

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,

Respondent,

v.

JAMES O. WIGGIN,

Appellant.

2010 SEP 27 AM 11:06

COURT OF APPEALS
STATE OF WASHINGTON
FILED

**ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY**

The Honorable Gerald L. Knight, Judge

STATEMENT OF ADDITIONAL GROUNDS

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A. ADDITIONAL GROUNDS

(1) My assistance of counsel was constitutionally deficient in violation of my Sixth Amendment rights.

(A) Defense Counsel was ineffective for failing to confer promptly and as often as necessary to elicit matters of defense and in order to produce an adequate defense.

(B) Defense Counsel was ineffective by failing to produce all the necessary and available mental health records and documentation required to support and present my “diminished capacity” defense.

(C) Defense Counsel was ineffective by failing to interview and subpoena the potential witnesses to be called that had direct knowledge of my “diminished capacity” state of mind at the time of the alleged time-line contained within the criminal complaint.

(D) Defense Counsel was ineffective by failing to have a pre-trial psychiatric evaluation done on me prior to the trial.

(2) The Court engaged in misconduct by attempting to force me into choosing between two Constitutional rights and by trying to trick me into somehow waiving one or the other right without my consent or knowledge.

(3) The Court erred at my trial on March 22, 2010 by denying my attorneys’ motion to continue the trial due to her failures to produce the necessary records and documentation and due to her failures to interview and properly subpoena the witnesses to present the defense.

B. Issues Pertaining to the Additional Grounds

(1) The defense attorneys' function is to conduct proper investigations, pursue and procure all possible exculpatory evidence wherever it may exist, seek out and interview all possible witnesses to be used in the defense, raise all possible defenses available to the client, and to bring to bear such skills and knowledge as necessary to accord the defendant the ample opportunity to meet the case of the prosecution in order to preserve the adversary process to protect the defendants' fundamental right to a fair trial. Did the assistance of counsel provided to me during this case and at my trial, meet the reasonably competent representation standard as required of a BAR attorney? Did a deficient performance of counsel cause substantial prejudices to my defense and directly affect the outcome of the trial? Can the trials' outcome be considered an unreliable adversarial test which renders the verdict produced an unsound result?

(A) A defense attorney has the duty and the obligation to confer promptly and as necessary with the client to produce a sound defense or to ascertain that possible defenses are not available. Did my attorneys' failure to confer promptly or as often as necessary cause an adverse effect on the quality of assistance provided in the case and did that ultimately cause prejudice to me in getting a fair trial? Does a violation of an articulated duty of counsel establish a Sixth Amendment violation and require a reversal?

(B) A defense Attorney must conduct proper investigations both factual and legal and must pursue and procure all necessary and relevant exculpatory

evidence to be used in the defense of the client. Did the failure to do so in this case cause prejudice to me at my trial and prevent my attorney from raising and presenting the “diminished capacity” defense? Was my attorney ineffective for failing to obtain all the necessary records and documentation?

(C) The Sixth Amendment guarantees the right to the accused to call witnesses on his/her behalf. Did the failure to interview and properly subpoena the available witnesses in this case violate my Sixth Amendment right to compulsory process? Is that independent violation of my Sixth Amendment right grounds for a reversal?

(D) One of the articulated duties of counsel is to obtain a pre-trial psychiatric examination of a client prior to the trial to establish his/her state of mind and to determine “diminished capacity” or “insanity” defenses. Did my attorneys’ failure to do so cause prejudice to my defense? Was the decision not to have the evaluation done based on sound tactical trial strategy or did it stem from inattention and incompetence?

(2) Both State and Federal Courts are equally obligated to guard and enforce every right secured by the Constitution. Does a trial Judge have the authority to force a defendant to choose between two Constitutionally guaranteed rights? Does a refusal to waive one right constitute a valid waiver of another? Who bears the burden for the failures of the defense attorney?

(3) CrR 3.3 allows a Court to continue a trial provided the continuance furthers the administration of justice and will not substantially prejudice the defendant. Did the Court abuse its’ discretion in this case by allowing my trial to proceed

without a proper representation of counsel? Did the Courts' ruling cause prejudice to my ability to obtain a fair hearing of my case? Did the Court violate my due process rights?

C. STATEMENT OF THE CASE

This case began on August 18, 2009 as an out of custody issue. Ms. Mann was assigned as defense counsel and appeared at my arraignment on that date.

This case was continued repeatedly due to complications surrounding Ms. Manns' unavailability and in her failures to contact my mental health providers at Sunrise Community Health Services and other Institutions and Agencies all of whom had records and documentation of my mental health issues prior to the time-line, during the time-line, and at the end of that time-line, contained in the criminal complaint in this case.

Sunrise, The Snohomish County Jail, Compass Health, and The Emergency Room in Arlington Washington, all had direct knowledge of my mental health conditions and had relevant documentation to support the "diminished capacity" defense in this case and there were many available witnesses to be called to support that defense.

I was under professional psychiatric care and taking heavy doses of anti-psychotic and mood disorder medications prior to the alleged crime of failure to register, during the time frame, and also throughout the trial process in this case as well.

I had been suffering adverse side effects from my medications and had been hospitalized twice prior to the failure to register time frame and had had direct contact with Sunrise complaining of mental health issues.

I was diagnosed paranoid schizophrenic with bi-polar disorders. I was being treated by Barbara Scott in Everett Washington who had me on the wrong medications. I went to Sunrise to get help but ended up in a mental health breakdown for a couple of months.

I called 911 and reported myself to the proper authorities at the time when I began to realize where I was and what I was doing. I was still suffering from my mental health break down but I was getting better. The Snohomish County Jail and the Everett Police report on the day I turned myself in, both contained information regarding my mental health statements and condition at the time of my arrest.

Ms. Mann had the case for 130 days while it was an out of custody issue and in all that time, she failed to meet with me for even one time and she never contacted any of the above mentioned institutions or agencies. She made no efforts towards contacting my current psychiatrist at Sunrise Community Health or that of my social worker who also works at Sunrise. She made no efforts to obtain any records or documentation to support my defense.

This case became an in custody issue on December 24, 2009. Ms. Mann did not make herself available, neither by phone nor in person for 43 days.

Grievances of counsel were levied by me to the Snohomish County Public Defenders Association but no action was taken to address my concerns.

On February 4, 2010, I filed a motion in this case to be reassigned counsel because Ms. Mann had refused to take my calls or to come see me in either of my cases and because she had not done a thing in the case up to that point. I expressed my concerns to the Court at that time about her lazy approach but also in that she was leaving the Country as well and I had no faith in her word about anything she said. I felt that she had not provided effective assistance in the case and that she would not be able to provide it due to her unavailability.

I advised the Court that I would not sign my speedy trial rights away and I did not consent to Ms. Manns' representation. I wanted new counsel.

The case was delayed against my objections on February 4th. The Court refused to intervene in the case at that time and essentially found that Ms. Mann was providing effective assistance and that I could not fire her.

On March 8th, before Judge Knight, the Court again continued this case over my objections. Judge Knight found that I did not want to sign my speedy trial rights away but I did expect a fair trial and for the effective assistance of counsel to be provided. He gave Ms. Mann an additional two weeks to prepare the defense at that time and my rights to a speedy trial were preserved in that I did not agree or sign a waiver of those rights.

Because my attorney waited till the last few days before trial to even begin to look at the case, she failed to get the necessary records or to interview and subpoena the witnesses.

The Court then attempted to bully me into accepting responsibility for her failures, first by attempting to have me accept new counsel in the case even

though they had denied that relief earlier in the process, and then they took the position that I could only have one of two rights, either it was a right to a speedy trial or it was the right to effective assistance of Counsel.

I had already been denied effective assistance of counsel in the case from the beginning, during, and at the end, and my rights to a speedy trial were also being violated as well. I refused to sign away my speedy trial rights on the day of my trial when my attorney had failed to get the records necessary and had also failed to interview or subpoena my witnesses. I did not waive either of those rights in this case.

I was not effectively represented in this case and the ineffective assistance caused me to be convicted of a crime that I should not have been convicted of. The conviction was obtained in violation of my 14th Amendment right to due process of law.

D. LEGAL ARGUMENT

(1) “The right to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. Without counsel, the right to a fair trial itself would be of little consequence..” Kimmelman v Morrison, 477 US 365, 91 L Ed 305, 106 S Ct 2574 [377] (1986) citing Cronic, supra, at 653, 80 L Ed 2d 657, 104 S Ct 2039; United States v Ash, 413 US 300, 307-308, 37 L Ed 2d 619, 93 S Ct 2568 (1973); Argersinger v Hamlin, 407 US 25, 31-32, 32 L Ed 2d 530, 92 S Ct 2006 (1972); Gideon, supra, at 343-345, 9 L Ed 2d 799, 83 S Ct 792, 23 Ohio ops 2d 258, 93 ALR 2d 733; Johnson v Zerbst, 304 US 458, 462-463, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357 (1938); Powell v Alabama, 287 US 45, 68- 69, 77 L Ed 158, 53 S Ct 55, 84 ALR 527 (1932).....for it is through

counsel that the accused secures his other rights. Main v Moulton, 474 US 159, 168-170, 88 L Ed 2d 481, 106 S Ct 477 (1985); Cronic, supra, at 653, 80 L Ed 2d 657, 104 S <*pg 321> ct 2039; See also, Schaefer, Federalism and State Criminal Procedure, 70 Harv L Rev 1, 8 (1956).. “(of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have)”

The **Constitutional guarantee of counsel**, however, “**cannot be satisfied by mere formal appointment..**” Avery v Alabama, 308 US 444, 446, 84 L Ed 377, 60 S Ct 321 (1940). “An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” Strickland, supra, at 685, 80 L Ed 2d 674, 104 S Ct 2052. In other words, **the right to counsel is the right to effective assistance of counsel** (emphasis added). Evitts v Lucey, 469 US 387, 395-396, 83 L Ed 2d 821, 105 S Ct 830 (1985); Strickland, supra, at [477 US 378] 686, 80 L Ed 2d 763, 90 S Ct 1441 (1970) 2

The Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The 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.

.. “Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial

system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. Strickland, supra, at [466 US 685] 686, 80 L Ed 2d 674, 104 S Ct. 2052; citing Adams v United States ex rel. McCann, 317 US 269, 275, 276, 87 L Ed 268, 63 S Ct 236, 143 ALR 435 (1942); See Powell v Alabama, supra, at 68-69, 77 Ed 158, 53 S Ct 55, 84 ALR 527. "Counsel...has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process" 466 US. at 688, 80 L Ed 2d 674, 104 S Ct 2052

In recognizing that the purpose of counsel is to preserve the adversary process and that counsel must act "in the role of an active advocate in behalf of his client", the courts hold that the accused's right to effective assistance is the right to "reasonably competent" representation.

In General: Counsel should be guided by the American Bar Association Standards for the Defense Function. They represent the legal professions' own articulation of guidelines for the defense of criminal cases;

(A) Specifically: Counsel should; (1) **confer** with his/her client "**without delay**" and "**as often as necessary**" (emphasis added) to elicit matters of defense, or to ascertain that potential defenses are unavailable. Counsel should discuss fully potential strategies and tactical choices with his client. (2) Counsel should **promptly** advise his client of his rights and **take all actions necessary to preserve them**. Many rights can only be protected by **prompt** legal action. ABA 4 1-1 to 4-8.6 (2d ed 198) ("The Defense Function"); See also U.S. v

DeCoster, supra, at 1203, 1204, 487 F 2d 1197; 159 U.S. App D.C. 326; 1973 U.S. App LEXIS 7660.

“**Without delay**” and “**prompt legal action**” are not coincidental languages used in these standards. It is clearly stated and reasonably expected that any sound defense would require **prompt** action and painstaking efforts into preparation for trial.

In this case, my attorney did not take any calls from me nor did she meet with me in private to confer in this case until I had been incarcerated for 43 days. She had also failed to confer with me for the 130 days this case was an out of custody issue so there can be no offer on her part that the obligation or the duty did not exist or that such action as to confer **promptly** was not necessary. Ms. Mann did offer up an excuse to the court on February 4th.

Ms. Mann: “And, unfortunately, it did take me too long to get over to see Mr. Wiggin when he’s been in custody. I think as the Court is aware, I was in a two-week murder trial in December. And then I had a very extensive day and a half motions hearing and that—those two matters did cause me to get behind, particularly on jail visitations. [Tr. Feb 4th pg6 at (5-10)]

Ms. Man went on to “**NOT**” confer with me, other than that first consultation that she finally afforded on February 4th, except for a few minutes prior to each hearing. She did not go on to produce my defense and her lazy approach to my case caused unnecessary delays which caused violations of my rights to a speedy trial and also caused her to be unprepared and ultimately unable to present the “diminished capacity” defense in the case which was a legitimate and readily available defense.

Ms. Mann: “And Mr. Wiggin and I have discussed this case, not as often as he would’ve liked, frankly, not as often as I would’ve liked” [Tr Mar 5th pg 2 at (18-20)]

Ms Mann was not able to obtain the necessary records, to interview the witnesses, and did not properly subpoena my witnesses, because she waited that 43 days to confer and she did not meet with me as often as necessary to prepare the defense. She didn’t even have a firm grasp of all the relevant agencies and witnesses that needed to be called even on the day of my trial.

Ms Manns’ offer to the Court that she was too busy in December because of a “murder trial” or “a day and a half motions hearing” does not even begin to explain why on earth she wasn’t able to come see me for the entire month of January, nor does it relieve her of her duties and obligations to me in my case. In fact, I still prevail in that, I have a right to the assistance of counsel unhindered by conflicts of interests (emphasis added). Holloway v Arkansas, 435, U.S. 475, 55 L Ed 2d 426 98 S Ct 1173 (1978).

... “Such representation is lacking, however if Counsel, unknown to the accused and without his knowledgeable assent, is in duplicatis position where his/her full talents as vigorous advocate having the single aim of acquittal by all means fair and honorable are hobbled or fettered or restrained by commitments to others....

... “In short, [w]e consider undivided loyalty of appointed counsel to client as essential to due process” McKenna v Ellis, 5th Cir 1960, 280 F. 2d 592, 599

... “prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsels’ duties” Cuyler v Sullivan, 446 US, at 345-350, 64 L Ed 2d 333, 100 S Ct 1708.

The duty to confer is not contingent upon an attorneys’ workload nor can it be said that Ms. Mann having other clients or a matter such as a “murder case”

somehow excuses her tardy action in my case and the fact is, there is now a showing of a substantial violation of one of the requirements as delineated in the ABA standards and as set forth in DeCoster, and upon such a showing, effective assistance **has been denied**, unless the government, on which now is cast the burden of proof once a violation of the precepts is shown, can show lack of prejudice thereby. U.S. v DeCoster, F 2d 1197; 159 U.S. App D.C. 326; 1973 citing Coles v Peyton, 389 F 2d 224, 226 (4th Cir. 1968)

The prejudice caused by her late start and her failure to confer as often as necessary in this case is apparent in her failures to produce all the records and in her failure to make contact, interview, and properly subpoena the witnesses. This Court must recognize this violation of a very important duty of counsel and find that the assistance rendered in this case was deficient and that the major cause of that deficiency likely stemmed from the tardy action by counsel,

(B) The “diminished capacity” defense that needed to be raised in this case hinged on my attorneys’ ability to obtain all the necessary records and documentation (all of which were readily available), in order to support that defense and Ms. Mann was ineffective for failing to do so. Whether that failure was born from the tardy action in this case or stemmed from inattention, incompetence, or inadvertence, is of no avail, the cause of the failure is less significant than the obvious prejudice caused by the failure to obtain those records. They were absolutely critical to my defense.

Ms Mann: “There is, we are hoping, some evidence through the jail and the agency that we haven’t yet gotten the records out of that upon his booking into the jail approximately two months later at the end of this charging period, there would be some information about a

psychiatric statement that he went in there to cover both ends of that time period.” [Tr. Mar 22nd pg 4 at (24)-pg 5 (4)]

Ms Mann only obtained the records available through Sunrise Community Health Services. She was to obtain records from several other sources but did not even attempt to do so. She didn't even get a waiver from me to contact those agencies in order to obtain those records. She only had the waiver for my current mental health provider, not Barbara Scott who was my original psychiatrist. I told Ms. Mann at every hearing who she needed to contact. She simply made no efforts in this case whatsoever.

Ms Mann: “Mr. Wiggin did not give us the wrong information to the wrong records being obtained. When I looked back at my notes when he pointed out that these records we obtained were from the wrong agency, I discovered that he had in fact given us the name of the Sunrise Agency as opposed to Compass Health. That was my offices' error....” [Tr Mar 8th pg 2 at (13-21)]

Ms. Mann deliberately attempted to smooth over her blatant failures in this case by manipulating the court record to somehow reflect some sense of honest efforts on her part or that of her office towards obtaining the records or interviewing the witnesses in this case. She was intentionally deceptive in that regard and I tried to bring that to light at each and every court appearance. The fact remained that she failed to ever produce the records that were available.

Ms Mann: “The releases of information were signed and delivered to the two agencies two weeks ago. We have received records from one of the two agencies on Wednesday of last week. It took 10 days for the agency to provide them. To my knowledge, we have not received records from the second agency. Although those are critical, the difficulty is that the agency that had the most contact with Mr. Wiggin, the individual who did the intake that is relevant to this time period has left that agency.” [Tr Mar 22nd pg 3 at (17-25)]

Ms Mann waited until trial call to even attempt to contact the agencies as she clearly indicated to the Court on March 22nd. It only took 10 days for Sunrise to provide the records. The jail is 3 blocks from her office and didn't obtain those records? She didn't act with any due diligence in this case and the failure to obtain the records was only one of the major blows to my defense. The assistance of counsel in this case was deficient and it did cause prejudice to my defense and the conviction must be reversed.

(C) The Sixth Amendment guarantees in relevant part, that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor.

Defense Counsel was ineffective for failing to interview and subpoena my witnesses and that failure caused an independent violation of my Sixth Amendment rights.

Ms. Mann was told that Barbara Scott was my treating psychiatrist at the time I first went to Sunrise Community Health Services. Barbara Scott was giving me medications that I was suffering adverse affects from, and she was refusing to give me the right medications. Barbara Scotts' office is located in the same building as the offices of the Snohomish County Public Defenders Association and Ms. Mann failed to make contact with her.

Ms. Mann was to contact Sunrise to speak with my Social worker as well as my current psychiatrist. Sunrise is 15 blocks from her office and she failed to make contact with and interview them, both of whom had

direct knowledge of the diminished capacity state of mind I was in at the time I first made contact with their agency and for the current state of mind I was in at the time of my arrest.

These witnesses were available to her and she simply failed to bring them forward and that failure caused obvious prejudice in that those witnesses were necessary to present the “diminished capacity” defense. This Court must recognize that an essential right guaranteed by the Sixth Amendment was violated by my attorneys’ failure to call my witnesses and the conviction must be reversed because of that violation.

(D) “Counsel should be prepared, where appropriate, to make motions for a pre-trial psychiatric examination. ABA Standards (“The Defense Function”) See also, DeCoster, supra, at 1203, 1204, 487 F 2d 1197; 159 U.S. App D.C. 326; 1973 U.S. App. LEXIS 7660.

The adversary system requires that “all available defenses are raised” so that the government is put to its proof. My attorney was fully aware of my mental health condition, not only at the time of the alleged failure to register, but I was also currently taking anti-psychotic medications at the time prior to my trial and during that trial. She had a duty and an obligation to the defense in this case to have a psychiatric evaluation conducted and her failure to do so was yet another violation of her duties as counsel. A reasonably minded attorney would have done so when the very nature of the possible defense was one of a diminished capacity.

Ms. Mann: “I do not know if an in-depth psychiatric evaluation will establish a mental health defense, but it is certainly a significant

possibility—either his diminished capacity or possibly an insanity defense.” [Tr Mar 22nd pg 5 at (21-25)]

It is clear that Ms. Mann even recognized the possible need for such an evaluation to be conducted to support the diminished capacity defense and it is also evident that her failure to do so was another example of a violation of the articulated duties of Counsel and is just one more point to be made towards the claim of ineffective assistance of Counsel in this case.

The prejudice caused to my defense by my attorneys’ failure to conduct a necessary evaluation is clearly established. The mental health “diminished capacity” defense was not raised.

The “.....right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. **He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.** He requires the guiding hand of counsel at every step in the proceedings against him.” Zerbst, supra, at [304 US 463] 82 L Ed 1461 304 US 458-469 (1938)

Defense Counsels’ performance was deficient and did cause prejudice in this case for all the reasons listed in (A), (B), (C), & (D) and my appellate attorney

has also pointed out that the charging instrument was deficient and my attorney also allowed me to receive too much community supervision due to her ineffective assistance. This Court must recognize that the ineffective assistance rendered in this case is not limited to the argument made by my appeal attorney. The deficient performance was throughout the entire case, from start to finish, at every hearing, and at every level imagined. The conviction was gained through a violation of my Sixth Amendment right to compulsory process and the right to counsel. Mere appointment is not enough.

(2) Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply laws that govern us. State Courts are bound by the United States Supreme Court in matters of Federal Constitutional rights. Not only may they not construe a federal Constitutional right more narrowly than mandated by the highest Court, they may not construe their own law, Constitutional or otherwise, in a manner inconsistent with Federal Constitutional Standards.

... upon the State Courts, equally with the Courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. Mooney v Holohan, citing Robb v Connolly, 111 U.S. 624, 637, 28 L Ed 542, 546, 4 S Ct 544

I asserted the full extent of my legal rights. I made it clear from the onset of the case that I would not be waiving my right to a speedy trial and I made it just as apparent that I fully expected my attorney to perform the duties of Counsel as was expected and that those duties be fulfilled within the time-period as set forth in CrR 3.3 which governs the defendants' right to a speedy trial.

I attempted to have my attorney dismissed because she was not providing effective assistance. I did not consent to her representation and the Court refused to grant me relief.

When the time came for trial and Ms. Mann had failed to do her job, they sought to have me accept new counsel so that I would have to restart my court dates and that would circumvent my speedy trial rights. I did not consent to that because I invoked my Sixth Amendment rights to a speedy trial and I would not accept the Courts imposition on those rights. The Court engaged in misconduct by attempting to bully me into waiving my rights.

The Court: Ms. Mann is asking for a two week continuance. I cannot see how that can prejudice you at all, but apparently you do not want to agree to that. So if you don't, the options come down to having you go ahead and go forward and represent yourself." [Tr Mar 22nd pg 11 at (13-17)]

Judge Knight made it quite clear that he intended to circumvent my rights with or without my consent. I had not even had a chance to speak at that hearing on March 22nd when he made that comment to me. He was attempting to bully me into waiving my right to a speedy trial away because my attorney had failed to do her job.

My attorney had explained my position with regards to my intentions on where I stood with regards to my rights,

Ms Mann: "He does wish both a speedy trial and to be effectively represented" [Tr Mar 22nd pg 5 at (12-20)]

The Court: "So now I think that we're at the same position that he wants his cake and to eat it too." [Tr Mar 22nd pg 9 at (14-15)]

Judge Knight goes on to say,

The Court: “If there is ineffective assistance of counsel, argument may be made is that it is. Let him make it. At the same time, the State can make argument that he waived it” [Tr Mar 22nd pg 10 at (1-5)]

I had not even been given a chance to speak yet and Judge Knight had made the determination that I was waiving my rights to effective assistance. He then engaged in an improper campaign to trick me into a waiver of my rights.

I plainly asked the Court, “Do I or do I not have a Sixth Amendment right to a speedy trial?” And the Court replied, “Yes. You do, but it’s not an absolute right.” [Tr Mar 22nd pg12 at (3-7)]

NOTE: The transcript is improperly transcribed to read the right to “speak” in trial but I said the right to a “speedy” trial and the Judge heard me correctly and did respond to what I had actually said.

I would agree in that the right to a speedy trial is not absolute in that a Court may continue the case in the interests of justice but I do not recognize the Court as having the authority to force me into waiving the speedy trial rights so that I would not have an appellate issue should the case proceed to be continued over and over and over. .

Furthermore; Any waiver, to be valid, must be a knowing, actual, and an intentional relinquishment or abandonment of the right or privilege. It cannot be presumed that because I refused to waive my speedy trial rights that I was somehow waiving my right to effective assistance of counsel. That is a ridiculous notion and that would leave the Court in a position to say at any time through its’ agents and actors that the case needs to be continued and the

defendant would have no recourse in assuring his right to a speedy trial. That would have absurd results and the Constitution would be of no value if it did not ensure the very rights that are intended within the language of the Bill of Rights which were formed to protect the accused from deprivation of Liberty without the Due Process of Law that ensure the defendant a right to a fair trial. Furthermore;

... "It has been pointed out that "Courts indulge every reasonable presumption against waiver of fundamental Constitutional rights and that we "do not presume acquiescence in the loss of fundamental right" A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." Johnson v Zerbst, 82 L Ed 1461, 304 U.S. 458-469 (1938)]

A man who asserts no rights has no rights. Well I asserted my rights fully.

"The people of the State are entitled to all the rights which formerly belonged to the King at his prerogative." Lansing v Smith, 21 D. 89 (New York S.C. 1829).

"Under our system, the people, who are there (in England) called subjects, are here the sovereign. Their rights, whether collective or individual, are not bound to give way to sentiment of loyalty to the person of monarch. The citizen* here (in America) knows no person, however near those in power, or however powerful himself to whom he need yield the rights which the law secures to him." United States v Lee, 106 U.S. 204 (March 3rd 1889).

I am an American as defined in the United States Constitution, Article II, section 1, clause 5. One of the "We the People" freely associated, compact, United States of America; the Declaration of Independence of 1776 C.E.; the Northwest Ordinance 1787 C.E.; the Constitution for the United States of America 1789 C.E.; as amended by the Bill of Rights 1791 C.E.; and, the Washington State Constitution, 1889 C.E.

I am a natural-born, free, living, breathing, flesh and blood human, with sentient and moral existence, a real man upon the soil, an Inhabitant of America and I do claim all Allodial Rights contained within the State and Federal Constitutions, National and/or International Treaties, and all my GOD given Rights. See “Washington and U.S. Constitutions” “Universal Declaration of Human Rights” “International Covenant of Civil and Political Rights” and the “Holy Bible”

I did not waive my right to effective assistance of counsel nor did I waive my rights to compulsory process. I do not recognize Judge Knight or any Superior Court Judge in Snohomish County as having the authority to circumvent my guaranteed rights. I do not have to choose between two guaranteed rights, ever.

”The Constitutional requirement of due process in safeguarding the liberty of the citizen against deprivation through the action of the State embodies the fundamental conceptions of Justice which lie at the base of the Civil and Political Institutions of the United States” Hebert v Louisiana, 272 U.S. 312,316,317 71 L ed 270, 273, 47 S Ct 103, 48 ALR 1102

It is the **DUTY** of Courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon.

No argument can be made that can justify the Courts misconduct in this case. The posture that was taken by the Court is contrary to the concepts of justice and are repugnant to the Constitution.

This case was undertaken with utter disregard of my rights and no fancy legal argument can smooth that over or elude from the obvious trespasses against my rights at every turn in this case.

“Upon the trial Judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused....” Holloway v Arkansas 435 U.S. 475, 55 L Ed 2d 426, 98 S Ct 1173 (1978)

How can a trial Judge justify encroaching himself upon the essential rights of the accused? He is sworn to uphold the Constitution and Judge Knight did not fulfill that oath in this case.

“Every Judge of the Supreme Court, and every Judge of a Superior Court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of Judge to the best of his ability, which oath shall be filed in the office of the secretary of state.”
(section 28 “Judges Oath”)

Judge Knight sought to have me bear the burden of my attorneys’ failures. I did not agree or consent to that.

“No fictional relationship of principal agent or the like can justify holding the criminal defendant accountable for the naked errors of his attorney.” “an attorneys’ ignorance or errors are beyond the clients’ control” Wainwright v Sykes 433 U.S. 72, 53 L Ed 2d 594, 97 S Ct 2497 (1977) at [433 US 114]

“The Sixth Amendment mandates that the State bear the risk of Constitutionally deficient assistance of counsel.” Murray v Carrier, post, at 488, 91 L Ed 2d 397, 106 S Ct 2639 (Where a “procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the State”); Cuyler, supra, at 344, 64 L Ed 2d 333, 100 S Ct 1708 (“The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance”); See also, Evitts, supra, at 396, 83 L Ed 2d 821, 105 S Ct 830 (“The Constitutional mandate is addressed to the

action of the State”) [Kimmelman v Morrison 91 L Ed 2d 305, 477 US 365 (1986)]

There was no valid waiver of my right to effective assistance of counsel. There was failures by my attorney, a deficient performance, ineffective assistance of counsel, and there was misconduct on the part of Judge Knight in attempting to impute the responsibilities for my attorneys’ failures upon myself.

This Court must recognize that I am entitled to all the rights secured to me by law and find that I did not intentionally, knowingly, waive any right to effective assistance in this case and reverse the conviction.

(3) This case should not have gone forward on March 22nd 2010. The Court erred by denying the defense counsels’ motion to continue when she made it perfectly clear that she could not present the defense due to her failing to obtain the records and subpoena the necessary witnesses.

This case was continued above my objections on March 5th before Judge Knight. Ms Mann attempted to have me accept new counsel at that hearing because she had failed to obtain the necessary records or to interview the witnesses and she was not prepared for trial. I explained my position in the case to the Court at that hearing.

Mr. Wiggin: “She got me to sign a waiver of my speedy trial rights under the premise that she was going to go obtain those documents and she told the Court that she was going to do that. So that was her representation both to me and the Court, which she failed to do.” [Tr Mar 5th pg 5 at (19-23)]

That response was in reference to a waiver that I signed while the case was an out of custody issue but it went towards why I declined to afford

my attorney any continuances. She had lied to me and manipulated me in the case and I had sought relief from the Court earlier in the case and they had denied me relief. I had made it clear at that time that I would not sign any waiver of my rights to a speedy trial away should counsel fail to prepare properly for trial. I had explained to the Court on February 4th that I had no faith in Ms. Manns' word and that I had no faith that she would represent me properly in the case because of her leaving the Country for several weeks but also because of her performance up to that point. **See [Tr. Feb 4th pg 2 (23)-pg 5 (2)]**

I also made it quite clear that I did not intend to bear the burden for her failures in preparing the defense. All these issues were relevant towards my reluctance to afford my attorney the additional time. I did not believe that Ms. Mann would ever produce the records or seek out the witnesses in this case.

Mr. Wiggin: "Now she wants to say to the Court we're at an impasse and we can't communicate so therefore, I'm going to have to start all over. I tried to invoke my Sixth Amendment rights to a speedy trial. They've already been violated. I have appellate issues, and my position is that I'm more than willing to work with the State, but if the State, even should they get a conviction on me, this is appellate issues.

This is ineffective counsel. She has done nothing, nothing on my case, and I did tell her exactly what my defense was going to be and I made her—she wouldn't meet with me. She would not meet with me. She was unavailable because of a murder trial. Then she was out of the Country. **Those are not my issues. Those are not my problems.** [Tr Mar 5th pg 8 at (1-14)]

The Court: "I'm having a hard time figuring out what it is, if anything, that you're requesting. I mean, you've made a long indication of your unhappiness with Counsel, but it doesn't sound

like you want necessarily new Counsel, since that would make the case be continued.” [Tr Mar 5th pg 9 at (2-7)]

Mr. Wiggin: “Exactly, that’s the only reason. I already tried to have her replaced because of ineffective Counsel. So at this point, you know, I’m just ready to push forward and just deal with it on an appellate issue...” [Tr Mar 5th pg 9 at (8-11)]

I never intended to relinquish any rights in this case. I intended to push forward and deal with the violations of my rights in the appellate Court because the Snohomish County Judges were not ensuring that my rights were being effectuated.

I explained my position again before Judge Knight on March 8th, 2010. Again Ms. Mann had failed to produce the records and to interview the witnesses to be called.

Mr. Wiggin: “From the onset, I mean, my position, is that what it’s been from the onset, that, you know, Ms. Mann has had the case for 200 plus days now total, was assigned to her in August 18, 2009, she hasn’t taken the case seriously.

It was January 11, I wrote Bill Jacquette complaining about ineffective counsel and her refusal to meet with me, take my calls. She was not taking any part of my case seriously. All she wanted to do was talk about the States’ threats, if I didn’t take a deal, what the State was going to do. And I kept trying to tell her the scope of my defense, and she wouldn’t listen. She wouldn’t hear it.” [Tr Mar 8th pg 5 at (10-23)]

Mr. Wiggin: “After five weeks the Court ruled they would not replace her and that I could not fire her. And now when it came to trial call, all of a sudden, because it would be the burden, she couldn’t get an appropriate defense done in time, then all of a sudden it became beneficial for her and the State you know, to have it replaced, and then re-set everything all over again.” [Tr Mar 8th pg 7 (22-25)—pg 8 (1-4)]

The Court then engages in a game so to speak to somehow get me to say that I agreed to have Ms. Mann represent me that day. I had clearly stated

my position and the Court sought to gain a waiver by using something I might say to constitute that waiver. Everything you say can and will be used against you, but does the Court have a right to engage in trickery into gaining a waiver of a right?

The Court: "So, in essence, your answer to my question is you agreed for her to represent you for this trial today?"

Mr. Wiggin: "I—What I—What I am saying is that....."

The Court: "No, Come on, just answer my question.

Mr. Wiggin: "What do you mean?"

The Court: "Did you or did you not agree to that?"

Mr Wiggin: "I object to starting over again, to taking new counsel and having to start over because she.."

Judge Knight would not even allow me to finish my sentences and intentionally engaged in judicial misconduct by campaigning to solicit a waiver of my rights against my knowledge.

It is, however; quite clear that I did not wish Ms. Mann to represent me in the case but I did not wish to continue the case because of new appointment of counsel and that I did not consent to carry the burdens of counsels' failures when that burden lied with the State. I did not wish to waive my right to a speedy trial but agreed in that the case should be continued at that time because my attorney was not prepared for trial and the Court agreed in that the case needed to be continued.

The Court: "If I deny her request, you will have an automatic built-in argument that her representation of you was ineffective because she or her office made a mistake in getting the right agency."

So you can't have it both ways by saying, I want to go forward, Judge, but I want the records. The records can't be obtained for this trial today.

You can't have the argument that, well, I don't want her—I want to go forward, and let's go forward and she doesn't have the records, and then it's going to be argued ineffective assistance of counsel. It's one or the other. I'm not going to buy into that situation." [Tr Mar 8th pg 9 at (22-25)]

Judge Knight goes on to attempt to bully me into choosing between the right to effective assistance or the right to a speedy trial and he begins to yell and point his fingers at me.

Mr. Wiggin: "I'm not raising my voice or pointing at you"

The Court: "Do not interrupt me." [Tr. Mar 8th pg 10 at (16-18)]

Judge Knight goes on to explain that the case is going to be continued because the trial could not possibly be a fair trial and the assistance of counsel would not be effective should the case go forward with my attorney having failed to obtain the necessary records ect.. and due to her failing to subpoena the witnesses to be called on behalf of the defense.

Mr. Wiggin: "So then how does the burden lie on me then where I have to say, Okay, now I'm agreeing to a continuance? How does the burden lie on me?" [Tr Mar 8th pg 12 at (21-23)]

The Court: "First of all, you don't have to agree. The matter can be granted without your agreement. [Tr Mar 8th pg 12 at (24-25)]

Mr. Wiggin: "Now I'm the one that's incarcerated. I'm the one burdened with doing the time. I'm the one that told them from the onset the scope of my defense. And it would have been very easily obtainable, all these records that we're talking about, had she just taken me seriously that it was going to go to trial. But instead, she chose to dismiss it." [Tr Mar 8th pg 13 at (17-24)]

The Court “What happened is that they got the wrong records”

Mr. Wiggin: “No, they didn’t even try to get the records until just days ago.” [Tr Mar 8th pg 14 at (2-3)]

The Court: “But they got the wrong records.”

Mr Wiggin: “But it’s still, it’s a last ditch effort to try to build some kind of a defense, and now I’m supposed to buy the fact that maybe there’s a breakdown. There was no breakdown. There was just a, I want you—they’re pitching for a deal, and I’m not going to take that deal and so now when it comes right down to it, okay, now we’re going to go to trial, well, we’re not ready for trial, so now we need to push this over. And they’re already, as far as I’m concerned, two weeks, they’re 14 days beyond the 3.3” [Tr Mar 8th pg 14 at (5-15)]

The Court: “Is your position that you wish to have another attorney? Which the continuance will probably be much longer? [Tr Mar 8th pg 15 at (10-12)]

Mr. Wiggin: “I would rather not continue it much longer, no. But what I’m saying is I am not going to agree to circumvent my Sixth Amendment right to a speedy trial.” [Tr Mar 8th pg 15 at (13-16)]

The Court: “I’m not asking you to agree. She asked as a matter of courtesy to you, to ask you to agree. [Tr Mar 8th 15 at (17-20)]

Judge Knight goes on to explain some choices in the matter and summed it up with that I did not wish to continue it much longer by reappointment of counsel but I also was not waiving my rights to a speedy trial.

The Court: “By saying you either agree to a continuance or you don’t, but you still wish to have Ms. Mann represent you than somebody else.” [Tr Mar 8th pg 16 at (23-25)]

Mr. Wiggin: “I’m going to leave that up to you. I’m going to state that it’s not a matter of a breakdown, it’s a matter of, you know, she’s now on board with the fact that I do in fact have a defense to this, so that gives me some hope that at least now she’s taking me seriously that, you know, I wish to pursue this to trial.

If you know – and actually I would have much rather had worked with the State and tried to negotiate something that was fair and reasonable so that we wouldn't have even had to have come to this, you know, point.

But to be honest with you, another month or two, no, that wouldn't—that's not what I'm looking for. **I am looking for Ms. Mann to fulfill her obligation, and thus far she has not.** So I'm hopeful that she will get on board now and do what she's supposed to be doing and represent me and build an effective defense. That's what I'm hopeful for.” [Tr Mar 8th pg17 at (1-20)]

Mr. Wiggin: “I'm not going to waive my rights, though, to a speedy trial. That's been my position from the onset. And I don't believe that **burden should lie on me to circumvent my rights,** especially since this case goes all the way back to August 18th. And that's just where I'm at” [Tr Mar 8th pg 18 at (22-25)—pg 19 at (1-2)]

There is no way I could have been any clearer in my position in this case than I attempted to explain to Judge Knight on March 8th.

The Court: “I agree in that the matter should be continued, because the situation in front of me that's been presented is that if I don't grant the request, the defense that you wish to have advanced cannot be advanced... ..And I do conclude that I'm faced, between that or denying the request for the continuance, which really then has you in a position of going forward without the information that you really would potentially need to advance the defense you want, which then you would increase your chances of being convicted.” [Tr Mar 8th pg 19 at (23-25) – pg 20 at (1-20)]

The Court: “...And what I'm hearing is that **for you to receive a fair trial, that administration of justice requires that I grant your attorneys' motion for a continuance** and the record will show that that was not with your agreement, but the record will also show what I just stated in regards to the options, and I come to the conclusion, for the reasons stated, **that the administration of justice and your interests are best served by granting the request for a continuance,** and it is granted over your objection and over the prosecuting attorneys' objection.” [Tr Mar 8th pg 21 at (11-22)]

The case was continued for two weeks and my rights were preserved in that I did not waive them by agreeing to the continuance or signing a waiver of my speedy trial rights.

Ms. Mann came before the court on March 19th and again attempted to solicit a waiver from me and again motioned the court for a continuance above my objection. I made my position clear at that hearing as well.

Mr. Wiggin: “Caroline Mann did this to me through the course of this entire case and my last case, waited until the very last second until trial call even on my Rob 1, had me convicted of first degree armed robbery now, all right? This one, she’s had for more than 200 days. Every time I meet with her, it’s some kind of an excuse about how she hasn’t done this or hasn’t done that.” [Tr Mar 19th pg 6 at (8-14)]

NOTE: When I said met with her, I meant the one or two minutes prior to each hearing.

Mr. Wiggin: “And I tried to have her replaced in January. I complained. I told Bill Jacquett. I came before the court. I motioned the court twice to have her replaced as my counsel. They denied that.

She went on vacation, left the Country, came back, like I said, waited until this day, trial call day, to even begin to look at my defense for my robbery. I’ve been found guilty on that robbery now.

At this point – and then she asked for Cambell against my – she went above me. And now here she wants to do it again. So I’m prepared to just go pro-se and because **I invoke my Sixth Amendment rights**. So I’d ask to do that, then, if she can’t do what she was supposed to do, which she hasn’t. She’s made no efforts like she presents to the Court.” [Tr Mar 19th pg 6 at (15-25) – pg 7 at (1-4)]

I invoked my Sixth Amendment rights. Which is not limited to the right to a speedy trial. It’s also the right to effective assistance of counsel and the right to compulsory process ect.... I had been denied effective assistance of counsel from the onset of this case and I wanted to just push forward and deal with the issues at the appellate level.

Mr. Wiggin: “I don’t want to put it off at all. Put it to Monday. I’m not waiving my rights. You guys have trampled all over my rights from day one. [Tr Mar 19th pg 8 at (7-9)]

The Court: “All right. Then I’ll deny the motion to continue.

There was no waiver of any rights at that hearing and Judge Mckeeman did not find that any such waiver was expressed or intended. I appeared before Judge Knight on March 22nd, 2010. My attorney once again motioned for a continuance above my objection because she failed to obtain the necessary records and had not made contact with or subpoenaed the witnesses in the case.

Ms Mann: “The difficulty is, You Honor, is that Mr. Wiggin wishes to present a mental health defense that is – the records do establish that at the exact right time period, he did go into this agency reporting significant – a significant psychiatric episode.

He has been diagnosed as schizophrenic and they made the determination on the day that he went in that he was not civilly committable. They set him an appointment two days later and he did not make that appointment.

There is, we are hoping, some evidence through the jail and the agency that we haven’t yet gotten records out of that upon his booking into the jail approximately two months later at the end of this charging period, there would be some information about a psychiatric statement that he went in there to cover both ends of that time period.

There has – I was somewhat optimistic before that we might possibly be able to come, based on the records we have, to come to some negotiated settlement. That has not happened.....

....On Friday at trial call, I had requested that this case be continued. Judge McKeeman denied that, I believe that Judge McKeeman was essentially finding – although he did not make this finding specifically – that my client, by his reluctance to waive his right to a speedy trial was essentially choosing to be ineffectively assisted by counsel. I do not believe that is Mr. Wiggins’ choice. **He does wish both a speedy trial and to be effectively represented.** I do not know if an in depth psychiatric evaluation will establish a mental health defense, but it is certainly a significant possibility – either his diminished capacity or possibly an insanity defense. I am concerned that at this point, if we proceed to trial, I would be unable to present either one of those” [Tr Mar 22nd pg 4 at (15-25) pg 5 at (1-25) and pg 6 at (1)]

Ms Mann: “But I do believe that **I cannot provide effective assistance** even if Mr. Wiggin is willing to waive that, which he has certainly never expressed that he is.” [Tr Mar 22nd pg 6 at (17-19)]

Ms Mann confirmed that I did in fact have a valid defense, that I did wish both a speedy trial and effective assistance, and she confirmed that her representation and assistance was not going to be effective should the trial proceed.

Judge Knight had heard the same exact case with the same exact circumstances just two weeks prior and he himself ruled that the only way I could get a fair trial was to continue the case above my objections but he took a different position on March 22nd, 2010.

The Court: “So it really doesn’t sound like we’re doing anything except like a gerbil in a cage going around and spinning around and around and around. I don’t have any reason to believe that continuing it two weeks is going to accomplish anything. I already continued it two weeks then.” [Tr Mar 22nd pg 7 at (2-6)]

The Court: “Well, that’s what I’m hearing – it might, it might, it might, Not that it will, it will, it will. As I understand it, the case that went to trial last week, your client was found guilty and he’s probably facing 10 years or thereabouts on a sentencing for that offense.

So now I think that we’re at the same position that he wants his cake and eat it too. He wants you to explore this to the best of your ability, but he doesn’t want to waive his right to a speedy trial.

Even though he’s probably going to be in prison for the next 10 years of his life, he doesn’t want to have this case continued for two weeks. That’s what it sounds like. It sounds like that is it – I don’t know – what Judge McKeemans’ thinking was, but he denied your request just last Friday afternoon.

Here we are. You’re renewing the same request. It sound like to me that Mr. Wiggin wants to go to trial and not waive his right to a speedy trial. If there is ineffective assistance of counsel, argument may be made is that it is. Let him make it.

At the same time, the State can make argument that he waived it. He wanted both. Took his chances. He lost. So that’s what it comes down to.” [Tr pg 9 at (9-25) – pg 10 at (1-6)]

CrR 3.3 (1) provides: that it shall be the responsibility of the Court to ensure that a trial is in accordance with the 3.3 rule to each person charged with a crime.

CrR 3.3 (1)(i) provides: that a defendant who is detained in jail shall be brought to trial within no longer than 60 days after the commencement date specified in 3.3.

My position in this case was that the Court was in violation of my Constitutional rights to a speedy trial and the right to effective assistance of counsel and I was not going to waive my rights. I did believe that the case should be continued as it was before, by Judge Knight even, but I was not going to bear the burden for my attorneys' failures and give her even more room to disregard my rights.

Judge Knight was telling me that I absolutely must sign the waiver to a speedy trial or he would consider that my reluctance to do so would constitute a waiver of my rights to effective assistance of counsel at my trial. I fully intended to push forward and settle the Constitutional issues on appeal, not waive them as Judge Knight wished to see it.

CrR 3.3 (f) (2) provides: On motion of the Court or a party, the Court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will **not be prejudiced** in the presentation of his or her defense. The motion must be made before the time for trial has expired. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that partys' objection to the requested delay.

On March 8th, Judge Knight found that the administration of justice could only best be served in continuing the case and stated plainly that in order for me to receive a fair trial, the case needed to be continued.

On March 22nd, he himself stated that he could see **no prejudice** to me by continuing the case and the State also addressed the issue of “prejudice” with regards to a continuance at that time.

The Prosecution: “My position is that the State is ready. The State will be ready whenever you ask me to be ready. **There’s no prejudice to the States’ case if it is continued.**” [Tr Mar 22nd pg 11 at (4-6)]

The Court: “Okay. Mr. Wiggin, that’s what it sounds like to me. Is that there would be no prejudice to you in having this matter continued since you are going to be incarcerated for about – I don’t know, I’m guessing as to what the range may be, but it sounds like around 10 years. Ms Mann is asking for a two week continuance. **I cannot see how that can prejudice you at all.**” [Tr Mar 22nd pg 11 at (7-14)].

So the Court acknowledges that there can be no prejudice to the defense and the State claims there can be no prejudice to the States’ case should the matter be continued, my attorney has clearly stated that she has failed to obtain critical records and documentation and failed to interview and properly subpoena the witnesses in the case to support the defense and that the records do reflect that the defense of “diminished capacity” does appear, prima facie, to establish that such a defense is likely valid and legitimate, and CrR 3.3 (f) (2) gives the Court the authority to continue the case in the interest of justice. These facts cannot be disputed.

My position was as it was throughout the entire case. I made it clear at every single hearing and on this day in Court as well.

Mr. Wiggin: “My position on this is that Ms. Mann has continuously misrepresented to the Court what is going on in the investigations. This supposed break down between us is – at one point when I tried to have her reassigned, it was the Court that denied that motion.

On the following day, I came in and I said, “Look, please, she’s leaving the Country anyway, we are at an impasse. She will not listen to me as far as the scope of my defense.” She just wasn’t trying to hear nothing at all.

So twice – two days in a row, I was denied being able to be assigned new Counsel. They told me that I had no right to fire Ms. Mann. Then I sent letters to Bill Jacquett complaining about the ineffective Counsel that I was receiving and the fact that she would afford me no time and no consideration when she did meet with me to even listen to me about the scope of my defense, the witnesses that I would like to call and so on and so forth.

So he sends me back a letter saying that he spoke with Ms. Mann and says that he is satisfied. Okay. The Court denied me a new attorney twice. Bill Jacquett said that she assured him that she was right on top of both cases. In my robbery charge, same thing. She waited to trial call to even really begin to look. She did nothing. They made one effort into an investigation of one witness and nothing else.

All of the other things that I tried to get her to bring on my behalf to represent me in my – on my other case, nothing was done. She threw a last ditch effort, a sham of a defense together at the last second. Now she is here on the next case, saying the same thing, even though **she has had this case for 200 plus days.** We’re not talking about just 60 days, your Honor, and she needed a couple of weeks. She has had this case for 200 and something days, you know, and has done nothing – nothing on it. [Tr Mar 22nd pg 12 at (8-25) – pg 13 at (1-16)].

The Court: “What’s your point today sir?”

Mr. Wiggin: “On the case that we’re here for today?”

The Court: “Yes”

Mr. Wiggin: “That was given to her.”

NOTE: Meaning I had conveyed my position to my attorney just moments before the hearing.

The Court: “No I’m asking you, do you want her to represent you or do you not?”

Mr. Wiggin: “I was already denied.”

The Court: "I'm asking you now." [Tr Mar 22nd pg 13 at (17-24)]

I had just explained a strong case to Judge Knight with regards to ineffective assistance of Counsel and obvious failures by counsel and deception on her part to the Court with regards to the case and her investigations, and the Court only replied with, "What's your point here today sir?"???(emphasis added)

The Court did not care whether I was receiving effective assistance in this case not did the Court care whether or not my rights to a speedy trial were going to be preserved. Judge Knight intentionally overlooked the Constitutional issues that were presented to him and decided to attempt to bully me into a waiver of my rights instead and when that didn't work, he sought to somehow justify disregarding my rights by insinuating that there was a waiver of my rights by me.

Mr. Wiggin: "I want my speedy trial rights."

The Court: "No. I'm sorry. I am asking you, do you want Ms. Mann to represent you on this case or do you not?"

Mr. Wiggin: "The Court already.."

The Court: "I am giving you that option now, sir."

Mr. Wiggin: "You just want me to start over is what you're trying to do."

The Court: "No. No. I'm giving you the option that you wanted, sir."

Mr. Wiggin: "No. That is not – you're – no. It has already been ruled on by the Court."

The Court: "I have the right to rule on it, sir. Do you want to or not? Do you want Ms. Mann to represent you or not?"

Mr. Wiggin: "I want – I want --..."

The Court: “If you don’t answer me yes or no, I will assume that you want her to represent you.” [Tr Mar 22nd pg 13 at (25) – pg 14 at (1-16)]

As I had already said to the Court, they denied me the right to fire my attorney and then when it would be beneficial to them, because she failed to prepare the defense, all of a sudden they could grant me a new attorney. The Court engaged in misconduct. Judge Knight was yelling and pointing at me and wouldn’t even allow me to finish my sentences at times.

My attorney had explained my position and I had explained my position as well. Judge Knight did not care about whether my rights were being effectuated and he intentionally engaged in an improper campaign to solicit some sense of a waiver of my speedy trial rights or to get me to accept new counsel, which would then restart all my Court dates over. He said it best himself, “I will **assume** that you....”

Mr. Wiggin: “I want to proceed forward. You guys have already violated my speedy trial rights.” [Tr Mar 22nd pg 14 at (17-18)].

That is not a waiver of any rights. That is a, I’m going forward. I’m not waiving my rights nor am I accepting new Counsel in the case which would cause delays when the Court denied me that relief earlier when I sought it months prior to the trial and it’s a “**You guys have already violated my rights...**”, I’m taking this to an appeal. That is what I said at every opportunity in this case and it is clearly stated in the transcripts in this case on February 4th, March 5th, March 8th, March 19th, and March 22nd.

Judge Knight engaged in judicial misconduct and abused his discretion on March 22nd, 2010. He made the proper choice in the matter just two weeks prior on March 8th, but he changed his tune on March 22nd.

He had already disarmed any appeal issue based upon “lack of prejudice” caused by the continuing of the case in the interest of justice, so the only clear and actual prejudice that could be caused to me and my defense would be to “NOT” grant the continuance which is what he found to be the case on March 8th when the same exact circumstances existed in the case at that time.

The Court erred by allowing this case to go forward knowing that my attorney had failed in the case and was not prepared to present my defense.

I did not get a fair trial and I did not waive that right. In the interests of justice, the conviction in this case must be reversed.

E. CONCLUSION

“We hold these truths to be self-evident: That all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that **to secure these rights, governments are instituted** among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its’ foundation on such principles, and organizing its’ powers in such form, as to them shall seem most likely to effect their safety and happiness.”

When in the course of any criminal proceeding, the Court becomes destructive to the ends of justice and fails to effectuate and ensure such rights as granted and guaranteed to me by the supreme law of our land, then I am compelled to speak, to decent from such actions against me. Silence equates acceptance. I did not and do not accept such a form of government and I do not consent to the jurisdiction of any such body of people who so blatantly disregards the very values and principles upon which our great nation was founded upon.

The Constitution protects all people. The guilty as well as the innocent. The poor as well as the rich. The educated as well as the ignorant. The law is not discriminate. Unfortunately, people are.

This case was undertaken with reckless disregard of my constitutional rights. Mr. Grannis has made a fine argument in the case and he has afforded me every professional courtesy thus far. However; I must respectfully say that I do believe that Mr. Grannis has eluded from the deeper Constitutional issues in this case and has limited his argument to mere technical points when there are obvious Constitutional issues deeply rooted in the case and contained within the Court record.

I was unlawfully convicted of this crime in violation of my 14th Amendment right to Due Process, my 8th Amendment right to equal protection of the law, my 6th Amendment right to effective assistance of Counsel, and my 6th Amendment right to compulsory process.

A criminal prosecution in the Courts of a State, based upon a law not in itself repugnant to the Federal Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the State, is due process of law in the sense of U.S. Constitution 14th Amendment, so long as it includes **notice and a hearing or an opportunity to be heard** before a Court of competent jurisdiction, **according to established modes of procedure.**

That did not happen in this case. There was no proper notice nor was there any opportunity to be heard and the Court certainly did not follow established modes of procedures.

The assistance of Counsel is among the Constitutional rights so basic to a fair trial that their infraction cannot ever be dismissed and deemed "harmless error".

There is no doubt in this case, that the result of my trial would have been different but for Counsels' deficient representation. Her performance was so grossly Constitutionally deficient that to have been out-right denied Counsel all together, would have produced like results.

What other conclusion can be made in this case other than; the conviction was obtained through arbitrary actions and governmental misconduct in violation of the United States Constitution and the laws of the State of Washington.

I was arrested, all property of mine was seized, and I was held imprisoned, without due process of law, under color of law and office, for the sole purpose of being held to account for an infamous crime, without proper service of notice (as my appellate attorney has pointed out), without representation of Counsel, through the denial of compulsory process to call witnesses in my behalf, and for other failures as set forth and contained herein, constituting violations of my 6th, 8th, and 14th Amendment rights.

Standards of conduct exist to ensure that convictions cannot be brought about by methods that offend a sense of justice..

The rationale behind the due process right is that a criminal trial provides a defendant a full and fair opportunity to develop and litigate the issues in the criminal case. That did not happen. This case was a complete miscarriage of justice.

Rules are calculated to prevent, not to repair. Their purpose is to deter – to compel respect for the Constitutional guarantees in the only effective available way – by removing the incentive to disregard them.

Following the rules is not an end in itself, but to intentionally divert from them to produce an end is contrary to the purpose for which the rules were intended and thus failures to act within the guidelines set forth in the rules produces unsound results.

The judgement in this case is void. The Court engaged in judicial misconduct that is repugnant to the United States Constitution and the Washington State Constitution. The Snohomish County Superior Court has divested itself of the jurisdiction over the subject matter in this case and it now lies within this Courts' authority to make right that which is wrong. *Antonie v Atlas Turner, Inc.*, 66 F 3d 105 (6th Cir 1995); FRCIP 60 (b)(4).

.. "inadequacy of Counsel undercuts the very competence and jurisdiction of the trial Court and is always open to collateral review." *Johnson v Zerbst*, 304 US 458, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357.

"To support a motion to dismiss in the furtherance of justice, arbitrary government action or mismanagement need not be evil or dishonest; simple mismanagement is enough."
CrR 8.4 (b)

This case was grossly mismanaged and the trial Court refused to grant me the due relief in this case. I now respectfully move this Court to recognize the issues stated herein and to grant the appropriate relief due to me.

I am not an attorney and I am not legally trained so I humbly request this Court to afford me liberal reading of this pro/se document and grant me relief whether independently requested or not and upon any and all grounds whereby relief can be granted whether expressly contained within this document stated in the legal argument or whether contained in any statement of a motion to this Court or not, in the interests of the furtherance of justice.

I move this Court to vacate the judgement in this case pursuant to CR 60 (b)(4) and CrR 8.4 (b) and any other relief or ground relevant within 7.8 or 8.3 as it may apply in this case.

I further move this Court to recognize that I do have the right to a speedy trial and because the Snohomish County Court intentionally denied me that right, or because to allow them to continue action against me in this case would be to allow them to make a mockery of those rights, I ask this Court to not only vacate the judgement but also to dismiss these charges with prejudice.

I also move this Court to order an evidentiary hearing to determine the facts in this case should the State wish to contest or otherwise rebut the truthfulness of the stated facts contained herein.

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

STATE OF WASHINGTON

Respondent,

vs.

JAMES O. WIGGIN

Appellant.

) Case No.: No 65215-0-I

) Affidavit of Service by Mail

2010 SEP 27 AM 11:06

FILED
COURT OF APPEALS
STATE OF WASHINGTON

I, James O Wiggin, declare under penalty of perjury under the laws of the State of

Washington that I did serve the following documents:

- (1) Affidavit of mailing
- (2) S0tatement of Additional Grounds

UPON:

Court of Appeals for the
State of Washington
Division I
600 University Street
Seattle, WA 98101-4170

Prosecuting Attorneys' Office
For Snohomish County
3000 Rockefeller Ave.,

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

by placing same in the United States Mail at Coyote Ridge Corrections center in the city of

Connell in the State of Washington on the 22nd day of September, 2010.

Signed by me [Signature] this 20th day of September, 2010 at Connell Washington

Subscribed and sworn to me before this 20th, day of September, 2010.



[Signature]
Notary Public for the State of
Washington
Residing in: Connell
Commission Expires: 10-10-2012