July 28, 2008

Dwayne S. Sanders
Washington State Penitentiary
1313 North 13th Street
Walla Walla, Washington, 99362

FILED
COURT OF APPEALS
DIVISION II
08 AUG 13 PM 12:03
STATE OF WASHINGTON
BY DEPUTY

RE: State V. Dwayne S. Sanders
Court of Appeals No. 37168-II
Superior Court No. 07-1-01845-1

10.10 Statement Of ADDITIONAL GROUNDS for Review.

1. On March 31, 2007, Police Officers from the City of Lakewood, WA Illegally arrested mr. Sanders for Assault 4th Degree D.V. no. 070891517 and Disorderly Conduct no. 7L411 Lakewood Municipal Court. April 2, 2007 Arraignment for Cause no. 070891517/7L411

On April 6, 2007 Illegally Arraigned by Pierce County Superior Court for Assault 2DV Cause No. 07-1-08451 Same incident different Cause Number. Thus twice putting mr. Sanders in Jeopardy for the Same Offense. The Superior Court thus Violated (CrR) 3.2.1

The Superior Court is thus Subject to Constitutional limitations and guidelines.
The Courts failure to join Related Offenses
(CrR) Rule 4.3 (a)(1)(2)
(CrR) Rule 4.3.1 (b)

(1) To or more Offenses are related Offenses, for purposes of this rule, if they are within the jurisdiction and venue of the Same Court and are based on the Same Conduct.

4.3.1(b)(3) A defendant who has been tried for one Offense may thereafter move to dismiss a Charge for a related Offense, unless a motion for Consolidation of these offenses was previously denied or the right of Consolidation was waived as provided in this rule.
The motion to dismiss must be made prior to the Second trial, and (Shall be granted) unless the Court determines that because the prosecuting Attorney was unaware of the facts Constituting the related offense or did not have Sufficient Evidence to warrant trying this offense at the time of the first trial, or for Some other reason, the ends of justice would be defeated if the motion were granted.

(2) The Superior Court violated my right to a speedy and public trial by detaining Mr. Sanders 190 day without his consent before going to trial and convicted on October 15, 2007.

(CrR) rule 3.3 (b) (Time for trial)

(1) A defendant who is detained in jail shall be brought to trial within no longer of

(i) 60 days after the commencement date specified in this rule

Thus the Superior Courts violated Mr. Sanders Sixth amendment right.

1204.

A claim that a accused has been denied the constitutional right to a speedy trial, therefore, is subject to a balancing test, which must be applied on an ad hoc basis, wherein the conduct of both the prosecution and the defendant are weighed. The factors to consider in determining whether Mr. Sanders has been deprived of his constitutional speedy trial right are explained by the United States Supreme Court in Barker v. Wingo: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

(1) Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d ~~[illegible]~~ 101 (1972)

(2) Washington Court of Appeals.
Dillman v. Reilly, 3 Wn. App. 335, 474 P. 2d 902 (1970)
State v. Valentine, 20 Wn. App. 511, 580 P. 2d 1119 (1978)

State v. Sterling, 23 Wn App. 171, 596 P. 2d 1082 (1979)

State v. Parris, 30 Wn. App. 268, 633 P. 2d 914 (1981), decision modified 98 Wn. 2d 140, 654 P. 2d 77 (1982)

State v. Wernick, 40 Wn. App. 266, 698 P. 2d 573 (1985)

1203 The constitutional right of the accused to have a speedy trial is guaranteed by article 1, Section 22 of the Washington State Constitution which provides in part: "In criminal prosecutions the accused shall have the right ... to have a speedy public trial."
In addition, article 1, Section 10, which declares that "justice shall be administered openly, also prescribes that it shall be done without unecessary delay. State v. Wernick, 40 Wn. App 266, 698 P. 2d 573 (1985) (defendant's speedy

trial rights under United States and Washington Constitutions).

3. Ineffective Assistance of Counsel.
Violations of the Sixth Amendment that raise claims of ineffective assistance of Counsel are analyzed under the two-part test established in Strickland v. Washington 466 U.S. 668 (1984)

4. Prosecutorial Misconduct:
A Constitutional violation based on a prosecutor's suppression of evidence will be found "Only if the evidence is material in the sense that it's suppression undermines confidence in the outcome of the trial. United States v. Bagley, 473 U.S. 667 (1985)
Evidence is material when "there is a reasonable probability that, had the evidence had been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a ~~reasonable~~ probability sufficient to undermine confidence in the outcome. Kyles v. Whitley, 115 S.Ct 1555, 1567-68 (1995)

A. Prosecution failed to present alleged victims past medical records that would prove that there was no substantial bodily injury caused by Mr. Sanders.

B. Prosecutorial violations of statutory disclosure requirements ~~are~~ are subject to harmless error review. Goldberg v. United States, 425 U.S. 94 (1976) Rosenberg v. United States, 360 U.S. 367 (1959), Such violations can be cured if the material is eventually produced United States v. Pope, 574 F. 2d 320 (6th Circuit 1978) There is disagreement as to how an uncured violation should be evaluated for harmlessness. Compare United States v. Keller, 14 F.3d 1051, 1055 (5th Cir. 1994) (Error is harmless where there is "no substantial inconsistency, contradiction, or variation between the prior statements and the witness' testimony)

C. Prosecutorial excesses challeged in a habeas petition will be analyzed as constitutional violations when the conduct is so fundamentally unfair as to deny the defendant due process.
Donnelly v. DeChristoforo, 416 U.S. 637, 645 (1974)

5. Mr. Sanders was denied confrontation with the witnesses against him. Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)

b. Mr. Sanders subpoena demands were ignored by his appointed counsel and he did not have compulsory process for obtaining witnesses in his favor.

C. A defendant must establish that his Counsel's performance fell below an objective standard of reasonableness and must further show that his Counsel's deficient performance was prejudicial. Kimmelman V. Morrison, 477 U.S. 365 (1986)

D. When a claim of ineffectiveness is based on circumstances showing that Counsel is burdened by an actual conflict of interest, prejudice is presumed if the defendant demonstrates that Counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his Counsel's performance. Cuyler V. Sullivan, 446 U.S. 335, 345-50 (1980) Holloway V. Arkansas, 435 U.S. 475, 487-91 (1978)

6. The Courts denied mr. Sanders Due Process of law thus violating the Constitutions fifth Amendment Clause: An individual not "be deprived of life, liberty or property, without due process of law" United States V. Lavasco, 431 U.S. 783, 97 S.Ct 2044, 52 L.Ed.2d 752 (1977) rehearing denied 434 U.S. 881, 98 S.Ct. 242, 54 L.Ed.2d. 164 (1977)
In addition, Article 1, Section 10, which declares that justice shall be administered openly, also prescribes that it shall be done without unnecessary delay.

A. Mr. Sanders objections to any and all continuances were denied by the courts.
The delay's were thus prejudicial towards the defendant (Mr. Sanders)
State v. Ruud, 6 Wn. App. 57, 491 P. 2d. 1351 (1971)

State v. Christensen, 75 Wn. 2d. 678, 453 P. 2d. 644 (1969)
Delay itself is not prejudicial unless the defendant demonstrates that, because of it, he has been deprived of the evidence which has disappeared or become lost, or that witnesses who would otherwise have been available in defendant's behalf cannot be produced. State v. Schapiro, 28 Wn. App. 860, 626 P. 2d. 546 (1981)
State v. Agtuca, 12 Wn. App. 402, 529, P. 2d. 1159 (1974)
State v. Wieman 19 Wn. App. 641, 577, P. 2d. 154 (1978)

B. Concerning the Sixth Amendment guarantee of a speedy trial. These factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant. State v. Ansell, 36 Wn. App. 492, 675 P. 2d. 614 (1984) (defendant must demonstrate prejudice with something more than unspecific allegations about stale evidence, absent witnesses and dimmed memories).

APPEAL ISSUES

I March 31, 2007. Illegally arrested Mr. Sanders for Assault 4 DV #(070891517) and Disorderly Conduct #(7L411) In the city of Lakewood, WA

II April 9th, 2007 Dismissed without Prejudice Cause # 070891517 / (7L411)
Lakewood Municipal Court

III April 6, 2007, Illegally charged Mr. Sanders for Assault 2DV, Same incident different cause #071018451 Subject to constitutional limitations & guidelines

IV Illegally entered the apartment / Amendment IV

V Twice put in jeopardy for the Same Offense Cause #(070891517) Dismissed without prejudice Cause #(071018451) Tried and Convicted

VI My right to a Speedy and Public trial was violated was held in custody 190 days without consent before actually being tried on Oct. 8, 2007

Denied Confrontation with the witnesses against me; My Subpoena demands were ignored; I did not have compulsory process for obtaining witnesses in my favor

Appeall Issues

VII Prosecution failed to produce Alleged Victims past medical records that would prove that there was no Substantial bodily injury caused by the defendant.

Ineffective Assistance of Counsel

(Last one) → Such other errors as may appear from the record

→ Evidentiary errors

→ Sentencing errors

IX Double Jeopardy / 5th Amendment

X Right to Counsel Denied. 3.1(A)
Lakewood Municipal 3.1(b)(2)

XI Motion for Discovery ignored
(CrR) 4.5(C)(iii)(IV) / 4.5(B)(i)(iii)

CrR 4.3.1 (b)(1)(a)(3)
failure to join related offenses

(CrR) 4.5(A)(b) and (C) Omnibus hearing

CrR 4.9(h)(7)

XII Constitutional Errors (10)

Appeal Issues
Rules of Evidence

I Prosecution failed to include degree of lesser included charges

II Trial Error and Misconduct 6-4(E)(2)

III Prosecutor Misconduct

Case Law Brady v. Maryland 373 U.S. 83 (1963)
Strickland v. Washington 466 U.S. 668, 696 (1984)
O'Neal v. McAninch 115 S. Ct. 992, 994 (1995)
Perry v. Leeke, 488 U.S 272, 280 (1989)
Weatherford v. Bursey, 429 U.S 545 (1977)
United States v. Kelly 790 F.2d 130, 38 (D.C. Cir 1986)
United States v. Bagley 473 U.S 667 (1985)
Id at 678 Id at 682 In
Kyles v. Whitley, 115 S. Ct. 1555, 1567, 68 (1995)
Goldberg v. United States 425 U.S. 94 (1976);
Rosenberg v. United States 360 U.S. 367 (1959)
United States v. Pope, 574 F.2d. 320 (6th Cir. 1978)
United States v. Keller, 14 f.3d 1051, 1055 (5th Cir. 1994)
United States v. Susskind 965 f.2d 80, 84-85 (2d Cir. 1992)
Kotteakos v. United States 328 U.S. 750, 764 (1946)
6-4(f)(3) Darden v. Wainwright, 477 U.S. 168, 182 (1986)
United States v. Robinson 485 U.S. 25 (1988);
United States v. Iglesias, 915 f.2d 1524 (11th Cir 1990)
Frazier v. Cupp 394 U.S. 731, 737 (1969)
Kruiewitch v. United States 336 U.S 440, 453

Appeal Issues
Criminal Rule (CrR) Violations

Rule 2.1 The indictment and the Information:
(d) Amendments.
(E) Defendants Criminal History

Rule 2.2 Warrant of Arrest or Summons
(A) Warrents of Arrest
(2) Probable Cause
(3)(iii)
(C) Requisites of a warrent
(E) Return
(f) Defective Warrent or Summons
(f)(1) and (f)(2)
(g) failure to issue warrant

Rule 3.1 (A)
(b) (1) and (2)

Rule 32.1 (A) Probable Cause Determination
(b)

The justification for the delay must be balanced against prejudice to the defendant's ability to offer such evidence as there is in his defense.
Violation of CrR 3.3 (c)(1)

7. Strength of Evidence: An error that might otherwise be harmless may be found reversible if the remaining evidence is circumstantial rather than direct, conflicting rather than consistent, and equivocal rather than strong and certain.
CrR. 7.8 (b)(1)(2)(3)(4)(5)

8. for the reasons stated in this Statement of Additional Grounds 10.10, this Court should vacate Mr. Sanders' Conviction and remand for a new trial.

Dated this 28th day of July, 2008
Dwayne S. Sanders #985394
Dwayne S. Sanders

I declare under the penalty of perjury and the laws of the State of Washington, persuant to W.S.C. 28 Section 1746, that I am the declarant and that the foregoing is correct and true.

Signed and dated this 28th day of July, 2008, in the County of Walla Walla, Washington.

Mr. Dwayne S. Sanders