

NO. 35706-2

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

COURT OF APPEALS

07 MAY 14 2007

STATE OF WASHINGTON
BY CA

IN RE PERSONAL RESTRAINT OF
AARON MICHEAL DAVIS,

PETITIONER,

V.

STATE OF WASHINGTON,

RESPONDENT.

REPLY BRIEF

AARON MICHAEL DAVIS
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TABLE OF CONTENTS

ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION.....1
ARGUMENT.....1
ISSUE ONE.....1
ISSUE TWO.....4
ISSUE THREE.....4
ISSUE FOUR.....5
CONCLUSION.....5

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION

1. When the jury could convict of unlawful imprisonment, and not assault do faulty self-defense instruction's result in ineffective assistance of Counsel?
2. Did petitioners' conduct result in separate criminal intent when the charges resulted from the same act?
3. The petitioner did not have any substantial and compelling reasons to justify a sentence upward so therefore the statutory maximum is the standard maximum range does initiative 159 control in that the deadly weapon and firearm enhancement have to stay in this maximum?
4. Do the above errors' constitute cumulative error?

B. ARGUMENT

THE PETITIONERS DEFENSE COUNSEL REQUESTED INSTRUCTIONS FOR SELF-DEFENSE THAT MISTATED THE LAW OF SELF-DEFENSE AND REQUIRED THE JURY TO FIND MR. DAVIS FEARED GREAT BODILY HARM INSTEAD OF PERSONAL INJURY.

Due to the many case's that have determined the self-defense instructions used in Mr. Davis cases, mistake the law and should'nt be used. There is absolutely no excuse for defense Counsel requesting these instruction's, and for the state not to catch this error both prosecution and Judge. Trial tactics can not act as a scape goat for ineffective assistance of counsel, and failure to research the law is a mandatory structure that sculps the very foundation of ineffective assistance of counsel.

CAVE V. SINGLETARY, 84 F.3d 1350, 1357-58 (11th Cir.1996).

The state concluded that Mr. Davis was not prejudiced from this mis-statement of the law that did not convey the proper legal

standard, and did not allow for the defense to present it's self because the jury found Mr. Davis guilty of unlawful imprisonment. Then after making a determination of credibility for the alleged victim and the trier of fact, the State Cites STATE V CAMARILLO, 115 Wn.2d 60, 71, 794 P.2d 850 (1990), with a quote that the State supreme Court wrote in which disallows this exact type of litigation. The State tried to convey to the Appellate Judge's that the jury would have found Mr. Davis guilty of the Assault no matter what because Mr. Davis has been found guilty of an unlawful imprisonment also, this is a credibility determination as to the witnesses, and the jury. Which is not supported by Law nor record.

Mr. Davis could have been found guilty of the unlawfully imprisonment and not the assault, or maybe a lesser degree of assault two if the proper instructions were submitted. The Jury could have found that an unlawful imprisonment had happened but once the alleged victim assaulted Mr. Davis and he disarmed the Alleged victim of the Knife only to be assaulted by pepper spray and in the course of this action Mr. Davis tried disarming the alleged victim of the pepper spray also and a knife wound which was not Great bodily harm, but substantial bodily harm was, inflicted. This definitly could have resulted in the jury believing Mr. Davis was in fear of great personal injury and therefore defended himself from an attack that occured at a point when the unlawful imprisonment was already over, or in effect. Further more the jury could have also found Mr. Davis was in fear of grea

personal injury and did not mean to inflict great bodily harm, but did know that defending a pepper spray can with a hand holding a knife is reckless and did result in an intentional infliction of substantial bodily harm. This would have resulted in the jury convicting Mr. Davis of Second degree assault not First degree.

Due to the instructions mis-stating the relevant legal standard of great personal injury versus great bodily harm the defense was not able to argue their defense properly. Also since Counsel to Mr. Davis did not even understand this error was occurring it is also reasonable to believe Defense counsel did not understand the defense as applied to the charges.

State V. Rodriguez, 121 Wn.App. 180, 87 P.3d 1201 (2004), supports Mr. Davis position that this is ineffective assistance of Counsel. STATE V. WALDEN, 131 Wn.2d 469, 932 P.2d 1237 (1997), also supports the fact that this error is of a constitutional magnitude that requires reversal of Mr. Davis' charges.

Therefore Mr. Davis ask this Honorable Court to reverse his conviction and remand for new trial or grant an evidentiary hearing to determine these matters.

ISSUE TWO

MR. DAVIS HAD ONE INTENT GETTING BACK HIS CAR ALL CHARGES ARISED FROM MR. DAVIS' ATTEMPT TO RETRIEVE SAID CAR THE ALLEGED ASSAULT HAPPENED IN THE COURSE OF THE UNLAWFUL IMPRISONMENT THE UNLAWFUL POSSESSION CHARGE WAS ALSO GIVIN FOR THE USE OF THE GUN IN THE ABOVE TWO CHARGES THE JUDGE FOUND SEPERATE CRIMINAL INTENT AND SENTENCED MR.DAVIS CONSECUTIVE.

The State offers that these above charges constitute seperate criminal intent. Only because they have different elements in the jury instructions. Relying on STATE v. VIKE, 125 Wn.2d 407, 411, 885 P.2d 824 (1994), to assert that criminal intent must be viewed objectively as to if it changes from one crime to the next. This as used by the state implies that Mr. Davis committed crimes that were seperate in criminal intent. This is an erroneus legal analysis because VIKE involved drup possession and relied on STATE V. Garra-Villarreal, 123 WASH.2d at 49, 864 P.2d 1378. In, GARRA-VILLARREAL SUPRA, The issue was whether criminal possession of cocaine and heroine had the same criminal intent when the purpose was to deliver. Although the first Court believed the two different drugs had different intent, the Supreme Court disagreed and found the drugs were possed for one intent to deliver drugs.

Mr. Davis has different facts but the same should apply because the intent was to retrieve his car, an alleged unlawful imprisonment arised in the attempt to retrieve his car, which a gun was allegedly used in the unlawful imprisonment, and an assault happened from the

unlawful imprisonment during the course of the unlawful imprisonment. How can there be different criminal intent when every incident arised from one intent to retrieve MR. Davis' car.

Therefore MR. Davis Honorable ask this Court to remand his case for resentencing of same criminal conduct.

ISSUE THREE

MR. DAVIS' SENTENCING JUDGE EXCEEDED THE PROPER AUTHORITY FOR SENTENCING PURPOSES WHEN CONTRARY TO INITIATIVE 159 SENTENCING JUDGE EXCEEDED THE STATUTORY MAXIMUM FOR THE UNDERLYING OFFENSE WITH THE ENHANCEMENT.

Mr. Davis had no substantial or compelling reasons that would justify a sentence over the relevant statutory maximum which is the Standard MAXimum range. CUNNINGHAM V. CALIFORNIA, 127 S.Ct. 856 (2007).

Initiative 159 does not allow for a weapon enhancement of any type to exceed the statutory maximum for the underlying offense. When Sentencing Judge exceeded Mr. Davis underlying offenses relevant statutory maximum (Standard Maximum range) the Court exceeded it's proper authority, and Mr. Davis sentence is un-constitutional on it's face.

Therefore Mr. Davis ask this Honorable Court to reduce the underlying offense so the enhancement does not exceed the relevant Statutory Maximum.

ISSUE FOUR

THE ABOVE ERRORS CONSTITUTE CUMULATIVE ERROR

The errors in Mr. Davis (PrP) Constitute reversal by there self. If this Court does not agree then it must at least realize the combined effect results in a cumulative error.

IN RE PERS. RESTRAINT OF LORD, 123 Wn.2d 296, 332, 868 P.2d 835.

C. CONCLUSION

Mr. Davis was not able to present a proper defense when the faulty instructions defining his defense were a misstatement of the law. Further more the criminal intent was the same as to every charge because they all revolved around one another. Mr. Davis also had no substantial and compelling reasons found by the jury to allow a sentence in excess of his relevant statutory maximum. The standard maximum range remains his relevant statutory maximum. The Sentencing Judge exceeded his proper authority when against initiative 159 Mr. Davis was given an enhancement outside the statutory maximum for the underlying offense.

Respectfully Submitted

THIS 26 DAY OF April, 2007.

Aaron Davis
AARON MICHAEL DAVIS