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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

GARRETT ANTHONY WILLIAMS,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 16-1-02116-8  
The Honorable Frank Cuthbertson, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred when it denied Garrett Williams' motion to continue sentencing and to appoint new counsel who could review whether a motion should be brought to withdraw his guilty plea based on ineffective assistance of defense counsel.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Where every criminal defendant is entitled to effective assistance of counsel during all stages of the proceedings, and also has the right to legal representation on a motion to withdraw a plea, did the trial court deny Garrett Williams these rights when it failed to postpone sentencing and appoint conflict-free counsel to assist him with preparing a motion to withdraw his plea based on ineffective assistance of defense counsel?

## **III. STATEMENT OF THE CASE**

On May 26, 2016, the State charged Garrett Anthony Williams with one count of communication with a minor for immoral purposes (RCW 9.68A.090(2)). (CP 3) The State alleged that Williams sent twelve-year old T.B. electronic text messages containing sexual comments and photographs. (CP 1-2)

The start of trial was delayed several times due to mutually-requested continuances, two failures by Williams to appear for hearings, and the withdrawal and substitution of defense counsel. (CP 4-16, 84-91)

On August 1, 2017, defense counsel filed a motion seeking permission to withdraw, stating:

I have been representing Mr. Williams since August 2016. My contact with him from the beginning has been sporadic at best. When I am able to make contact with Mr. Williams he makes promises to me and to my investigator about his participation in the case and then swiftly breaks those promises. Both my investigator and I have been unable to prepare Mr. Williams' case for trial.... [T]here has been a complete breakdown in the relationship between Mr. Williams and myself.

(CP 20) At a pretrial hearing held on August 7, 2017, counsel elaborated:

[M]y team and I are having a difficult time getting Mr. Williams to cooperate. We – he's not assisting us, and I have to say it's almost impossible to have even a basic communication. Numbers change. I found out today that the email address that I had before that he says is good but we weren't able to reach him on it in the past. It's just been really difficult preparing this case, and I'll let my affidavit speak for itself.

(08/07/17 RP 15)

Williams told the court that he wanted defense counsel to remain on his case. (08/07/17 RP 15-16) Williams said he has

responded when defense counsel has attempted to contact him, but most of their conversations revolve around payment of fees. (08/07/17 RP 15-16) According to Williams, “[t]he problem is coming up with the money.... I mean, I paid him a lot of money so far, but I still owe him a lot more before even trial comes up.” (08/07/17 RP 15-16) Defense counsel acknowledged that lack of payment was an issue, and that Williams “does owe a significant amount of money.” (08/07/17 RP 16)

The State also objected to counsel’s request to withdraw, noting that counsel had been on Williams’ case for nearly a year, that progress had been made on preparing for trial, and the communication breakdown seemed to be only a recent issue. (08/07/17 RP 18-19) The trial court denied counsel’s motion. (08/07/17 RP 23) The court set a trial-readiness hearing for August 18, 2017, and a trial start date of September 5, 2017. (08/07/17 RP 23; CP 92)

At the hearing on August 18, defense counsel indicated that Williams was considering entering a plea to the original information. Counsel requested that a plea hearing be set for the same day as trial, September 5. (08/18/17 RP 1-2) The court told defense counsel that it should schedule a plea hearing on an earlier date.

The court said that it wanted the parties to continue preparing for trial in case there was no plea, and also noted that pleas are generally not taken on the first day of trial. (08/18/17 RP 1, 2-3)

Defense counsel explained that he was leaving on vacation the next morning and would not be back until September 5. (08/18/17 RP 2) Counsel also told the court that Williams was not ready to plead yet because he had other more serious charges pending in King County, and wanted to talk to his defense attorney for those charges first to “determine the ramifications of a guilty plea” in the current case. (08/18/17 RP 2) Williams was scheduled to meet with his King County attorney the following week. (08/18/17 RP 2)

The prosecutor informed the court that she had not made a plea offer to Williams, and that the State planned to file an amended information adding two bail jumping charges. (08/18/17 RP 3, 5) The trial court declined defense counsel’s request to set a plea hearing for September 5.

After a pause in the proceedings, the parties returned and defense counsel informed the court that Williams was prepared to enter a guilty plea. (08/18/17 RP 5) The trial court engaged in a brief colloquy, and Williams answered affirmatively when asked

whether he discussed the plea, the elements of the crime, the rights he was giving up, the registration requirements, and the sentencing consequences with his attorney. (08/18/17 RP 6-8) Williams acknowledged that the factual statement was true, and indicated that the decision to plead guilty was his own. (08/18/17 RP 7, 9-10) Williams also signed and initialed a written Statement of Defendant on Plea of Guilty. (CP 23-34) The trial court accepted the plea as knowing, intelligent and voluntary. (08/18/17 RP 10) The court set over sentencing because Williams still needed a presentence investigation report. (08/18/17 RP 10-11)

Prior to sentencing, Williams filed a motion asking for a delay in sentencing and for appointment of new counsel. (CP 35-37) Williams states that he has “not had an adequate opportunity to talk about my case” with defense counsel and that their conversations have “primarily been about money and the fees he claims I owe.” (CP 35) Williams states that he “has reason to believe [defense counsel] has breached the attorney-client relationship and shared confidential information with third parties.” (CP 36)

Williams also states, “I feel I entered my guilty plea under duress and was uninformed about the case and the consequences of the plea. For example, I thought I pled guilty to a misdemeanor

but a computer records search shows that I may have pled guilty to a felony.” (CP 36) Williams states that he and defense counsel “have irreconcilable differences” and that he would “like to have a separate attorney review this [plea] with me so that I can consider my options before a sentencing hearing.” (CP 35, 36)

Williams reiterated his request at the sentencing hearing on October 20, 2017. (10/20/17 RP 2) Defense counsel agreed with Williams’ assessment of their relationship, stating: “I stand by what I wrote sometime back that I felt that our relationship was irrevocably broken back then and I moved to withdraw, and all I’ll add to the record is that nothing has changed[.]” (10/20/17 RP 2)

The trial court denied Williams’ motion and proceeded to sentencing. (10/20/17 RP 2) The court imposed a standard range sentence and various terms and conditions. (10/20/17 RP 6; CP 57-61) Defense counsel then asked to be allowed to withdraw and to be relieved of representing Williams at any future restitution hearing. (10/20/17 RP 9) The trial court granted that request. (10/20/17 RP 10) Williams filed a timely Notice of Appeal. (CP 75)

#### **IV. ARGUMENT & AUTHORITIES**

In his motion, Williams claimed that his relationship with defense counsel had broken down and that he did not have an

adequate opportunity to discuss the plea before he entered it. Williams asked the court to appoint a new attorney so that he could consider filing a motion to withdraw his plea. (CP 36) By denying this motion, the trial court denied Williams' of several critical constitutional rights.

“Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily.” State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); U.S. Const. Amend. XIV; Wash. Const. art. I, § 3. Otherwise, a guilty plea is invalid. Boykin v. Alabama, 395 U.S. 238, 242-44, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228(1996).

This standard is reflected in CrR 4.2(d), “which mandates that the trial court ‘shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.’” State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). “Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a manifest injustice.” In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390

(2004). “An involuntary plea produces a manifest injustice.” Isadore, 151 Wn.2d at 298.

Criminal defendants also have a Sixth Amendment right to appointed counsel at all critical stages of a criminal prosecution, including a plea withdrawal hearing. State v. Harell, 80 Wn. App. 802, 804, 911 P.2d 1034 (1996); U.S. Const. Amend. VI. While mere allegations of incompetence do not require substitute counsel, where a defendant alleges sufficient facts that would establish ineffective assistance of counsel, the appointment of new counsel is necessary to avoid a conflict of interest. State v. Stark, 48 Wn. App. 245, 253, 738 P.2d 684 (1987). New counsel is more likely necessary where “the allegations are based primarily on actions not reflected in the record[.]” State v. Young, 62 Wn. App. 895, 837, 802 P.2d 829 (1991). A court’s decision on the appointment of new counsel is reviewed for abuse of discretion. Stark, 48 Wn. App. at 252.

Defense counsel has a duty to assist the defendant “actually and substantially” in determining whether to plead guilty. State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984). Consistent with this duty, to prevail on a claim of ineffective assistance of counsel, the defendant must show (1) that his attorney failed to “actually and

substantially” assist him in deciding whether to plead guilty and (2) that but for counsel’s failure, there is a reasonable probability he would not have pled guilty. State v. McCollom, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997); State v. Garcia, 57 Wn. App. 927, 933, 791 P.2d 244 (1990).

Together with evidence already in the record, Williams alleged sufficient facts that, if proved at an evidentiary hearing, would establish ineffective assistance of counsel. Eleven days before Williams’ entered his plea, defense counsel moved to withdraw from the case, citing a total breakdown in communications. (CP 19-22; 08/07/17 RP 15) In his motion, Williams alleged that he and counsel had “irreconcilable differences” and had not been able to productively communicate about his case and the plea. (CP 35-37; 10/20/17 RP 2) Defense counsel agreed. (10/20/17 RP 2)

Defense counsel cannot perform competently where there is a complete breakdown in communication with the client. And such a breakdown, by itself, is good cause for substitution of counsel. State v. Stenson, 132 Wn.2d 668, 734, 940 P.2d 1239 (1997) (citing Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)), cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998);

see also United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2001) (“a serious breakdown in communications can result in an inadequate defense”). This fact alone justified appointment of new counsel.

However, there were other facts that, if true, would support a finding that counsel was not adequately representing Williams’ in this case. Counsel made it clear he did not want to represent Williams, and that Williams’ best interests were not at the forefront of his decision-making in this case. First counsel tried unsuccessfully to be removed from the case. (CP 19-22; 08/07/18 RP 15) Counsel claimed his relationship with Williams had completely broken down and that he “cannot effectively represent” Williams. (CP 20, 22) At the next hearing, counsel specifically told the court that Williams was considering a plea but needed time to talk to his other attorney to determine what the ramifications would be. (08/18/17 RP 1-2) But counsel was scheduled to leave for vacation the next morning. (08/18/17 RP 2) If Williams did not plead that day then counsel would be forced to prepare for and potentially conduct a trial starting the day he returned from vacation. (08/18/17 RP 2-3) Moments later, Williams stood before

the court and entered a guilty plea, and counsel was off the hook.

(08/18/17 RP 5)

Williams alleged sufficient facts to establish defense counsel's failure to "actually and substantially" assist him in deciding whether to plead guilty. Williams also alleged sufficient facts to establish a serious breakdown in communication. The trial court abused its discretion when it denied Williams' request for new counsel with whom he could properly discuss his case and determine whether to file a motion to withdraw his plea. This Court should remand for the substitution of defense counsel and a hearing to decide the substantive merit of Williams' claims.

#### **V. CONCLUSION**

Williams' case should be remanded so that conflict-free counsel can advocate on his behalf regarding a motion to withdraw his plea.

DATED: May 11, 2018



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STATE OF WASHINGTON,  
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vs.

GARRETT ANTHONY WILLIAMS,  
Appellant.

Appeal No. 51186-0-II

CERTIFICATE OF MAILING

I, Stephanie C. Cunningham, court-appointed counsel for Appellant Garrett A. Williams, certify that I caused to be placed in the mails of the United States, first class postage pre-paid, a true and complete copy of the OPENING BRIEF OF APPELLANT and this CERTIFICATE OF MAILING, addressed to:

Garrett A. Williams  
12415 27th St. East  
Edgewood, WA 98372

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: May 11, 2018



STEPHANIE C. CUNNINGHAM, WSB #26436  
Attorney for Appellant Garrett A. Williams

**May 11, 2018 - 10:40 AM**

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