

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON)	
Plaintiff,)	No. 51658-6-II
)	
v.)	STATEMENT OF ADDITIONAL
)	
IVAN LEE AHQUIN)	GROUND(S), RAP 10.10
Defendant.)	
)	

A. IDENTITY

Ivan L. Ahquin, appellant, hereby brings forth these additional GROUND(S) for review, (SAG), and asks for the relief sought in Part B.

B. RELIEF SOUGHT

Appellant Ahquin hereby requests the reversal of his conviction for a New Trial. In the ALTERNATIVE, he requests a Reference / Evidentiary Hearing to develop facts in support of his claims. Should the Court choose to Remand this case for resentencing, Ahquin seeks to have a "Full Resentencing" where any mitigating circumstances that may have developed may be presented for the courts consideration.

Ivan L. Ahquin, DOC# 319309
MCC-TRU-B-603
P.O. Box 888
Monroe, Wa 98272

C. INTRODUCTION

i. ²SAY YOUR PEACE, Ivan L. Ahquin and Jennifer Giovani-Effinger met while they were in High School in 1991, RP 714, they were neighbors. After loosing touch for about 17 years, they met up again by happen-stance in mid 2016, RP 718.

ii. The two hit it off and began having a relationship, RP 719. The relationship was far from a traditional one. It involved "non-traditional sex", and "non-traditional sex toys", RP 34 - (3.5 Hearing, January 25, 2018). The Court cited Sado-Masochism and the popular movie, Fifty Shades of Grey.

iii. What Ivan did not know was that Jennifer was being seen by Greater Lakes Health Services for a pre-existing mental disorder(s), that stemmed from before she began her relationship with him, CP 19-20 - (Hearing Held November 17, 2017). She was being treated for Bi-Polar, schizophrenia, manic depression, hallucinations, and suicidal thoughts with multiple attempts to commit suicide. She was taking antipsychotic medication, along with abusing Methamphetamines with Ivan, while having Non-traditional sex. Medical Records. RP 531-44, 556-62.

²SAY YOUR PEACE-RULE, (Proposed for acceptance to the Court, 51658-6-II) A Statement of Additional Grounds may contain an "INTRODUCTION", RAP 10.10. An "INTRODUCTION" need not make citation to the record, RAP 10.3(3). Although appellant must not rely on matters outside the record to support GROUND(S) for relief, *State v. McFarland*, 127 Wn.2d 322, the opportunity to briefly SAY YOUR PEACE may be articulated in a short INTRODUCTION because "procedural rules are to be interpreted liberally." *Maynard v. Sisters of Providence*, 72 Wn. App. 878, 866 P.2d 1272 (1994).

iv. After several weeks, between 1-3 months, the relationship started to have problems. The ³sado-masochistic fornication while high on antipsychotic medication mixed with meth, and Ivan's inability to recognise that Jennifer was damaged from a previous occurrence, began to spiral out of control. On one occasion, while the two were having sex, Jennifer had an episode where she began to panic and cry. She confided in Ivan that she'd been raped in the past and that her Father had "gotten one of them". Insinuating that her father had killed one of her attackers. Ivan also gathered from conversations between Jennifer and her EX, Ryan Effinger, who called from prison, that she was afraid of his release because she'd done something to get him locked up. Jennifer was telling Ivan that she was preparing to sign divorce papers to separate from Ryan, but while testifying, she stated that she'd told Ivan that, but was really planning on getting back together with her husband, RP 827.

v. One evening while Ivan and Jennifer were in the driveway of Ivan's friends home, they began to argue. Ivan told Jennifer that she needed to leave. Jennifer told Ivan he needed to get out of the drivers seat. During the exchange, the keys were left in the car and the doors got locked. Jennifer ended up walking to a neighbors house who took her to the fire station. The firefighters helped her get into the car.

³Sado-Masochisim is not illegal in Washington. Fornication is voluntary intercourse between two persons. The sex acts between Ivan and Jennifer involved household items / objects, and urinating on or in eachother.

vi. That evening when the keys got locked in the car, the neighbors called the police because Jennifer was "screaming at the top of her lungs", RP 1146. Ivan's friend, whoms driveway this was taking place in testified that Jennifer had been texting him with accusations that she believed Ivan was cheating on her and seeing another women, saying she would "rant and rave", RP 1142.

vii. Prior to this incident, Jennifer had gotten a temporary no contact order. It took her 30 days to go down and get one, a fact that the court chose to exclude from the jury. But the no-contact order was later dropped. Even while the no-contact order was in place, Jennifer actively sought Ivan to have sex and get drugs. She was still interested in having that same Masochistic fornication because finding a partner in that sort of life-style is no easy task.

viii. Because of the no-contact order, Ivan had to sneak in and out of Jennifers apartment when she called him to her for sex and drugs. This is what caused Ivan to have to use the window and stand on-top of the air-conditioner. (FOOT PRINTS) A fact later focused on to demonstrate that Ivan had been some kind of creep in the night who scaled buildings and snuck in windows to rape Jennifer.

ix. While performing the non-traditional sex acts, as is involved with sado-masochistic fornication, pain and pleasure waltz a fine line. During an Orgasm, one becomes even more numbed to pain. To experience an orgasm in this way while high on meth and on antipsychotic medication, may very well be the reason why this relationship got so far off course. Not to mention Jennifer's pre-existing mental disorders and prior alleged rape experience. It would not be uncommon to see spotting or tears in a vagina or anus, even during natural intercourse, so the over-reliance of these factors were taken perhaps without full context, because the jury did not get to hear about the meth use, mixing medications, prior rape history, or mental conditions Jennifer had.

x. The fact is, that Jennifer was a willing participant in this sort of life-style and non-traditional sexual relationship. Yes I want it, no I dont want it, not that way but this way, get away, no come here. Jennifer was damaged and Ivan did not know how to deal with her. He got in the habit of trying to restrain her when she went into manic episodes or began to have flash-backs of an alleged rape perpetrated by multiple men. His restraining of her occasionally caused brusing, rough sex cause tears, yet she texted him to come back, RP 823-24.

xi. Through the act of going back and forth with Ivan, Jennifer conditioned Ivan to sneak into her apartment to avoid the neighbors and police from seeing him there. Through rough sex and manic disorders and panic attacks, Ivan was conditioned into restraining Jennifer when she freaked out. Ivan had no idea how to deal with such a women. Transfixed by the erotic nature of having sex with her while she was high on meth and psych meds, and the nurture instict that kicks in when a person is suicidal and or mentally damaged, became the catalyst of Ivan and Jennifers actions.

xii. Jennifer was damaged and Ivan is a drug addict. Jennifer had allegedly been raped by multiple assailants in the past and suffered from several disorders. She was mixing meth with antipsychotic drugs. Ivan had no felony record or previous accusations of this nature, yet in the end, he was sentenced to 40 years in prison. A "clearly excessive" sentence.

xiii. The prosecution successfully petitioned the court to suppress and or exclude the exculpatory nature of all these relevant factors, so the jury never got to hear all of it. Ahquin appreciates this opportunity to, SAY YOUR PEACE.

D. GROUND(S) AND ARGUMENT

Ground One

i. Ahquin contends that the court abused its discretion when it suppressed and excluded the alleged victims mental health records, RP 556-62. He asserts that this denied him his right to present a defense.

ii. The alleged victim had extensive mental health issues that included suicide attempts and hallucinations. She even tried to commit suicide and take her dog with her. She was on multiple medications for multiple disorders, RP 531-44. To say that her questionable mental state was not probative or relevant to Ahquins defense to the charge(s) was an abuse of discretion.

iii. "The Supreme Court has made it clear that the erroneous exclusion of critical, corroborative defense evidence may violate both the Fifth Amendment Due Process Right to a fair trial and the Sixth Amendment Right to present a defense." *Depetris v. Kuykendall*, 239 F.3d 1057, 1062 (9th Cir. 2001), citing *Chambers*, 410 U.S. at 294, 93 S. Ct. 1038.

iv. A Superior Courts decision will not be disturbed on appeal unless its decision was manifestly unreasonable or based on untenable grounds or reasons. *Freeman v. Freeman*, 169 Wn.2d 664, 671, 239 P.3d 557 (2010). Ahquin asserts that this requires a new trial.

Ground Two

i. Ahquin contends that his trial counsel rendered ineffective assistance of counsel for failing to seek severance of the Rape charge, from the other charged offenses. Such as, Assault °2, Felony harrassment, unlawfull imprisonment, Unlawfull Possession of a Controlled Substance, as well as the untried Burglary charge, that the state chose not to join, RP 138.

ii. Ahquin raises the failure to seek severance in the context of an I.A.C. Claim because: "If a party does not bring a motion to sever charged offenses during trial, it waives the right to later challenge that issue on appeal." Henderson, 48 Wn. App. 543, 551, 740 P.2d 329 (1987).

iii. "A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo." In Re Fleming, 142 Wn.2d 853, 865, 16 P.3d 610 (2001). To prevail on a claim of I.A.C. a defendant must show that (1) defense counsels representation was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995), applying two-prong test of Strickland, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Severance of charges is important when there is a risk that the jury will use the evidence of one crime to infer defendants guilt of another crime or to infer a general criminal disposition. State v. Russell 125Wn.2d 247-62-63, 882 P.2d 747 (1994) 884).

iv. "In this context there is a recognised danger of prejudice to the defendant even if the jury is properly instructed to consider the crimes seperately." *State v. Harris*, 36 Wn. App. 746, 750, 677 P.2d 202 (1984).

v. Ahquin contends that he suffered prejudice and that no legitamate trial strategy could account for counsels failure to seek severance. Ahquin asserts that this requires the vacation of his conviction and remand for a New Trial.

Ground Three

i. Ahquin contends that the issues he presents, in addition to his appellate counsels assignments of error, amount to a violation of the Cumulative Error Doctrine.

ii. "The cumulative error doctrine applies if there were several trial errors, none of which standing alone warrant reversal, that when combined may have denied the defendant a fair trial." *State v. Greift*, 141 Wn.2d 910, 929, 10 P.3d 390 (2000). An accumulation of errors can violate the Fourteenth Amendment requiring reversal. *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038, 35 L.Ed.2d 297 (1973).

iii. Ahquin asserts that this warrants reversal so that he may be afforded a New Trial.

Ground Four

i. Ahquin contends that the sentence he received, in the context of this case, was "Clearly Excessive". Ahquin asserts that this was a consenting sexual relationship between two people that, through the use of drugs and unconventional sex, went awry. He asks the Court to consider these factors and the sentence of 40 years that he received.

Ground Five

i. Ahquin would like to raise an issue separate and distinct from his appellate counsel's assignment of error, in that the alleged incidents that occurred on the day of the alleged rape, were part of a single, continuing sequence of events. *State v. Collins*, 110 Wn.2d 252, 751 P.2d 837 (1998). Ahquin asserts that this is a separate and distinct analysis than that of Same Criminal Conduct. Where the court may find that some incidents are not same criminal conduct, it may find that it was part of a continuing sequence of events.

ii. Ahquin requests the court to grant a full resentencing on this aspect if no errors warrant reversal.

E. CONCLUSION

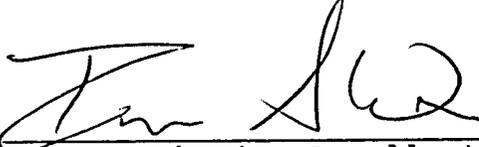
Ivan L. Ahquin, appellant appearing Pro Se for this S.A.G., hereby respectfully prays for the relief of a New Trial where he may present evidence of Jennifer Giovani-Effingers mental history and disorders which in the context of this case, were potentially exculpatory. Ahquin also prays that he may have the opportunity to present his case severed from the abundance of charges that caused the jury to improperly infer his general criminal disposition. And last, if the court should find, he prays for the opportunity to receive the effective assistance of counsel at a New Trial. If by chance the court declined to reverse his convictions, he requests a full resentencing to consider whether he committed a continuing sequence of offenses that should be considered as one point for the purposes of sentencing.

In the interests of justice.

DATED this 29 day of October, 2018.

Presented By:

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Ivan L. Ahquin, Appellant Pro Se

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STATE OF WASHINGTON,)
PLAINTIFF,)
v.)
IVAN L. AHOJIN,)
DEFENDANT.)

NO. 81658-6-II
DECLARATION OF MAILING

I, IVAN L. AHOJIN, hereby declare:

1. I am over the age of eighteen years and I am competent to testify herein.

2. On the below date, I caused to be placed in the U.S. Mail, first class postage prepaid, 2 envelope(s) addressed to the below-listed individual(s):

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DIVISION TWO
950 BROADWAY, SUITE 500
TACOMA, WA 98402

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