

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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COURT OF APPEALS  
JAN -9 PM 1:10  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 Manuel Ortiz Santiago )  
 )  
 Appellate )  
 )  
 ) Clerk action request

Comes Now the petitioner, Manuel Ortiz, Santiago moves this court to reveiw Statement of Additional Grounds he has submitted to this court pursuant to Rap 10.10.

This statement of additional grounds is based upon the opening brief prepared by my attorney and the court trial transcripts which I received and reviewed. Summarized below are the additional grounds for review that are not addressed in the brief. I understand the court will review this 'statement of additional grounds' for review when my appeal is considered on the merits.

ADDITIONAL GROUNDS- 1

The petitioners Fifth (V), Sixth (VI), and Fourteenth (XIV) Amendments to the U.S. Constitution were violated by the denial of effective assistance of counsel.

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1 copies of ADG  
to S. Baur  
& A. Orsler  
1/23/09 ESC

Appellate review of ineffective assistance of counsel claims are especially important. In considering, the Court has a strong inducement to dispose of ineffective counsel claims by labelling as "strategic" assistance. But, that which is truly substandard, ineptitude and even callous disregard for the client, can not be brushed off as "tactical decisions," insulated from constitutional review.

To prevail on this above claim, a petitioner must show: First, that counsel's performance was deficient. This requires showing that counsel was not functioning as the "counsel" guaranteed the petitioner by the Sixth Amendment.

Second, the performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the petitioner of a fair trial, a trial whose result is reliable.. Strickland v. Washington, 466 U.S. 668, 678, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Thomas v. Borg, 159 F.3d 1147, 1151-1152 (9th Cir. 1998). To satisfy the first prong of this test, the petitioner must overcome the 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" Id. [Strickland] at 689, 104 S. Ct. 2052; see Hickman v. Spears, 160 F.3d 1269, 1273 (10th Cir. 1993).

At the time that trial counsel represented the petitioner, he was deficit in several critical areas And, it must be remembered that this was a trial for Kidnapping in the First Degree while armed with a firearm; also violation of the uniform controlled substances act (Possession of Methamphetamine) and unlawful possession of a firearm in the first degree.

Which hinged upon the, communication of his attorney to inform his client of all the facts the findings and conclusions of law in his proceeding before trial and during. Which is first and foremost in understanding all the consequences and out comes of the legal requirements by communication between counsel. Such was not the case here at all between Mr. Santiago and his lawyer.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information.

(b) A lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding the representation.

Washington Court Rules, State---Rule 1.4.

(a) After informing himself or herself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

American Bar Association Standards for Criminal Justice (A.B.A. Standards). Defense function, Standard 4-5.1.

(b) Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions included what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced and/or suppressed. Such was not the case here. Mr. Santiago did not have any real understanding of these legal proceeds at all.

The petitioner does not speak english that well and did not understand legal terms at all. As the record indicates he had to have a interpreter throughout the trial whose communication and qualifications and certified skills were in question. But, this fact has little relevance to the fact that there was no legal knowledge and understanding between the attorney of the record and the defendant as defined in all of the above A.B.A standard requirements.

There was no Suppression of evidence; the bullets, and drugs found in the shirt pockets, no open statements by defense; no objections to prosecutions leading questions about firearm possession and the firearm clip and bullets and the weapon that was never found on Mr. Santiago.. The witnesses admitted to lying to police officers before taking the states sweet offer deal in return for there testimonies. When they should have been competently cross-examined about there drug induced confusion and creditability at the time of the crimes. None of this was ever remotely brought through to the defendant and/or the jury at the time as to strategic or tactical advantages or disadvantages.

Nothing, the non-English hispanic speaking client was left totally in the dark. The communication, between a client and counsel is the very basic and important core premise to having effective assistance of counsel during any legal proceedings especially during trial when selecting the (12) twelve jurors. A constitutional six amendment right

#### ADDITIONAL GROUNDS - 2

The petitioner's Fourteenth (XIV) Amendments to the U.S. Constition were violated by not proving all the elements of the charged crimes.

The Due Process Clause requires the government to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1063, 25 L.Ed.2d 368 (1970). This applies to State proceedings. Sullivan v. Louisiana, 508 U.S. 275, 273 (1993). Here the petitioner was charged with the elements of unlawful possession of a firearm and armed with a firearm.

In this statement of additional grounds which contends that the trial court abused its discretion in giving Mr. Santiago a weapon enhancement when he did not even have a firearm or weapon in his possession at all. The petitioner's Fifth (V), and Fourteenth (XIV) Amendments to the U.S. Constitution were violated by convicting the petitioner where insufficient evidence existed on the above charges. In re Personal Restraint Petition of Steven Wayne Gunter, 102 Wash. 2d 769, 689 P.2d 1074 (Wa 10/25/1984).

Regardless of the Judicial interpretation that has been applied to the sufficiency of the evidence challenged. The petitioner does not admit to any of the State's evidence, nor any inferences that can reasonably be drawn therefrom. And, has repeatedly shown through police reports and the State's own witness testimony at trial that the only two (2) witnesses that the state relied upon and their testimonies had no real creditability and were at best a far reaching definition of circumstantial evidence.

"The state has the burden of proving each element of the crimes charged beyond a reasonable doubt. A reasonable doubt is one for which a reason exists and many arise from the evidence. It is such a doubt as would exist in the mind of a reasonable person after they have fully, fairly, and carefully considered all of the evidence or lack of evidence."

To prove the petitioner was armed with a firearm the state must prove that there is a nexus between the crime and the defendant. Unfortunately, possession means having a firearm in one's custody or control. It may be either actual or constructive actual possession occurs when the weapon is in the actual physical custody of the person charged with possession.

As the record indicates such was not the case with Mr. Santiago. There was no weapon in his possession. There was no fingerprints on the weapon. There was no fingerprints on the magazine firing clip. There was no fingerprints on any of the bullets. In State v. Tongate, 93 Wash 2d 751, 613 P.2d 121 (1980), it was held that enhanced punishment under RCW 9.95.040 requires proof beyond a reasonable doubt that the defendant was armed with an actual deadly weapon when he committed the crime. State v. Pam, 98 Wash 2d 748, 659 P.2d 454 (1983).

In conclusion, petitioner is requesting that this Court remand the petitioner back to court for a new trial and reverse the gun enhancements base on the above Case law authorities.

I declare under penalty of perjury under the laws of the state of Washington, pursuant to RCW 9.A.72.085, and the laws of the United States, pursuant to Title 28 U.S.C. § 1746, that the foregoing is true and correct

EXECUTED ON THIS 5<sup>th</sup> day of January, 2007

Respectfully submitted



Manuel Ortiz Santiago

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DIVISION II

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**CERTIFICATE OF SERVICE BY MAIL**

STATE OF WASHINGTON

This is to certify and state under the penalty of perjury under the laws of the State of \_\_\_\_\_  
Washington that I have mailed a true and correct copy of the following document(s): DEPUTY

**In re The statement of additional grounds**

**pursuant to Rap 10.10**

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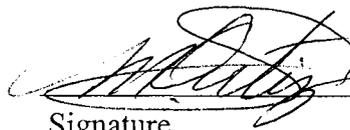
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Respectfully Submitted,



Signature

**MANUEL ORTIZ SANTIAGO**

Printed/Typed Name

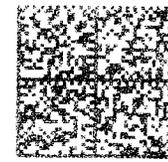
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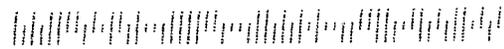
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