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COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE
202103-01 11:57

NO. 68062-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

ERIC CARMICHAEL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Hollis R. Hill, Judge

STATEMENT OF ADDITIONAL GROUNDS, APPELLANT

ERIC CARMICHAEL
Pro se
Monroe Correction Center
P.O. BOX 888, C-313
Monroe, Wa 98272

MEMORANDUM OF AUTHORITIES

NOTE: CP = CLERK'S PAPERS

TT = TRIAL TRANSCRIPT

RELATING TO: CrR 3.6;

STATE V LADSON, 138 Wn.2d 343, 979 P.2d 833.....3

STATE V DAY, 168 P.3d 1265, 161 Wn.2d 889.....3

STATE V HOPKINS, 117 P.3d 377, 128 Wm.App. 855..3

U.S.V NEWBERRY, 8 F.3d 32 (9th Cir).....3

RELATING TO 'WORK PRODUCT':

U.S. V NOBLES, 95 S.Ct. 2160, 422 U.S. 225.....4

DOWDEN V SUPERIOR COURT, 86 Cal.Rptr. 20 180 73 Cal.App 4th
126.....4

STATE V ROUTE,117, Wash. App.1007.....4

RELATING TO: PRO SE ACCESS:

STATE V SILVA, 107 Wn.App. 605, 27 P.3d 663.....4

HAINES V KERNER, 404 U.S. 519 (1972).....1

RELATING TO MISCALCULATED OFFENDER SCORE:

STATE V GARZA-VILLARREAL, 123 Wn.2d 42, 47, 864 F2d 1348
.....9

STATE V MENDOZA, 165 Wn.2d 913 (2009).....12

RCW 9.94A.400.....8

RELATING TO: WASHINGTON CONSTITUTION:

Article 1, §22.....4

IDENTITY OF PETITIONER

Eric Carmichael currently incarcerated at Monroe Correction Complex/TRU, C-313 is the pro se defendant in this SAG as well as the counsel of record for the instant case. He asks the court to grant him deference to his layman status per HAINES V KERNER, 404 U.S. 519 (1972).

RELIEF REQUESTED

Mr Carmichael requests this court (a) dismiss the counts of Unlawful Possession of a Firearm 1st°, (b) possession of stolen property 1st°, and (c) remand for resentencing with instructions for a hearing to determine the admissibility of evidence seized during the Terry stop and search.

INTRODUCTION:

Mr. Carmichael alleges his Appellate Attorney was ineffective because she submitted what is essentially nothing more than an "Ander's brief", ignoring important issues and errors. He therefore asks this court to bear with his inexperience in raising all his issues properly. RAP 10.10.

ASSIGNMENT OF ERROR 1:

In the absence of a hearing or sworn testimony, the court

erred in not suppressing evidence found on Mr. Carmichael when he alleges he was illegally seized by Renton Police Department and charged with Possession of Stolen Vehicle when the vehicle in question was initially cleared (TT 300) as not stolen. A subsequent police inquiry of the registered owner who then claimed the vehicle stolen (CP 62) is unsupported by sworn testimony or oath and would be inadmissible as hearsay. The error would be in admitting hearsay evidence without a hearing or confrontation right of the accused.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 1:

Did the trial court err when it denied suppression absent a hearing or sworn testimony from the registered owner that the vehicle was stolen? (TT 112)

ASSIGNMENT OF ERROR 2:

The record is absent "specifically articulatable facts" warranting defendant's detention on a Terry Stop resulting in defendant's arrest from a reported 'suspicious activity' 911 call. The initial stop resulted in a police check for stolen vehicle which came back negative (CP 62). The investigating officers, Edwards and Steed (ref. police video), escalated the Terry Stop into a Terry Search without

articulatable facts to cause them fear for their safety or reason to believe a crime was in progress or had just been committed. The police used a parking infraction and "unreported stolen vehicle" as a pretext to stop Mr. Carmichael and conduct a search for evidence of a crime. Reference for the court's review see STATE V LADSON, 138 Wn.2d 343, 979 P.2d 833 (Pretextual stops [WORKMAN, etc.]); STATE V DAY, 168 P.3d 1265, 161 Wn.2d 889 (parking violations, ref. clerk's papers); STATE V HOPKINS, 117 P.3d 377, 128 Wn.App. 855 (particularized suspicion and criminal activity); U.S. V NEWBERRY, 8F.3d 32 (9th Cir.) (2 prong Terry analysis).

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 2

(A) Did officer Edwards overstep 'Terry' by conducting wallet search (TT 248); (B) Did the trial court err when it denied suppression when it had before it the facts and chronology of the pretextual 'Terry' Stop and the officers statements (ref. police video) admitting they "should have waited until the car came back stolen."

ASSIGNMENT OF ERROR 3:

As a pre-trial detainee, Mr. Carmichael was severely limited

and, in fact, prevented from developing confidential "work product" essential to his defense. The court approved Mr. Carmichael to represent himself as pro se, (TT Aug. 15, p11, 12, 13). Jail regulations allow attorneys and their clients confidential and unrecorded phone and personal communications between them free from subpoena or disclosure to opposing counsel. (reference U.S. V NOBLES, 95 S.Ct. 2160, 422 U.S. 225; DOWDEN V SUPERIOR COURT, 86 Cal.Rptr. 20 180 73 Cal.App. 4th 126; STATE V ROUTE, 117 Wn.App. 1007 (Cites omitted)). Mr. Carmichael's case development was severely impeded, hampered, and prejudiced preventing appropriate trial preparation (TT 96). Mr. Carmichael on numerous occasions (CP 36, 41, 53B, 61) requested non-monitored and non-recorded phone calls and funds for essential supplies and services from the Office of Public Defense. All of which were ignored. In addition, Mr. Carmichael made additional requests for legal materials such as WIPIC's which were also ignored. See STATE V SILVA, 107 Wn.App. 605, 27 P.3d 663; and NOBLES and DOWDEN, supra.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 3:

Did the court err in denying Mr. Carmichael meaningful access to the court and due process by ignoring his requests to protect and further develop his work product (TT 96) in preparation for trial?

ASSIGNMENT OF ERROR 4:

Mr. Carmichael was forced, as an indigent party, to advance his very limited funds to secure the limited material and services he was entitled to by right pursuant to Washington Constitution Article 1, §22 guaranteeing he did not have to advance such funds to secure that right.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 4:

Did the court err by ignoring Mr. Carmichael's constitutional right to State funds and services (CP 37, 56A, 56E, 56F, 78) necessary to his defense by ignoring his constitutional requests for funds and services and thereby prejudice his ability to properly defend his case and have full access to the courts? At one point the court issued a concilatory reimbursement of \$14.84 (TT Nov. 30, p122-123) agreeing he should not have to advance his own funds, but took no further action to secure this constitutional right for this instant case.

ASSIGNMENT OF ERROR 5

Mr. Carmichael was denied a jury instruction of unwitting possession (TT 825). The record shows the owner of the firearm testified she placed the firearm in the jacket pocket (TT 548), unknown to Mr Carmichael, where it was

found during the Terry Stop and search. The weapon being a small caliber was small and light-weight enough to be undetected or noticeable to Mr. Carmichael. The record is absent 'mens rea' and 'actus resus' required to convict for firearm possession.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 5:

Did the court err in denying defendant's jury instruction on knowingly and willingly, AKA "unwitting possession" when it had before it the owner's unimpeached testimony that Mr. Carmichael was unaware of its location? See Mr. Carmichael's censure by the court (TT p.827).

ASSIGNMENT OF ERROR 6:

Mr. Carmichael was granted motions in limine (TT 135) to prevent disclosure of prior crimes to the jury and, as a pro se defendant was inexperienced and not aware of the proper procedure to object when, while on the stand, the prosecutor attacked his character by disclosing his prior crimes to the jury (TT 644).

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 6:

Did the court err when it knew it had issued the in limine motions and did not (a) prevent the disclosure to the jury,

or (b) did not recess the jury while the prosecutor 'made the record', and thereby unfavorably prejudice the jury against Mr. Carmichael?

ASSIGNMENT OF ERROR 7:

The procecutator presented only the face of a facsimile of a debt instrument (check) as evidence to convict Mr. Carmichael of possession of alleged stolen property allegedly obtained during the Terry stop. ER 1002 plainly states that "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by rules adopted by the Supreme Court of this state or by statute." A duplicate (ER 1001(d)) is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original [no evidence exists to show an endorsement was made or attempted on the original document], or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. ER1003. And ER 901(a) "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." A facsimile of a check is not a check.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 7:

Did the court err in admitting the facsimile contrary to ER1002 and 1003 when the facsimile showed only the face and not the reverse of the instrument in question, without the maker or the endorsee present to testify to its authenticity and thereby prejudice the jury in favor of a conviction?

ASSIGNMENT OF ERROR 8:

Mr. Carmichael alleges his juvenile record was miscalculated on the basis that the court failed to recognize a scribner's error which resulted in a duplication of the record of the same crime, (same place doctrine governed by RCW 9.94A.400) and inadvertently resulted in two case Numbers which the court overlooked at sentencing. One of which is absent the full compliment of numerals to comprise a valid case Number. On close examination it can be seen the two case numbers and charges in question are the same crime and the same victim and the same place. The court erred in not giving the necessary inspection and scrutiny to verify Mr Carmichael's claims made at sentencing. (CP 878-9). The case Numbers in question are 99-8-00023-6 and 99-00426-6. RCW 9.94A.400 defines 'same criminal conduct' as two or more crimes that require the same time and place, and involve the same victim. If any one of these elements is absent the offences

must be individually counted toward the offender score.
STATE V GARZA-VILLARREAL, 123 Wn.2d 42, 47, 864 P.2d 1376
(1993). A third case Number, 99-8-01767-8, a Res. Burg and
theft First degree was all from the same crime, time,
victim, and should definitely have merged under the 'same
criminal conduct' doctrine.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 8:

Did the court err by not giving the weight and scrutiny to
discover the scrivener's error as claimed by Mr. Carmichael
at sentencing, thereby pronouncing an invalid sentence?

ASSIGNMENT OF ERROR 9:

Mr. Carmichael's sentence imposed 116 months plus 12 months
of community custody resulting in a total sentence of 128
months. The statutory maximum for his crime level and
offender score is 120 months.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR 9:

Did the court err in calculating Mr. Carmichael's total
offender score and crime level by assessing an additional
twelve months, eight months over the statutory maximum set
by the legislature?

CONCLUSION

While, except for ASSIGNMENT OF ERRORS 2, 3, 5, 6, 8, and

9, each other error of its own accord may not reach the judicial standard required for dismissal or remand, the combination of assigned errors are prejudicial in their effect denying due process; and public policy requires remand, in the interest of justice; to cure the errors manifest in this case.

Should the court agree the above assigned errors are valid as to:

Error 1: Admissision of allowing suppressible evidence created prejudice and denied due process;

Error 2: Absent 'specifically articulatable facts' defendant's arrest would be illegal and pretextual under the Terry analysis;

Error 3: Even should the court find the Terry stop harmless, Mr. Carmichael was further prejudiced by the denial of his right to confidential 'work product';

Error 4: Mr. Carmichael's Washington Constitution Article 1, §22 right was violated when he was forced to advance his own funds to secure his rights thereunder;

Error 5: The jury was denied opportunity to try the truth and fact of 'unwitting possession' by the court not allowing the instruction;

Error 6: Mr. Carmichael was further prejudiced when the court allowed prosecutor to violate motions in limine orders preventing disclosure of prior crimes;

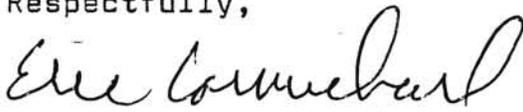
Error 7; The admission into evidence of a facsimile of only the face of an instrument purported to have been stolen by Mr. Carmichael further prejudiced the jury and resulted in conviction of stolen property. Without the facsimile or the original it is highly probable the jury's verdict would have been different;

Error 8: The miscalculation of Mr. Carmichael's juvenile record as it affected his over-all offender score resulted in a sentence exceeding the statutory limit;

Error 9: Mr. Carmichael's sentence of 116 months would have been statutorily correct had the additional 12 months of community custody not also been imposed. Such imposition exceeded the court's statutory authority. For the court's reference see STATE V MENDOZA, 165 Wn.2d 913 (2009),

then for the above reasons stated this case should be remanded with instructions for evidentiary hearings on the issues, and at minimum for resentencing if not for retrial.

Respectfully,


Eric Carmichael, pro se

Dear Clerk

7-31-12

I'm also certifying that I sent this
brief out to

King County Pros. Att.
516 Third Ave
King County Courthouse W-554
Seattle, WA 98104

~~COURT REPORTERS DIV
STATE OF WASHINGTON
2012 AUG -3 AM 11:57~~

&

Neilson Boman & Koch % Jennifer Swergel
1908 E. Madison St.
Seattle, WA 98122

&

Sheriff Gordon McClelland
(in hopes of an Amicus)

Also, I tried to be as "Brief" as I
could but if the courts want any additional
"Breifing" please write and I will do what
I can.

7-31-2012 in Monroe WA

Sincerely,

Eric
Carmichael