

COURT OF APPEALS

FILED
COURT OF APPEALS
DIVISION II

DIVISION TWO

07 OCT 24 PM 1:11

OF THE STATE OF WASHINGTON STATE OF WASHINGTON

BY _____
DEPUTY

STATE OF WASHINGTON
Respondent,

Cause No. 35602-3-II

v.

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

Kevin D. Moore
Appellant,

I, Kevin D. Moore, 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

Ineffective Assistance Of Counsel, 6th Amendment violation and Due Process. These Fundamental Rights were violated on several occasions by defense counsel and the court; If you look at defense counsel's many statement's, starting on page 11 line 8 of the trial transcripts and continued on page 12 line 2, page 16 line 25, page 17 line's 1 through 9, page 17 line's 19 through 25, page's 162 through 164 and page's 166 through 168, Counsel clearly states that he is not (Quote) "adequately prepared to try this case with Mr. Moore and is unfair to force him to go to trial with an attorney who is not prepared". Appellant also claims Counsel was Ineffective in his Assistance do to the fact that Reference Counsel had not prepared a defense, had not interviewed Key witnesses, or investigated impeachment evidence before Voir Dire (Hunt v. Mitchell 261 F.3d 575 6th Cir 2001),

(Cargle v. Mullin 317 F.3d 1196 10th Cir 2003), (Pavel v. Hollins 261 F.3d 210 2d Cir 2001) and (Williams v. Washington 59 F.3d 673 7th Cir 1995). There was also 6th Amendment violations, For Due Process and Ineffective Assistance were the Court forced Defense Counsel to proceed at trial when the Defense Counsel was not prepared, page 17 line 23 through 25 (Quote the Judge) "You're a seasoned attorney and often attorneys have to just suck it up and that's what I'm suggesting you do in this particular case". Also page 167 line's 3 through 17 and line's 20 through 25.

Additional Ground 2

The Affidavit of Prejudice should have been granted do to the fact that the presiding Judge never made a Discretionary Ruling. RCW 4.12.050 say's "but the arraignment of calendar, the setting of action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this pro viso;" Blacks Law states that a Discretionary act is "A deed involving an exercise of personal judgement and conscience" A agreed order to Continue can not be construed as a Discretionary ruling were there was no conflict. CrR 8.9 States that "Any right under 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations of the statute, the motion and affidavit is filed with the court no later than thirty days prior to a different judge less than 40 days prior to trial, a party may then move for a change of Judge within 10 days of such reassignment, unless the moving party has made such a motion. So clearly Judge Tahor should have accepted the Defenses Affidavit of Prejudice do to the Fact that he was appointed to be the trial judge just day's before. The original trial Judge was Judge Hicks who fell sick and could not continue. The Defendant was diligent in regards to his Affidavit of Prejudice. Judge Tahor in this matter showed prejudice and abuse of discretion threw out this trial as the transcripts reflect (Page 17 line's

19 through 25) Quote Judge "Just suck it up" (Page 20 through 21) Interfering with jury selection (Page 23 through 26) Not allowing Defense to interview the states witness before Voir Doir, (Page 90 line 18) Abuse of Discretion by allowing tape transcript in, (Page 162 through 164) Not allowing Defense Counsel to follow up on impeachment issues. These are just a few of the many acts of prejudice. Even so the Defense had no actual responsibility to prove prejudice; 121 Wn.App.817 "Actual Prejudice is not required to remove a judge, Prejudice is deemed to be established by the Affidavit its self".

Additional Ground 3

The Court abused its Discretion by telling the jury "that we wouldn't be able to select a jury. Thereafter, some jurors seem to change their position" (Page 21 line's 1 through 4) This statement along with many others including telling the jury that they can not get sick, and not to do anything to jeopardize them being jurors, prejudiced the jury and hindered the Defenses ability to detect any bias juror's. This error is not harmless and effected the Defendant's Constitutional Right to a impartial jury.

Additional Ground 4

The Court should have honored the Defense Counsel's Motion for a Mistrial. It was clear that the juror in question, after receiving the judges reprimand not to do anything to jeopardize them being jurors was biased and didn't want to up-set the Court. From the Bailiffs testimony along with Officer Tyler Graham and Mr. Moore's we can conclude that the juror did see the Defendant in handcuffs and/or being escorted by Armed Officer's which undermined the presumption of innocence and lead the juror to infer that the defendant was dangerous. (Page's 92 through 101 of the trial transcripts)

Additional Ground 5

The witness in this case did not want to testify and was a unwilling witness. Her unwillingness is shown threw out this trial and by her actions. The witness Ms. Cardwell felt helpless by the states abuse of her Constitutional Rights and thus succumb to the will of the state. As the record will reflect the witness did not testify at the first trial and told Officer Seig that she did not wish to testify and so left the state to hide from Law Enforcement Officials. The witness was then found arrested on aggravated witness warrant and held against her will; While in custody the defendant found out that she had 4 new drug charges in another state, then as the transcripts will reflect on (Page 247 line's 2 through 4 and line's 15 through 18) the witness testified that she would not testify unless she received assistance on these new charges. The reason she testified is the Prosecuting Attorney agreed to help her (Page 248 line 7 through 8) with these new charges.

Additional Ground 6

Prosecutorial Misconduct, The prosecutors actions in this matter were negligent at best. The prosecutor commented on Defendants guilt on many occasions outside of the court room to associates and to the Defendant. Prosecutor failed to notify Defense Counsel as to were the witness was and when the Defense could interview her. Prosecution made statements to the witness as to the effect that if she testified, the prosecution would make some phone calls to help her with her pending drug case's; thus giving the impression to the witness that if she said what the state wanted she would gain favor and receive help in return. (Page 315 line's 9 through 19) Prosecutor acted Vindictively by trying to bring up new charges on the Defendant after the first trial ended in a hung jury. The prosecutor also acted Vindictively at sentencing by trying to double the Defendant's sentence and act outside of the legislative intent set forth in

the sentencing guidelines. These actions were not harmless and seriously violated the Defendant's Due Process Rights.

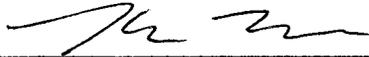
Additional Ground 7

Chain of Custody: The Chain of Custody was objected to 6 times in this trial with out any offer of proof to the Chain of Custody; The Defense Counsel should have been allowed to question the integrity of the evidence submitted.

Additional Ground 8

Cumulative Error should be considered in this case by (1) all the errors committed and by (2) the Courts own statement (Page 311 line 8 through 9) To Quote the Judge "Well if something can go wrong with this trial it will".

Date: 10-20-07

Signature: 

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CERTIFICATE OF SERVICE

Kevin D. Moore
Appellant,

I, Kevin D. Moore, Appellant in the above entitled cause, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of: STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

TO: Court of Appeals Div II
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

Thurston County Pros. Att. Office
2000 Lakeridge Dr. SW
Olympia, WA. 98502

Tom Doyle
P.O. Box 510
Hansville, WA. 98340

By processing as Legal Mail, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2109, Airway Heights, WA. 99001-2109

Dated this 20th day of October, 2007.

Respectfully Submitted,



Kevin D. Moore