COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2018 NOV 26 AM 8:28
STATE OF WASHINGTON
BY
DEPUTY

STATE OF WASHINGTON Respondent, v. Travis C. Schuettke (your name) Appellant.	)	No. 51803-1 BY 11 STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW In Pro se. RAP 10.10

I, Travis C. Schuettke, 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 1

Appellant received ineffective assistance of counsel during pre-trial, it was impossible for counsel to prepare for a meaningful defense without first conducting a proper investigation, in this present case there was no investigation what so ever. Counsels performance was deficient and seriously prejudicial, but for counsels errors the results would have been different. Appellants 1st, 4th, 5th, 6th, and 14th U.S. constitutional amendments were violated by trial attorney James P. Foley.
SEE: Additional pages.

Additional Ground 2

Appellant received ineffective assistance of counsel during Trial by trial attorney James P. Foley for failing to object to to Juror #9, Son-in-Law was ~~witness Austin Cady, who was~~ officer in this case. Trial counsel was also ineffective for failing to object to exhibit 18 and 19 being entered as evidence to the jury. Appellant was never in possession of a controlled substance. Counsel abused his descretion by not defending appellant and having a meaningful objection as the elements for possession do not exist. Appellants above U.S. Const. Amend. we violated.

If there are additional grounds, a brief summary is attached to this statement. See: Attached pages

Date: 11-19-2018

Signature: [signature]
Pro se, # 320326

Form 23

Div 2
No. 51803-1-II

Standard Of Review

Appellant is acting in pro-se pursuant to RAP 10.10, statement of additional grounds for review, and request "liberal interpretation". Haines v. Kerner, 404 U.S. 519 (1972). Appellant respectfully moves the Court to "Promote Justice", pursuant to RAP 1.2, in the present Direct Appeal.

Statement Of Facts (Grounds One and Two)

On or about 10-7-2017, Travis Schuettke, (herein after) Appellant, was arrested and charged by the police for being in possession of a stolen motor vehicle, that when returned to the owner, had the original "Keys" still in the ignition. See: Tr. Trans. P.159, lines 14-15. "These were actually the Keys to the van inside the van itself". Appellant contends that he had No Knowledge the vehicle at bar was stolen, which was in fact argued in the Opening brief by appellants Counsel, the Elements of Washington law was not met by the state, and trial counsel was seriously ineffective in failing to argue this fact during trial. Trial Counsel was further ineffective for failing to point out that, at worst, appellant was "operating a motor vehicle without owner's permission" -- as a matter of law. Trial counsel was ineffective in his Duty to protect the trial rights of appellant, his performance fail below the deficiency standard, appellant was prejudiced due to Counsels performance, and but for Counsels errors, the results at trial would clearly have been different. Trial Counsel, James Foley, abused his descretion!

SEE: Vol 1, Trial Transcript pg 81-82, No Objection.

Next, Juror #9, ~~testified in this trial and~~ admitted he was in fact "related to" an officer in this case" ~~Austin Cody, who did in fact testify during this trial.~~ Trial counsel was further ineffective and abused his discretion for not objecting and having Juror #9 removed from this case. Appellants due process was seriously violated by trial counsels ineffective performance, which did in fact prejudiced appellant from receiving a fair trial. But for counsels abusive errors and ineffectiveness, the results would have been different. See: Trial Transcripts at pg's See: Vol 1, Tr. Transcripts Page 81-82, Juror #9, No Objection. To

* ~~Austin Cody was~~ Son-In-Law was an officer involved in this case + ~~testified at trial.~~

Next, trial counsel was further ineffective in his Duty to object to the possession of controlled substance charge and allowing *exhibits # 18 and 19* to be entered into evidence for the Jury to use to convict appellant of a drug charge. See: Tr. Transcripts at p. 143-145. No Objection.

The methamphetamines was found inside the van after the police searched, took pictures, questioned several witness's, and more over, Appellant never was in possession of a controlled substance -- the Record in the present Appeal Demonstrates. See: P. 107 Tr. Trns line 24. Mr. Clausen testified, "that he had a problem with Squatters". There is further testimony of the owner of the Van was "Amped up". Appellant firmly contends that he was never in possession of drugs, as such, the elements for possession clearly do not exist[.] No evidence demonstrates other wise what so ever.

Appellant further argues that anyone could of placed drugs in the van that appellant was wrongly charged and convicted for. Appellants prints were never found on the exhibits (18+19) the jury relied upon, nor was appellant ever in possession of the drugs found several (40 min) 1 hour + later. The state waited 14 days before trial to charge appellant, not the police, for drug charges. As a matter of law, the elements do not exist in this case for a drug charge conviction. A miscarriage of justice has been committed in the present case, and attorney James Foley seriously abused his discretion by not protecting appellants due process rights, counsel was seriously ineffective that rises to a "chilling effect". But for counsels abusive errors, and ineffective performance, the results would clearly of been different. In the present case, defense counsel is constitutionally ineffective where (1) the attorney's performance was unreasonably deficient and (2) the deficiency prejudiced the defendant. But for James Foley's deficient performance, that was prejudicial to Appellants rights to a fair trial, the results would have been much different. State v. Thomas, 109 Wn. 2d 222, 225-26, 743 P. 2d 816 (1987) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). "A claim of ineffective assistance of counsel may be considered for the first time on appeal as an issue of constitutional magnitude". State v. Nichols, 161 Wn. 2d. 1, 9, 162 P. 3d 1122 (2007). Also, Promote Justice, RPC 1.2.

Taint Evidence. *

Appellant contends that the above arguements and constitutional violations are in fact supported by the record of this courts review. Appellant firmly contends that the drugs were not his, nor did he have <u>any knowledge</u> they were in the van, and that the elements do not even exist to demonstrate that he was ever in possession of a controlled substance. Appellant had <u>No Knowledge</u> the van was stolen, which had the keys in the ignition, and further testified that he was only attempting to push the van out of the way when found only half way inside the van with his feet and legs still outside of the van, the record hereine does in fact demonstrate.

Trial Counsel, James Foley, was further seriously ineffective in failing to have an investigator appointed by the court to properly investigate this case <u>prior</u> to appellants trial starting. Without a meaningful investigation being conducted, Appellant firmly contends that it was in fact "<u>impossible</u>" for his trial counsel to prepare for a meaningful Defense in this case. <u>See</u>: <u>Strickland v. Washington</u>, Supra. Without conducting a necessary investigation required for a felony trial, clearly counsel could not have been armed with all the facts and relevant information to effectively defend his client. A constitutional magnitude exist here in the present matter, an abuse of trial counsels duty under the 6th and 14th U.S. Const. Amend. to represent Appellant effectively has been violated, with out exception.

Conclusion

Wherefore, the violations of Appellant's Constitutional right to receive effective assistance of trial Counsel was not met, and for all the additional reasons provided above requires reversal of his convictions. The Elements do not exist in either charges and a new trial is warranted.

Dated this 18th day of November, 2018.

Respectfully Submitted

By: _____

Travis Schuettke, pro se
Olympia Correction Center # 320326
11235 Hoh Mainline Rd.
Forks, WA 98331

SEE: "Declaration For Timely Filing"

I, Travis Schuettke, hereby declare under penalty of perjury under the Washington State law that the above foregoing information is true and correct to the best of my knowledge and information. Dated: November 18, 2018.

_____

Travis Schuettke, pro se
320326

Court of Appeals Div Two
Case No. 51803-1-II

Declaration Of Travis Schuettke

I, Travis Schuettke, hereby declare under penalty of perjury under the Washington State law that the following information is true and Correct to the best of my knowledge and information.

1. I am the Appellant in Appeal Case No. 51803-1-II, and I am over 18 years old.

2. I have logged my document entitled: "Statement of Additional Ground For Review" by handing to DOC Correctional officer for U.S. mailing from Olympic Correction Center on 11-18-2018. Said document is hereby considered "Timely Filed" with the Court of Appeals, Div II.

Dated this 19 day of November, 2018.

Respectfully Submitted

By: _____

Travis Schuettke, pro se
#320326

Witnessed By: _____
#368483 11-19-18

Cover Letter

November 19, 2018

RE: Travis C. Schuettke
DOC # 320326
Olympic Correction Center
Case No. 51803-1-II

RECEIVED
NOV 26 2018
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Washington State Court of Appeals
Division Two

Dear Court Clerk:

I received my attorney's letter and opening brief, logged in the institution legal mail Book, on 10/23/18. Please be informed that my enclosed "Statement of Additional Grounds" is being mailed/Filed timely from the Olympic Correction Center. The Sgt confirmed the date I received the opening brief, as such, I'm within the 30 day time frame to have my Statement of additional grounds filed and taken into consideration by this Court.

Thank you for your time and consideration in this matter.

Sincerely,

Travis Schuettke

cc: File