FILED
COURT OF APPEALS
DIVISION II
2015 JUL 17 PM 1:49
STATE OF WASHINGTON
BY _____
DEPUTY

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON	)	
	)	
Respondent,	)	No. 46758-5-II
	)	
v.	)	STATEMENT OF ADDITIONAL
	)	GROUNDS FOR REVIEW
	)	
Allixzander D. Harris	)	
(your name)	)	
Appellant	)	

I, allixzander D. Harris, 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

(See: attachment's)

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 7/14/15 Signature: Allixzander D. Harris

Additional Grounds

(Argument) (Ineffective assistance)

Defense counsel rendered constitutionally ineffective assistance by stipulating to a conclusion of law activating CrR 3.3 (D)(3) which waived defendant's right to object that a trial date commenced outside the time limit's prescribed by this rule blocking any motion for dismissal Due to a speedy trial rule violation which counsel also ineffectively failed to move for but (That) would have been granted had attorney not stipulated activating CrR 3.3 (D)(3) waiving the right to object.

- Under Rap 2.5(a)(3) a person can raise constitutional error's for the first time on appeal if they are manifest error's meaning fact's to adjudicate the claimed error's are on the record.

- The prosecutor's Coreen Schnepf and Farshad Talebi both explained to the court multiple time's that a unforseen circumstance is diffrent then a conflict of intrest under the court rule's.

[See: RP-4/14/14 pg. 7, line 17 – pg. 8, line 4];
also [See: RP-4/14/14 pg. 9, line 7 – 18];
and [See: RP-4/7/14 pg. 7, line 17 – pg. 8, line 1].

(A.) The Court has a duty to strictly comply with the CrR rule's

[See: CrR 3.3 (A)].

- CrR's provide "flexibility in avoiding the harsh remedy of dismissal with prejudice", including a "30-Day buffer period" for excluded period's and a "one time cure period" that allows the court to bring a case to trial after the expiration of the time for trial period (State v. Flim, 154 wash. 2d 193, 199 nil, 110 P.3d 748 (2005)) see CrR 3.3 (B)(5), (g). But under CrR 3.3 once the 60 or 90 day time for trial expire's without a stated lawfull basis for further continuance's, the rule requires dismissal and the trial

Court lose's authority to try the case. CrR 3.3 (B), (f)(2), (G), (H) the rule's importance is underscored by the responsibility it places on the trial court itself to ensure that the defendant recives a timely trial and its requirment that criminal trials take precedence over civil trial's CrR 3.3 (a) (1)-(2).

[See: State V. Saunder's (2009)]

(1.) Under CrR rule 3.3 (e) (8) a unforseen Circumstance is what mr. Shoenberger was allowed to withdraw for because the judge ruled it was only for the health reasons that he was asking for and not the other's that he claimed.

- This rule's exclusion applies under 3.3 (G) the cure period; which under the language of this rule is suppose to be moved for by the court or a party with a finding on record that the defendant will not be substantially prejudiced in the presentation of there case which was not done.

[See: CrR 3.3 (e) (8) and (G).]

(2.) The trial was suppose to be held on 3/31/14 with an expiration date of 4/30/14 because 1/14/14 befor he was allowed to withdraw mr. shoenberger moved for a continuance under (state v. Campbell) considered as CrR 3.3 (f) (2) which allow's a continuance for the administration of justice, (via) State v. Campbell for effective assistance.

[See: RP- 1/14/14 pg. 24, line 9-18];
[see: CrR 3.3 (f) (2)].

(3.) On 3/28/14 Shoenberger withdrew, and mr. Valley was appointed and instead of moving for a continuance properly or the court following CrR 3.3 (e)(8) or (e)(8), (G) counsel was allowed to and did stipulate to a conclusion of law in that speedy trial restarted 60 day's when he was appointed making the actual trial date of 3/31/14 to 5/14/14 and the expiration date of 4/30/14 to 5/27/14 which was not a triggering of the resetting of a trial date and - was improper.

[See: RP-4/7/14 pg. 11, line 19 - pg. 12, line 15].

- The application of the speedy trial rule to a particular →

set of facts is a question of law subject to de-novo review.
[See: State V. Raschka 2004].

- Conclusion of law = (1) an inference on a question of law, made as a result of a factual showing, no further evidence being needed/required.
[See: Black's law dictionary 10th edition].

- A stipulation by parties to the law does not bind a trial court or this one. It is error for a court to treat parties stipulation's to law as binding.
[See: State v. Drum, 168 wash 2d 23, 34, 225 P.3d 237 (2010)].

- Stipulations as to questions of law are generally held to be invalid and ineffective, also not binding upon the court's, either trial or appellate.
(See: In Re A.K.D., 745, S.E.2d 7 (N.C. Ct. app. (2013)].

- Courts of law are not bound by parties stipulations of law.
[See: 50 am jur. Stipulations 55, at 607];
and [See: Rusan's Inc. V. State, (wash 1970) DOC: 478 P.2d 724, 78 wn.2d 601].

(4.) Under CrR 3.3 rule's a commencment date only restart's for issue's under 3.3 (c) (2) which was not the case here, and therefore was invalid reguardless of the reason because the court did not take responsibility to ensure a trial in accordance with this rule failing to strictly comply, state a lawfull basis for continuance or state a lawfull triggering of a resetting of the commencment date.
[See: CrR 3.3 (a) (1)]; [See: CrR 3.3 (c) (2)]
and [See: State v. Saunder's (2009)].

(B.) A prosecutor cannot intervene in defense counsel's independant decision's in representing there client.

(1.) The prosecutor talebi proposed the stipulation that speedy trial restarted once eric valley the new attorney was appointed right afterexplaining that the judge only allowed the last attorney shoen berger to withdraw for health reason's only and that its not to be considered as an actual conflict.

-This is when eric valley followed the prosecution's decision and also stipulated making his choice not independant rendering his assistance non reliable slaughtering the adversarial process.

[See: RP- 4/7/14, pg.7 line 6-16]; [See: Strickland v. Washington].

(2.) which prejudice the defendant by the attorney following the prosecutor's decision that was based on a false fact, and had the substantial likelihood of affecting the judgement.

(C.) A waiver of right's or agreement must knowingly, intelligently, and voluntarily be made.

(1.) Defendant was obviously confused during the whole "stipulation" even after defense counsel eric valley, and defendant had gone over these issues multiple times befor.

[See: RP- 4/7/14 pg.6 line 19 - pg.9 line 19]

- Waiver of state remidies such as will bar federal Habeas corpus relief must be the product of an understanding and knowing decision by the petitioner himself, who is not [redacted] (necessarily) [redacted] bound by the decision or default of his counsel.

[See: Humphrey V. Cady (1972) 405 U.S. 504, 92 S. ct. 1056 [8]].

- A defendants "convictions are valid only if he voluntarily and knowingly agreed to the stipulation".

[See: State v. adams 968 F.2d at 843].

- The court has defined waiver as an intentional relinquishment or abandonment of a known right or privilege.

[See Johnson V. Zerbst (1938)].

— It is the responsibility of the trial judge when accepting a stipulation or waiver to ensure that it is voluntarily made.
[See: United states v. miller 588 F.2d 1256, 1264 (9th cir-1978-) citing US v. terrack.

② Defendant did not stipulate to anything even if he expressed he understood what the attorney eric valley was talking about it was a understanding of thee attorney's saying's and not a known waiver or stipulation of any form to the defendant's understanding, nor were any answer's made in the aspect of a stipulation even though the defense attorney was presistant on stipulating the defendant's remarks indicate objection
[See: RP-4/7/14 pg.8 line 13 — pg.9 line 11]
also [See: RP-4/7/14 pg.9 line 12 — 19.]

— And on 4/14/14 defendant's attorney eric valley stated (**defendant**) claimed he was tricked or confused if he waived when attorney finally pronounced the objections on record, and that he told the defendant he could not object on 4/7/14.
[See: 4/14/14 RP pg.6 line 17 — pg.7 line 14].

(D.) Count has duty to set trial within speedy.

(1.) If defense counsel eric valley did not stipulate that the speedy trial expiration date was 60 days from when he was appointed the trial court would have been required to and would have set a date within the actual limit's prescribed by CrR 3.3
[See: RP-4/7/14 pg.3, line 13-21].

(2.) Instead the trial court did not make an (**independant**) decision nor inquiry into the facts of this issue and accepted a conclusion of law by the parties proposed by the prosecution and copied in method by the defense attorney eric valley. The court then set a trial date outside the limits prescribed by this rule violating the defendant's Due process right's (via) By Criminal rule's and the inquiry of certain facts of law due by the court.
[See: RP-4/7/14 pg.6, line 19 — pg.10, line 9];
[See: State v. Mierz 1994 72 wash. app. 783].

(E.) Defense attorney has duty to avoid waiving defendant's rights.

(1.) The stipulation activated CrR 3.3(d)(3) once eric Valley ineffectivley failed to move for a trial date within the 3.3 time limits along with making the oral objection he made as was required by this rule when objecting within 10 Days of the setting of the trial date outside of the limits prescribed.
[See: RP-4/14/14 pg. 6, line 17 — pg. 7, line 16].

This waived any argument that this trial commenced outside of these limits which prejudice the defendant because the right to object was lost and a motion for dismissal would have been granted had this right not been lost.
[See: CrR 3.3(d)(3)].

(F.) Defense counsel has duty to move for dismissal when the motion would be granted.

(1.) The failure to seek dismissal of the charges, where a motion to dismiss would probly be granted, Constitutes ineffective assistance of counsel.
[See: State v. Carter 56 wash app. 217 (1989)].

(2.) Defense counsel ineffectivley failed to move for dismissal due to a speedy trial rule violation that would most likely have been granted had he because;

—The Stipulation did not trigger a restart of the speedy trial clock nor did the untenable ground on 4/14/14 making the actual trial date 3/31/14 with an expiration date of 4/30/14 because there was no stated lawfull basis for further continuance after the court date when mr. Shoenberger requested the continuance or a trigger of the resetting of a commencment date nor speedy trial waiver.

(G.) When a judge has under their discretion ruled on a issue already they cannot untenably find that they ruled diffrently in multiple issue's thereafter nor to help the prosecution or to rule in favor of the state.

① On 4/14/14 eric valley the defense attorney abandoned his position in the stipulation he followed the prosecution in after he made an objection to the trial date set by the trial court.

[See: RP-4/14/14 pg.6 line 7 — pg.7 line 7].

— This position was abandoned during oral argument, where the club recognized the holding of (simms v. allstate ins)

[See: Jet set travel club v. Houston general ins. Group (wash app. Div 1 (1982) 639 P.2d 222 [6], [7].]

② If the court refuses to accept a stipulation, the effect is generally to place the parties in there original positions regaurding the matters affected by the stipulation. each party is then free to seek resolution of the issue through a motion befor the judge.

— The court after eric valley made the objection to the trial date within 10 Days of the setting of it reffused to accept the stipulation any longer by using a diffrent issue to rectify the "speedy trial resetting of the clock". which shows that the stipulation was not a lawfull or binding issue on the court because it was tossed away and abandoned.

— The defense attorney eric valley, the prosecution and the judge/Court used this stipulation to improperly change the speedy trial date instead of strictly complying to the rule and using a lawfull continuance or the cure period nor the rule's legal exclusions.

— Under (State v. Adamski, 111 wash. 2d 574, 582, 761 P.2d 621 (1988) = faiture to strictly comply with the speedy trial rule requires dismissal, regardless of wheather the defendant can show prejudice.

Then once again circumvented the CrR's finding that mr. shoenberger the prior defense counsel was removed not just for health reasons but also for a conflict of intrest because of bar complaints and stated it was good cau-

Se to have restarted the speedy trial clock under the CrR rule's.
[See: RP-4/14/14 pg. 9, line 23-pg. 10, line 11].

-This was brought on by coreen Schnepf the prosecutor and not by the court's independant inquiry of the facts.
[See: RP-4/14/14 pg. 10, line 6-9].

-Though coreen knew and stated that the court only let mr. Shoenberger be withdrawn for health reason's only and also tryed to rely on the improper stipulation and or agreement befor it was abandoned.
[See: RP-4/14/14 pg. 7, line 17-25].

-As did the judge because she stated it was only for health issue's mr. Shoenberger could withdraw.
[See: RP-4/14/14 pg. 9, line 7-13]; Here the judge interpreted the CrR's wrong.
and [See: RP-3/28/14 pg. 13, line 24-pg. 14, line 4]; when the attorney was actually withdrawn.

also after the judge improperly and untenably found that she let the attorney mr. Shoenberger withdraw for health and conflict issues she states it was only for health-issue's again in a diffrent situation to provide strength to her position she took in this issue.
[See: RP-5/5/14 pg. 27, line 1-10].

[Under state v. Raschka 2004]
The appeal court dismissed the case because in the trial court the judge allowed the defendant to be excused for good cause from a courtdate under the CrR rule's.
Then later the prosecution claimed that the speedy trial restarted because the defendant missed a courtdate which would restart the speedy trial but the defendant went back and on record showed that the trial court excused him for good cause which was a way to not have to re-start the speedy trial if you missed a courtdate as long

as the court excused you for good cause which under the rule does not trigger a resetting of the speedy trial time and the court failed to strictly comply to the 3.3 rule inbet-ween the issue because the state had thought this restarted the speedy time. which violated the defendants rights and the case was dismissed.

-In anology this is the same type of issue in the present case now because on record the court allowed mr. Shoenberger to withdraw only for health issue's, and under the rule's this was not a conflict that would restart the commencment date/speedy trial time and the attorney or the trial court would have had to move for a continuance or cure period for excluded periods under 3.3 (B)(5) to apply.

[See: CrR 3.3 (B)(5)].

-This was not done nor was there a stated lawfull basis for a continuance or triggering of a commencment date reset.

[See: State v. Saunder's (2009)].

-A motion or brief would have been dismissed for a claim under CrR violations at a higher court because the defense-attorney failed to move for a new trial date back within the Speedy trial limit's when he objected orally waiving the right to object that a trial was beyond the time limits prescribed.

-This untenable ground was improper and did not trigger a resetting of the speedy trial clock under the rule's, and after the stipulation was abandoned by defense counsel eric Valley and the prosecution and judge refused to accept it any longer due to the objection made within 10 days under 3.3(d)(3) that put the state on notice of the violation There were still no continuance's, cure period or lawfull basis for further extensions of time under the rule untill 5 days to late made under CrR 3.3 (f)(2).

[See: RP-5/5/14 pg. 23, line 14 - pg. 24, line 7]; and [See: RP-5/5/14 pg. 29, line 3-19.].

it was 5 days to late because it was made under a regular continuance in CrR 3.3(f)(2) or State v. Campbell which has to be made 5 days befor the expiration date is up and this was not thus sense the stipulation and untenable ground were not Proper the actual expiration date was 4/30/14 Thus if a continuance was made on 5/5/14 it was 5 days to late.

— And if the court would have strictly complyed to the rule and enforced it under CrR (e)(8) a unforseen circumstance then the proper procedure would have been through CrR (g) the cure period which could be 5 days late.

— this was not done and the trial court failed to strictly comply requiring dismissal with prejudice

— If this honorable court finds that the issues in this statement of additional grounds are with merit the defendant respectfully ask this case be dismissed with prejudice or alternatively be reversed and remanded for a new trial.

Dated this 14th day of July, 2015
Respectfully Submitted

Allixzander D. Harris
DOC 324111
address:
Washington State Penitentiary
1313 N th 13th avenue
walla walla, WA. 99362

(Certificate of Service)

Il allixzander D. Harris have caused a copy of this statement of additional grounds to be sent to the court of appeals by way of state legal mail from Washington state penitentiary.

Signed: Allixzander D. Harris
Dated: 7/14/15

at
(The court of appeals)
950 Broadway Ste 300
Tacoma, Washington 98402