FILED
COURT OF APPEALS
DIVISION II

07 MAR 19 AM 8:50

STATE OF WASHINGTON
BY _____
DEPUTY

No. 34879-9-11

****

WASHINGTON STATE COURT OF APPEALS, DIVISION II

****

In Re the Personal Restraint Petition of:

MICHAEL JOHN REISE,

Petitioner

****

REPLY TO THE STATE'S RESPONSE TO SUPPLEMENTAL BRIEF

****

Michael J. Reise #882766
Petitioner, Pro Se
S.C.C.C. H3 / A-79U
191 Constantine Way
Aberdeen WA 98520-9504

A. IDENTITY OF THE PETITIONER:

The Petitioner, Michael John Reise, is currently confined within the Department of Corrections (DOC), at the Stafford Creek Corrections Center, based on a faulty plea out of Thurston County Superior Court. Mr. Reise seeks the relief requested in Part "B", herein.

B. REPLY TO THE STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF:

The Petitioner was under the advice of his counsel, James Dixon, to say that he intentionally shot, and caused the death of, Austin G. Hardison in order to get a plea-bargain that his counsel said would get him home in 3 to 5 years.

The handwritten statement saying Mr. Reise caused Mr. Hardison's death was written in by petitioner's counsel, Jim Dixon. Mr. Dixon wrote that statement, then asked his client, Mr. Reise to initial it then repeat it when its time, for the court records. The exact same sentence Mr. Dixon wrote, Mr. Reise repeated when it was time to do so. Please see Exhibit "A" in Petitioner's Reply to State's Supplemental Response.

In the State using the State v. Arnold, 81 Wn. App. 379, 914 P.2d 762 (1996), the witness had already been discovered. In Petitioner's case the witness had not been discovered. Had this witness been discovered Mr. Reise would have never accepted any plea deal.

The State uses the case of In Re Personal Restraint of Crabtree, 141 Wn. P.2d 577, 9 P.3d 814 (2000). This case has no bearing on Petitioner's Appeal. The Petitioner, Mr. Reise, is in timely with his Appeal. Crabtree waited 9 years to challenge his plea for what appears to be no real good reason as stated on Page 8 of the State's Supplemental Response.

On Page 10 of the State's Response to Supplemental Brief, asks the Court using Arnold, Supra, and Crabtree, Supra, to consider three factors in evaluating whether a guilty plea should be withdrawn based on newly discovered evidence (1) whether the guilty plea was entered voluntarily and with full knowledge of

the consequences of his plea. Clearly the defendant was not. Please see Exhibit "A" of Petitioner's Reply to State's Supplemental Response. (2) Whether the defendant fully admitted his guilt to the charge as opposed to entering an Alfred Plea: The Petitioner had no knowledge of what an Alfred Plea was. See Exhibit "A" of Petitioner's Reply to the State's Supplemental Brief, Page 3, 6. (3) Whether, even considering the claim of newly discovered evidence, there is an independent basis for the conviction. Mr. Reise would not have accepted any plea-bargain if he had known of Mr. Gillaspie being an actual witness during that time which could have resulted in his full acquittal.

Page 12 of the State's Supplemental Response says, there was no claim that the defendant had been injured. This evidence along with photographs of the defendant's injuries are in police records and should be in the Discovery.

Along with detective R. T. Hiratoka was another detective who recorded Mr. Reise's statement on 10/28/04 without any legal counsel present. After the statement was recorded the detective that was with detective Hiratoka took photographs of the Petitioner's injuries. Mr. Reise received injuries to both right and left elbows and an injury to the back of his head by landing on his head and elbows on the concrete steps.

On Page 13 of State's Supplemental Response says the defense counsel acknowledges that the forensic evidence showed that Hardison was still about 8 feet away when the shot was fired. That's an incorrect statement.

Mr. Dixon is quoted in Appendix "B," Pages 29 and 30 that, "the Court would have issued a self-defense instruction and I could have argued that, hopefully very convincingly, borne out by not only the <u>forensic evidence</u> but the testimonial and, more importantly, the lack of testimonial evidence.

When Mr. Dixon says that last statement quote, "more importantly, the lack of testimonial evidence," is key why Mr. Gillaspie's testimony, as a real eye-witness at the scene, would have changed everything.

Mr. Gillaspie's Declaration is exactly what happened. The

Petitioner is, and has been saying from the beginning that the assailant, Mr. Hardison, had the club raised over his head while advancing at a fast pace towards Mr. Reise. Yelling, "pull the trigger m_____ f_____! Pull the trigger!"
Mr. Reise did not want to fire the gun, but had to, because one more stride from the assailant and the club would have hit Mr. Reise on top of his head. Mr. Reise yelled "stop," but to no avail. The forensics on the distance will be disputed. That October afternoon was dark and raining hard due to a large storm system. Petitioner believes the forensics on the distance is not accurate at best. In the State's Supplemental Response on Page 5, Lines 1-6, Mr. Straume states the assailant Mr. Hardison was there looking for drugs, but could not find any. Then Mr. Straume states that later, through blood results, it was determined that Methamphetamine was in his system. The question is now, how much drugs were in his system and how long has he been on drugs as far as consecutive days? This would account for Mr. Hardison's psychotic behavior in attacking Mr. Reise, not just once, but twice.

Petitioner did not admit to the essential elements of Second Degree Murder. Under the advice of his counsel, Mr. Reise took a plea-bargain because he believed that was the only way out so he could get back home to his family in just a few years, according to his lawyer.

How, or why would there have been a Manslaughter plea-bargain for Mr. Reise if Mr. Reise admitted to murder? Mr. Reise never knew about a Manslaughter plea-bargain until he received the Court transcripts stating that fact. There were a number of statements and things said at the proceedings Mr. Reise really did not quite hear or understand. If Mr. Reise had been given the choice to choose a Manslaughter plea versus a Murder plea there would be no question on what choice Mr. Reise would have made. The Petitioner is completely stunned by this revelation. Please see that State's Supplemental Response in Appendix "B," Page 32, Lines 5 through 14. There's no other explanation for this than that the prosecution and the Petitioner's counsel were negotiating

without the defendant's knowledge, and not letting the defendant actually choose a Manslaughter plea over a Murder plea. Mr. Reise never left a position of Manslaughter, he never knew he had one.

In Appendix "B," Page 4, Lines 3 through 10, in the State's Supplemental Response, the Court did not conclude its decision regarding the defendant's 3.5 Hearing where there were some very important legal issues regarding counsel for the defendant during interrogations, taped interviews, and photos taken without being provided with legal representation, after Mr. Reise repeatedly asked for legal counsel. The Court is quoted as saying:

> "Okay. Additionally, this Court was previously assigned this case and I did hold a Hearing that I'll characterize as a 3.5 Hearing. The Court has not signed findings and conclusions in that regard. Do the parties feel that that is necessary in the light of this plea?" Mr. Dixon? "No, your Honor."

The Defendant asks why his counsel did not think the findings of that Hearing were not important? The Petitioner's counsel's actions here again show how directed and adamant he was on a plea-bargain. Mr. Dixon was not acting in the best interest of his client. These actions clearly show Ineffective Assistance of Counsel.

The Petitioner's wife paid Jim Dixon $10,000 to retain his services for a Murder in the First Degree charge. Shortly after, Mr. Dixon asked for more money for investigations and for specialists. The Defendant could not come up with the money Mr. Dixon said he needed. Please see Exhibit "A," Page 2 of the Petitioner's Reply to State's Response to Supplemental Brief.

Please see Appendix "A" of State's Supplemental Response Page 4, Lines 20 through 25, and Page 5, Lines 1 through 6, show where Mr. Reise paused to the question of, "is any of your decision to change your Plea affected by your ability to obtain, or pay for an attorney?" Mr. Reise was going to respond to the question truthfully when Mr. Dixon leaned over and advised Mr. Reise to just say "no." Mr. Reise then just continued, saying "no."

The Petitioner had never been shown, or had access to the

discovery of his case during this whole process because he believed his counsel was doing his job legally to the best of his professional ability to represent him. The Petitioner just received the transcripts of the Hearing of 4/29/05 and the Sentencing Hearing on 5/12/05, on 3/2/07. Both transcripts show many problems with this case as described herein.

Through the Ineffective Assistance of Counsel, the Petitioner was led into taking a faulty, unknowing plea-bargain.
1) No real specialists were being brought in the case to explain why Mr. Reise may have been in shock due to his injuries, and what had just took place to explain why he left the scene. 2) Petitioner was told by counsel that a polygraph was needed, which Petitioner wanted to do to prove he was telling the truth. But, no polygraph was ever taken. 3) Counsel did not seem to care about the results from the 3.5 Hearing, which was a very important Hearing for the defense. 4) Lack of investigation, which may have resulted in missing a key, real witness. 5) Petitioner's lack of money may have been the reason for his counsel doing everything he could to manipulate Mr. Reise into taking a faulty plea. 6) How could anyone refuse a Manslaughter plea to accept a plea to a Murder charge? This shows that this case became what was in the best interest of the prosecution and the Petitioner's counsel, and not in the best interest of the Defendant.

In closing, Mr. Reise RESPECTFULLY ASKS this Court to Withdraw his Guilty Plea to correct a Manifest Injustice so he can begin to seek counsel for his defense, who will act on his behalf and begin to prepare for a Trial by Jury.

C. REQUEST FOR RELIEF

Vacate my conviction and dismiss the criminal charges against me; on the alternative, withdraw my Plea and be tried anew.

I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of Washington, pursuant to **RCW 9A. 72. 085,** and the laws of the United States, pursuant to title **28 U.S.C. 1746,** that the foregoing is true and correct.

RESPECTFULLY SUBMITTED and signed, this 15th day of March, 2007.

Michael Reise
Michael J. Reise #882766
Petitioner, Pro Se
S.C.C.C. H3 / A-79U
191 Constantine Way
Aberdeen WA 98520-9504

EXHIBIT
A

WASHINGTON STATE COURT OF APPEALS, DIVISION II

IN RE OF MICHAEL J. REISE Petitioner vs. STATE OF WASHINGTON Respondent.	)	AFFIDAVIT OF MICHAEL J. REISE
State of Washington County of Grays Harbor	)	ss:

I Michael John Reise after having been first duly sworn under oath, do hereby depose and say:

1) I am a United States Citizen and a resident of the State of Washington, Grays Harbor County. I am over the age of 18 and competent to testify to the matters related herein. I make this Affidavit based upon my personal knowledge.

2) When I was sentenced on May 12, 2005, on Thurston County Cause No.: 04-1-01962-5, I believed acquiescing to my attorney's advice, all the while ignorant of the legal proceedings and the law. I have never had the need to hire an attorney for any legal, civil, or criminal matters before. I made that clear to Mr. Dixon and that I would put 100% of my trust in him to represent me with the best of his ability. Through all the court proceedings I did exactly

what I was advised to do and say by Mr. Dixon.

3) My wife and I were under a lot of stress mentally and financially. My wife was able to retain Mr. Dixon for the sum of $10,000 for a Murder in the First Degree charge. We thought that was a lot of money, but we came to find out that was just a fraction of what Mr. Dixon should of asked for as a retainer for a First Degree Murder charge.

Shortly after Mr. Dixon realized we had lost the restaurant and we could not come up with more money for him right away at that time. From there on out I would maybe see Mr. Dixon once or twice a month if that and it was only for 5 to 10 minutes, because he always had to be in court, as he would say.

Mr. Dixon said his job was to get me home to my family and that's what he was going to do, and to let him work his magic and to follow his advice. He stated on numerous occasions we needed to come up with more money for specialists and investigation. But we, meaning my wife and I, just couldn't.

4) Mr. Dixon continued to convince me to take a plea bargain that would guarantee to have me home in 3 to 5 years without any risk of going to trial. He stated that the trial would last over a month and cost the State over a million dollars and if I took this plea he said I would get 156 months with one third, and time served off.

Mr. Dixon said I would only do one year in closed-custody then go right to a minimum facility were I would serve another two years then go to what he called "camp." Mr. Dixon said that from camp, DOC will parole me, that they have the power to do so because of the prisons being over crowded. Saying, "You have no criminal history, your age, and I know you will do good time, so there will not be any problem."

I believed Jim Dixon and trusted him with all my being. I then did exactly what he advised me to do through the proceedings. He also convinced my wife and son. Please refer to Exhibits "B" and "C" of petitioner's Personal Restraint Petition. Mr. Dixon also stated that judge Tabor was on board and would keep the bargain.

5) Please refer to page 32 of the State's Supplemental Response to Personal Restraint Petition, Lines 5 through 14. In Appendix "B" Mr. Straume is quoted as saying:

> "The reason that it came so quickly together was when Mr. Reise left his position of manslaughter one, then we were in a position to, I think, fairly find a compromise in this case, and I think given the strengths and weaknesses of both sides, 13 years is appropriate, your Honor. This is not a science but this is the best Judgment that experienced people can have given the status of the case, and I ask the Court to follow the recommendation. Thank you."

I was never informed by my attorney about a Manslaughter plea. If quoted in the transcripts reveals the truth I would have never accepted a Murder in the Second Degree plea over a Manslaughter charge. Mr. Dixon and the prosecution were clearly leaving me out of the loop and were conducting negotiations without my knowledge. Why would I even consider a Murder plea over a Manslaughter plea?

6) My Counsel never mentioned or advised me of taking an Alfred plea. I would not have known anything about an Alfred plea, again I had to rely on Mr. Dixon for legal representation for me, and to defend me to the best of his ability.

7) Mr. Dixon is quoted twice saying that, if this case would have gone to trial Mr. Reise would have walked out of here being acquitted. Please refer to Appendix "B" in the State's Response to Petitioner's Supplemental Brief, page 27, Lines 14 and 15 quote:

> "This is a case that could have resulted in an acquittal."

See pages 29 and 30 of Appendix "B," Lines 19 through 25, and on page 30, Lines 1 through 5.

> "I believe there is a - - would have been a legitimate chance that had this matter proceeded to trial, Mr. Reise would have walked out of here acquitted. And I was prepared to try this case, and I say that with all sincerity. This was a self-defense case. I have no doubt in my mind that Mr. Reise would have - - the Court would have issued a self-defense instruction and I could have argued that, hopefully very convincingly, borne out by not only the forensic evidence but the testimonial evidence and, more importantly the lack of testimonial evidence."

My question is, why then did Mr. Dixon not go to trial and do what was best for his client? Why was Mr. Dixon so adamant about plea bargains? Why didn't Mr. Dixon let Mr. Reise know about a Manslaughter plea, then advised Mr. Reise to accept a Murder plea?

8) Mr. Gillaspie's declaration states the truth on what happened that day during the incident. If Mr. Gillaspie would have been discovered during those seven months I was in County

Jail, during those proceedings I know it would have been the most important evidence in my case. And if Mr. Dixon did not want to go to trial because of my financial problems I would have asked the Court for a Court appointed attorney and would have gone to trial.

I am a good and fair man, and I would not have expected Jim Dixon to go through a long trial without being able to pay him. Both my wife and myself lost our livelihood, that being the restaurant, the day of the incident. My daughter and son also worked at the restaurant full-time.

9) In support of my contention that the plea was not knowingly, voluntary, and intelligently entered. I did not hand-write the guilty statement, my attorney Mr. Dixon did. I initialed everywhere my counsel showed me. Again I was told to follow everything my counsel advised me to do and he assured me I would be back with my family in 3 to 5 years. My early release date is 2018. Also I was sentenced to 24 to 48 months of Community Custody and a year after being sentenced was charged over $6,000 for the restitution which never was part of the plea bargain I was told I would get if I pled guilty to Murder in the Second Degree by my counsel Mr. Dixon.

10) I know what I know now, having been able to File the Personal Restraint Petition, the Reply to the Response. I learned about the importance of Affidavits, Declarations, the filing of Supplemental Briefs, and the Reply to the Response to the Supplemental Brief, and how to look up case law using computers and having access to typewriters at the Law Library.

I have been able to educate myself enough with the tools we have access to in the Law Library to hopefully be able to utilize the appeal process to correct a Manifest Injustice. Also I was able to get help from real knowledgeable inmates that were able to guide me in the right direction. My family

and I pray that this Court will allow my plea to be withdrawn so I may prove my innocence in a Jury Trial.

Oath of Petitioner
State of Washington)
) ss:
County of Grays Harbor)

I DECLARE, under penalty of perjury under the laws of the State of Washington, that I have examined this Petition and to the best of my knowledge and belief it is true and correct.

Dated this 15 day of March 2007.

Michael Reise

Michael John Reise #882766, Pro Se
S.C.C.C. H3 / A-79U
191 Constantine Way
Aberdeen, WA 98520-9504

I, John S. Thompson, Notary Public in and for the State of Washington, do Hereby certify that on this 15 day of March, 2007, Personally appeared before me, Michael John Reise, to me known to be the Individual described in and who executed the within instrument and acknowledges that he signed the same as his free voluntary act and deed for the use and purpose herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 15 day of March in the year of 2007.

John Thompson

Notary Public in and for the State of Washington, residing at: Shelton, WA.

My Commission expires: 6/6/10

JOHN S. THOMPSON
COMMISSION EXPIRES
NOTARY
PUBLIC
6-6-10
STATE OF WASHINGTON

PROOF OF SERVICE

I, Michael J. Reise, hereby certify and/or declare, under penalty of perjury, by my signature, that on this 15th. day of March, 2007 I served via U.S. mail, postage prepaid, one copy of Reply to the States Response to Petitioner's Supplemental Brief, to the attorneys' of record:

Edward G. Holm
James C. Powers
Thurston County Prosecuting Attorney
2000 Lakeridge Dr SW #2
Olympia, WA 98502-6001

FILED
COURT OF APPEALS
DIVISION II
07 MAR 19 AM 8:50
STATE OF WASHINGTON
BY DEPUTY

SIGNED this 15th. day of March, 2007.

Michael Reise

MICHAEL J. REISE