In the Court of Appeals Division II
of the state of washington

NO. 50928-8-II

In re the Personal Restraint Petition of

Sophea Sar

Supplemental Brief

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STATE OF WASHINGTON

A. Assignments of Error

Accumulative Ineffective Assistance of counsle

(1) Standard of Review for ineffective Assistance of Counsle.

"To prevail on an ineffective assistance of counsle Claim, a defendant must show both deficient performance and resulting prejudice" State Vs viet Huynh, 2018 wash. App. Lexis 648, 15, citing Strickland vs washington, 466 vs. 668, 687, 104 S. Ct. 2052, 80 L Ed. 2d 674 (1984) Defanse Counsle's peformance is deficient if it falls below an Objective Standard of reasonablenss. Viet Huynh, 2018 wash. App. Lexis 648 at 15, citing Mcfarland, 127 wn. 2d at 334-35.

(2) Corpus Delicti Raised for the first time on Appeal

this procedural difference is now immaterial, as Dow made clear, Corpus Delicti relates to Questions of evidentiary Sufficiency, which appellate Courts Consider,

(2) for the first time on Review. Indeed following Dow, this court remanded a case in which the defendant's trail Counsle failed to Raise a Corpus Delicti challenge. State v. Grogan, 147 wn. App. 511, 195 P3d 1017 (2008) (Grogan I) aff'd on remanded, 158 wn. App 272, 246 P.3d 196 (2010) (Grogan II)

In Grogan I, the court of appeals refused to entertain the defendants Corpus Delicti Challange because the defendant raised it for the first time on appeal. 147 wn. App At 519. Supreme court of washington then accepted review and remanded for reconsideration in light of Dow, order, State v. Grogan, NO. 82609-9 (wash, June 2010.) on remanded, the court of appeals properly entertained the defendant's Corpus Delicti challeng. Grogan II, 158 wn App. at 277. In doing so, the Appeals court stated:

(2) The corpus Delicti rules does not merely set standard for admission of a statement into evidence, it established that an uncorroborated Confession is insufficient evidence to Sustain a conviction as a matter of Law unless independent proof shows that a Specific crime occured.

2(b) washington Corpus Delicti Rule

The corpus Delicti must be proved by evidence Sufficient to Support the inference that a crime took place.
State V. Carderas-Flores, 189 wn. 2d 243, 252, 401 P.3d 19 (2017) (quoting state v. Brockob, 159 wn 2d at 327-28). Specifically, "the state must present other independent evidence... that the Crime a defendat described in the confession actually accured.
In addition to corroborating a defendant's incriminating statement, the in dependent evidece "Must be consistant with guilt and inconsistent with a hypothesis of innocence. Id. at 660 quoting state v Lung, 70 wn 2d 365, 372, 423 P. 2d 72 (1967).
If the independent Evidence supports "reasonable and logical inference of both Criminal agency and noncriminal cause", it is insufficient to corroborate a defendant's admission of guilt.
State v. Brockob, 159 wn. 2d 311, 329.

(3) Law Related to Due Process

Due process and structural Error are subject-matter jurisdiction in nature and jurisdictional issues may be raised at any time and are always timely. Petitoner has not waived any rights, remedies or jurisdictional Clams, statutery or procedural. Since petitioner brings this petition, pursuant to his right Secured and protected by the constitution (1791). to demand relief pursuant to the original doctrine of Hebeas Corpus and Since it challenge the courts very jurisdiction to indict and convict petitioner. No Procedural hurdle exist and no time bar exists. see. united States v. Peter, 310 F.3d 709 (11th cir 2002) strickland v. washington, 466 U.S 668 (1984) also see Powell v. Alabama, 287 U.S. 45 (1932) johnson v. zerbst, 304 U.S. 335 (1963). In these Cases the Supreme court has recognized that the sixth amendment right to Counsle exists, and is needed, in order to protect the fundamental rights to ~~an impartial tri~~ a fair trial. Thus, a fair trial is ~~presented~~ one in which evidence Subject to adversarial testing is presented to a impartial tribunal for resolution of issues defined in advance of the proceedings. The right to Counsle plays a crucial part in the adversarial System embodied in the sixth amendment, since access to counsels skill and knowledge is nessary to accord defendant the ample opportunity to meet the case of the prosecution, to which they are entitled, supra.

Statement of the case

(4) The State charged Sophea Sar with one count each of first degree robbery, first degree burglary, first degree kidnapping, and first degree trafficking in stolen property. The state alleged that Sar or an accomplice was armed with a firearm during the commission of the robbery and kidnapping offense, and that the burglary offense was aggravated because the victim was present. Sar testified in a withdraw plea hearing that the detectives told him that his wife, Setthery Srey, was in Custody and that they knew he and Srey were fighting to regain costody of thire children. According to Sar, the officers told him they would release Srey if he agreed to talk to them. If he refused, Srey would get charged with first degree robbery and they would both get longer sentences. Sar felt he had no choice but to waive his rights and talk with the detectives. The detectives testified that they did not threaten Sar or try to coerce him into making a statement. Allthought the detectives mentioned that they had spoken to Srey, they denied telling Sar that they would not investigate or charge Srey, if he agreed to talk to them. The trial court found the detectives testimony to be more credible. The court ruled that Sar's statements were not coerced and were made after a knowing and voluntary waiver of his rights.

(4) As a result of the ruling, Sar's counsler indicated that the defense would need to reconsider its strategy and may want to resolve the case with a plea barguin. Sar and the State did enter into a global plea agreement for this robbery and two other pending Criminal cases. Sar moved to withdraw his plea before Sentencing.

(5) Arguement

Defense counsle was ineffective when he admitted he told petitioner that he would mostlikely lose in trail and defendant was looking at the rest of his life making it easy to coeres the defendant into taking a deal when he has never been through the legal System. (see) (Direct by Mr. Ryan, verbatim Report of proceeding volume 7) pg. 144, 145, 146, 1-2. when Counsle told petitioner befor the State had no case. (colloquy pg. 20, 6-10) than counsle acknowled the State never could prove defendant was present at the Sene of the crime, and the alleged victum Said he would never be able to identify any of the assailants because of Masks. (colloquy, pg. 12 1-6) there was no legitmate trial tactic decision about given up and taken a deal for a crime that has not been proven beyound a reasonable doubt. Counsle advise petitioner to take a deal after defendant's statements were admitted, but faild to raise Corpus Delicti. The Corpus delicti rule requires the State to present evidence that is independent of petitioner's state and that corroborates not just a crime, but a specific crime with which petitioner was charged.

(5) b. The state's evidence must support an inference that the crime with which the defendant was charged was committed. In petitioner's case there was not independent evidence that corroborates or supports the defendant committing a particular crime besides defendant's statement during interragation. Counsle should of raised corpus delicti instead of telling defendent he was facing the rest of his life and coeresing him to take a deal for a robbery there is no prove he was present at.

(6) Request of Relief

This court should reverse Petitioner Sar's conviction in the Superior Court of the state of washington in the County of Pierce for Robbery in the first, Burglary in the first, kidnapping in the first, and trafficking stolen property in the first, because the Corpus Delicti was never established by evidence independent of Sar's statement and Sar's trial counsel provided prejudicial ineffective assistance.