. See e.g., State v. Finch, 181 WnApp 387, 398-99, 326 P.3d 148 (2014)

"A judicial proceeding satisfies the appearance of fairness doctrine if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. State v. Bilal, 77 WnApp 720, 722, 893 P.2d 674 (1995). We analyze whether a judge's impartiality might reasonably be questioned under an objective test that assumes a reasonable person to know and understand all relevant facts. Sherman v. State, 128 Wn2d 164, 205-06, 905 P.2d 355 (1995). The party must produce sufficient evidence demonstrating actual or potential bias... In re Pers. Restraint of Haynes, 100 WnApp 366, 377 n.23..."

The Appearance Of Fairness Doctrine
Applies To The Right To Counsel Of Choice

See e.g., United States v. Campbell, 491 F3d 1306, 1310 n.2 (11th Cir 2007)("United States v. Gonzalez-Lopez, 548 US _____, ... (2006), did not deflate the Wheat opinion's emphasis on the need to balance the right of counsel of choice with the need to ensure the integrity of the criminal justice system and the appearance of fairness."). See also e.g., State v. Stenson, 132 Wn2d 668, 768, 940 P.2d 1239 (1997)(En Banc)

"An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defence presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense. Id. at 820-21, 95 Sct at 2533-34 (citations omitted)."

Counsel Of Choice Analysis

See e.g., Miller v. Smith, 765 F3d 754, 760 (7th Cir 2014) saying:

"The United States Supreme Court clarified in United States v Gonzalez-Lopez, 548 US 140, 126 Sct 2557, 165 LEd2d 409 (2006), that there is a substantial difference between the right to effective counsel and the right to counsel of choice. The right to effective counsel is a baseline requirement that a trial court appoint a competent attorney to an indigent defendant. Id. at 150, 126 Sct 2557. The right to counsel of choice, however, deals with the ability to select a particular lawyer and 'does not extend to defendants who require counsel to be appointed to them.' Id. at 151, 126 Sct 2557."

See also e.g., State v. Hampton, 332 P.3d 1020, 1026 (2014).

However, the Hampton court at 1027, went on to say that:

"The right to counsel of choice " 'guarantees a defendant the right to be represented by an otherwise qualified attorney whom that the defendant can afford to hire, or who is willing to represent the defendant even though he is without funds.' " Gonzalez-Lopez, 548 US at 144, 126 Sct 2557 (quoting Caplin v. Drysdale, 491 US at 624-25, 109 Sct 2646).

Moreover, the right to counsel of choice "commands, not that a trial be fair, but that a particular guarantee of fairness to be provided -- to wit, that the accused be defended by counsel he believes to be best." Gonzalez-Lopez, 548 US at 146, 126 Sct 2557. Indeed, " '[t]he Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause.' " Gonzalez-Lopez, 548 US at 146, 126 Sct 2557 (quoting Strickland v. Washington, 466 US 668, 648-85, 104 Sct 2052, 80 LEd2d 674 (1984)).

The Deprivation of a defendant's right to counsel of choice is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received to argue otherwise is to confuse the right to counsel of choice -- which is the right to a particular lawyer regardless of comparative effectiveness -- with the right to effective counsel -- which imposes a baseline requirement of competence on whatever lawyer is appointed.

Gonzalez-Lopez, 548 US at 148, 126 Sct 2557.

Providing an effective court-appointed lawyer is not a constitutionally - acceptable substitute for the defendant's counsel of choice.

The right to select counsel of one's choice, by contrast, has never been derived from the Sixth Amendment's purpose of ensuring a fair trial. It has been regarded as the root meaning of the Constitutional guarantee. [collecting US Supreme Court rulings]. Where the right to be assisted by counsel of one's choice is wrongfully denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Gonzalez-Lopez, 548 US at 147-48, 126 Sct 2557 (footnotes omitted)."

As Applied To The Case At Hand

Appellate Counsel has clearly demonstrated in his Opening Brief referencing the Report of Proceedings that Judge Garrett denied Mr Sassen-Vanelsloo his counsel of choice. (See Opening Brief Pgs. 7-12). Appellate Counsel also points in the Judge's own words that she is "less sympathetic to Mr Sassen Vanelsloo's request for private counsel than I am for a continuance based on the newly discovered police reports." (See Opening Brief Pg.9; VRP at 35). Judge Garrett was willing to allow for a two-week continuance so that appointed counsel could obtain police reports that the state had wrongfully withheld from the defence. (See Opening Brief Pg.9). In short Judge Garrett forced Mr Sassen Vanelsloo to continue with appointed counsel after he was able to retain paid, private counsel of choice. (See Appendix A). This clearly violates his Constitutional rights under the Sixth Amendment. See Hampton, 332 P.3d at 1027 (collecting cases).

The Verbatim Report Of Proceedings also reflects that Judge Garrett was sympathetic to the State's desire to control their prosecution. This is demonstrated in her having just prior to denying Mr Sassen Vanelsloo's motion for substitution of counsel to paid, private counsel of choice granting the State a continuance to search for in another part of the country, obtain, and transport a missing potential witness. (See VRP 30-33). The

Judge also seems more concerned with working around and accomodating Officer Leake's vacation schedule, (consideration no private citizen would be afforded), while denying Mr Sassen Vanelsoo his Constitutional right to Counsel of Choice. (See VRP Pgs. 30-33).

This Court cannot now say that a reasonably disinterested and independant person with knowledge of the facts could conclude that Mr Sassen Vanelsoo received a fair proceeding. The apparant bias by Judge Garrett just doesn't seem to pass the smell test and violates the appearance of fairness doctrine! The proceeding just doesn't appear to have been fair and Mr Sassen Vanelsoo was denied his federally protected right to Counsel of Choice and Due Process.

The proper remedy for the violation of Mr Sassen Vanelsoo's Sixth Amendment right to counsel of choice and Fourteenth Amendment right to due process is a new trial. See e.g., United States v. Robinson, 753 F3d 31, 39 (1st Cir 2014) ("An erroneous deprivation of the right to counsel of choice requires a new trial, regardless of whether or not the defendant suffered any prejudice. [United States v. Gonzalez-Lopez, 548 US 140] at 146, 126 Sct 2557"). In the interest of justice this Court should remand with directions for the new trial proceedings to be assigned to a different judge. If a different and apparantly impartial judge cannot be found, venue should be order to be changed.

SAG Pg.8

III. CONCLUSION

(1) Mr Sassen Vanelsloo's right to Due Process under the Fourteenth Amendment and Counsel Of Choice under the Sixth Amendment were violated.

(2) The Judge's actions demonstrate an apparent bias, and Mr Sassen Vanelsloo has made a sufficient showing to demonstrate a violation of the appearance of fairness doctrine.

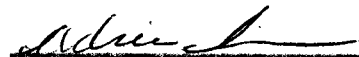
(3) The appropriate remedy is to remand for a new trial with direction for a change of judge or venue.

IV. OATH

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 26th day of May, 2015 at the Stafford Creek Corrections Center, Aberdeen, Washington.

Respectfully Submitted,



Adrian Sassen Vanelsloo DOC# 837829
Stafford Creek Corrections Center
191 Constantine Way, H2-B108
Aberdeen, WA. 98520

APPENDIX A

(Appendix A)

DECLARATION OF ADRIAN SASSEN VANELSLOO

I, Adrian Sassen Vanelsloo, Appellant do hereby declare and say that:

(1) I am the Appellant in this action, over the age of 18, and competent to testify.

(2) I make this Declaration in support of my RAP 10.10 Statement of Additional Grounds for Review.

(3) That during the action for which this appeal is taken my family was able to secure and retain, private counsel for me and this counsel was my counsel of choice.

(4) I attempted to have appointed counsel substituted for counsel of choice but was denied by the trial Judge.

(5) The trial Judge while denying me substitution of counsel allowed continuances to both appointed counsel and to the prosecution.

(6) I believe that the trial Judge violated my Sixth Amendment right to Counsel of Choice and Fourteenth Amendment to Due Process as well as the Appearance of Fairness Doctrine.

Respectfully Submitted,



Adrian Sassen Vanelisloo DOC# 837829
Stafford Creek Corrections Center
191 Constantine Way, H2-B108
Aberdeen, WA. 98520

DECLARATION OF MAILING
PURSUANT TO GR 3.1

I, Adrian Sassen Vanelsloo, Appellant declare and say: That on the 26th day of May, 2015 I deposited the following document(s) in the Stafford Creek Corrections Center legal mail system, postage pre-paid, United States Mail under cause number COA 71856-8-I: RAP 10.10 Statement Of Additional Grounds, or a copy thereof addressed to the following:

Nielsen, Broman & Koch PLLC
1908 E. Madison St.
Seattle, WA. 98122

Washington Court Of Appeals
One Union Square
600 University St.
Seattle, WA. 98101-1176

I, Adrian Sassen Vanelsloo declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 26th day of May, 2015 at the Stafford Creek Corrections Center, Aberdeen, Washington.

Adrian Sassen Vanelsloo

Adrian Sassen VanElsloo DOC# 837829
Stafford Creek Corrections Center
191 Constantine Way, H2B108
Aberdeen, WA. 98520

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 MAY 29 AM 11:20