

67609-1

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)

Respondent,)

v.)

JASON DAVIS)

(your name))

Appellant.)

No. 67609-1

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Jason Davis, 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

See Attachment

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STATE OF WASHINGTON
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Additional Ground 2

See Attachment

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

Date: 3-15-2012

Signature: Jason Davis

Additional Ground 1

If the jail phone calls made, which were done so within the context of extreme conditions themselves, are to be used against me, (something I am still not sure is right as they are not being used as evidence of a crime or even evidence relating to the crimes I was charged with) then they should at least be examined in context and in their entirety. This is my life. It should not be stripped from me through trial by soundbyte like some political smear ad. Firstly, I believe the prosecution's focus on the word "only" taken out of the context of a phone call which was made moments after returning to my cell from an event which felt like a suicide attempt to me, a phone call in which I am stumbling over my words and physically shaking while talking to her, would be foolish and unfair even if it was in fact the only reason given in the phone call. The truth is that if we examine the phone call itself (Defendant's Exhibit 9) then we see that not only was that statement prefaced as being one of the things I could "talk about" as opposed to the things I could not talk about, which my mother's statement immediately preceding this comment revealed she was aware of, but also is followed in the same call by a reference to not just another reason for pleading guilty but that reason was the death threats from Chad Andrews and my anguish at being forced to lie during the colloquy about those threats and my guilt. Clearly, the information regarding the lack of defense (according to my attorneys, a subject we will touch upon in a moment) was not one of the things I had previously been unable to talk about but was now free to discuss thanks to the plea, as suggested by Ms. Kanner (Hearing Transcript pgs 83, 84), because I had previously spoken about that on earlier calls and it had always been considered a "safe" topic. Furthermore, I directly reference the death threats in the context of the colloquy question of coercion in this same call and when I realized how close I was to saying something that would cause guilt and anger for my mom and place me in a difficult and compromised position in my cell I scrambled to tone down that statement. There were multiple reasons I could

not express my fears to others. I came as close as I dared. In addition, I expressed my profound grief at having to claim my guilt for a crime I was not actually guilty of. Without knowing me as a person it is impossible to understand how heavily that necessity weighs upon me; perhaps as much as the entirety of my sentence. I believe that should be enough on its own to qualify as a "manifest injustice." Of course, it's not on its own. Later that same day, April 22nd, I made a call to Stacy Hill's mother Sheryl Hill where again I reference the death threats from Chad Andrews (State's Exhibit 11) and also once again talk about my shame in being forced to lie during the colloquy. In fact, in this call with Sheryl I relate what I'm feeling to the abuse I suffered growing up. Abuse suffered in order to protect my mom and younger brother. A situation of self-sacrifice to protect those I loved that for obvious reasons was haunting me that day. I hate lies and, perhaps due to the nature of my abuse, I feel a great shame and sense of cowardice when forced into a lie. This anguish is repeatedly expressed in those phone calls. To quote: "things I had to say that I didn't believe mom, you know." (Defense Exhibit 9) Immediately following that I reference question of the threats and further on my guilt. In fact, during the plea colloquy all direct questions were answered by me immediately and clearly. All but one. When Judge Armstrong asked me if I was threatened into taking the plea I hesitated for the only noticeable amount of time during the colloquy, eventually stating, "Um, no." (Attachment C Plea Hearing Transcript Pg 9 Ln 9) Now as regards the statement which the prosecution cites as my "true" motive for pleading, which Mr. Nielser drastically understates as my attorneys having told me that my "defense was weak" but which is clearly and repeatedly related (sometimes in step by step detail) as no defense, comes dangerously close to ineffective assistance of counsel, especially in light of the high likelihood of a nearly identical or even very probably lower sentence following trial. While this direct appeal does not seek a claim of IAC as it was not sought in the hearing it should still be given weight in regard to the "manifest injustice" clearly in evidence in this case.

Additional Ground 2

In her decision, Judge Armstrong appears to rule based on an issue that was not actually even a part of the hearing, was blatantly untrue, and would have been laughably easy for the defense to disprove had we actually been given a chance to do so. As we were not given that chance, it doesn't even matter whether or not it was in fact true but as I hate for my honor to be impugned I will address it anyway. That issue being the concept that for some reason I was waiting for the no contact order to be dropped so I could then engage in witness tampering. First, considering the degree to which my mother was in contact with Stacy Hill, the dropping of the no contact order would have been utterly unnecessary to relay any message whatsoever. I held to the no contact order in everything but for wishing my son and Stacy my love, and talking to my mom about their safety. I held to it because I am not a criminal. I follow the law. My largest single motivation in having the no contact order dismissed was to finally be granted access to my son after more than a year. The conversation used to "prove" this witness tampering (though again as it was never actually alleged that I had engaged in said tampering and thus was unable to defend this accusation) was one in which I had learned that Chad Andrews was no longer living with her and, more importantly, no longer had access to her house. This meant it would now be far safer for her to actually testify and for the truth, the actual truth to finally be voiced at trial (now that there was no longer an unstable madman waving a gun in her face at her home) so true justice could be served. I never asked her to say anything but the truth, even though I did have some concerns that more than a year spent with someone who obviously hated me, wanted to kill me, and had been threatening her regarding her support of or indeed any concern for me with both death threats against me and also the constant and repeated display of a gun, might have distorted her recollection of that night or skewed her testimony. I would like to point out that the evidence of witness tampering is pretty overwhelming but only on the part of Chad Andrews. If I had engaged in even 1 percent of the actions carried out by Mr. Andrews I would have been brought up on additional charges and rightly so.

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Yet somehow my plea to her to now tell the truth at trial as he no longer had direct access to kill her or my son are considered tampering? And I am not even given the chance to defend that accusation though the judge states her decision is based in part on this very non-allegation? Judge Armstrong use of this in her ruling is false, invalid, and quite possibly illegal.

Additional Ground 3

In Judge Armstrong's fourth stated reason for her ruling she states, that the "best way to protect Stacy Hill and my son was to "go to trial, have the case dismissed, and be released" so I could then physically protect them. Firstly, it was the coming trial itself that was causing his growing instability and her testimony that I believed would fully unhinge him. The judge herself described him during the hearing as, "insanely jealous and upset" (Hearing Transcript Pg. 52 Ln 10-11). In addition, at that time he was in the house with them (so far as I knew) and obviously it would be impossible for me to be released fast enough to protect them, even assuming that I had learned to stop bullets during my time in jail and could somehow immediately evict him from her home. This entire statement is insane and it's difficult for me to believe it was written by a judge. Further, she claims that these are fears which Stacy Hill "did not share," which I assume is based upon the one or two comments made by Stacy which were fully in keeping with an abuse victim and completely outweighed by the mountain of other statements to her state of mind and how seriously she viewed the threats. Quotes from multiple exhibits and her own testimony at the hearing: "I was not allowed to mention Jason's name.", "And then when the detective contacted him again, the gun came out again and was there all the time.", "He was not joking.", "When he would get mad, I would, uh, drive my car to the grocery store and catch the bus from the grocery store to work instead of catching it from home or the park and ride because I was afraid he might do something to my car.", "I would, you know, press and ask what's wrong even though I knew better. Uh, the gun would come out." That last statement directly referring to the approaching trial. In an email just 20 days before the plea, "Chad is now more angry than ever. The trial getting closer has brought everything to the surface.", "I have no idea what Chad is

really capable of.", "Chad is out for blood." In an email the following day, "He accused me, again, of planning the entire thing." meaning the incident. Later in same email, "I know he is still monitoring my phone usage." In phone calls my mother described her as "all freaked out" and scared. Despite these statements, which pretty clearly indicate she did actually take his threats seriously, the truth is that whether she took them seriously is not relevant. What is relevant is my state of mind and whether I took the danger seriously. This can best be revealed in my May 8th call to Stacy Hill in which I attempt to convince her to get a protection order for her and Raine against Andrews (something I consider vital if we go to trial as it will at least provide them with some legal options to keep him away and make them even a little safer) and I state to her, "I'm worried about you and Raine being hurt or killed by a dangerous and unstable person." Lastly, Judge Armstrong argues that the plea being "entered as an altruistic gesture to ~~assist~~ (emphasis added) Ms. Hill, altruistic gestures are not grounds to set aside a plea." Judge Armstrong compares this to State v. Williams in which a father entered a plea of guilty in an attempt to shield his adult son who was also guilty of a crime. This comparison is insane, ridiculous, and sets an unbelievably advantageous precedent for organized crime. As long as they threaten the lives of the person's family members they are not using duress or coercion. Mafiosos take note. Not wanting my son or his mother to be killed is not the same as protecting a guilty party from being convicted of a crime. The comparison is offensive and insulting. Seeking to save their lives is not "assist[ing] Ms. Hill". I had every reason to believe the coming trial was creating a deadly and dangerous situation with a violent and unstable person who was repeatedly issuing specific and visceral death threats against me and actively seeking to harm any who cared about me. A person described by Judge Armstrong herself as "insanely jealous," and that this situation would very likely result in the deaths of my loved ones, myself, or both if we went to trial. State v. Frederick established that "threats from a third party that impair the voluntariness of the plea may rise to the level of a manifest injustice." In that, "the defendant must present evidence that meets his high burden." the evidence presented is overwhelming and uncontested by either defense or state. As such, the judge's decision is flawed and invalid.