

68121-4

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Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

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

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DIVISION I
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State of Washington

Respondent,

v.

Robert King

Appellant.

Court of Appeals Cause No. 68121-4

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I Robert King, 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 I

Please see Attachments

Additional Ground II

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

Date: 10-8-12

Signature: Robert King

When defense counsel knows or has reason to know defendant's medical and mental problems are relevant to making an informed defense theory (diminish capacity defense), Counsel has a duty to conduct a reasonable investigation into medical & mental health, having such problems fully assessed and if necessary, retain qualified experts to testify. Failure to do so is in-effective assistance. BRETT, 142 Wn.2d 868 (2001)

Defendant's counsel was fully aware of his mental health problems. How? Because defendant told his counsel that he has mental health records, not only in King County jail, but that there was also a federal file that could also be obtained. Counsel refused to listen and told defendant that "playing crazy would not work". Defendant told his counsel that he needed help to be able to help her in his defense. Counsel did seek court order for defendant to begin his medication before court each day. (see attachments marked 1). Defendant explained to his counsel that his thoughts were racing, he was not sleeping, and that he was hearing voices. Counsel didn't get

medical records.

Defendant had a right to have his counsel at the very least to get his medical records to see if nothing else, if a problem existed. Defendant's counsel instead made the determination that that was no problem, and went forth ignoring defendant's cry for help. Although defendant told his counsel that he was having hard times separating facts from fiction. Defendant was suffering from ~~severe~~ bipolar disorder and could not help out with the facts of the case. Defendant begged his counsel to contact his federal attorney because he was found incompetent in federal court. Again counsel ignored defendant's request.

There ~~are~~ records to prove defendant's mental health, that could have easily been obtained by counsel. Defendant would have sign any release form need for information on health, competency hearing required in light of defendant's history of irrational behavior violated due process, PATE VS ROBINSON, 383 U.S. 375-385 (1996)

Defendant has a right to due process, defendant has the right to have counsel take his request for help seriously, informing

the courts of his mental health.

Defendant has the right to use mental health as a defense, and most important defendant had a right to be coherent during trial, to be competent to not have to deal with thousands of thoughts running through his head simultaneously; making it impossible for defendant to comprehend.

Enclosed are copies of some of defendant's mental health records that would show that defendant truly has mental health issues that require medication & intensive treatment. There are many more files pertaining to defendant's mental health. (In federal court file defendant was found incompetent during federal court proceedings.)

King County jail where defendant was housed awaiting trial, defendant was also was sent twice to C-Cap on bail to receive treatment for his mental health.

Defendant had a right to have his mental health issues addressed. Defendant's counsel claimed not to believe defendant, that being the reason to reject defendant's pleas. Defendant has shown 1) mental health does exist, 2) counsel refused to seek mental health, violating defendant's rights

to both effective counsel & due process.

(Please see attached records).

While in King County jail defendant was suffering terribly with mental health issues & needed help. This help was denied to him by his counsel. Defendant was forced to go to trial while suffering with severe mental health problems and hearing voices. Not able to put events and time together separating one from another. Defendant's counsel was inadequate.

In closing mental health is a serious issue that should not be ignored. Defendant takes mood stabilizer and anti-psychotic medications & needs intensive treatment to keep him stabilized.

There is federal court testimony stating because of mental health conditions, defendant will never be a productive member of society. Always needing medication & intensive treatment.

Defendant's counsel should have gotten defendant's mental health records before she determined that there was no problem, that defendant's mental issues did not exist. Defendant should have

5

have received a evaluation to
determine his competency. Defendant
should of been able to use
diminished capacity as a defense.

Respectively Submitted,

X _____

Robert King

1 case. Not to do any research on this case or this type
2 of case. And don't let anybody quiz you on what you are
3 doing here in the Superior Court for King County.

4 So if you will kindly leave your note pads on your
5 chairs, follow Jonathan back, and he is going to let you
6 go for the evening, and we will see you tomorrow morning
7 at 8:45 back here. Have safe travels.

8 THE BAILIFF: Please rise. Thank you, everyone. If
9 you would collect your belongings, I will be back in a
10 few minutes to release you.

11 THE COURT: So I didn't lecture them now. I don't
12 like lecturing people. Okay. You can take Mr. King back
13 upstairs. Thanks.

14 THE CLERK: And may I go off the record?

15 THE COURT: And you may go off the record.

16 MS. DECKMAN: Yeah.

17 THE COURT: Back on the record. Sure. Go ahead.

18 MS. DECKMAN: My client just mentioned it to me. He
19 normally receives mental health medication in the jail.

20 THE COURT: Okay.

21 MS. DECKMAN: And this was a problem in his first
22 trial. He wasn't receiving his medication. He says he
23 hasn't received it for the past two days.

24 THE COURT: Oh, that's not good.

25 MS. DECKMAN: Which could get to be an issue.

1 MS. DECKMAN: No questions for this witness,
2 your Honor.

3 THE COURT: May Ms. Graff be excused?

4 MS. SCHIRMAN: Yes, your Honor.

5 THE COURT: All right. Ms. Graff, thank you for
6 testifying. You are excused. You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: All right. We are done with witnesses for
9 the day. So that means you get to go home a little early
10 and get those express buses. Let me tell you a little
11 bit about tomorrow's schedule. We are ahead of
12 ourselves. So that means, the good thing is it means
13 that we are not going to run over. You will definitely
14 get the case on Thursday. Tomorrow is a strange day.
15 Not because it's Thursday. It's just strange because we
16 don't have a full day for you. We have about a half day,
17 and even then that might be short. So I need you to be
18 here at nine o'clock. We are going to take a couple of
19 witnesses, and then we will be done before noon, and then
20 I will see you on Thursday, but we will talk about that
21 at the close of tomorrow morning and Thursday you will be
22 here pretty much all day so that'll be -- my only gift to
23 you is that you'll have Wednesday afternoon to yourselves
24 to do what you do when you are not in trial in this
25 court. So I will just remind you not to discuss the

PROCEEDINGS

OCTOBER 26, 2011

1 UNIDENTIFIED SPEAKER: I think so, your Honor.

2 THE COURT: And then we have two officers, and then
3
4 Agate tomorrow morning.

5 MS. SCHIRMAN: That's correct.

6 THE COURT: All right. Let's bring in the jury and
7
8 get these officers' testimony.

9 UNIDENTIFIED SPEAKER: (Inaudible.) Now --

10 UNIDENTIFIED SPEAKERS: (Inaudible.)

11 MS. SCHIRMAN: Medication.

12 MS. DECKMAN: Yes.

13 THE COURT: What?

14 MS. DECKMAN: Medication.

15 THE COURT: Has he not been getting his medication?

16 MS. DECKMAN: Apparently not.

17 THE DEFENDANT: (Inaudible.)

18 THE COURT: Do you have documentation that he's got
19
20 prescription for these medications? Do you have
21
22 anything?

23 UNIDENTIFIED SPEAKER: Provide the medication for
24
25 (Inaudible.) nurses on upstairs (Indecipherable.) give it
to him.

THE COURT: All right. Let's just have Jonathan hold

1 THE COURT: Would you mind telling either me or your
2 attorney what it is and are you --

3 THE DEFENDANT: Because I come to court early in the
4 morning we don't get (Indecipherable.) medications
5 usually 10:00, ten o'clock they pass out the morning
6 meds. And I miss my afternoon meds because I get back
7 late.

8 THE COURT: All right.

9 THE DEFENDANT: And the Zyprexa is the one I really
10 need because it keeps me from having violent attacks.

11 THE COURT: All right. Let me see what I can do. Did
12 you all contact the jail commander?

13 MS. DECKMAN: We -- we -- originally I had my social
14 worker contact the jail, and I think what ended up
15 happening was that Judge North just wrote a little order
16 saying, you know, the jail should make efforts to provide
17 medication.

18 THE COURT: His mental health. I will do an order,
19 but I think I will do a courtesy call. Who deals with
20 that on seven, do you know?

21 THE DEFENDANT: Best place to call is mental health.
22 That's who came -- that's who came to see me, and they
23 just changed my medication from ten o'clock to
24 four o'clock in the morning. So they gave it to me at
25 four o'clock in the morning. So I made sure I had it

1 before I went to Court.

2 THE COURT: So you got it today before you came down?

3 MS. DECKMAN: Yeah.

4 THE DEFENDANT: No, I didn't get it. I didn't get it
5 the last two days.

6 THE COURT: All right.

7 MS. DECKMAN: Your Honor, that was -- at the last
8 trial we had this issue, and then they adjusted the
9 timing so that he had it really early in the morning.

10 THE COURT: All right. I will do an order right now.

11 MS. DECKMAN: Only issue is he is not housed on the
12 7th floor.

13 THE COURT: Okay.

14 MS. DECKMAN: Which may be why there is a difficulty
15 in getting his medication, but I'm not sure about that.

16 THE COURT: Let's draft an order, and we will get it
17 to you, and we can get it over to the jail.

18 MS. DECKMAN: Okay.

19 THE COURT: Thank you.

20 MS. DECKMAN: Thank you.

21 MS. SCHIRMAN: Do you want me to draft one or...

22

23

24

(End of transcription.)

25



OFFENDER I.D. DATA: **KING, ROBERT**
 (Name, DOC#, DOB) **353170**

PRIMARY ENCOUNTER REPORT

DATE	TIME	FACILITY	UNIT	ALLERGIES
06/25/2012	14:00	AHCC		
Narrative: <input checked="" type="checkbox"/> Risks/benefits of recommended intervention explained; patient consents Following decrease of Lithium carbonate from 1200 mg to 900 mg, patient has been more activated. He "sleeps well, except last night (terminal insomnia at 3 AM)." He reads there books at the same time, and his job takes him less than 1 hour daily. Patient recognizes increased energy and boredom. He lists walking as a main coping skill with the current situation. As it is a next session related to the same issue, this time in the presence of patient's Primary Therapist, Susan Crowe, MS, the reasons for the medication change and treatment plan has been renewed again. a/ low platelets level has been surprising finding, as we usually expect relative polycythemia in the treatment with Lithium. This patient has no other side effects and has no bruises or signs of bleeding. The control lab work has been ordered. b/ this patient presents with strong cluster B symptomatology. He, himself is very much concern with the potential of being violent again and returning to prison again. Once again, patient puts significant expectation in Lithium controlling his impulses, and maintains much more passive attitude regarding options of behavioral modification. The need of developing self monitoring and self-modulating skills has been stressed again. Although Lithium may prevent possible hypomanic episode ("I have not used cocaine, I have only been selling..."), it is not proper to use Lithium for the behavioral control. I discussed with patient and his therapist that there is high risk that this inmate, considering his age and other biological factors, will need to terminate treatment with lithium due to increasing side effects.				Plan/Rx: (Dx required for med orders)
Name and Title of Staff Performing Encounter: Mira Narkiewicz			Signature:	

State law (RCW 70.02; RCW 70.24.105; RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

[4-4350] [4-4351] [4-4355] [4-4359] [4-4367] [4-4372] [4-4397] [4-4398] [4-4405] [4-4407]
 DOC 410.430 DCC 420.250 DOC 420.255 DOC 610.010 DCC 610.040

DOC 610.025 DOC 610.600 DOC 610.650 DOC 630.520 DOC 670.020 DOC 670.030



MENTAL HEALTH APPRAISAL

Initial Assessment Updated Assessment

OFFENDER NAME: KING, ROBERT	
DOC NUMBER: 353170	DATE OF BIRTH: 01/23/1972
FACILITY: WCC	DATE: 02/01/2012

SECTION 1

Reason for Referral (source and purpose):

Mr. King arrived at WCC with prescriptions for Zyprexa and Lithium.

Presenting Problems (problem development):

Mr. King reports he has been on medication for about 6 years and started when he was in federal prison. He stated that he would go through spells where he became violent and would start attacking people. He stated that he would get into a bad mood that would last for weeks at a time. He would go 3 or 4 days (sometimes up to 7 days) without any sleep and would become more and more aggravated and agitated. He thought that what he was going through was normal because it happened his whole life. He was diagnosed with ADHD as a child and given Ritalin but it did not help him. He stated that he had these violent mood swings as a child but he was not diagnosed with Bipolar until he was 30.

He stated that he was not taking the medication in the community because he became easily frustrated by the system and trying to get appointments and complete paperwork. He stated that if he were taking his medication he would not likely be here.

He reports that he was diagnosed with bipolar 2 in federal prison.

He stated that the Lithium stabilizes him for the most part.

Zyprexa makes him tired and he cannot make his morning call outs.

He stated that he takes the Zyprexa only when he is irritable and cannot sleep. He reported that he just wants the Zyprexa as needed to calm him down but not on a regular basis because it makes him too tired and then it does not work as well. it as needed. to calm him down.

Observations / Mental Status

<p>Affect-Visible</p> <input checked="" type="checkbox"/> Appropriate <input type="checkbox"/> Labile <input type="checkbox"/> Inappropriate <input type="checkbox"/> Constricted <input type="checkbox"/> Expansive <input type="checkbox"/> Angry <input type="checkbox"/> Sad <input type="checkbox"/> Other	<p>Mood</p> <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Depressed <input type="checkbox"/> Anxious <input type="checkbox"/> Hypomanic/Manic <input type="checkbox"/> Hopeless <input type="checkbox"/> Other	<p>Orientation</p> <input checked="" type="checkbox"/> Person <input checked="" type="checkbox"/> Place <input checked="" type="checkbox"/> Time <input checked="" type="checkbox"/> Situation <input type="checkbox"/> Other	<p>Speech</p> <input checked="" type="checkbox"/> Appropriate <input type="checkbox"/> Poverty of content <input type="checkbox"/> Flight of ideas <input type="checkbox"/> Latent <input type="checkbox"/> Guarded <input type="checkbox"/> Loud <input type="checkbox"/> Soft <input type="checkbox"/> Rapid <input type="checkbox"/> Pressured <input type="checkbox"/> Other
<p>Thought Process</p> <input checked="" type="checkbox"/> Organized <input type="checkbox"/> Tangential <input type="checkbox"/> Loose associations <input type="checkbox"/> Poverty of content <input type="checkbox"/> Paranoid <input type="checkbox"/> Illogical <input type="checkbox"/> Other	<p>Memory Impairment</p> <input checked="" type="checkbox"/> None <input type="checkbox"/> Immediate recall <input type="checkbox"/> Short-term <input type="checkbox"/> Long-term	<p>Hallucinations</p> <input checked="" type="checkbox"/> None <input type="checkbox"/> Auditory <input type="checkbox"/> Auditory command <input type="checkbox"/> Visual <input type="checkbox"/> Olfactory <input type="checkbox"/> Tactile <input type="checkbox"/> Does not seem to be responding to internal stimuli <input type="checkbox"/> Other	<p>Appearance</p> <input checked="" type="checkbox"/> Groomed <input type="checkbox"/> Disheveled <input type="checkbox"/> Poor Hygiene <input type="checkbox"/> Malodorous <input type="checkbox"/> Poor Dentition <input type="checkbox"/> Scars/Tattoos <input type="checkbox"/> Other

HEALTH ASSESSMENT

DATE: 08/01/2011 19:51									
PATIENT NAME: KING, ROBERT L									
VITAL SIGNS:									
MOST RECENT: 8/1/2011									
BP:	123 / 75 (Sitting)	Pulse:	68 (Sitting)	Temperature:	95.5 (Left Ear)	Respiration:	15 / min	SO2:	99 %
PRIOR: 7/19/2011									
BP:	111 / 79 (Sitting)	Pulse:	68 (Sitting)	Temperature:	97.2 (Left Ear)	Respiration:	16 / min	SO2:	98 %
Current Height: 74 In. Current Weight: 179 Lbs. Age: 39 year									
MEDICATIONS:	LITHIUM CARBONATE 600MG, 1 CAPS ORAL(po) BID ZYPREXA 10MG, 1 TABS ORAL(po) QHS <i>Special Instructions: SINGLE DOSE ONLY</i>								
ALLERGIES:	NO KNOWN ALLERGIES								

Physical Exam – Intermediate here.

HEALTH ASSESSMENT
Receiving Screening Form Reviewed
Yes

S	Reports Bipolar, states was on meds while here in KCCF, per chart review patient was on Lithium and Zyprexa ordered 3/7/11. Has a lump to forehead and has been there for 12 years. Denies SA/SI
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Review of Systems

- Recent Health-Related Encounter
 - Regular Health Care Provider
 - No
 - Hospitalized or Medical Issues in Past 12 Months
 - No
- Additional Medical History
 - Other **chronic L knee pain, torn ligaments**
- Mental Health History
 - History of Mental Health Hospitalizations **3 yrs ago while in Federal Prison**
 - History of Violent Behavior
- Emotional Response to Incarceration
 - Hopeful
- Female/Male Health History
 - Male Health History
 - No Notable Male Health Problems
- Oral Health History

	Jail Health Services 500 5 th Avenue 620 W James St Seattle, WA 98104 Kent, WA 98032 Ph: 206.296.1091 Ph: 206.205.2410 FAX: 206.296.1771 FAX: 206.205-2439	PATIENT NAME: KING, ROBERT L BA #: 211022419 CCN: 1877150 BOOKING DATE: 7/19/2011 05:30PM LOCATION: KCCF - 10ELBB5	HRN: 000006559 DOB: 01/23/1972 SEX: male
	New/Revised –Health Assessment - Nursing– Form # (Sep 2009.) (Rev. mo. – yr.)		

HEALTH ASSESSMENT

None
 Current Complaints
 No
 STD Risk Factors
 No STD Risk Factors
 Tuberculosis Risk Factors
 Self-Referral
 Physical Exam
 HEENT
 No Trauma to Head, Face or Neck
 PERRL
 Clear Conjunctiva, Sclera
 External Ear Canals Normal
 Oral Mucosa Moist, Pink without Discoloration or Lesions
 Pharynx Normal
 Cervical Nodes Non-Tender and Non-Palpable
 Neck Supple, Normal Range of Motion
 Dental
 Dentition and Gums Normal (no evidence of infection or abscess)
 Cardiovascular
 Regular Rate, Normal S1 and S2
 Respiratory
 Respirations Even, Unlabored and Normal Rate
 Lung Sounds Clear and Equal in All Lung Fields
 Abdominal
 Bowel Tones Active and Normal
 Abdomen Soft, Non-Tender and Non-Distended
 No Hernia or Masses Palpated
 Musculoskeletal/Skin
 Grossly Normal Strength and Function of All Extremities
 Good Skin Turgor
 Abnormal Findings (explain) ~6 cm soft movable mass center of forehead,
consistent with lipoma
 Neuro/Psychological Status
 Gait Steady
 Patellar Reflexes within Normal Limits
 Alert, Oriented to Person, Place and Time
 Affect and Mood Appropriate
 Logical Thought Process
 Intellectual Functioning Appears Normal
 Disposition
 Medical
 History and Exam within Normal Limits
 Mental Health
 Mental Health Risk Factors Present
 Dental
 History and Exam within Normal Limits
 Oral Hygiene Instructions Provided

P On Psych meds, has labs and f/u scheduled.
 No new referrals.

Procedures Ordered:
 HEALTH ASSESSMENT HA: health assessment

 <p>Public Health Seattle & King County</p>	<p>Jail Health Services 500 5th Avenue Seattle, WA 98104 Ph: 206.296.1091 FAX: 206.296.1771</p> <p>620 W James St Kent, WA 98032 Ph: 206.205.2410 FAX: 206.205-2439</p>	<p>PATIENT NAME: KING, ROBERT L BA #: 211022419 CCN: 1877150 BOOKING DATE: 7/19/2011 05:30PM LOCATION: KCCF - 10ELBB5</p>	<p>HRN: 000006559 DOB: 01/23/1972 SEX: male</p>
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Federal

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: KING, ROBERT LEE
Date of Birth: 01/23/1972
Encounter Date: 11/05/2008 10:28

Sex: M
Provider: Haven, Grant MD

Reg #: 14079-006
Race: BLACK
Facility: SET

Chronic Care Visit encounter performed at Health Services.

SUBJECTIVE:

COMPLAINT 1 **Provider:** Haven, Grant MD

Chief Complaint: BEHAVIORAL HEALTH CLINIC

Subjective: AA male with hx of bipolar d/o tx currently with zyprexa 10mg which helps. He has 3-4 day episodes of no sleep, racing thoughts, hyper, agitated, extra powerful. In 2007 he tied up roommate and demanded a candy bar. At same time made a SA. He has "a bunch of SA in past". Describes mixed episodes, but no pure depression. Denies panic, ocd, eating d/o, ptsd sx, AH, IOR. Endorses thinking cameras in cell in past. FH: Bipolar in aunt, uncle and mo. Denies ETOH. Drug use: MJ only. PMH: knees. ANX=13; BECK=12. Failed valproic: no benefit, heartburn. Seroquel 200mg for 2-3 mo seemed to help. Switched to zyprexa when came here. It helped sleep for 8 mo in past then pooped out. Working now for sleep. Lithium trial in past was not continued for unclear reasons. Patient willing to give Lithium another chance.

Pain Location:

Pain Scale:

Pain Qualities:

History of Trauma: No

Onset:

Duration:

Exacerbating Factors:

Relieving Factors:

Comments:

OBJECTIVE:

Exam:

Mental Health

Mood

Appropriate (yes)

Calm, logical. No psychosis. No SI.

ASSESSMENT:

<u>Description</u>	<u>ICD9</u>	<u>Status</u>	<u>Status Date</u>	<u>Progress</u>	<u>Type</u>
Axis I: Bipolar disorder, unspecified	296.80	Current	10/16/2008	Improved	Chronic

Health Problem Comments:

since 2007.

Diagnosis Comments:

Patient feels OK on zyprexa with decent sleep. Still has some signs of getting agitated, so goes in cell. Feels structure like a job or gym would help him to remain stable and not get agitated. Willing to try lithium as long term mood stabilizer. Will continue Zyprexa for now until it is clear lithium is working.

PLAN:

Renew Medication Orders:

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>	<u>Prescriber Order</u>
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