No. 32507-5-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JOHNATHON M. T. FLORES,

Defendant/Appellant.

Appellant's Reply Brief

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A. ARGUMENT

1. Regarding Respondent's Procedural Facts.

At pages 11-12 of his brief, Respondent states, "After the notice of appeal was filed, Attorney Raheem sent a declaration to appellate counsel claiming he had not met the requirements of CrR 3.1 and SiD 14.2." Respondent neglects to mention that Mr. Raheem filed his sworn declaration in Okanogan County Superior Court and is part of the record.

2. Mr. Flores was denied his constitutional right to a fair trial due to ineffective assistance of counsel because his trial attorney was not yet qualified under CrR 3.1, Standards for Indigent Defense, to conduct a trial involving two Class A felonies without supervision.

Respondent argues the Standards for Indigent Defense are merely guidelines and should not be strictly construed. In support of this assertion he cites cases *decided before the Standards were adopted*. Respondent's Brief pp 16-18.

Court rules are interpreted by reference to rules of statutory construction. *State v. Greenwood,* 120 Wn.2d 585, 592, 845 P.2d 971 (1993). Courts give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *In re Estate of Little,* 106 Wn.2d 269, 283, 721 P.2d 950 (1986). It is well settled that the word

"shall" in a statute is presumptively imperative and operates to create a duty. *Crown Cascade, Inc. v. O'Neal*, 100 Wn.2d 256, 261, 668 P.2d 585 (1983); *State v. Q.D.*, 102 Wn.2d 19, 29, 685 P.2d 557 (1984) (citing *State v. Bryan*, 93 Wn.2d 177, 183, 606 P.2d 1228 (1980)). The word "shall" in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent. *Bryan*, 93 Wn.2d at 183, 606 P.2d 1228 (quoting *State Liquor Control Bd. v. State Personnel Bd.*, 88 Wn.2d 368, 377, 561 P.2d 195 (1977)).

Applying these principles to CrR 3.1, the language in *Standard 14.1* stating, "attorneys providing defense services *shall* meet the following minimum professional qualifications," imposes a mandatory requirement of compliance. CrR 3.1, *Standard 14.1* (emphasis added). Similarly, the language in *Standard 14.2(B)* that provides, "Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 *shall* meet the following requirements," imposes a mandatory requirement of compliance. CrR 3.1, *Standard 14.2(B)* (emphasis added).

Therefore, the Standards are mandatory and not merely guidelines.

3. Mr. Flores was denied his constitutional right to effective assistance of counsel, when his attorney committed numerous non-strategic errors during the trial.

Respondent claims the numerous errors and omissions by defense counsel during the course of the trial did not constitute ineffective assistance of counsel. Respondent's Brief pp 19-32. The specific instances of ineffective assistance are thoroughly vetted in Appellant's opening brief and will not be repeated here. The facts as set forth in the record speak for themselves.

E. CONCLUSION

For the reasons stated herein and in Appellant's initial brief, the convictions should be reversed.

Respectfully submitted May 2, 2016,

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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on May 2, 2016, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or e-mailed by prior agreement (as indicated), a true and correct copy of the reply brief of appellant:

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