Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

FILED
COURT OF APPEALS
DIVISION II
2018 SEP -4 AM 8:19
STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

State Of Washington,	)	
Respondent,	)	Court of Appeals Cause No. 51254-8-II
v.	)	STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
James Gorman-Lykken	)	
Appellant.	)	

I James Gorman-Lykken, 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 I

Ineffective Assistance of Counsel See attachments 1-12

Additional Ground II

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

Date: 8/27/2018 Signature: [signature]

1) Criminal law- Preparation for Trial: Criminal law- Presentation of Witnesses: Generally, an attorney's dicision to call a witness to testify is a matter of legitimate trial tactics, which will not support a claim of ineffective assistance of counsel; however, defendant can overcome this presumption by demonstrating that counsel failed to adequately investigate or prepare for trial. U.S.C.A. Const. Amend. 6.

2) Criminal law- Deficient Representation and Prejudice in general: To demonstrate ineffective assistance of counsel defendant must show (1) defense counsel's representation was deficient, that is, fell below an objective standard of reasonableness based on consideration of all circumstances and (2) defense counsel's deficient representation prejudiced the defendant, that is, there was reasonable probability that, except for counsel's upprofessional error's result of proceeding would have been different. U.S.C.A. Const. Amend. 6.

3) Criminal law - Standard of Effective Assistance in General: Benmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined proper functioning of adversarial process that trial cannot be relied on as having produced a just result. U.S.C.A. Const. Amend. 6.

4) Criminal law - Deficient Representation in General: Defense counsel has duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process U.S.C.A. Const. Amend. 6.

5) Criminal law - Standard of Effective Assistance in General: Criminal law - Strategy and Tactics in General: No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or of the range of legitimate decisions regarding how best to represent a criminal defendant; any set of rules would interfere with constitutionally protected independence of counsel and restrict wide latitude counsel must have in making tactical

5) decisions, and could distract counsel from the overriding mission of vigorous advocacy of defendant's cause. U.S.C.A. Const. Amend. 6.

6) Criminal law - Standard of Effective Assistance in General: Criminal law - Particular Cases and Issues: From counsel's function as assistant to defendant's cause and more particular duties to consult with defendant on important decisions and to keep defendant informed of important development in course of the prosecution U.S.C.A. Const. Amend. 6.

7) Criminal law - Conduct of Trial in General: As relating to Sixth Amendment claims of ineffective assistance of counsel, prejudice is presumed only if defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's proformance. U.S.C.A. Const. Amend. 6.

8) Criminal law - Conduct of Trial in general: Actual ineffectiveness claims alleging a deficiency in attorney proformance are subject to general requirement that

8) defendant affirmatively prove prejudice. U.S.C.A. Const. Amend. 6.

9) Criminal law - Prejudice in General: To succeed on Sixth Amendment Claim of ineffective assistance OF counsel defendat must now show that there is a "resonable probability," which is a probability sufficient to undermind confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different. U.S.C.A. Const. Amend. 6.

10) Criminal law - Adequacy of Representation: Ineffectiveness of counsel is not a question of basic, primary, or historic fact but, rather, is a mixed question of law and fact. U.S.C.A. Const. Amend. 6.

page 239 section 4 - Mr. DeBray: "Actually, your Honor, before this witness is excused, could I have about five minutes to listen to audio-recording that I made with his consent of our conversation?" "I might be able to impeach him or might not."

page 240 section 3 - Mr. DeBray: "Well, unfortunately, the portion of the interview, I got an incoming call, I didn't take it, but it apparently stoppe the recording." "I then ~~discovered~~ discoverd that later and I resumed the recording and I thought that I had recorded the pertinent part of this, but in any event I'm not happy about this, but I cant impeach him and he can be released."

Mr. DeBray my attorney at the time had lost impeaching evidence he state's his error and ineffectiveness by losing audio-recording of Mr. Kunkel's interview with impeaching statement or statement's that is very critical to me as his client the prosicutor Mr. Laurine state's on page 149 section 11- talking about Mr. Kunkel "Circumstantial witness" to critical page 150 section 2- talking about Mr. Kunkel "Important because they do go to an issue of notice and notice of consent that was given to the defendant and lack of consent especially given the circumstances of the event's."

page 154 section 21- The Court: "And if you feel, Mr. DeBray, that you need more time to prepare for cross-examination, we can talk about that, but at this point I didn't hear that." Mr. DeBray: "All right." The Court: "All right any other issues before the" Page 155 section 1- The Court: "jury is invited in?" Mr. Laurine: "Would it be appropriate for Mr. DeBray to take a moment and reflect whether or not he needs more time?" The Court: "He indicated he doesn't."

page 145 section 13- Mr. DeBray: "I did have the opportunity to interview the state's anticipated witness, Randy Kunkel, over the lunch hour." The Court: "Okay." Mr. DeBray: "It was not a particularly long interview, probably about 10 minutes." "My ~~concerat~~ concern is that I just have not really had enough time to put this into a good coherent theory for the defense of my client."

Mr. DeBray aloud the court to move forward insted of taking the continuance the Judge offered or asked about for the investigation or cross-examination with the trial forced to go in and investigate a witness to fast and was so quick he had to use his cell phone as a recorder and lost part of the investigating statement or statement's in the hallway of the court house not very thurough and there might or might not have been jury member's waiting to come in the court room and be picked for the jury panal and could have heard the investigation.

page 234 section 13- Mr. Laurine: "Are you aware of how she sleeps?"

Mr. Kunkel: "Very heavy." Mr. Laurine: "What do you mean by." "Very heavy

Mr. Kunkel: "I could be out in the living room watching TV, volume

turned up, playing a game, cooking in the kitchen, anything like that,

and it wouldn't wake her."

page 235 section 9- Mr. Laurine: "Does she talk in her sleep?"

Mr. Kunkel: "Possibly little garbles, nothing coherent at all."

Mr. Laurine: "No conversations?" Mr. Kunkel: "No absolutely not."

They's may or may not have been what Mr. DeBray had for

impeaching lies I am not sure but do to this error and ineffectiveness

what I am about to show you made it's way into my trial and

it made it a unfair trial and prejudiced to me.

Page 385 section 5 - Mr. Laurine: "What was the argument that you heard?"

Mr. Kunkel: "She was telling him she wanted to be left alone, she wanted to go to bed." "She didn't want to continue fighting with hi, and she was also telling him, as she had told him several times before, that he was not allowed to do things to her sexually while she was asleep." Mr. Laurine: "How many times do you think she told him that specific thing, you can't do things sexually to me while I'm asleep that night?" Mr. Kunkel: "That night?" "I dont know that it was necessarily something that was made very clear, very adamant." "She raised her voice." "She was telling him that it's not okay." Mr. Laurine: "What's not okay." Mr. Kunkel: "For him to do those things while she's asleep." Mr. Laurine: "Okay." Mr. Kunkel: "Even if ~~there~~ they're together, it doesn't make it okay." Mr. Laurine: "What was his response?" Mr. Kunkel: "He didn't have much of a response." "He didn't seem to care."

page 386 section 1- Mr. Laurine: "All right." "Now, you indicated that she's told him this in the past?" Mr. Kunkel: "Yes." Mr. Laurine: "How many times do you think you've heard her specifically tell him that in the past?" Mr. Kunkel: "I can't tell an exact, number, but its been a conversation that's happened on several occasions." Mr. Laurine: "And each time it's not okay to have sexual relation's with me when I'm asleep?" Mr. Kunkel: "To do anything as far as -- anything sexual when someone is asleep." Mr. Laurine: "Okay thank you." Mr. DeBray: "So I believe you testified yesterday that the first time that you mentioned anything about this to anyone connected with lawenforcment was two day's ago?" Mr. Kunkel: "Yes." Mr. DeBray: "And that was in a conversation you had with Mr. Laurine?"

page 387 section 1- Mr. Kunkel: "Yes." Mr. DeBray: "Okay." Mr. DeBray: "That's all I have." Mr. Laurine: "Did you want to be involved in this?" Mr. Kunkel: "Absolutely not." Mr. Laurine: "Did your sister involve you in this?" Mr. Kunkel: "No she didn't tell the officers that I was even around that night." "It was something that she wanted to keep me separate from it as much as possible." Mr. Laurine: "What you have told us here today is what you know?" Mr. Kunkel: "Absolutely." Mr. Laurine: "Thank you."