

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON

Respondent

No. 41634-4II

V

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STEVEN G WELTY

I STEVEN GUY WELTY have recieved and reviewed the opening brief prepared by my attorney. Summarized below are 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 I-VI

GROUND I - Speedy Trial Rights

GROUND II- Lack of Medical/Physical Evidence

GROUND III - No Specific Dates of Offenses

GROUND IV- Inneffective Assistance of Counsel

GROUND V - Pre-Sentence Investigation Report

GROUND VI - Due Process violation from Missing and/or Edited Tapes/Transcrips

Additional Statements Added (Yes) Pgs 1-7

Date: 7-13-11

Signature: [Signature]

GROUND I
SPEEDY TRIAL RIGHTS

My rights to have my trial begin within 60 days of my arrest, perCrR 3.3, were violated. The Appellant was arrested on August 5th, 2010. The trial started on October 4th, 2010. This is a total of sixty one (61) days. This is a violation of my 6th Ammendment to the United State's Constitution, and Article I Section 10 and Section 22 of the Constitution of the State of Washington..

GROUND II
LACK OF MEDICAL/PHYSICAL EVIDENCE

There was never presented as evidence any physical/medical evidence to prove the Appellant's guilt. If the sexual assaults/rapes did occure as stated by the prosecution, to wit: Over a period of six years (6) yearsand on a regular basis; then there would have been physical evidence in the form of "serious" scar tissue. The fact that there were not any medical reports/results from a gynecolgical examination performed, provided by the prosecution would have shown the irrefutable evidence needed. The reason the state did not provide the medical/physical examinations as proof, is because the Stat's case would have proven the Appellant to be innocent of the charges. By not supplying the evidence is a **Brady** violation and on it's own merits a required dismissal.

Brady V Maryland 373 V.S. 83,87,S.G.1194,10L.ED.2d.832,842-3(1996)
In addition to the **Brady** violation, it is prosecutorial misconduct and a due process violation.

State V Savania 82 Wn.App.832,842-3(1996)
U.S. V Miller 263 F3d I(2ndCir.2001)
U.S. V Mulderig 120 F3d 354(5thCir.1997)
Thompson V Calderon 109 F3d 1358(9thCir.1996)
U.SV Goodson 165 F3d 610(8thCir1999)
Hayes V Woodford 301 F3d 1054(9thCir.2002)
U.S. V Bautista 252 F3d 141(2ndCir.2001)
Brown V Nationsbank Corp. 188 F3d 579(5thCir.1999)
Gray V Klauser 282 F3d 633(9thCir.2002)
Kyles V Whitley 514 U.S.at 438
Strickler V Green 527 U.S.at 281-82
Banks V Dretke 540 U.S.668,698-99,124 S.Ct.1256,1276
157L.ed.2d 1166(2004)

GROUND III
NO SPECIFIC DATES OF OFFENSES

The fact that there were no specific dates used to state when the alledged crimes occurred, is rediculous. To state that the crimes occured over a period of six (6) years with out pin-pointing any exact dates is impossible. To state that it happened during "Winter recess, Spring Recess and during the Summers" is impossible.

The Appellate was accused of the facks listed above for dates of crimes committed. Yet, there were many times that the Appellate was not only out of town during these times, but out of the country. In addition there were times when the alleged victim was away on vacation with her parents and her brother, making it impossible to have occurred.

There were also times when the Appellate and/or his wife were going through presurgery to post surgery procedures, and had no visitors at all.

Without having specific dates of occurances, it was impossible to have the defence come up with any true way of countering the accusations that "It happened during a period of six (6) years, on each and every Winter break, Spring break, and Summer vacation."

Phillips V Woodford 267 F3d 966(9thCir.2001)

Wilson V Lawrence Co. 260 F3d. 946(8thCir.2001)

Daniel's V Lee 316 F3d 477(4thCir.2003)

U.S. V Hause 162 F3d 359(5thCir.1998)

Su V Filion 335 F3d 119(2ndCir.2003)

Singleton V Cecil 155 F3d 983(8thCir.1998)

Phifer V Clark 115 Fd 496

Mancuso V Olivarez 292 F3d 939(9thCir.2002)

GROUND IV
INNEFFECTIVE ASSISTANCE OF COUNSEL

The trial attorney appointed by the court for the Appellant, **Mr. HAYDEN**, performed well below what would be considered adequate. This was done in many ways.

(A) Mr. HAYDEN Called No Experts for the Defense.

The defense attorney did not acquire a private investigator to put on a proper defense. There were no experts to create a defense. Specifically, a medical expert to check for medical proof of the physical damages to the alleged victim. A medical expert in the field of psychiatry, to test both the alleged victim or the accused.

In Re Maxfield 133 Wn.2d 332,343-44,945 P2d 196(1997)

This indigent defendant should have been entitled to expert witnesses at the public expense per CrR.3.1(f)

State V Punsalan 156Wn.2d 875(2006)

State V James 48 Wn.App.353(1987)

Personal Restraint of Fleming 142 Wn. 2d 853(2001)

Personal Restraint of Brett 142 Wn. 2d 368(2001)

(B) No Witnesses for the Defense.

Mr. HAYDEN did not interview a single witness for the defense. This was even after many requests by the Appellant.

Proof of this is the court docket. The prosecuting attorney supplied a list of expected witnesses. **Mr. HAYDEN** supplied no such list at all. The Appellant, on many occasions asked for defense witnesses, but was told "not to worry about it."

Personal Restraint of McCready 100 Wn.App.259(2000)

Boyd V Ward 179 F.3d 768(10thCir.1999)

Duvall V Reynolds 139 F.3d 768(10thCir.1998)

Silva V Woodford 279 F.3d 825(9thCir.2002)

Brown V Johnson 224 F.3d 461(5thCir.2001)

State V Visitacion 55 Wn.App.166,776 P.2d 986(1989)

Dorsey V King County 51 Wn.App.664,754, P2d 601(1981)

(C) No Substantial Defense or Arguments.

The Appellant's court appointed attorney, Mr. HAYDEN provided no substantial arguments during the trial. The closest "real" and "substantial" argument was in regard to allowing the defendant's sister to testify on "supposed events" from fifty (50) years ago, and the defendant's daughter do to the same for about a thirity (30) prior year period.

Mr. HADEN'S argument was before the bench trial started, instating that he would argue the evidence later. He never argued to the court on the appropriateness to allow these time to have occurred. (He only mentioned them in closing arguments.)

In addition, Mr. HAYDEN did not raise up a single defense. Once the prosecutor was done and rested, then so did Mr. HAYDEN.

State V McSorely 128 Wn.APP.598,605-10(2005)

Brown V Johnson 224 F.3d 461(5thCir.2000)

(D) General Attorney-Client Conflicts.

Mr. HAYDEN said to the appellant on more than a few occasions "You are guilty." This generally followed with a line akin to "So take a deal" or something similar. He even advised the Appellant to take the deal for twenty (20) years, you are going to lose anyway.

Essentially, my right to defense counsel at a criminal hearing was diminsed to virtually non-existent. Yes Mr. HAYDEN was there physically, but that was the only way, as a living breathing body. According to Washington State's own guidelines, a court appointed attorney does not represent the client, but they represent the court. That is this case to the Nth degree. To state that Mr. HAYDEN was given the Appellant on ineffective assistance of counsel, is, to be kind, an understatement. There were essentially NO representation at all.

State V James 48 Wn.App.353(1987)

Malare V Carney Hosp. 170 F.3d 217(1stCir.1999)

U.S. V Morrison 449 U.S.361,66 LE.2d 564,101 S.Ct.665(1981)

Gray V Klausor 282 F.3d 633(9thCir.2002)

(E) Attorney-Client Loyalty and Comulative Error.

In summary of GROUND VI(A)-(D) The Appellant brings the fact that the Attorney-Client Loyalty was absolutely never there. This is not a case of "Trial Strategy," this is a case bordering on malpractice. Mr. HAYDEN never put up any sort of defense, to the point of Washington State was represented by two prosecuting attorney's, with one being named the "defense attorney" This point is proven by there being no investigator hired for the defense, no expert witnesses, in any capacity of expertise, no witnesses interviewed by Mr. HAYDEN on behalf of the defense of the case. No witnesses or potential witnesses were listed for the defense, no substantial defense or arguments for the defense, and finally, the complete and utter breakdown of the "supposed" Attorney-Client relationship in any way.

All of these errors, which some may be argued to be harmless, most of which should be seen as "plain errors", justify a basis for a dismissal of the conviction, and remand for a new trial, but taken accumulatively, become "Harmful, plain errors", justifying a dismissal of the charges, with prejudice.

At the very least, it is justified that the conviction should be vacated, and sent back for a new trial.

State V James 48 Wn.App.353(1987)

Personal Restraint of McCready 100 Wn.App.259(2000)

Powell V Alabama 287 US 45(1932)

Glasser V U.S. 315 US 60(1942)

Strickland V Washington 466 US 668,80 LED2d674,104S.Ct.2052(1988)

Silva V Wilford 279 F. 3d 825(9thCir.2002)

Washington Legal Found. V Legal Foundation of Washington 271

F.3d 835 (9th Cir. 2001)

Lockhart V Terhune 250 F.3d 1223(9thCir.2000)

U.S. V Morrison 449 US 361,66,LE2d 564,101 S.Ct.665(1981)

Haupt V Dillard 17 F3d 285(9thCir.1994)

U.S. V Fuchs 218 F.3d 957(9thCir.2000)

Mancuso V olvarez 292 F.3d 939(9thCir.2002)

U.S. V Geston 299 F.3d 1130(9th2002)

Harris V Wood 64 F.3d at 1438-39

State V Coe 101 Wn.2d 772,789,684 P.2d 668(1984)

State V Badda 63 Wn.2d 176,183,385P.2d 859(1963)

State V Alexander 64 Wn.App.147,154,822 P.2d 1250(1992)

GROUND V

PRE-SENTENCE INVESTIGATION REPORT

The court procedures were not followed for the P.S.I.R. in the Appellant's case. It was not done on a recording device, just with the notes of the interviewer.

In violation of Federal Rule of Criminal Procedure 18 U.S.C. § 3552 (d). The Appellant never was given the opportunity to see the report at least ten (10) day's prior to sentencing. The Appellant was not allowed to dispute the information in the report, nor was he allowed to correct gross inaccuracies in the report. The use of this report as it was produced and not checked is a violation of all court procedures.

Hill V Scarrota 140 F.3d 210(2ndCir.1998)

U.S. V Monotus-Mejia 824 F.2d 360(5thCir.1987)

U.S. V Davenport 151 F.3d 1325(11thCir.1998)

GROUND VI

DUE PROCESS VIOLATION FROM MISSING AND/OR
EDITED TAPES/TRANSCRIPTS.

The prosecution brought forth fourteen (14) exhibits as evidence in the Appellant's case. Numbers 1,2,3, and 4 were pictures. Numbers 5,6,7,8, and 9 were compact disks, recording of phone conversations. Numbers 10,11,12,13, and 14 were verbatim transcripts of exhibits # 5-9.

The exact match-up of exhibits # 5-14 are as follows (per the testimony of the trial): 10 is the verbatim of #5. # 11 is the verbatim of #6, 12...7, 13...8, 14...9.

Items #1-4 are not in dispute here, but are mentioned only to be accurate to the facts.

(A) The Appellant's attorney, Ms. Sweigert, assigned to represent the Appellant, had previously sent copies of the documents in her possession to the Appellant. She stated that she did not get the transcripts for #13 and #14.

Question: How is the Appellant's attorney expected to defend the case at hand when all of the evidence was not presented for argument? How can the Appellant argue on the evidence not provided?

It is impossible and a violation of his Constitutional Rights per the U.S. Constitution and Washington State Constitution. This has the appearance of a Brady violation. A State may not arbitrarily prevent defendant from presenting evidence that is material, trust worthy, and important to his defense.

(B) Edited Tapes and Transcripts.

Transcripts of evidence #10,11,12, which have been supplied to the Appellant's attorney and himself, show a drastic inconsistency in them. This is probably due to editing.

Transcript Table.

<u>Evidence#</u>	<u>Start time</u>	<u>End time</u>	<u>Total minutes</u>	<u>Total pages</u>
5,10	11:24	11:33	9	5
6,11	13:29	13:59	30	7
7,12	14:25	14:37	12	5
8,13	No information			
9,14	No information			

This brings up quite a few issues regarding evidence #10 to 14

(1) The Appellant remembers a few different conversations that had occurred, and were not presented. This is just based on the Appellants memory. In addition to that, the witness(es) both said there were multiple conversation between the defendant and the alleged victim. Both of these statements were made on the record during testimony.

(2) The tapes (or Cd's) played that matched the transcripts, evidence #5-9 for the judge to hear were obviously edited. The general rule of accepted time lapse for transcript testimony, is approximately a page of transcript per minute of time passing.

On evidence #10,11,12 (13#is missing/non existant to the ~~XXXXXXXX~~ Appellant) the total time according to the transcripts is 9,30 and 12 minutes, totaling 51 minutes. Yet there is only 17 pages.

The Appellant and his attorney should have been supplied the evidence in question. (The original tape/CD transcripts) This is the only way to get the ability to organize a true appropriate defence.

Brady V Meryland 373 US 83,10Led.2d 215,83 S.Ct.1194(1963)

U.S. V Lurner 104US F.3d 217(8thCir.1997)

U.S. V Blars F.3d 647(1stCir.1996)

Strickler V Green 527 US 263,280,144Led.2d 286,119S.Ct.(1936-

Gray V Klauser 282 F.3d 633(9thCir.2002)

U.S. Constitution Ammendment #14

Washington State Constitution Article1 §22

U.S. V Bagley 473 US 667,676,105S.Ct.3375,87Led.2d 481(1985)

Kyles V Whitley 514 US 419,437,115S.Ct.1555,131,Led.2d490(1995)

Banks V Dretke 540 US 668,698-99,124S.Ct.1256,1276,157Led.2d1166
(2004)

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