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**Case # 327795**

**Statement of Additional Grounds  
for Review**

**State of Washington**

**v.**

**Sean Joseph Bates**

**COPY**

**FILED**

SEP 17 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

32779-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SEAN JOSEPH BATES, APPELLANT

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STATEMENT OF ADDITIONAL

GROUND FOR REVIEW

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Sean Joseph Bates  
Defendant 'Pro Se'

Sean Joseph Bates #375510  
Coyote Ridge Corrections Center  
1301 N. Ephrata Ave  
Connell, Washington 99326-0769

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	No. <u>32779-5-III</u>
v.	)	STATEMENT OF ADDITIONAL
	)	GROUND FOR REVIEW
SEAN J. BATES	)	
	)	
Appellant.	)	

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I, Sean J. Bates, have received and reviewed the opening brief prepared by attorney Janet G. Gemberling, my appellate 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.

Convicted Innocents:

People who have been arrested on criminal charges. Who have either pleaded guilty to the charge or have been tried and found guilty; and who, not withstanding plea or verdict, are in fact Innocent.

Although wrongful conviction can never be eliminated in a system involving human judgment. I am convinced that it can be greatly reduced through a focus on preventable errors.

### Additional Ground I

I, Sean J. Bates, humbly request you exercise RAP 1.2 (a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.

Also RAP 1.2 (c) Waiver. The Appellate Court may waive or alter the provisions of any of these rules in order to serve the ends of justice.

The following concerns the witness Ms. Samantha Jackson (S.J.) and RCW 5.6.020 A child witness is competent to testify if he or she: (1) understands the obligation to speak the truth on the witness stand. (2) has the mental capacity at the time of the occurrence to receive an accurate impression of it; (3) has a memory sufficient to retain an independent recollection of the occurrence; (4) has the capacity to express in words his or her memory of the occurrence; (5) has the capacity to understand simple questions about the occurrence. State v. Allen, 70 Wash. 2d 690, 692, 424 P. 2d 1021 (1967).

RCW 5.60.050 (2) : A person is not competent to testify if he or she is "incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly."

I was unable to obtain written transcripts from the video recording of ( S.J.) out of Court statements.(The forensic interview with Mari Murstig). So I will only be able to quote material facts from my trial transcripts. I will show that the misstatement of facts and inconsistencies in S.J.'s testimony during the 9a.44 hearing and the Jury trial go to the weight and credibility of her statements and not necessarily to S.J.'s competency. State v. Carlson, 61 Wash. App. 865, 874, 812 P.2d 536 (1991).

During the 9a.44 hearing (RP 9). S.J. believed, if only for a minute, until she was corrected by then, Ms. Laurel Whittier, the Deputy Prosecuting Attorney. The judge brought her to court, Ms. Whittier's dog's name is Spot or maybe Charlotte. Again corrected by Ms. Whittier (RP 11), stated "Once the bad guy did." Suggested by mom and dad. (RP 8).(RP 14) Then during Cross examination by Ryan Michael Swinburnson #30227 when asked about what she should say, states I don't remember.

Again " I don't rember" (RP 15). During direct examination by Ms. Whittier (RP 289) when asked "do you know the difference between a truth and a lie ?" S.J. stated Dad and Mom talked about it, " I learned it on my own. " (RP 294) S.J. states that she put her clothes back on then she left to her Aunt's house. Again one of the many cotradictory statements made by S.J.. Affirmed by Tammi Makeef (RP 130) that S.J. had stayed the night at her (Ms. Makeef's) house that night. Ms. Whittier asked S.J. (RP 295) "Did he ever do anything else to your back private part?" S.J. replied "No, just licked it." Again contradicting her previous statement, that I would like to add, suggested by Ms. Whittier about sticking a finger inside her privates. During S.J.'s secret game with Aaliyah (RP 303) "she (Aaliyah) had like 30 points." "We had like 30 questions." "she had 30 points and I had zero." (RP 308) when questioned by Mr. Swinburnson; S.J. claims, " 30 times, 30 different days sounds about right." (RP 307) During questioning from Mr. Swinburnson; he asks S.J. what she had told the lady (Mari Murstig) when she (S.J.) was coloring. S.J. states, "uh-huh, I do. I do. I do. I do. I do." Which again turns out to be different than the last time S.J. was asked.

It is a matter of common sense for most people that one of the best ways to determine whether what some one says is trustworthy is to see if it is corroborated by other evidence. One can imagine a situation in which a child makes a statement which is spontaneous or is otherwise made under circumstances indicating that it is reliable, but which also contains undisputed factual inaccuracies so great that the credibility of Samantha Jackson's statements are substantially undermined.

Other states also have expressly recognized the need for, and legitimacy of, considering corroborating evidence in determining whether a child declarant's statements are trustworthy and should be admitted into evidence. See >Ariz. Rev. Stat. Ann. § 13-1416 (1989); >Ark. Rule Evid. 803 (25)(A); Cal. Evid. Code Ann. § 1228 (west 1990); >Colo. Rev. Stat. § 13-25-129(1987); >Fla. Stat. § 90.803 (23)(1989); >Idaho Code § 19-3024 (1987); > Ill. Rev. Stat., ch.38, ¶ 115-10 1989); >Ind. Code § 35-37-4-6 (1988); >Md Cts. & Jud. Proc. Code Ann. § 9-103.1 (1989); Minn. Stat. § 595.02(3)(1988); >Miss. Code. Ann. § 13-1-403(Supp. 1989); N.J. Rule Evid. 63 (1989); N.D. Rule >Evid.803 (24); >Okla. Stat., Tit. 12, § 2803.1(1989); >Ore. Rev. Stat. § 40.460(1989); >42 Pa. Cons. Stat. § 5985.1 (1989); >S.D. Codified Laws § 19-16-38 (1987); >Utah Code Ann. § 76-5-411 (1990).

That concludes my first argument.

Additional Ground II

Mr. Ryan Michael Swinburnson # 30227 provided ineffective assistance of counsel by:

(I) Failure to obey a Court Order. The Honorable Vic L. Vanderschoor ordered Mr. Swinburnson (no matter what the cost) to send Patty Quinn's I-PAD to a forensic computer analyst.

\* Superior Court Case Summary. Sub-44 Docket Date 04-03-2014  
Docket Code order for CONTINUANCE STIPULATED \*

A direct violation of the Rules of Professional Conduct 8.4- Misconduct.

(i) Commit any act involving moral turpitude, or corruption or any unjustified act of assault or other act which reflects disregard for the Rule of Law.

Also failure to conduct any forensic testing of physical evidence.

Siripongs v. Calderon 35 F.3d 1308 (9th Cir. 1994).

U.S. v. Dixon 113 S.Ct. 2849, 509 U.S. 688.

Interest of the Court in preserving it's authority. It cannot be lightly dismissed.

(II) Counsels failure to visit alleged crime scene or employ an investigator. (RP 234).

Berry v. Gramley 74 F. Supp. 2d 808.

Thompson v. Calderon 120 F. 3d 1045 (9th 1997).

Failure to investigate.

(III) Counsel's failure to investigate another suspect.

Jones v. Wood 114 F.3d 1002 (9th Cir. 1997).

Stated in 9a.44 Hearing from Aaliyah Valdez (RP 22) claiming it was her (S.J.'s) Stepdad. Again stated by Savannah Moore (RP 282) "StepChad rhymes with Stepdad."

(IV) Counsel's failure to obtain medical reports.

Vick v. Lockhart 952 F.2d 999 (8th Cir. 1991).

As stated by Ms. Whittier (RP 226 & 227).

(IV) Mr. Ryan M. Swinburnson's cumulative errors and complete failure to investigate and prepare for trial.

Thompson v. Calderon 120 F.3d 1045 (9th 1997); United States v. Tucker 716 F.2d 576 (9th Cir. 1983); Clabourne v. Lewis, 64 F.3d 1373, 1378 (9th Cir. 1995).

Even though the U.S.C.A Const. Amend. 6 states, The defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case in order to demonstrate ineffective assistance of counsel.

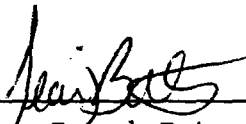
I believe the fabulous work that Ms. Gemberling has done proves beyond a reasonable doubt that Mr. Swinburnson's performance in trial fell below an objective standard of reasonableness.

That concludes my second and final argument.

IN CONCLUSION

I believe my, Sean Joseph Bates's conviction should be reversed.

Dated this 15th day of September, 2015.

  
Sean Joseph Bates #375510  
Appellant 'Pro Se'



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION III

STATE OF WASHINGTON, )  
 )  
 Respondent, ) No. 32779-5-III  
 )  
 v. ) CERTIFICATE OF MAILING  
 )  
 SEAN JOSEPH BATES, )  
 Appellant. )

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I certify under the penalty of perjury under the laws of the State of Washington that on September 15, 2015, I placed in the U.S. Mail, postage prepaid, 1 envelope addressed to :

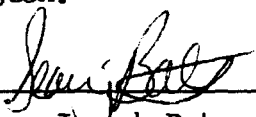
THE COURT OF APPEALS  
DIVISION III  
500 N. Cedar ST.  
Spokane, WA 99201-1905

I am a prisoner confined in the Washington Department of Corrections, housed at the Coyote Ridge Correctional Complex, 1301 N. Ephrata Ave., P.O. Box 769, Connell, WA 99326-0769, where I mailed said envelope in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained:

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW  
Sean J. Bates No. 32779-5-III

I hereby invoke the "Mail Box Rule" set forth in General Rule 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED September 15, 2015., at Connell Washington.

  
\_\_\_\_\_  
Sean Joseph Bates #375510  
DEFENDANT 'Pro Se'

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

SEAN JOSEPH BATES

Appellant.

No. 32779-5-III

AFFIDAVIT IN SUPPORT OF  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

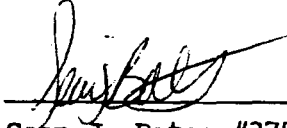
STATE OF WASHINGTON )  
COURT OF APPEALS DIV. III ) ss.

I, Sean J. Bates, the above listed affiant in this cause appearing 'Pro Se', declare under penalty of perjury, under the laws of the State of Washington, and the Laws of the United States of America, that the foregoing is true and correct pursuant to: RCW 9a.72.085 & 28 U.S.C § 1746.

- 1) I am the Appellant in the above listed cause number, am over the age of 18 years and am competent to testify to the facts herein;
- 2) I am familiar with only the documents and transcripts pursuant to cause No. 32779-5-III sent to above named affiant by Legal Mail to the below named facility;
- 3) I am presently incarcerated in the Washington State Department of Corrections facility at Coyote Ridge in Connell, Washington pursuant to cause No. 32779-5-III;
- 4) I am in good faith bringing this Statement of Additional Grounds for Review and Affidavit.

Sworn unto me this 15th day of September, 2015, at Coyote Ridge Corrections Center in Connell, Washington 99326-0769.

Sean Joseph Bates #375510  
Coyote Ridge Corrections Center  
1301 N. Ephrata Ave., EB-03  
Connell, Washington 99326-0769

  
Sean J. Bates #375510  
Appellant 'Pro Se'