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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 50205-4-II

COURT OF APPEAL
DIVISION II
OF THE STATE OF WASHINGTON

SAMUEL VALDEZ, Appellant

V.

FRED H. CANTRELL et al. Respondent

Appeal from the Trial Court of Wahkiakum County
The Honorable Douglas E. Goelz
No. 16-2-00015-0

BRIEF OF APPELLANT
SAMUEL VALDEZ

Samuel Valdez, Pro-Se
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
Phone 360-963-3315

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A. Assignments of Error

Assignments of Error

1. The trial court errored by denying Mr. Valdez due process of law by not allowing his participation in any part of the trial.

2. The trial court errored by allowing a telephonic hearing to replace the defendant's right to be present at every stage of his trial over the objections of the defendant.

Issues Pertaining to Assignments of Error

1. Did the trial court error when it allowed the trial to go forward when the defendant was not present at any stage of the trial?

2. Did the trial court error when it allowed a telephonic hearing to replace the defendant's right to be present at every stage of his trial?

B. Statement of the Case

On February 2, 2017 Mr Valdez placed in the Clallam Bay Corrections Center Mail a Motion to Dismiss, along with a Motion to Docket Court Calender for February 27, 2017 at 9:30 AM for Telephonic Hearing. The hearing took place on time, but to Mr. Valdez's suprise, he was told by his Counselor Mr. Grubb that he had to use the dayroom phone along with everyone else in the dayroom. This phone has a short cord, no desk for papers, along with no privacy. The phones are timed to stop working after 20 minutes of use. After the court ruled on the Motion to Dismiss it then rolled the 20 minute phone call into a trial over the objections of Mr. Valdez, RP 14-22, that this kind of trial placed a huge disadvantage on the defendant.

Mr. Valdez is hearing impaired and was having trouble hearing what was being said over the phone. RP 12 Ln. 16, RP18 Ln. 10. There is also a high demand for the dayroom phones, and the inmates are required to share the phones after 20 minutes of use. RP 10. (See; Appendix A, Department of Corrections' Memo. December 22, 2015)

The court openly discussed where Judge Douglas Goelz and Attorney Crandall have never conducted a trial by speaker phone. RP 6, Ln. 6
Mr. Crandall goes on to say, I don't know how he's (Mr Valdez) going to look at they're [sic] painting (Exhibits). RP 6, Ln. 11. Judge Goelz goes on to say, I think that's his problem. RP 6, Ln. 13. The Judge here demonstrates prejudice which is carried out through out the trial.

The Petitioner on RP 12, Ln. 16 informs the Court:

Mr Valdez! I need to inform you that I'm hearing impaired so I'm having a little trouble understanding you.

The Court: Well, this is the best that we can do. RP 12, Ln. 19 I want to discuss some complications caused by a telephonic trial. I don't think anybody has ever done one of these before. RP 12, Ln. 22

After listening to Mr. Valdez's objections to the lack of due process of law the the court Ruled:

"I'm going to deny your Motion for an actual presence, Mr Valdez"
RP 19, Ln. 10

The Court then proceeds with voir dire, while the defendant was told to be quiet. RP22, Ln.18. Shorty thereafter, the phone reached the end of its 20 minute time limit and shut off. The rest of the trial proceeded with the complete absence of the defendant.
RP 23

C. Argument

Pursuant to the confrontation clause of the Sixth Amendment, the due process clause of the Fourteeth Amendment of the United States Constitution along with Article 1, section 3, 21 and 22 of the Washington Constitution a

defendant has the right to be present during all critical stages of a civil trial.

In State v. Irby, 170 Wn. 2d 874 (2010) The court held that the trial court violated the defendant's rights under the Due Process Clause of the 14th Amendment and Washington Constitution, Art. 1 § 22, to be present during the entire voir dire process.

In this Case, Mr Valdez was excluded from the entire voir dire process in direct violation of the Petitioner's rights under Due Process.

In State v. Pruitt, 145 Wn. App. 784 (2008) Under U.S. Constitution amend. VI and XIV, a defendant has the right to attend all critical stages of his trial. This entitles a defendant to be present at every stage of his trial for which his presence has a relation, reasonable substantial to the fullness of his opportunity to defend aginst the allegation. This is true even in situations where the defendent is not actually confronting witnesses or evidence aginst him.

This right is not unlimited, for example, when presence would be useless, or the benefit but a shadow. But an accused is guaranteed the right to be present at any stage of the trial's proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure. The presence of a defendant is a condition of due process to the extent that a fair and impartial trial would be thwarted by his absence. Both the presentation of evidence and the return of the verdict are critical stages of the trial and are integral to his right to a fair and impartial Civil trial.

In this Case, Mr Valdez was absent at every stage of the civil trial.

In US v. Deering, 179 F3d 592 (8th Cir.) Goverment interference with defendant's right to present a defense, including calling defense witnesses, violates the Constitution.

In this Case, the defendant was incarcerated without representation and lacking the ability to call and confront witnesses denied the petitioner due process of law.

D. Conclusion

For the foregoing reasons but not expressly limited thereto, Appellant asks this court to vacate the judgment and remand the case for new trial.

March 11, 2018

Respectfully submitted,
Samuel Valdez, Pro-Se
Samuel Valdez

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ATTACHMENT A

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
CLALLAM BAY CORRECTIONS CENTER
1830 Eagle Crest Way • Clallam Bay, WA 98326-9723 • (360) 963-2000
FAX (360) 963-3390

December 22, 2015

TO: **All Offenders**

FROM: Yvette Stubbs, AA4/Legal Liaison
Clallam Bay Corrections Center

SUBJECT: Telephonic Hearing Requests

This is a reminder if you are utilizing a Telephonic Hearing Request Form, you are responsible for the court hearing telephone call. Not the Department of Corrections (DOC) staff and not the Court Clerks.

The Court Clerk will send you a letter telling you what day to appear via the telephone with the telephone number you will need to call. You will utilize the dayroom telephones/ be prepared to show your letter to unit staff before the scheduled day and/or time of your call so you are allowed out of your cell at the requested time to make your legal telephone call.

Dayroom phone shuts off after 20 min. use.

Cc: Unit Counselors
Correctional Unit Supervisors
Unit Booth Officers

" Working Together for SAFE Communities"

recycled paper

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DIVISION II

2018 MAR 15 AM 11:32

STATE OF WASHINGTON

BY _____ DEPUTY

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, Samuel Valdez, declare that, on this 13 day of March, 2018 I deposited the forgoing documents:

Brief to Court of Appeals, Div. Two, No. 50205-4-II

or a copy thereof, in the internal legal mail system of
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

And made arrangements for postage, addressed to: (name & address of court or other party.)

Derek M. Byrne, Court Clerk,
Wash. State Court of Appeals Div II
950 Broadway STE 300
Tacoma, WA 98402-3694

Duane C Crandell, P.O. Box 336, Longview, WA 98632

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA (City & State) on 3-13-18 (Date)

Samuel Valdez
Signature

Samuel Valdez
Type / Print Name