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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

REPLY BRIEF OF APPELLANT SAMUEL VALDEZ

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Table of Contents

I. INTRODUCTION ---------- 1

II. RESPONSE TO ASSIGNMENT OF ERROR --- 1

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR - 2

IV. RESPONDENTS CLAIMS ---------- 3

V. RESPONDENTS ARGUMENT ---------- 5

A. The trial court's denial of a continuance was an abuse of discretion. ------ 5

B. Appellant is not educated in the administration of law. ---------- 7

C. Appellant and Respondant both miscite case law. ---------- 7

VI. CONCLUSION ---------- 10

TABLE OF AUTHORITIES

CASES

In re Marriage of Olsen, 69 Wn. App. 621 (1993) -- 10

CONSTITIONAL PROVISIONS

Wash. Const. Art. 1 § 3 ---------- 6, 9

Wash. Const Art. 1 § 21 ---------- 6, 9

U.S Const. Amend. VII. ---------- 5, 9

U.S. Const. Amend. XIV. ---------- 6, 9

American's with disabilitys Act -------- 6, 9

Rehabilitation Act ---------- 9

COURT RULES

Code of Judicial Conduct Rule 1.1 -------- 8

Code of Judicial Conduct Rule 1.2 -------- 9

Code of Judicial Conduct Rule 2.6 ------ 8

Civil Rules, Rule 38 ---------- 8

STATUTES

RCW 2.42.110(1) ---------- 10

I. INTRODUCTION

I am Samuel Valdez presently serving time in Clallam Bay Correction Center, on charges based on the purjured testimony of the States key witness Christopher Todd Horton. There was no evidence of arson, and Mr. Horton's own statements, are not supported by the facts. Prosecution also knew that, Mr. Horton, had a history of untruthfulness. My attorney for this trial with the Cantrells did nothing to prepare for trial and left me uninformed and unprepared. My attorney left on short notice leaving Mr. Valdez to proceed Pro-Se.

II. RESPONSE TO ASSIGNMENT OF ERROR

1. Respondent claims, that the court did not denys Mr. Valdez participation in the civil trial.

2. Respondent claims, that the trial court did not err by allowing Mr. Valdez to attempt telephonic communication at trial.

III ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court did deny the particapation of Mr. Valdez in the civil trial. The defendant made a Motion to the court for telephonic hearing that was not adequate for a trial.

2. Whether the court or Plaintiff had a duty to procure the presence of Mr. Valdez at a civil trial? Who is responcable for Mr. Valdez's presence, is an issue after the fact, the the court decided to move forward in violation of Mr. Valdez's 14th Amendment Rights. Mr. Valdez was hearing impaired and the court was telling him he would have to proceed even tho Mr. Valdez indicated having trouble hearing. The court was also asking Mr. Valdez to proceed blind with the use of a phone at trial.

3. Does the court have the right to deny Mr. Valdez due prosess of the law in violation of his Constitutional rights, regardless to his understanding of proceedure?

IV RESPONDENTS CLAIMS

1 Respondent claims, that the court did not deny Mr Valdez participation in the trial and that the trial judge made every attempt to accomodate Mr Valdez, and attorney Crandell can find nothing in the Reports of Proceedings where Judge Douglas E. Goelz denies Mr Valdez any request to be present.

Judge Douglas E Goelz:

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

2. Respondent claims, the court did not error by allowing Mr. Valdez to attempt telephonic comunication at trial. The question is, did the court err by allowing a court proceeding to go forward after the defendant objected to the proceedings because the defendant realized that he would not be able to adequately hear the court proceedings, or participate in any relivant, or meaningful way, due to his hearing impairment along with other issues related to a fair trial?

3. The court indicates it is having trouble with with the phone's volume. (RP 12, Ln 12)
Mr. Valdez then goes on to inform the court that he is hearing impaired and having trouble under standing what is being said. (RP 12, Ln. 16)

3. Respondents attorney states repeatedly, referring to, "Mr. Valdez or his attorney" on pages 1, 2, 5 and 6 of his, Brief of Respondents, as if Mr. Valdez has the help of his attorney's guiding hand. Mr Valdez <u>does not</u> have the help of an attorney.
Mr. Valdez's attorney withdrew 19 days before the trial date of February 27, 2017. Mr Valdez's attorney had done nothing prior to his witdrawal to prepare Mr. Valdez or himself for trial. There was a conflict of interest between Mr. Valdez and his attorney and that was the matter of money. Mr Valdez was indigent and could not aford to pay the attorney to proceed.

4. Respondent Claims Mr. Valdez nor his attorney made any effort to arrange transport. This is true. Mr Valdez's attorney did not make

arrangements for transport, nor did Mr Valdez's attorney inform Mr. Valdez that he needed to do so. Mr. Valdez did the best he knew how, on short notice and asked for a Motion for telephonic hearing thinking that, standards for a telephonic hearing would follow the guildlines layed out in CrR 3.4 (d) (3). Mr. Valdez was shocked to learn for the first time from his counselor Kirt E. Grubb, that he was required to use the dayroom phone with the other inmates with a phone that had a 20 minute time limit.

The Court is well aware of the problems related to trying to conduct a trial using a prison dayroom phone. (RP 7-12)

V. The Respondents argument

A. The trial court's denial of a continuance was not an abuse of discretion?

The denial of a continuance and proceeding with a trial denied Mr. Valdez due process of law found in the Seventh Amendment to the Constitution, which states "the right of trial by jury shall be preserved;"

or property, without due process of law."
and in the Fourteenth Amendment, which states "nor shall any state deprive any person of life, liberty, or property without due process of law." Fundamental to procedural due process is adequate notice prior to the goverment's deprivation of one's life, liberty, or property, and an opportunity to be heard and defend one's rights to life, liberty, or property.

Washington State Constitution covers the same issues that address a person's right to due process of the law, under Article I Section 3, Personal Right. "No person shall be deprived of life, liberty, or property, without due process of law". Section 21 Trial by Jury. "The right of trial by jury shall remain inviolate."

Not only were U.S. and Washington Constitutional rights of Mr. Valdez denied, the court violated his right under the American's with disabilitys Act. 42 U.S.C. § 1201 et seq. (1990) provided civil rights protection to individuals with disabilitys. Mr Valdez informed the court that he had a hearing impairment. (RP 12) The court then, unable, or unwilling to make

the needed accommodation for Mr. Valdez to hear the proceedings, not to mention, being able to see and participate in the proceedings, decided, to proceed in his absence after the prison phone stopped working after 20 minuts of use.

B. Respondent claims, appellant confuses his criminal rights with civil rights.

This may be true. Mr. Valdez is uneducated in the administration of law. Does this give the plaintiffs attorney, or the court the right to take advantage of the defendants lack of knowledge?

C. Respondent claims in there Conclusion that: Appellent has miscited criminal cases for the proposition that they apply to civil cases there by invoking constitutional protections inapplicable to these circumtances. In part I would agree that I have unknowingly miscited case law. Respondent, also uses case law that seems to be inapplicable to this case. Which illustrates how foreign this kind of proceeding was, and well should be, considering how it goes aginst every persons rights, layed out in

the United States Constitution, and Washington State Constitution, along with a few rules layed out in:

1. Washington Court Rules
   Code of Judicial Conduct
   Rule 2.6 Ensuring the right to be heard.
   (A) A Judge shall accord every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

2. Civil Rules
   Rule 38 Jury trial of Right.
   Defined. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact
   (a) Right of Jury Trial Preserved.
   The right of trial by jury as declared by article 1, section 21 of the Washington constitution or given by statute shall be preserved to parties inviolate.

3. Code of Judicial Conduct
   Rule 1.1 Compliance with the Law
   A Judge shall comply, with the law, including the Code of Judisial Conduct.

4. Code of Judicial Conduct

Rule 1.2 Promoting Confidance in the Judiciary. A Judge shall act at all times in a manner that promotes public confidence in the independance, integrity, and impartiality, of judiciary, and shall avoid impropriety and the appearance of impropriety.

The Judge in this case, was not complying with the law when he denied the defendant his rights under the Seventh Amendment to the Constitution, which states "the right of trial by jury shall be preserved", and the Fourteeth Amendment, which states "nor shall any state deprive any person of life liberty, or property without due process of law." Washington State Constitution covers the same issues under Article 1, Section 3, and, Section 21. To top it off Mr. Valdez's is hearing impaired and was expected to participate in a jury trial without eyes, but now hearing impaired with a less than adequate basic way to communicate. The Judge acted in direct violation of the Americans with Disabilities Act (ADA), 42 U.S.C § 12132 and the Rehabilitation Act U.S.C. § 12132.

5. In re Marriage of Olson, 69 Wn. App. 621 (1993)
RCW 2.42.110(2) provides that:
A "hearing impaired person" is one who cannot readily understand the spoken lauguage, and includes persons who are "hard of hearing" RCW 2.42.110(1) The intent of RCW 2.42, is to, secure the constitutional rights of deaf persons, and other persons who, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings.

In this case the defendant repeatedly indicated he was having trouble hearing. The Courts responce was that was the best they could do. RP 12, Ln. 19.

VI. CONCLUSION

For all the reasons given within these pages the court should vacate the the trial and remand for a new trial.

Dated May 23, 2018

Respectfully submitted
Samuel Valdez, Pro Se
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DECLARATION OF SERVICE BY MAIL
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I, Samuel Valdez, declare that, on this 28 day of May, 2018 I deposited the foregoing documents:

Reply brief of appellent

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
Washington State Court of Appeals, Div. II
950 Broadway STE 300
Tacoma, WA. 98402-3694

Duane C. Crandall, PO 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 May 28, 2018 (Date)

Sam Valdez
Signature

Samuel Valdez
Type / Print Name