

IN THE COURT OF APPEALS DIVISION II  
FOR THE STATE OF WASHINGTON  
**Form 23**  
FORM STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

ISRAEL V. MAGTANONG	)	
	)	
Appellant/Petitioner,	)	
	)	No. <u>35000-9-II</u>
v.	)	
	)	STATEMENT OF ADDITIONAL
	)	GROUNDS FOR REVIEW
<hr style="width: 30%; margin-left: 0;"/>	)	
STATE OF WASHINGTON	)	
	)	
Respondent/Apelle.	)	

I, ISRAEL V. MAGTANONG, 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 1**

**Record on Appeal**

I respectfully request that all of the documents in the Kitsap County court file should be made available to be considered by this Court. If for some reason the complete file has not been transferred, I respectfully request that the entire Kitsap court file be transferred for reference on this appeal.

I do not have access to the documents before this Court, and I have not consulted or discussed these responses with my attorney (I did consult and use my Mother, Rose Vianzon to help me) so my reference to the hearing verbatim report of proceedings (RP) will be to the page numbers in the version of the hearing that I possess. The Affidavit of Richard Stocking will be referred to as "affidavit of RS", and other documents in the Kitsap clerk's file will be referred to by their names (i.e. "my motion"). I will use PD for public defender, and the Crawford firm for the public defender firm of Mr. Murphy and Mr. Kelley, and the Ness firm for my first PD attorney, Mr. Cross.

**Remand for Hearing**

If my appeal before this Court is not granted to reverse the decision of the honorable Judge Verser, I respectfully ask that the case be remanded to Kitsap County to hold hearings on the issues I raise below with respect to the basic incompetence of my public defender representation owing to overwork from too many cases, AND on the issue of the State having deceived either the warrant and motion judges OR Judge Verser regarding the extent to which the informant was to be benefited. An independent attorney should be appointed to investigate and present the hearing.

## Additional Ground 2

### **Incompetence of Counsel Affected Result of Case: Overworked Public Defender; No Preparation Whatsoever for Trial to Start Two Days After he Pushed us to Plead Guilty**

I was not afforded adequate representation both because of the conflict of interest raised by my present attorney in this appeal, but also because the two firms assigned to me were too busy to prepare the case for trial. I would not have been convicted of that crime to which I acknowledged sufficient evidence existed (in my plea), but would have been convicted of another felony crime involving the drug and the informant, which would not have resulted in deportation proceedings. Thus, the result would have been different had I received competent representation. If you set aside my plea, I am willing to plead guilty to that other felony crime, and accept my time served in prison as just punishment..

I believe that my attorney from the Crawford firm is a good person, but he is way too far overworked from what I could tell. That attorney, who had erroneously been appointed for my criminal defense in October 2004, had not contacted one single witness of mine in preparation for a trial that was to commence just two working days after he coerced me to enter a plea of guilty on January 19, 2005. The public defenders from both the Ness firm and the Crawford firm never had adequate time to prepare my case. Yes, I admit that I did have brief office visits with each of them, but I believe we did a lot of our work in the courthouse hallway or the jury room while they appeared to be rushing about taking care of other clients.

For example, I had met with Mr. Murphy the night before his motion was to be heard on Wednesday, January 19, 2005, and I told him I wanted the motion to go through and for him to go to trial. That was just three working days before trial. During that visit, which was just three working days before my trial was to commence, I discovered that he had not even contacted my key witness that I had mentioned to my first public defender from the Ness firm.

In the presence of my Mother, Rose Vianzon, Mr. Murphy did call that witness. But this was way too late to be first preparing for trial. How did he intend to defend me if he had lost my motion that was heard the next morning, just two days before trial? Thus, he was mistaken when he testified at the hearing before Judge Verser that he was "preparing for ... trial" (RP11, line 21) since, so far as I could see from our office meeting, he made no preparations whatsoever for my defense at trial.

Then, on the day of the motion, he met with me and my Mother for no more than five minutes in the jury room adjacent to the court room. Mr. Murphy had other matters to attend to, and he was rushing about and came in and made an argument for why I should accept the plea deal. He pushed real hard for me to accept a plea, and told me I would just state that there was sufficient evidence to convict me.

I am now thinking that what he never told us is that he was trying to make me plead guilty because he had done no work whatsoever on preparation for my trial, which was to start on January 24, 2005, just two working days later.

It will do no good for Mr. Murphy to argue that "HE" was going to continue the trial date once again inasmuch as it had already been continued four times, and I was not going to agree to any further delays. (RP page 23, line 10). I do not think that Mr. Murphy had the power to continue my trial yet again. But since he had apparently not prepared at all for the trial, he was in a position of having to pressure me and my Mother to accept the deal that was offered, even though we both thought I would have had a pretty good chance to avoid a conviction on the charge that requires my

deportation. I acknowledge that I am guilty on another felony charge that would require the same prison sentence, but not deportation. We did discuss deportation issues with my attorney, but he did not seem to know about them.

Thus, in the interests of justice, this appeal should be granted, but if not, then I think a hearing should be had to see what information was in my attorney's file and what information was transferred from the Ness firm. I do not have knowledge of what work was done or what information was transferred from my first attorney, but judging from the testimony of Mr. Murphy at the hearing before Judge Verser, no information that I discussed with my Ness firm attorney made it into the file at the Crawford firm. And, as my Mother and I learned the night before his motion, my attorney had not contacted even one of my witnesses who would have undermined the allegations of the informant.

### **Result of Case Would be Different if I had Competent Counsel**

If I had competent counsel, not shackled by either a conflict with another client or overburdened by workload, the result of the case would have been different.

My attorneys would have used the witnesses I provided to prove that some of the allegations of the informant were lies. Then, I would have pleaded guilty to a crime involving the drug and the informant, BUT NOT DELIVERY. I never pled "guilty" per se to delivery; my attorney explained that I was pleading that there was sufficient evidence to convict me of the charge.

I readily admit that I was guilty of a crime for which I would have been sentenced to prisons for perhaps the same term as I was sentenced. I have no problem with a conviction of that particular felony crime and having to serve time for my crime.

BUT, THAT CRIME WAS NOT ONE FOR WHICH I CAN BE DEPORTED. Thus, I am seeking to vacate my plea that there was sufficient evidence to convict me, and if requested by the State, I would in its place gladly enter a plea to a felony crime involving the drug and the informant, but not one for which I could be deported.

## **Additional Ground 3**

### **The State breached its Duty to Provide Indigent Defendant Effective Counsel**

The government has the obligation to provide an indigent like me with effective counsel. That duty cannot be avoided just because the budget does not permit enough money to pay attorneys to do a competent job.

My PD attorneys did make time to see me in their offices, but the important meetings more often were in the court hallways where they were rushing between clients and court appearances. I do not contend that they are not caring or competent attorneys: it is just that they both seemed to have way too much to do each time we met with them. Except for one phone call in my presence three days before trial, my attorneys never did contact the witnesses I identified who would prove that the important allegations of the informant were lies. Unless they had done work that was hidden from us, it appears to my Mother and me that my attorneys failed to make any reasonable investigation into possible defense strategies. Speaking with my witnesses would have been the first step

toward that end, and we do not believe that was done, except for the one witness that Mr. Murphy called during our meeting with him three working days before trial was to commence.

I know that my PD attorneys are good people, but I also know that they must have way too many cases because they did not have the time to work on my file in the way that a competent attorney would have done.

I have been told that there have been findings about the public defense system and the conclusion was that the PD's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations.

Neither can that duty be avoided just because the system calls for transfer of a client from one firm to another. What I told my first government-appointed attorney must be carried forward as part of the file, just as surely it would be if this were a one-person firm. It would be incompetent if a one-person firm were so busy that it could not place vital information into the file.

Likewise, it is no excuse that the public defender system is so overworked that attorneys do not adhere to basic standards of competent practice, such as taking down notes for the file of important points made by the client. In this case, apparently nothing or little of my conversations with my first attorney made it into the file or found their way to my second attorney. This is a basic expectation of a client, and it is not my fault that the attorneys dropped the ball.

I told my first attorney the name of the informant at the time he showed me the police report (RP5, line 6). That was also the time that I told my attorney that important allegations made by the informant were untrue (Affidavit of RS-page 4, line 29). This was our meeting in the court hallway; there were four of us—me, my Mother, Mr. Stocking and my PD attorney from the Ness firm. This was the first time I met with my attorney to go over the police reports. I disputed each and every important allegation of the informant. (Affidavit of RS-page 4, line 29). Thus, my attorney knew that my testimony would be in direct conflict with that of the informant. And, my attorney knew the name of the informant.

Furthermore, after Mr. Stocking went to the Clerk's office, he returned to inform us, including my Ness firm attorney, that Crawford firm was on the informant's file as having appeared of record. (Affidavit of RS-page 4, line 47)

It would be malpractice for a private one-person public defender firm to neglect to take note of the name of the informant or to take note of the allegations of the informant that I disputed. Such a failure would fall beneath the duty of care to be given a client. Why should the government be allowed to escape the basic standards of care for competency simply because its attorneys are too overworked to take and transfer notes or because it cannot keep track of who has representation and why they were assigned? Furthermore, it is a basic expectation of a client that such vital information will surely be transferred should the representation be transferred to a new attorney. Had these basic expectations of competency been fulfilled, I would have had representation without a conflict, and representation wherein my attorney was aware of the defenses, and thus I believe I would have been able to prevail on the deportation crime, although I acknowledge I would have admitted to the other felony crime.

## Additional Ground 4

**Once the Public Defender firm was alerted that there was a conflict of interest in the case, it had a duty to ascertain the nature of the conflict.**

At the hearing before Judge Verser, Mr. Murphy correctly denied ever hearing the name of the informant from Mr. Stocking. This is consistent with the affidavit of Richard Stocking, wherein he twice states that he likely did NOT mention the specific name of the informant to either Public Defender attorney he spoke with (affidavit RS-page 2, line 37; and page 3, line 21).

But Mr. Murphy was never asked at the hearing whether or not he was ever alerted by Mr. Stocking or by any other attorney (his partner Mr. Kelley or the Ness firm) that there was a conflict in the case. Specifically, Mr. Stocking says that although he does not think that he ever mentioned the informant's name, he specifically recalls that he DID mention the fact that there was a conflict in the case in these instances:

1. In the very first phone call to Mr. Murphy (Affidavit RS-page 2, lines 33, 42);
2. In the very first meeting with Mr. Kelley of the Crawford firm (Affidavit of RS-page 3, line 11);
3. In discussion with Mr. Kelley as to whether or not he could represent me notwithstanding the fact his firm had a conflict (affidavit or RS-page 3, line 37);
4. In the court hallway conversation among myself, my Mother, Mr. Stocking, and my then-PD attorney from the Ness firm (Affidavit of RS-page 4, line 470).
5. This testimony stands of record; nor did anyone ever refute the testimony that these attorneys, although not informed of the actual name of the informant, were put on alert that this was a conflict case.

In the exercise of basic attorney competence, one would expect that the conflict information should appear in my file from the Ness firm, which, in the exercise of basic competence, should have been requested by Mr. Murphy when he took over the defense of my criminal case.

I cannot expect that either of the Crawford firm attorneys would annotate my Drug Court file with a comment about a conflict in the criminal case. But, once he was mistakenly appointed for my defense, Mr. Murphy could be expected to have been on alert for a conflict for four reasons.

First, the Court retained representation of the criminal matter in the Ness firm when it appointed the Crawford firm for THE LIMITED PURPOSE OF DRUG COURT ONLY. That should have been a red flag to Mr. Murphy since it was right there of record in the court file. I was told that the judge even made this limiting purpose as a handwritten addition which should have been apparent to anyone who read the file.

Second, Mr. Murphy should have asked for my file from the Ness firm, and my file should have had the reference to our conversation in the court hallway.

Third, one might expect a conflict in a PD case to be transferred from the Ness firm. This is especially the case since the Ness firm is apparently used for PD work as a resource in the event of a conflict (RP 43, line 4).

Fourth, perhaps he might be expected to recall the fact that early on before I went to Drug Court he was informed that there was a conflict in the case (Affidavit RS-page 2, lines 33, 42).

## Additional Ground 5

### **The Court Erred When it Failed to See That Appointment of the Crawford Firm for Criminal Defense Would be a Conflict; Notes in the Ness Firm File Should Have Recited Both my Defense and Conflict With Crawford Firm**

The Court was apparently aware of the conflict when it made my assignment of counsel for Drug Court to the Crawford firm. As noted on the court record of that assignment, on September 3, 2004, the Crawford firm was appointed to help me with Drug Court, and BY HAND Judge Jay Roof added that this appointment was **ONLY for the LIMITED PURPOSE of assisting me in Drug Court proceedings**. Apparently the Ness firm was used as a conflicts PD firm (RP 43, line 4).

Thus, my representation for purposes of the criminal proceedings was to have remained with the Ness firm, which knew of all of the disputed allegations I had with the informant. The Ness firm was to represent me in the criminal matter, but it appears of record that no one ever alerted that firm once my Drug Court assignment was being terminated. (RP 12, line 13).

Thus, when I was finished with any Drug Court proceedings, the limited purpose for the assignment to the Crawford firm was completed, and I should have been returned to the Ness firm. Instead, the judge just allowed the Crawford firm to continue on. This was an error, and that error denied me assistance of effective counsel since the Ness firm did not have any conflict.

The result would have been different but for this error inasmuch as my attorney at the Ness firm knew of my detailed refutation of the important allegations of the informant. One would suppose that, unlike my experience with the Crawford firm, the Ness firm might have prepared my case for trial by attacking the informant using the witnesses I gave, and I would have had competent representation at trial and hence I would have prevailed on all but the one felony charge of which I was guilty (and to which I am still willing to plead should you set aside my conviction).

A mistake was made when the Court appointed the Crawford firm for criminal defense once I was done with Drug Court. First, the appointment to the Crawford firm had been **SOLEY FOR THE PURPOSE OF DRUG COURT**. My criminal representation, by order of the court, had stayed with the Ness firm. No one bothered to notify the Ness firm that I was done with Drug Court and thus needed representation on the criminal matter.

Even worse, apparently none of my file was transferred from the Ness firm to the Crawford firm. Mr. Murphy testified that he never heard about the conflict from the Ness firm (RP 11, line 25). My attorney at the Ness firm had full knowledge that I disputed certain allegations of the informant during our conversation in the court hallway (Affidavit of RS-page 4, line 29). My attorney at the Ness firm had full knowledge that the informant was represented by the Crawford firm (Affidavit of RS-page 4, line 47).

In the expectation of ordinary care by an attorney, my file at the Ness firm must have contained references to both of those topics that were discussed in the court hallway with my attorney, my Mother, and Mr. Stocking.

Either Mr. Murphy never bothered to ask for my file or the notes from the Ness firm, or such important matters were not included within the file at the Ness firm. In either event, that is gross negligence, far beneath the expectation of competent representation. And that failure, on the part of one or both of the PD firms, changed the result of my case.

If my file from the Ness firm did have the annotations one would expect in basic competence of attorney practice, and if Mr. Murphy had requested either my file or the attorney notes, as one would expect in basic attorney competence, Mr. Murphy would have transferred my file back to the Ness firm where I would have received a defense that would demonstrate the lies of the informant. Hence, I would not have been convicted of the crime for which I will be deported, but instead of only the one felony crime I was guilty of.

As it was, apparently neither the Court nor Mr. Murphy ever gave any notice to the Ness firm that I had been transferred out of Drug Court, and hence Mr. Murphy apparently never obtained any information I had already given to my Ness firm attorney regarding witnesses to attack the lies of the informant. Since my Ness firm attorney had already shown me the police report, and it was in his file, I think perhaps nothing from the Ness firm file was sent over to Mr. Murphy because Mr. Murphy testified that he had to wait a couple of weeks to get the police report (RP 13, line 3).

### **Additional Ground 6**

#### **The State Cannot Escape its Duty of Providing Effective Counsel by Using Large Law Firms (with overworked staff that claims not to know what other attorneys are working on)**

A large law firm doing public defense work is held to the same standard as a one person firm. If something is known to one person in the firm, it is known to all. If one attorney in the firm represents a client, another attorney cannot plead ignorance of the representation.

Apparently it was known to attorneys that the Ness firm was appointed when there was a conflict with the primary public defense firm, the Crawford firm. (RP 43, line 3; Affidavit of R. Stocking-page 2, line 1)

Mr. Murphy's testimony at the hearing is not credible.

1. He insists that he never heard me tell him the name of the informant, stating instead only that I "**had suspicion**" who it was.(RP 9, line 5). This is in direct conflict with my testimony and that of Mr. Stocking to the effect that when I first saw the police reports I knew who the informant was, that I disputed his testimony to my Ness firm attorney in the court hallway, and that Mr. Stocking researched his file in the Clerk's office, and that we together discussed it with my Ness firm attorney in the court hallway. I KNEW the name, and said so: it was NOT a "suspicion", as Mr. Murphy would have the court believe.
2. He testified that he would for certain get the name of the informant and do many other things prior to going to trial. But the day he convinced me to plead guilty was on Wednesday, January 19, 2005, which is just two working days from the date of the trial, Monday January 24, 2005. When did he think he was going to do all of those things on my behalf if he had done none of them in the three months since he had been appointed to take over my defense?
3. He states that I never gave him any names, but I did give him names of witnesses to prove that certain allegations of the informant were lies, but to my knowledge he never even called one of them, EXCEPT the night before his motion to suppress was to be heard, when I insisted on one name; and in the presence of my Mother, attorney Murphy did call that one witness. To my knowledge, this was the first and only time he spoke to my main witness, and at that the timing was just three working days before my trial was supposed to begin. By the way, my Mother was also with me during our other meetings when I discussed

witness names to Mr. Murphy, and she will so testify. Why did he never call them? How can this be called reasonable and competent attorney defense work?

4. To the best of my knowledge, he had done no work whatsoever on my case in preparation for trial in making a defense by contacting any of the witness names I had given him; thus he was counting on pushing me to plead guilty all along, and his testimony at the hearing before Judge Verser was designed to protect his position.
5. He mistakenly told Judge Verser at the hearing that "We were pretty far from trial when it (the case) was resolved" (RP 14, line 6), but the plea was entered just two working days ahead of the start of my trial.
6. If my appeal is not granted, this Court should remand and subpoena my files from both the Ness firm and from Mr. Murphy to ascertain what, if any, work was done in preparation for my defense in the three months they had my file prior to trial date.

### **Additional Ground 7**

#### **The State Misled Either the Warrant Judge or Judge Verser Regarding Extent of Benefit to the Informant (or so it appears to me)**

One of the factors cited in the ruling at the hearing was the very limited extent of the bargain that was earned by the informant. The State convinced the honorable Judge Verser that the informant had not earned any bargain at all, thus implying that there would be no incentive for the public defender to protect the informant's position. In this, there is conflict on the position of the State, and one or more judicial officers have therefore been misled, or so it would appear to me.

Unless I am missing something, it appears as if the State either misled both the warrant judge and the judge who was to hear my motion to dismiss, or the State misled the honorable Judge Verser at the hearing. A remand must be made to subpoena the State's agents who have given conflicting statements about the magnitude of the bargain given to the informant.

The State cannot deny that the informant was giving testimony in exchange for very favorable treatment on a criminal matter. At the hearing before Judge Verser, the State took the position that the informant was not in line to receive any favorable treatment. The State's attorney contended that the informant did not receive any bargain at all. The State misled Judge Verser to believe that only some community service probation question was hanging over the head of the informant. This was the basis of the decision by Judge Verser.

But in this basis of his decision, it seems to me (if what Mr. Murphy printed in his motion-below-is correct) that the Court maybe did not have the full picture, (and there needs to be a remand to find the facts) because when the State was trying to build up the credibility of the informant, its agents represented to the warrant judge and to the judge who was to hear my motion that this informant was credible because he was all set to receive some significant benefit owing to his deal with the State.

**This is opposite the position taken by the State in the testimony at the hearing wherein it led Judge Verser to believe that this informant had no benefits from his arrangements since he had only some probation community service to do. Yet, below, we see that the State showed to the warrant judge that the informant had FOUR YEARS OF DRUG TRAFFICKING HANGING OVER HIS HEAD.** The State is bound by the statements of its agents before the two judges, and cannot have it both ways. Following are two instances wherein the State contended that the informant DID have a significant bargain.

First, we have the testimony of the officer who procured the search warrant. My then-attorney, Mr. Murphy, noted how the officer built up the credibility of the informant based upon all of the favorable treatment he was getting from the State (Argument of Defendant's Motion to Suppress submitted by Mr. Murphy [**in an attempt to destroy the credibility of his (or his firm's) client (the informant) on another pending matter**], page 2 of Argument, lines 1 through 20):

"First it is appropriate to consider the credibility of the CI. Despite Detective Rentro's belief in the CI reliability, he provides information that reduces the CI's credibility to nothing. **The first is that the CI is cooperating in return for a favorable recommendation in a pending criminal matter.** This provides the CI with a motive to tell the detectives whatever they want to hear in order to receive the benefit of his bargain. Second is the CI's depth of knowledge in the field of methamphetamine delivery. This indicates a close relationship to illegal activity. Next it is disclosed that the CI has a history of crimes of dishonesty. **Finally it is revealed that the CI has had at least a four year history of involvement in drug trafficking. These years involve hundreds of individual crimes committed by the CI as he/she continually violated the law, apparently only stopping now because of the cooperation agreement that was signed.** While one of these factors alone may be insufficient to destroy the CI's credibility, the combination of all these factors leave the CI's statements with no weight.

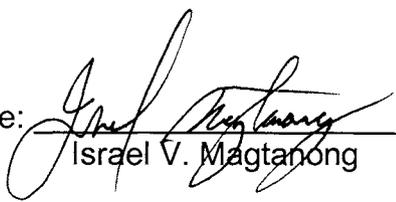
The first basis for the warrant given to the Judge was CI's assertions that he/she had purchased methamphetamine from Mr. Magtanong at the residence in question around one hundred times over four years. As this particular CI lacks any credibility, the first basis for the warrant should not have been considered by Judge Spearman. . . . "

Next is the argument of the State's attorney filed of record in opposition to my Motion to Suppress (filed January 14, 2005). Please note that the attorney for the State mentions a pending charge, **IN ADDITION** to the one probation violation that was shown to Judge Verser at the hearing:

"When the defendant asserted his refusal to give consent to a search of his home the officers applied for a search warrant, described the above facts, and also told the judge **that the informant was working for them in exchange for a favorable recommendation for a pending charge; that they had a prior conviction for Possession of Stolen Property,** that the informant had a past history of drug abuse, . . .

The credibility prong is satisfied in a several ways. . . . and **his contract requires him to provide truthful information in his undercover work. The potential for criminal prosecution can enhance an informant's motivation to provide truthful information."**

Date: 01/30/07

Signature:   
Israel V. Magtanong

CERTIFICATE OF SERVICE

I, Israel V. Magtanong, hereby certify, that I have mailed on January 30, 2007, via Prepaid Postage, a true and correct copy of Statement of Additional Grounds for Review, to which this is attached upon the individuals listed below:

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