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NO. 34885-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

ALFRED TAISICAN,

Appellant.

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

The Honorable John Hickman, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court failed to engage appellant in a colloquy to determine if appellant was making an unequivocal request to proceed pro se and therefore denied appellant the right to make an informed decision regarding self-representation.

2. The trial court failed to engage appellant in a colloquy to apprise him of the risks and disadvantages of proceeding pro se thus denying appellant the right to make a knowing, voluntary and intelligent decision regarding waiver of counsel.

3. Mr. Taisican was denied his right to an omnibus hearing.

4. Counsel was ineffective for failing to assure that Mr. Taisican obtained an omnibus hearing.

Issues Presented on Appeal

1. Did the trial court's failure to engage appellant in a colloquy to determine if he was making an unequivocal request to proceed pro se deny appellant the constitutional right to self-representation?

2. Did the trial court's failure to engage appellant in a colloquy to apprise him of the risks and disadvantages of proceeding pro se deny appellant the right to make a knowing, voluntary and intelligent decision regarding waiver of counsel?

3. Was Mr. Taisican denied his right to an omnibus hearing?

4. Was Counsel ineffective for failing to assure that Mr. Taisican obtained an omnibus hearing?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On August 11, 2005, Mr. Taisican was charged with one count of possession of a controlled substance in violation of RCW 69.50.4013. CP 1-2. Without objection, Mr. Taisican's statements to the police were admitted following a 3.5 hearing. CP 58-59. Mr. Taisican was convicted as charged following a jury trial. CP 49. On March 21, 2006 Mr. Taisican filed a motion to impeach his attorney for failing to properly represent him at trial. CP 50-53. On March 24, 2006, Mr. Taisican filed supplemental information regarding his motion to impeach his attorney claiming ineffective assistance of counsel. CP 56. On March 24, 2006, the trial court denied Mr. Taisican's request for new counsel. 1RP1 5. On March 30, 2006, Mr. Taisican filed a motion to reconsider the trial court's denial of his motion. RP 65-66. On April 14, 2006, Mr. Taisican filed a motion for arrest of judgment claiming that there was insufficient evidence of guilt and that the police officers lied.

¹ 1RP refers to the verbatim report of proceedings from March 24, 2006. Court Reporter Venegas did not comply with the RAP's by beginning each volume of the verbatim report of proceedings with the number 1.

CP 69-76. On April 19, 2006 Mr. Taisican filed a motion for arrest of judgment for failure to schedule an omnibus hearing. CP 78-89. On May 4, 2006, Mr. Taisican filed a brief claiming ineffective assistance of counsel. Supp CP (Brief of Mr. Taisican in support of motion for arrest of judgment 5-4-06). On May 12, 2006, the court denied Mr. Taisican's request for new counsel and granted his request to proceed pro se. 2RP2 11. The following discussion took place regarding Mr. Taisican's request to proceed pro se. According to defense counsel, "My client doesn't trust me, and would like to proceed pro se." 2RP 4. Mr. Taisican stated, "I filed this motion to impeach my attorney for his misrepresentation and I would ask the court if I can be pro se or be assigned to proceed with my motions." 2RP 5.

Court: First of all, I'm not going to appoint a new attorney....Mr. Shaw shall remain as stand by counsel only.Mr. Taisican's motion to represent himself is granted.

2RP 11

On March 12, 2006, the court also denied Mr. Taisican's motion for arrest of judgment. 2RP 12. Mr. Taisican was sentenced within the standard range. CP 93-108. This timely appeal follows. CP

2. SUBSTANTIVE FACTS

Pierce County Deputy James Jones testified that he was on duty

² 2RP refers to the verbatim report of proceedings³ from May 12, 2006.

working a scheduled store operation on August 8, 2005. The store operation was designed to identify people involved in purchasing precursor materials for methamphetamine manufacture. RP 24, 26-27. Mr. Jones was in an unmarked car in the Walgreen's parking lot when he saw Mr. Taisican park 5-6 feet from his parked car, pull out a crack pipe and begin smoking what appeared to be a rock form of methamphetamine. RP 28-29, 31. Mr. Jones called for back up from a marked patrol car. RP 31. Defense counsel did not cross examine Mr. Jones.

Pierce County Sheriff Kory Shaffer, responded to Mr. Jones' request for back-up. He arrived at Mr. Taisican's car, arrested Mr. Taisican and put him into the back of a patrol car. 38-340. Mr. Shaffer saw the glass pipe and retrieved it from the car. Id. Mr. Shaffer read Mr. Taisican his Miranda rights and Mr. Taisican agreed to speak with the officer. RP 39-40. According to Mr. Shaffer, Mr. Taisican said "you guys scared the shit out of me". Mr. Taisican also answered "yes" when asked if was smoking methamphetamine. RP 41. Defense counsel did not cross examine Mr. Shaffer.

Jane Boysen, a Washington State Crime Lab forensic scientist testified that she tested the substance retrieved from a glass smoking pipe and it tested positive for methamphetamine. RP 46. The amount tested was less than 1/10 of a gram, and too small to be measured on the state's sensitive

electronic scales. RP 46, 49.

C. ARGUMENT

1. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO MAKE A KNOWING, VOLUNTARY AND INTELLIGENT DECISION TO PROCEED PRO SE OR WITH REPRESENTATION.

a. Decision to Proceed Pro Se Not Knowing, Voluntary and Intelligent.

Both the United States and Washington State Constitutions guarantee the right to self-representation. U.S. Const., amend. VI and XIV; Wash. Const. art. I, § 22. The Court of Appeals reviews a trial court's denial of a motion to proceed pro se for abuse of discretion. State v. Breedlove, 79 Wn. App. 101, 106, 900 P.2d 586 (1995). The trial court should grant a motion to proceed pro se when it is voluntarily, knowingly and intelligently made, unequivocal, and timely. *Id.* For a decision to be knowing, voluntary and intelligent, the trial court must advise the defendant of the risks and disadvantages of proceeding pro se. State v. Woods, 143 Wn.2d 561, 587, 23 P.3d 1046 (alteration in original), cert. denied, 534 U.S. 964, 122 S. Ct. 374, 151 L. Ed. 2d 285 (2001); see also Tacoma v. Bishop, 82 Wn. App. 850, 855-

56, 920 P.2d 214 (1996), citing, City of Bellevue v. Acrey, 103 Wn.2d 203, 208-09, 691 P.2d 957 (1984).

The Washington State Supreme Court has ruled that “the trial court should assume responsibility for assuring that decisions regarding self-representation are made with at least minimal knowledge of what the task entails. “ This is long standing history from the United States Supreme Court which stated almost 60 years ago that:

[A] judge must investigate as long and as thoroughly as the circumstances . . . demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility.

Acrey, 103 Wn.2d 210, quoting, Von Moltke v. Gillies, 332 U.S. 708, 723-24 92 L. Ed. 309, 68 S. Ct. 316 (1948).

Mr. Taisacan made a request to proceed pro se and the court granted the motion. The court did not however advise Mr. Taisacan of the risks and disadvantages of proceeding pro se. Mr. Taisacan was therefore unable to make a knowing, voluntary and intelligent waiver of his right to counsel.

In Acrey, 103 Wn.2d at 212 the Court reiterated the need for proper advisement before ruling on issues of waiver of constitutional rights.

No colloquy appears between the judge and petitioners wherein the judge addressed the risks of self-representation. The record otherwise holds no evidence that shows that petitioners actually knew the nature or seriousness of the charge, the possible penalties, or that presenting a defense is a technical matter, subject to technical rules. Petitioners did not expressly waive counsel; even if they had, this record is inadequate to show that they understood or were aware of the "dangers and disadvantages of self-representation". The convictions are therefore reversed and the cause remanded for a new trial.

Id. See also Bishop, 82 Wn. App. at 860 ("We hold that the municipal court erred in requiring Bishop to proceed to trial unrepresented, without first warning him of the dangers and consequences of proceeding pro se").

The right to proceed pro se exists "despite the fact that its exercise will almost surely result in detriment to both the defendant and the administration of justice." State v. Fritz, 21 Wn. App. 354, 359, 585 P.2d 173 (1978), quoting, People v. Salazar, 74 Cal. App. 3d 875, 141 Cal. Rptr. 753, 761 (1977), review denied, 92 Wn.2d 1002 (1979). As well-intentioned and understandable as the impulse is, protecting the defendant's best interest is an untenable reason for denying a request to proceed pro se. State v. Vermillion, 112 Wn. App. 844, 852, 51 P.3d 188.

Trial courts are instructed to “indulge every reasonable presumption against finding that a defendant has waived the right to counsel.” State v. Vermillion, 112 Wn. App. 844, 851, 51 P.3d 188 (2002), review denied, 148 Wn.2d 1022, 66 P.3d 638 (2003), (quoting State v. Chavis, 31 Wn. App. 784, 789, 644 P.2d 1202 (1982)), review denied, 148 Wn.2d 1022, 66 P.3d 638 (2003).

In the instant case, the trial court was not concerned with protecting Mr. Taisican’s best interests, rather it simply abdicated its responsibility to ensure a knowing, voluntary and intelligent waiver in favor of a speedy granting of Mr. Taisican’s request. State v. Vermillion, 112 Wn. App. at 852.

In Bishop and Acrey the defendants were denied their constitutional rights to make a knowing, voluntary and intelligent decision regarding whether or not to proceed pro se. In Bishop, supra, and Acrey, supra, the Courts rejected as constitutionally adequate the method used by the trial court in the instant case any decision or order to proceed pro se without proper advisement of the risks and disadvantages of proceeding pro se. As in Bishop, supra, and Acrey, supra, Mr. Taisican was denied his constitutional right to make a knowing, voluntary and intelligent decision regarding whether or not to proceed pro se.

b. Waiver of Right To Counsel Must Be Unequivocal.

After a defendant is advised of the risks and disadvantages of proceeding pro se, the trial court must also ascertain that the defendant's request to proceed pro se is unequivocal when viewed in light of the record as a whole and not simply an expression of frustration with his attorney. State v. Stenson, 132 Wn.2d 668, 741-72, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998), citing, State v. Luvene, 127 Wn.2d 690, 698-99, 903 P.2d 960 (1995).

The requirement that a request to proceed pro se be stated unequivocally derives from the fact that there is a conflict between a defendant's rights to counsel and to self-representation. Because of this conflict, a defendant's request for self-representation can be a "heads I win, tails you lose" proposition for a trial court. *People v. Sharp*, 7 Cal. 3d 448, 462 n.12, 499 P.2d 489, 103 Cal. Rptr. 233, 242 (1972), cert. denied, 410 U.S. 944 (1973). If the court too readily accedes to the request, an appellate court may reverse, finding an ineffective waiver of the [***14] right to counsel. But if the trial court rejects the request, it runs the risk of depriving the defendant of his right to self-representation. *People v. Sharp, supra*. To limit baseless challenges on appeal, courts have required that a defendant's request to proceed pro se be stated unequivocally.

State v. D. Weese, 117 Wn.2d 369, 377, 816 P.2d 1 (1991), citing, State v. Imus, 37 Wn. App. 170, 179-80, 679 P.2d 376, review denied, 101 Wn.2d 1016 (1984).

In DeWeese, the defendant's request for new counsel was denied and the court engaged in a long colloquy regarding the risks and disadvantages of proceeding pro se. The Court held that although the defendant was dissatisfied with appointed counsel, he did make an unequivocal, knowing, voluntary and intelligent decision to proceed prose. DeWeese, 117 Wn.2d at 379.

In State v. Luvene, Luvene's attorney requested a continuance despite Luvene's strong objections. Luvene, 127 Wn.2d at 698-99. Luvene stated that he would represent himself if necessary and went on to express his anger at how long it was taking to get to trial. The court denied the request holding that Luvene's statement indicated his frustration with the delay in going to trial, not an unequivocal assertion of his right to self-representation. *Id.*

In State v. Stenson, immediately after the trial court denied Stenson's motion for new counsel, he moved to proceed pro se: "I would formally make a motion then that I be able to allow [sic] to represent myself. I do not want to do this but the court and the counsel that I currently have force me to

do this." Stenson, 132 Wn.2d at 739. The trial court denied his motion as untimely, but also found that he did not really want to proceed without counsel. Stenson, 132 Wn.2d at 740. The Washington Supreme Court held that Stenson's request was both conditional and equivocal. Stenson, 132 Wn.2d at 741. It observed that almost all of the discussion between Stenson and the trial judge concerned Stenson's wish for different counsel, and Stenson did not refute the trial court's conclusion that he did not want to proceed without counsel.

In State v. Woods, Woods objected to his lawyer's request for a second continuance and said he was prepared to proceed without counsel:

THE DEFENDANT: Your Honor, you know, I will be - I will be prepared to proceed with - with this matter here without counsel come October 21st.

THE COURT: All right. You understand you have the right to do that.

THE DEFENDANT: Yes.

THE COURT: Counsel, have you discussed this with your client?

[DEFENSE COUNSEL]: No. We have not discussed that point at all. It's a surprise to me.

THE DEFENDANT: I've - I've already consented to one continuance, Your Honor. And they - they have done nothing but grossly misuse that time there. And I feel if - if they

was [sic] granted a second continuance, it - it would be treated in the same manner, Your Honor.

THE COURT: All right. Thank you.

State v. Woods, 143 Wn.2d at 587. The Washington Supreme Court held that Woods' request was as equivocal as that in Luvene because it "merely revealed the defendant's displeasure with his counsel's request to continue the trial for a lengthy period of time." Id.

In the instant case, Mr. Taisican requested to proceed pro se because he was dissatisfied with his appointed attorney. 2RP 5. The trial court did not engage in a meaningful inquiry to determine if Mr. Taisican's request was equivocal. Rather the court simply granted Mr. Taisican's request to represent himself without apprising him of the risks and responsibilities of self-representation. The court also failed to enter written finding and conclusions regarding Mr. Taisican's reasons for wanting to proceed pro se.

By failing to determine if Taisican's request to proceed pro se was unequivocal and by failing to apprise Mr. Taisican of the risks and disadvantages of proceeding pro se, the trial court denied Mr. Taisican of his constitutional right to make an informed decision regarding representation or proceeding pro se. Woods, 143 Wn.2d at 588. This is reversible error

requiring reversal of Mr. Taisican's convictions and remand for a new trial with a proper colloquy to assure that Mr. Taisican's decision regarding self representation is knowing, voluntary and intelligent; and for a determination whether Mr. Taisican's request to proceed pro se was unequivocal. Woods, 143 Wn.2d at 587; Acrey, 103 Wn.2d at 208-09.

2. CrR 4.5 REQUIRES THAT THE COURT CONDUCT AN OMNIBUS HEARING

CrR 4.5 provides:

(a) When required. When a plea of not guilty is entered, the court **shall** set a time for an omnibus hearing.

(b) Time. The time set for the omnibus hearing **shall** allow sufficient time for counsel to (i) initiate and complete discovery; (ii) conduct further investigation of the case, as needed; and (iii) continue plea discussions.

(c) Checklist. At the omnibus hearing, the trial court on its own initiative, utilizing a checklist substantially in the form of the omnibus application by plaintiff and defendant (see section (h)) **shall**:

(i) ensure that standards regarding provision of counsel have been complied with;

(ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;

(iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be

made at the hearing or continued portions thereof;

(iv) ascertain whether there are any procedural or constitutional issues which should be considered;

(v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference; and

(vi) permit defendant to change his plea.

(d) Motions. All motions and other requests prior to trial should be reserved for and presented at the omnibus hearing unless the court otherwise directs. Failure to raise or give notice at the hearing of any error or issue of which the party concerned has knowledge may constitute waiver of such error or issue. Checklist forms substantially like the memorandum required by section (h) **shall** be made available by the court and utilized at the hearing to ensure that all requests, errors and issues are then considered.

(e) Continuance. Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation or preparation, or evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

(f) Record. A verbatim record (electronic, mechanical or otherwise), **shall** be made of all proceedings at the hearing.

(g) Stipulations. Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.

(h) Memorandum. At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending

CrR 4.5 unequivocally requires the trial court to set an omnibus hearing when the defendant does not plead guilty. Mr. Taisican did not plead guilty in the instant case.

"Statutory construction begins by reading the text of the statute or statutes involved." State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). When the language of the statute is unambiguous, there is no need for an inquiry into the meaning of the language in question. The plain language dictates the meaning, and the courts assume that the statute means exactly what it says. State v. Salavea, 151 Wn.2d 133, 142, 86 P.3d 125 (2004). "Where statutory language is amenable to more than one reasonable interpretation, it is deemed to be ambiguous." Roggenkamp, 153 Wn.2d at 621. "When interpreting statutory terms, a court should take into consideration the meaning naturally attaching to them and that best harmonizes with the context of the rest of the statute. " In re the matter of

I.A.D., 131 Wn.App. 207, 213, 126 P.3d 79 (2006), citing, Roggenkamp, 153 Wn.2d at 623.

A statute is not considered ambiguous simply because different interpretations are plausible. Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 239-40, 59 P.3d 655 (2002). "A legislative body is presumed not to use nonessential words." I.A.D, quoting, State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002). "Therefore, each word of the statute must be accorded meaning and interpreted so that no portion of the statute is rendered meaningless or superfluous." I.A.D., citing, Roggenkamp, 153 Wn.2d at 624.

In CrR 4.5(a) "shall" is unambiguous and the plain meaning indicates that the provisions using the term "shall" are mandatory. In the instant case, Mr. Taisican did not receive the benefit of the mandatory omnibus hearing; and he did not waive his right to an omnibus hearing. The Court in State v. Wilson, 28 Wn. App. 821, 626 P.2d 998, 1002 (1981), noted that it is possible for a defendant's attorney to waive the omnibus hearing. Wilson, 626 P.2d. at 1002.

In Wilson, the Court described the CrR 4.5 as"

allow[ing] for accelerated disclosure of information which ultimately must be revealed at trial and their purpose is to prevent last-

minute surprise, trial disruption, and continuances and to encourage the early disposition of the cases through settlement. *State v. Nelson*, 14 Wn. App. 658, 545 P.2d 36 (1975); *State v. Dault*, 19 Wn. App. 709, 578 P.2d 43 (1978).

Wilson, 626 P.2d at 1002. This description indicates that the purpose of CrR 4.5 is to assist the defendant with his trial preparation and to engage in discussions regarding resolution short of trial. These are critically important matters for a defendant preparing for trial that Mr. Taisican was not privy to. Inexplicably and to Mr. Taisican's detriment, his attorney failed to request or note an omnibus hearing. During trial, attorney for Mr. Taisican did not engage in cross examination of the majority of witnesses and did not object to the introduction of Mr. Taisican's statements at the 3.5 hearing.

3. COUNSEL WAS INEFFECTIVE FOR FAILING TO PROVIDE MR. TAISICAN WITH AN OMNIBUS HEARING.

Mr. Taisican did not plead guilty in the instant case thus under CrR 4.5 as stated, *supra*, an omnibus hearing was mandatory. Counsel was ineffective for failing to assure that Mr. Taisican obtained an omnibus hearing. This failure ultimately deprived Mr. Taisican of the opportunity to understand his case and have his attorney prepare a defense. There is much to gain from an omnibus hearing and much to lose without one. There is no

tactical reason for failing to note an omnibus hearing. Counsel in the instant case was ineffective.

A criminal defendant has the constitutional right to effective assistance of counsel. The state and federal constitutions guarantee defendants reasonably effective representation by counsel at all critical stages of a proceeding. U.S. Const., amend 6; Wash. Const. art 1 sect. 22; Strickland v. Washington, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Mierz, 127 Wn.2d 460, 471, 901 P.2d 286 (1995). A stage of a proceeding is considered critical if it “presents a possibility of prejudice to the defendant.” State v. Harell, 80 Wn. App. 802, 804, 911 P.2d 1034 (1996), citing, Garrison v. Rhay, 75 Wn. App. 98, 102, 449 P.2d 92 (1968). It is defense counsel’s effective representation that is supposed to ensure that the defendant is able “to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or to take an appeal.” Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct 3308, 77 L.Ed.2d 987 (1983).

Plea negotiations and entry of a guilty plea present a potential for prejudice to the defendant and thus, the effective assistance of counsel is required during this critical stage of a case. State v. James, 48 Wn. App. 353, 361 n.2, 362, 739 P.2d 1161 (1987), citing, Hill v. Lockhart, 474 U.S. 52, `06

S.Ct. 366, 370, 88 L.Ed2d 293 (1985). Similar to plea negotiations, the omnibus hearing presents an opportunity to obtain information to properly evaluate a case and thus determine what course is best suited for the defendant. An omnibus hearing is a critical stage of a case. CrR 3.1(b)(2); CrR 4.5.

CrR 3.1(b)(2) provides:

A lawyer **shall be provided at every stage of the proceedings**, including sentencing, appeal, and post-conviction review. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

(emphasis added). *Id.* To obtain relief based on a claim of ineffective assistance of counsel, a criminal defendant must establish that: (1) his counsel's performance was deficient; and (2) the deficient performance prejudiced his case. Strickland, 466 U.S. at 687; State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). An attorney's failure to engage in reasonable investigation can result in ineffective assistance of counsel. Personal Restraint Petition of Rice, 118 Wn.2d 876, 909, 828 P.2d 1086 (1992), citing, Code v

Montgomery, 799 F.2d 1481 (11th Cir. 1986) (counsel ineffective by failing to investigate alibi witness).

In the instant case, counsel for Mr. Taiscan rendered ineffective assistance of counsel when he failed to thoroughly investigate Mr. Taiscan's case; beginning with his failure to ensure Mr. Taiscan's access to a simple omnibus hearing and ending with his almost complete inaction during trial. Counsel for Mr. Taiscan failed to comply with the basic and mandatory procedures established to protect criminal defendants from surprise and to allow adequate trial preparation.

As a consequence of counsel's failure to follow the basic Criminal Rules of Court, Mr. Taiscan was denied effective representation. Defense counsel's failure to investigate and resulting inability to apprise Mr. Taiscan of all pertinent evidence constituted less than reasonably competent assistance of counsel and this deficient representation prejudiced Mr. Taiscan in his ability to make informed decisions regarding his case. Ultimately Mr. Taiscan was also denied the opportunity to assist his attorney, because his attorney did not follow proper procedure established to inform defendants of the strengths and weakness of their cases and of any other pertinent trial related issues. CrR 4.5

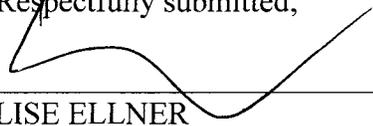
When defense counsel is ineffective, the appropriate remedy is a new trial. State v. Thomas, 109 Wn.2d 222, 232, 743 P.2d 816 (1987). In the instant case, defense counsel's deficient performance substantially prejudiced Mr. Taisican.. Because Mr. Taisican was denied the constitutional right to the effective assistance of counsel during a critical stage of his case, this Court should reverse the trial court and remand for a new trial.

D. CONCLUSION

Mr. Taisican respectfully requests this Court (i) reverse his conviction and remand for a new trial with directions for the trial court to advise Mr. Taisican of the risks and disadvantages of proceeding pro se; (ii) require the trial court to make specific findings regarding whether Mr. Taisican's request to proceed pro se is unequivocal; and (iii) find that defense counsel was ineffective and appoint new counsel if Mr. Taisican does not make a knowing, voluntary and intelligent waiver of his right to counsel.. And remand for anew trial with new counsel.

DATED this 9th day of October 2006.

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor's office, appeals department 930 Tacoma Ave. S. County- City Building Rm 946, Tacoma WA 98402 and Alfred Taisican DOC# 972900 WCC PO Box 900 Shelton, WA 98584 a true copy of the document to which this certificate is affixed, on October ¹⁰ 2006. Service was made by depositing in the mails of the United States of America, properly stamped and addressed.

Signature _____

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