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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

In the Court of Appeals of the State of Washington

Division two

State of Washington Respondent vs. Alberto Carbonal Appellant	No. 35582-5-II Statement of Additional Grounds for Review

Ground # 1.

Defense Counsel Rendered ineffective assistance of Counsel in violation of mr. Carbonals U.S. Const. Sixth Amendment, And Article I, §22 of the Washington State Constitution.

In this Case, Defense counsel ("ms. Medcalf") Refused to defend mr. Carbonal's U.S. Constitutional Right against ilegal Search and seisure, even after mr. Carbonal repeetedly requested her assistance in that matter. mr. Carbonal informed Counsel Medcalf

that the police officers who Contacted him in his room "Room 25 At the Lacasa motel" Came to his Room repoitedly Looking for a "Sean Rogers". the officers informed mr. Carbonal that according to their information, Sean Rogers was the registered occupant of the Room. mr Carbonal informed the officers that he was infact the registered occupant and that there was no Sean Rogers there. "Please See the Charging information in this Case". After mr. Carbonal varified that he was the registered occupant of Room 25, the officers took it upon themselves to go outside their parameters of the Law and Conducted an ilegal Search and Seisure without probable Cause, And in violation of due Process.

Asidefrom the States Claim in the Charging information, there is no other Claim or varification that Sean Rogers was the registered occupant of Room 25.

Crucial to the Police officers Right to Search mr. Carbonal's Room is the Scenario of their unsubstantiated Claim that a third party was the registered occupant of Room 25.

mr. Carbonal asked Defense Counsel to pursue the issue that the police officers acted without authority of Law when they pushed their way into his Room after learning that he was the registered occupant.

had Defense Counsel pursued that issue the State would have had to prove that the police actually had reason to believe that a third party was the occupant of Room 25, but Defense Counsel fell to do so after mr. Carbonal repeatedly requested her assistance in this

Statement of additional grounds for Review

matter.
under the Sixth Amendment to the united States Constitution And Article I, § 22 of the washington State Constitution, a defendant is guaranteed the Right to the effective assistance of Counsel in Criminal proceedings. Strickland v. washington 466 U.S. 668, 684-86, 104 S.Ct. 2052, 80 L.ed.2d 674 (1984): State v. Hendrickson, 129 wn.2d 61, 77, 917 P.2d 563 (1996).

to successfully Challenge the effective assistance of Counsel, mr. Carbonal must satisfy a two part test. He must show that #(1) defense Counsels representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances: And #(2) Defense Counsel's deficient representation prejudiced him, i.e., there is a reasonable probability that, except for Counsels unprofessional errors, the result of the proceeding would have been different. State v. mcfarland, 127 wn.2d 322, 334-35, 899 P.2d 1251 (1995). the united States supreme Court has defined reasonable probability as " A Probability sufficient to undermine confidence in the outcome". Strickland 466 U.S. At 694. a failure to establish either element of the test defeats the ineffective assistance of Counsel Claim. Strickland At 700.
mr. Carbonal easily meets the two part test in Strickland.

Had defense Counsel (ms. medcalf) Challenged the states Probable Cause to try the case, as repeatedly requested by mr Carbonal, the State

would have been required to demonstrate proof of its claim of probable cause. i.e., Documentation from Lacasa motel stating that mr Sean Rogers was the registered occupant of Room 25, and would have been required to produce a receipt of some kind showing the actual registration of that occupancy. but the fact that Defense Counsel Refused to Challenge the states probable cause, the trial court allowed this case to be tried based on the arresting officers assertion that they thought some one els was the registered occupant of the Room. And because of this fact, the state was never made to show or demonstrate how or why they thought a third party was the registered occupant of the Room in question. Due process was grossly violated And mr. Carbonal was severely prejudiced by the deficient performance of defense counsel.

because counsel failed to Raise this issue at trial, reviewing courts will review for Plain Error, see U.S. v. tAnH Huu LAM, 251 F.3d 852, 861 (9th. Cir. 2001) to secure reversal under this standard mr. Carbonal must prove that #(1) there was error, #(2) the Error was Plain, And #(3) the error affected substantial Rights, U.S. v. Sanchez 174 f.3d 1214, 1219 (9th Cir. 1999) quoting U.S. v. turman 122 f.3d 1167, 1170 (9th Cir. 1997) citing U.S. v. olano 507 U.S. 725, 73032 (1993). under this standard a conviction can be reversed only if viewed in the context of the entire trial, the impropriety seriously affected the fairness,

integrety or Public reputation of Judicial proceedings or where failing to reverse a Conviction would result in a miscariage of justice." TAHN HUU LAM, 251 f.3d At 861.

It is a prosecutors duty to refrain from knowingly presenting purjured testimony, and from knowingly failing to disclose that the testimony used to convict a defendant was false. U.S. V. Aichele 941 f.2d 761, 766 (9th Cir. 1991).

Mr. Carbonal does not dispute that there was drugs in his Room nor does he dispute that the drugs belonged to him. he does however Rebutt the Claim that he possessed the drugs with intent to distribute. the demonstration of impropriety On behalf of the State is sufficient to reverse all Charges, Mr. Carbonal however is interested only in vacation of the intent to deliver aspect of the possession Charge and asks this Court to consider all aspects and implications of this case and vacate the with intent to deliver portion of the Charge.

Mr. Carbonal has Clearly demonstrated that the arresting police officer did not demonstrate the probable Cause neccessary to Conduct a Lawfull Search of his motel Room. it is plain that but for Counsels failure to Chalenge the validity of probable Cause to arrest, the out Come of the proceedings would have been different, as State would not have been able to produce proof of Probable Cause.

At most, two Conflicting versions of the incident was Presented to the jury to administer

Judgment of the facts and decide the disputed facts. it is plain error and Clear "by my understanding" that defendants Right to the effective assistance of Counsel was violated when Counsel refused to present Chalenge of States Claim of probable cause when it was Clear in the Record that mr Carbonal was the registered occupant of the Room in Question.

Counsel Medcalf Clearly didnot act in the best interest of her Client mr. Carbonal.

where there is a breakdown or collapse between Lawyer and Client, the Sixth amendment Right to the effective assistance of Counsel can not be insured. Please See United States V. Moore, 159 F.3d 1154, 1158 (9th Cir. 1998) (citing Brown V. Craven 424 f.2d 1166, 1170 (9th Cir 1970). a defendant need not Show prejudice when the breakdown of a relationship between Lawyer and defendant results in the complete denial of meaningfull assistance. "more, 159 f.3d At 1158.

essentially, in this case, Carbonal was Completely denied Counsel.

Counsel Simply didnot care that the State didnot have Lawfull probable Cause, And As a result mr Carbonal ended up with adverse Consequences.

Conclusion

Based on the above and appellants opening brief mr. Carbonal Respectfully Requests that this court reverse or vacate the intent to deliver Portion of his Conviction

Respectfully 07-02-07

Signed