COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
STEVEN POWELL)
(your name))
)
Appellant.)

No. 48047-6-II

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, STEVEN POWELL, 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

PLEASE SEE ATTACHED 13-PAGE DOCUMENT, ENTITLED "ADDITIONAL GROUND 1."

Additional Ground 2

PLEASE SEE ATTACHED 2-PAGE DOCUMENT ENTITLED "ADDITIONAL GROUND 2."

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

Date: FEBRUARY 28, 2016

Signature:

Form 23

State of Washington v. Steven Powell / Case No. 48047-6-II

ADDITIONAL GROUND 1 - 27 Feb. 2016

Submitted by Steven Powell, Appellant

On Wednesday, May 9, 2012, the first day of the first trial for State of Washington v. Steven Craig Powell, Pierce County cause #11-1-03893-1, Prosecution and Defense gave opening statements, which have not been transcribed for Appellant's review or for review by his appellate attorney. The transcript of that day's hearing merely says "Opening Statements presented." (5/9/2012 trial, transcript, page 174 at 3), but does not include a transcription of opening statements by Prosecution or Defense. For reasons given below, Appellant believes those transcribed opening statements were relevant to the appeal of his first conviction, in 2012, in Pierce County Cause #11-1-03893-1, COA #43585-3-II, as well as in the current appeal, COA #48047-6-II.

For three years, Appellant Steven C. Powell has been trying to find a statement, made by Defense Attorney Mark Quigley at the 2012 trial, that shocked and

appalled Appellant, as well as his daughter, Alina Powell, who was present at the trial. A review of the transcripts of that 2012 trial, undertaken in the last week or so, convinces appellant that he could not find that reprehensible statement by his attorney because it had not been transcribed and included with Verbatim Reports of the Proceedings, supplied to Appellant and his appellate attorney's in 2013.

The opening statements were passed over almost dismissively in the transcript without being reported, as if of no relevance. Appellant is certain that the statement of concern, wrongfully made by defense counsel Mark Quigley, is in his opening statement, omitted from the transcription, and thus not falling within the purview of appellate attorneys for the 2012 appeal or for the instant appeal. Appellant believes Attorney Quigley's convention in his opening statement may support a case for ineffective assistance of counsel.

Mr. Quigley's comment was to the effect that Defense, in the trial, would not be criticizing

the actions or performance of law enforcement. Atty. Quigley made the comment before the jury on May 9, 2009. However at least six months prior to that trial, Appellant had informed Atty. Quigley that there was outright perjury in the search affidavit, authored by Pierce County Sheriff's Department (PCSD) Detective Gary Sanders. Less than an hour after Atty. Quigley assured the jury, in essence, assured the jury that the defense believed law enforcement, working on Appellant's case, to be honest, forthright and trustworthy, PCSD Det. Gary Sanders was the first witness for the prosecution to take the stand. PCSD Det. Sanders may be guilty of criminal perjury (Appellant is accusing him and other law enforcement agents from West Valley City, Utah, Police Department (WVCPD); the FBI, and the USMS with criminal wrongdoing which led to the deaths of Josh Powell, Charlie Powell and Braden Powell, Appellant's Son and grandsons, three innocent people), and yet Atty. Quigley assured the jury, in so many words, that "you can rely on the word of this witness, PCSD Det. Gary Sanders."

Attorney Mark Quigley made no effort to investigate Appellant's allegation, spelled out

to Mr. Quigley in October or November 2011, that the core premise of the search affidavit, which was that a search was necessary because Appellant and his son, Josh Powell, refused to give law enforcement access to missing-woman Susan Powell's childhood journals, was perjury. Appellant's daughter, Alina Powell, sent email proof of that perjury to Attorney Mark Quigley in October or November 2011.

At a Suppression hearing on April 23, 2012, Atty. Quigley argued that there was no nexus between crimes alleged in the search affidavit and the items being sought, the childhood journals of Susan Powell. Those journals ended in 2000, before Susan Cox married Josh Powell in 2001. Susan Powell disappeared in December 2009.

The trial court denied Appellant's Motion to Suppress, presented April 23, 2012, completely ignoring Mr. Quigley's faultless argument from the "four corners" of the affidavit, and bypassed any material found within those four corners,

basing it's denial of the Motion on an unsupported speculation that had been advanced by the prosecution. That speculation was that law enforcement needed Susan Powell's childhood journals because those volumes might have information about problems in her marriage to Josh Powell, and possibly about other relationships during her marriage, that might suggest other avenues of investigation.

The Affidavit does not advance this imaginative conjecture within it's four corners, even though it would seem like a matchless argument for obtaining a warrant, because law enforcement knew from discussions with Powells that there would be no such information available from journals that ended before Susan Cox and Josh Powell were married. However based on that conjecture, newly-minted by Prosecution at the Suppression hearing, the trial Court denied the motion to Suppress.

Within hours of that denial, Appellant spoke from his jail cell to Attorney Mark Quigley, reminding him of the perjury by law enforcement, and asking him to present that to the court in a Motion for Reconsideration. Atty. Quigley

pooh-poohed Appellant's request, responding that there would be no basis for making an accusation of perjury since "it's only a probable-cause document." Atty. Quigley's statement at the opening of the trial two weeks later seemed to confirm that he was in no way going to level any criticism at those in law enforcement, whose criminal wrongdoing precipitated a grievous loss in Appellant's family. As noted, Atty. Quigley's statement, effectively absolving law enforcement, was withheld from Appellant and his appellate counsel by Pierce County Department of Assigned Counsel. Thus it cannot be here quoted.

In 2015, in preparation for Appellant's second trial, subject of instant appeal, defense Counsel Travis Currie, who was Atty. Quigley's co-counsel in 2012, chose to have a staff investigator interview three Utah cops and PCSD Det. Gary Sanders. One interview confirmed Appellant's allegation of police perjury, yet

Attorney Travis Currie again chose to make no mention, in a 2015 Motion to Suppress and to convene a Franks hearing, of Appellant's allegations, supported by evidence, of law-enforcement criminality. At no time during the 2015 suppression hearing, or during pre-trial hearings or the trial, did Attorney Travis Currie as much as mention alleged perjury committed by law enforcement. Nor did Mr. Currie mention the new (in 2015) interviews by Defense with law enforcement, which contained telling details about the efforts of interviewees to hedge the truth. Transcripts of the four interviews were added to the court file with no explanatory notes.

By the end of Appellant's 2015 trial, his Counsel Mr. Currie had failed to even hint at law enforcement wrongdoing, that led directly to deaths in Appellant's family. Those agencies involved in that wrongdoing included PCSD, WVCPD, FBI, US Marshals Service (USMS) and Washington State Attorney General's Office (WA-AG), as well possibly of others. Appellant took it upon himself to inform the court of the perjury at his 2015 Sentencing hearing. He cannot

cite what he said at sentencing, because he has not been supplied with transcripts of the 2015 proceedings.

Appellant does not accept the possible explanation that his attorneys' failure to mention law-enforcement perjury was part of a "legal strategy." Atty. Mark Quigley's argument from the "four corners of the affidavit" at the suppression hearing in 2012 made for a good legal strategy. But when the trial judge ignored the four corners of the affidavit, and ruled against suppression based on pure speculation (unsupported by the record or the facts of the case), Atty. Quigley should have filed for Reconsideration, which Motion would rightfully include evidence of the perjury, or at least a mention of it. That mention, along with the email evidence supplied to Atty Quigley in 2011 by Appellant's daughter, should have triggered an investigation and a Franks hearing. But if a Franks hearing had been

convened, Defense would have attended it virtually empty-handed, since Atty. Mark Quigley had not bothered to follow up and investigate Appellant's serious allegations of police criminality.

Appellant avers that he was denied, in both 2012 and 2015, effective assistance of counsel because 1) his counsel did not function as the Counsel guaranteed by the Sixth Amendment, and 2) had Counsel not committed unprofessional errors, both in (a) omitting the investigation of, and submission to the court of, allegations of law-enforcement perjury, and (b) making an ill-conceived and dubious statement about law enforcement at the opening of the 2012 trial, the outcome of this case would have been entirely different. Both in 2012 and 2015, Counsel failed to meet the Strickland Standard.

In addition to the instances above, suggesting ineffective assistance of counsel, Appellant would add that during 2015 proceedings, subject of instant appeal, defense Counsel appeared unwilling or unable to respond to the most transparent arguments by Prosecution. At the time it appeared to Appellant/Defendant that his counsel was distracted or unwilling to respond. When Defendant quietly

asked Counsel, "Aren't you going to respond?" and started to remind Counsel of facts they had discussed in private, Counsel brushed him aside as if to say, "I'm not interested."

Appellant cannot cite a specific incident he recalls because he has not been supplied with any documents or transcripts of the 2015 proceedings. Appellant asks that this deficiency be corrected, as the transcripts of 2015 proceedings may further illustrate Appellant's position that he did not receive the Counsel guaranteed by the Sixth Amendment.

Although it may be argued that Appellant has "had his day in court" as regards the 2012 trial, which has been reviewed and subjected to a ruling by the Washington State Court of Appeals (181 Wash. App. 716, 326 P.3d 859, October 8, 2014), Appellant contends as his "Additional Ground 1" that his 2015 trial would not have gone forward had the Verbatim Report of the opening Statements made at trial on May 9, 2012 not been withheld or suppressed by Pierce County Superior Court or Pierce County Department of Assigned Counsel (DAC). Appellant was unable to properly advise his appellate attorneys due to the suppression of those pivotal opening Statements.

Appellant believes the above demonstrates a pattern of ineffective assistance of counsel by DAC, and that the suppression of transcripts of Mark Quigley's ill-advised opening Statement on May 9, 2012, as well as the failure of both DAC attorneys, Quigley and Currie, to investigate or argue that Appellant and his family are victims of egregious law enforcement

Wrongdoing, suggests that there may be something more serious and sinister at work than mere ineffective assistance of Counsel." There appears to be a purposeful effort to prevent Appellant Steven Powell from having a fair hearing in the Courts of Pierce County. The constant failures by DAC attorneys over the span of years, to properly litigate in behalf of Appellant appear purposeful even when only the salient lapses are noted, as above, rather than inadvertent. Is justice available to Steven Powell and his family in Pierce County, Washington?

In conclusion, the following is evident:

1) Defense Counsel Mark Quigley and Co-Counsel Travis Currie did nothing to investigate Appellant's concerns about law enforcement misconduct prior to the 2012 trial proceedings.

2) Counsel Travis Currie, in 2015, requisitioned four interviews with law enforcement, which demonstrated their clear intent to deceive, but failed to use them for Appellant's defense.

3) Defense Counsel Mark Quigley made an inappropriate comment, exculpating law enforcement in his May 9, 2012 opening Statement, in the presence of the jury, which was detrimental and prejudicial against the defense, minutes before a law-enforcement witness for Prosecution took the Stand.
4) The transcript of the inappropriate comment in #3, above, has not been made available to Appellant or to his appellate attorneys, having been omitted from the Verbatim Report of the 2012 proceedings.
5) Neither Defense Counsel Mark Quigley in 2012 nor Defense Counsel Travis Currie in 2015 presented Widence in Suppression hearings to Suggest that a Franks hearing was called for.

Appellant asks this court for the following:
1) That COA II's decision in 181 Wash. App. 716 (2014) be rescinded, Since important information was withheld from Appellant and his appellate counsel.
2) That due to ineffective assistance of Counsel both the 2012 and 2015 convictions be remanded to Pierce County for further investigations and hearings and, if applicable, retrial.

STATE OF WASHINGTON V. STEVEN POWELL - CASE NO. 48047-6-II
ADDITIONAL GROUND 2 — 27 FEBRUARY 2016
SUBMITTED BY STEVEN POWELL, APPELLANT

At the bottom of page 7 of Appellant's "ADDITIONAL GROUND 1", he noted that at his 2015 sentencing hearing he made a statement about the police perjury he had been alleging to his attorneys since 2011. This was so that information left out by his counsel could be broached on appeal.

The trial court judge at that sentencing appeared to use Appellant's comment, which included mention that Appellant would be appealing that most recent conviction, to justify an aggravated sentence. Based on Appellant's statement in his own defense, apparently, the judge stated that "Mr. Powell shows no remorse," and handed down an invalid sentence.

Under the RCWs, the reinstated count, for which Appellant was convicted in 2015, is defined as "same criminal conduct" as

the counts for which he was convicted in 2012. As such, the "CONSECUTIVE" 60-month sentence imposed by the trial court was an abuse of discretion. The trial court's jurisdiction only included authority to impose a "CONCURRENT" sentence, unless the defendant is accused of a violent crime, or unless the same jury that found guilt determined that defendant had "no remorse" and deserved an aggravated sentence. In this case, neither prerequisite applies, and a "consecutive" sentence is an "aggravated" sentence, a doubling of the range authorized by the state legislature.

Appellant's counsel, Attorney Travis Currie, did not object to such a sentence, nor did he at any time advise Appellant of his right to file a motion to vacate an invalid judgment and sentence.

Appellant's maximum sentence, under State law, ends on September 23, 2016, at which time he is entitled to be released from incarceration, regardless of the outcome of the instant appeal.