

61853-9

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

In the Matter of the Application)
For Release from Personal Restraint)
of:)
)
Raymond D. McCoy)
Petitioner)

~~60630-4~~
61853-9
~~61855-5~~
Personal Restraint Petition
Pursuant to (RAP 16.3)

If there is not enough room on this form, use the back of these pages, or other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a Notary.

FILED
JUN 17 AM 11:39
COURT OF APPEALS OF THE STATE OF WASHINGTON

A. Status of Petitioner

I, Raymond D. McCoy, Stafford Creek Correctional Center, 191 Constance Way, Aberdeen, WA 98520

(Full name and address)

Apply for relief from confinement. I am am not now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order:

8-14-08

(Identify type of order)

PETITIONER MAY FILE PETITION WITHOUT PAYMENT OF FILING FEE

B. M. D. E.
COURT ADMINISTRATOR/CLERK
Carm

1. The Court in which I was sentenced is: King County, Superior Court

2. I was convicted of the crime(s) of: First Degree Robberies

3. I was sentenced after trial , after plea of guilty on June 8, 2007
(Date of sentence) (Year)

4. The judge who imposed the sentence was Honorable Paris Kallus
(Name of trial court judge)

5. My lawyer at trial court was: Robert C. McKay
(Name and address if known; if none, write "none")

6. I did did not appeal from the decision of the trial court (if the answer is that I did), I appealed to: Washington State Court of Appeals Division One
(Name of court or courts to which appeal was taken)

7. My lawyer on appeal was: Andrew P. Zinner, Nelson, Bromer & Kohn, 1908 E. Madison St. Seattle, Wash 98122
(Name and address if known, if none, than write "none")

8. The decision of the appellate court was was not published. If the answer is that it was published, and I have this information), the decision is published in: _____
(Volume number, Washington Appellate Reports or)
(Washington Reports and page number)

9. Since my conviction I have have not asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked)

The court I asked was: Washington State Court of Appeals Division - One

(Name of court or courts in which relief was sought)

Relief was denied granted "Pending"

(Date of decision, if more than one, dates of all decisions)

10. (If I have answered in question 6 that I have asked for relief), the name of my lawyer in the proceedings mentioned in question 6 was: Andrew P. Zinner

Neilsen, Brennan & Koch, 1908 E. Madison St., Seattle, Wash 98112

(Name and address if known; if none, write "none")

11. If the answers to the above questions do not really tell about the proceedings and the court, judges and attorneys involved in your case, tell about it here: _____

See attached Summary of post conviction proceedings.

B. Grounds for Relief

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground," "Second Ground," "Third Ground." Etc.), I claim that I have (number) 5 reason(s) for this court to grant me relief from the conviction described in part A.

_____ Ground

(First, Second, etc.)

1. I should be given a new trial or released from confinement because [Here state legal reasons why you think that there was some sort of error made in your case which gives you right to a new trial or release from confinement.]:

" See attached Brief "

2. The following facts are important when considering my case [After each fact statement, put the name of the person or persons who know the facts and will support your statement of the fact. If the fact is already in the record of your case, indicate that also.]:

" See attached Brief "

"See attached Brief"

3. The following reported court decisions [include citations if possible] in cases similar to mine show the error I believe happened in my case [if none are known, state "None Known"]:

"See attached Brief"

4. The following statues and constitutional provisions should be considered by the court [if none are known, state "None Known"]:

"See attached Brief"

5. This petition is the best way to get the relief I want and no other way will work as well because:

"See attached Brief"

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

Raymond D. McCoy,)
)
 Petitioner,)
)
 V.)
)
 State of Washington,)
)
 Respondent.)
_____)

No. 06-1-03538-7
COA# 60134-2-1

MOTION TO PROCEED
IN FORMA PAUPERIS

COME NOE the peitioner in the above cause number, and do
move this court for a Motion to proceed In Forma Pauperis.

This Motion is proceeded by the attached Statement Of Finance
and Notarized Affixdavate.

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Statement of Finances

If you cannot afford to pay the filling fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form

- 1. I do do not ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.
- 2. I have \$ Ø in my prison or institution account.
- 3. I do do not ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.
- 4. I am am not employed. My salary or wages amount to \$ 20 a month.

My employer is:

Department of Correction, Stafford Creek Correctional Center, 191 Constantine Way, Aberdeen, WASH 98520

(Name and address)

- 5. During the past 12 months I did did not get any money from a business, profession, or other form of self-employment. If I did, it was:

(Kind of self employment)

The total income I got was \$ Ø.

- 6. During the past 12 months, I:

DID

DID NOT

Get any rent payment. If so, the total amount I got was

\$ Ø

Get any interest. If so,

The total amount I got was \$ Ø
 Get any dividends. If so, the total amount I got was \$ Ø
 Get any other money. If so, the amount of money I got was \$ 100

7. During the past 12 months, I:

| DID | DID NOT | | |
|--------------------------|-------------------------------------|---|-------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Have any cash except as said in answer 2. If so, the amount of cash I have is | \$ <u>Ø</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Have any savings accounts or checking accounts. If so the amount in all is | \$ <u>Ø</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Own Stocks, Bonds, or Notes. If so, there total value is | \$ <u>Ø</u> |

8. List all Real Estate and other property and things of value, which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family need.

Item: NONE Value: \$ Ø
Item: (()) Value: \$ Ø
Item: (()) Value: \$ Ø

9. I am am not married. If I am married, my spouses name and address is:

10. All of the persons who need me to support them are listed here:

| Name | Address | Age | Relationship |
|-------------|---------------------------------|-----------|--------------|
| <u>Self</u> | <u>Department of Correction</u> | <u>48</u> | <u>Self</u> |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

All the bills I owe are listed here:

| Creditor | Address | Amount |
|-----------------|--------------|---------------|
| NONE | / | \$ |
| / | / | \$ |
| / | / | \$ |

C. Request for Relief

I want this court to:

- Vacate my conviction and grant me a new trial.
- Vacate my conviction and dismiss the criminal charges against me without a new trial.

Other

[Specify]:

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

~~/~~

D. Oath of Petitioner

THE STATE OF WASHINGTON)

) SS

COUNTY OF King)

After being first duly sworn, on oath, I dispose and say, That I am the petitioner, that I have read the petition. I know it's contents, and believe that the petition is true.

June 12, 2008
Date

Raymond D. McLoey
Signature of petitioner

SUBSCRIBED AND SWORN to me this 12 day of June, 2008.



John S. Thompson
NOTARY PUBLIC in and for the State of Washington
Residing at Shelton

My commission expires: 6 / 6 / 10

If a Notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated at _____ on this _____ day of _____, _____.

(City and State)

Signature of Petitioner

Print Name

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

Raymond D. McCoy,)
)
 Petitioner,)
)
 V.)
)
 State Of Washington,)
)
 Respondent.)

No. 06-1-03538-7
COA# 60134-2-1

MOTION REQUESTING
JOINDER OF PERSONAL
RESTRAINT PETITION
AND DIRECT APPEAL
PURSUANT TO CAUSE
NUMBER 06-1-03538-7
AND R.A.P. 16.13.

COME NOW the petitioner in the above cause number, proceeding Pro-Se, and do move this court, to respectfully consider a Motion to "Jionder" petitioner's P.R.P. with petitioner's Direct Appeal pursuant to the above cause number, for the reasons stated in part B. of this Motion.

A. STATEMENT OF FACTS:

On February 9, 2006 petitioner was arrested for allegedly delivering a controlled substance to a under cover Seattle Police Officer, incident to the arrest, the arresting officer founded what appeared to be a bank demandnote on petitioner's persons.

As a result, on April 7, 2006 petitioner was charged with two counts of first degree robberies. In-custody, petitioner was proceeding Pro-Se, until March 28, 2007, May 10, 2007, petitioner was tried and convicted of three counts of first degree bank robberies.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2008 JUN 17 AM 11:39

8.14.06
Denied. An
opinion has been issued
in the direct appeal,
No. 60134-2.
B. M. DeL
Commissioner

B. Argument:

As stated above in part A. of this motion, from April 7, 2006 to March 28, 2006, petitioner was proceeding Pro-Se pursuant to cause No. 06-1-03538-7. During the eleven months preparing for trial, petitioner acquired a number of experts witnesses to perform pretrial evidentiary examination of evidence the State were to present in its case-chief at trial.

After turning over all experts' reports and material facts to Mr. McKay (who on March 28, 2007 became attorney of record) the above experts' findings and conclusions were withheld from the trial Judge and jury

Specifically, the finding and conclusion of Mr. Eric Blank (Video Analysis Expert) of the Key Bank's surveillance tape. Although Mr. Blank would have testified that, 1.) the tape showed little information; 2.) 90% or more of the footage was missing; 3.) the system was in disrepair. The State presented this tape to the jury as rebuttal evidence.

Here, Mr. McKay's trial tactics or strategy fell below an objective standard of reasonableness, not to call Mr. Blank, but called a State witness on behalf of the defense, who testified that he (the State's witness) thought the tape was in good condition.

Mr. McKay's decision not to call Mr. Blank, intruded on the province of the fact finder, by denying the fact finder an opportunity to hear material and relevant facts concerning the contents of the evidence presented for the fact finder's viewing and deliberation.

This on its face constitutes deficient performance, which prejudiced petitioner, denying petitioner the right to a fair trial and effective assistance and representation of counsel pursuant to the Sixth Amendment of the U.S. constitution and Article 1, § 22 of the Washington State constitution.

"...If a defendant wishes to raise issues on appeal that require evidence or facts not in the existing trial record, the appropriate means of doing so is

though a personal restraint petition, which may be filed concurrently with the direct appeal." See State V. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995) at 335 citing Washington State Bar Ass'n, Appellate Practice Desk Book § 32.2(3)(c) at 32-6 (2d.ed 1993)(Citing State V. Byrd, 30 Wn.App 794, 800 638 P.2d 601 (1981).

C. CONCLUSION

Therefore, in the fair of justice, petitioner asks that the reviewing court "Joinder" petitioner Personal Restraint Petition with petitioner's Direct Appeal, to consider material and relevant facts excluded from the trial record.

Submitted: This 12 day of June, 2008.


Raymond D. McCoy

Petitioner