WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

FILED
COURT OF APPEALS
DIVISION II
2019 SEP 19 PM 1:18
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON, Respondent,	No. 52884-3-II
v.	Statement Of Additional Grounds For Review / Motion To Order Additional Briefing
THYJUAN T. TAPLIN, Appellant.	

I, Thy Juan T. Taplin, 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.

Appellant Taplin moves this Court pursuant to Rule of Appellate Procedure 10.10 (f) to order the assigned counsel to address these issues raised pro se. Additional briefing by counsel would benefit this Court's review.

Pursuant to RAP 10.10 (c), the specific grounds inform this Court of the nature and occurance of the constitutional errors without arguments and this is the basis to order additional briefing.

Judicial Notice

Appellant Taplin respectfully asks this Court to take judicial notice of the documents below as further basis to grant additional briefing. Spokane Research & Def. Fund v. City of Spokane, 155 Wn. 2d 89, 98, 117 P.3d 1117 (2005) (Court may take judicial notice of the record before it).

Pursuant to Evidence Rule 201 (d), Appellant Taplin supplies this Court with:

A) Motion, Declaration, And Consent For Voluntary Withdrawl Of Review ; and
B) Affidavit of Appellant.

Assigned counsel, Kevin A. March, is currently denying Appellant Taplin effective assistance of counsel on direct appeal. Evitts v. Lucey, 469 U.S. 387 (1985).

Under Washington state law, collateral proceedings will be the first opportunity for Appellant Taplin to raise an ineffective assistance of counsel claim under Strickland v. Washington, 466 U.S. 668 (1984). However, additional briefing would cure the violation.

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

STATE OF WASHINGTON, Respondent, vs. THYJUAN TOMIKIO TAPLIN, Appellant.	))))))))	NO. 52884-3-I DECLARATION OF COUNSEL REGARDING VOLUNTARY WITHDRAWAL OF REVIEW

Kevin A. March, being first duly sworn upon oath, states:

I am an attorney with Nielsen, Broman & Koch and appointed counsel for appellant ThyJuan Tomikio Taplin in the above-captioned appeal. I have communicated with Mr. Taplin by telephone and by letter. After advising him regarding the merits of his appeal, Mr. Taplin has indicated to me that he no longer wishes to challenge the October 15, 2018 order amending his judgment and sentence. Mr. Taplin seeks to withdraw his appeal. The consequences of doing so have been fully explained to him.

I certify under penalty of perjury under the laws of the State of Washington that foregoing is true and correct.

_____

KEVIN A. MARCH Date
WSBA No. 45397
Seattle, WA

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

STATE OF WASHINGTON, Respondent, vs. THYJUAN TOMIKIO TAPLIN, Appellant.	))))))))	NO. 52884-3-II MOTION, DECLARATION, AND CONSENT FOR VOLUNTARY WITHDRAWAL OF REVIEW

MOTION

The above-named appellant, through appellate counsel and upon all the records, files, and proceedings in this case, hereby requests this court to enter a ruling terminating review in the direct appeal in this case. This motion is based upon the attached declaration of counsel for the appellant and the written statement of appellant consenting to withdrawal of review in this case.

DATED this ____ day of July, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

_____
KEVIN A. MARCH, WSBA No. 45397
Office ID No. 91051
Attorneys for Appellant

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

STATE OF WASHINGTON, Respondent, vs. THYJUAN TOMIKIO TAPLIN, Appellant.	))))))))	NO. 52884-3-II APPELLANT'S CONSENT TO VOLUNTARY WITHDRAWAL OF REVIEW

I am the appellant in the above-captioned appeal from the October 15, 2018 order amending the judgment and sentence entered in Pierce County Superior Court cause no. 17-1-00216-1. I currently reside in Stafford Creek Corrections Center in Aberdeen, Washington.

In June and July 2019, I spoke to Kevin March, the attorney who represents me on appeal, on the phone. Mr. March and I have also corresponded by letter. Mr. March outlined the legal merit or lack of legal merit in this appeal. I am satisfied, based on the information Mr. March provided, that further pursuit of this appeal is not in my interest. Therefore, I am hereby requesting that my appeal be terminated without any further proceedings in the Court of Appeals.

I understand that by making this request I am giving up my right to appeal the judgment and sentence and order transferring funds. I am making this request voluntarily.

_____

THYJUAN TOMIKIO TAPLIN Date

Signed at _____, Washington

Affidavit of Appellant

I, Thy Juan Tomikio Taplin, declare under penalty of perjury under the laws of the State of Washington that all of the foregoing is true and correct.

Declaration

1) I am the Appellant in this matter. I am over the age of 18. I am a citizen or permanent resident of the United States. I am competent to testify. I assert the following facts from my personal knowledge and observations.

2) I am proceeding pro se and without the assistance of a person educated in law. This procedural posture is very unusual and inherently contradictory since there is a counsel on record.

3) The issues contained within my Statement of Additional Grounds are Sixth Amendment claims that appear on the face of my judgment and sentence.

4) I asked counsel to raise these claims but was lead to believe I should withdraw my appeal.

Dated: 9/15/19

Thy Juan T. Taplin

Thy Juan T. Taplin

Additional Ground 1

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Calculating The Current Offenses In The Offender Score Without Seeking An Exceptional Sentence ?

Additional Ground 2

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Mischaracterizing The Current Offenses As Prior Convictions In The Criminal History ?

Additional Ground 3

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Imposing A Special Condition That He Shall Remain Within A Boundary To Be Determined By A Community Corrections Officer's Discretion ?

Additional Ground 4

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Imposing A Special Condition That He Shall Participate In Treatment ?

Additional Ground 5

Does The Charging Information Violate The Fifth Amendment Right To Notification Of All The Essential Elements Of A Crime By Failing To Include Current Offenses Calculated In The Offender Score ?

Additional Ground 6

Does The Charging Information Violate The Fifth Amendment Right To Notification Of All The Essential Elements Of A Crime By Failing To Include The Special Condition Regarding Boundary Limitations ?

Additional Ground 7

Does The Charging Information Violate The Fifth Amendment Right To Notification Of All The Essential Elements Of A Crime By Failing To Include The Special Condition Regarding Treatment ?

Additional Ground 8

Did The Trial Court Violate The Fifth, Sixth, And Fourteenth Amendment By Imposing A Sentence In Excess Of Authority Based On A Stipulation Pursuant To Blakely V. Washington, 542 U.S. 296 (2004) ?

Additional Ground 9

Did The Trial Court Violate The Fifth, Sixth, And Fourteenth Amendment By Mischaracterizing (ATC) Alternative To Confinement As Community Custody?

Additional Ground 10

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Improper Adding A Point To The Offender Score For (ATC) Program?

Additional Ground 11

Did The Trial Court Violate The Sixth Amendment Right To A Jury Trial By Failing To Apply The "Same Criminal Conduct" At Sentencing?

Additional Ground 12

Was Trial Counsel Ineffective For Failing To Object To The Mischaracterizing (ATC) Alternative To Confinement As Community Custody? If so, Did Deficient Performance Prejudice The Sentence Imposed?

Additional Ground 13

Was Trial Counsel Ineffective For Failing To Object To The Improper Adding Of A Point To The Offender Score For (ATC) Program?

Additional Ground 14

Did The Trial Court Violate The Fifth, Sixth, And Fourteenth Amendment By Failing To Apply The "Same Criminal Conduct" At Sentencing?

Additional Ground 15

Was Trial Counsel Ineffective For Failing To Notify The Trial Court To Apply The "Same Criminal Conduct" At Sentencing?

Additional Ground 16

Was Trial Counsel Ineffective For Failing To Object To The Inclusion Of Current Offenses Used In The Offender Score ? If So, Did Deficient Performance Prejudice The Sentence Imposed ?

Additional Ground 17

Was Trial Counsel Ineffective For Failing To Object To The Mischaracterization Of Current Offenses As Prior Convictions ? If So, Did The Failure Prejudice The Offender Score Calculation ?

Additional Ground 18

Was Trial Counsel Ineffective For Failing To Object To The Imposition Of A Special Condition That Limits Boundaries ? If So, Did The Failure To Object Prejudice The Sentencing ?

Additional Ground 19

Was Trial Counsel Ineffective For Failing To Object To The Imposition Of A Special Condition That Orders Mandatory Treatment ? If So, Did The Failure To Object Prejudice The Sentencing ?

Additional Ground 20

Was Trial Counsel Ineffective For Failing To Challenge The Sufficiency Of The Charging Information Since It Failed To Notify The Inclusion Of Current Offenses To Be Calculated For Purposes Of The Offender Score ? If So, Did Deficient Performance Prejudice The Entire Proceeding ?

Additional Ground 21

Was Trial Counsel Ineffective For Failing To Challenge The Sufficiency Of The Charging Information Since It Failed To Notify Of A Special Condition That Limits Boundaries ? If So, Did Deficient Performance Prejudice The Entire Proceeding ?

Additional Ground 22

Was Trial Counsel Ineffective For Failing To Challenge The Sufficiency Of The Charging Information Since It Failed To Notify Of A Special Condition That Mandates Treatment ? If So, Did Deficient Performance Prejudice The Entire Proceeding ?

Additional Ground 23

Was Trial Counsel Ineffective For Failing To Object To A Waiver Of Blakely Rights Pursuant To A Stipulation ? If So, Did The Failure Prejudice The Sentence Imposed ?

Additional Ground 24

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Presenting The Trial Court A Fraudulent Offender Score That Was Adopted And Imposed By The Trial Court ?

Additional Ground 25

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Misleading The Trial Court To Mischaracterize Current Offenses As Prior Convictions In The Criminal History ?

Additional Ground 26

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Seeking An Unlawful Boundary Condition ?

Additional Ground 27

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Seeking An Unlawful Treatment Condition ?

Additional Ground 28

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Charging A Crime That Failed To Include The Essential Element Of Current Offense For The Purpose Of Offender Score ?

Additional Ground 29

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Charging A Crime That Failed To Include The Essential Element Of A Crime Enhancement Regarding Treatment ?

Additional Ground 30

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Charging A Crime That Failed To Include The Essential Element Of Boundary Limitations As A Condition ?

Additional Ground 31

Did The State Violate Its Ethical Obligations Under The Rules Of Professional Conduct By Failing To Bridle Its Discretion In Manipulating A Blakely Stipulation That Mislead The Trial Court And Prejudice The Defendant ?

Additional Ground 32

Does The Cumulative Effect Of The Trial Court Errors Warrant Relief ?

Additional Ground 33

Does The Cumulative Effect Of Ineffective Counsel Errors Warrant Relief ?

Additional Ground 34

Does The Cumulative Effect Of The Prosecutorial Errors Warrant Relief ?

Additional Ground 35

Does The Cumulative Effect Of Trial, Counsel, And Prosecutor Errors Combined Warrant Relief ?

Conclusion / Relief

When the trial court entered an order amending Appellant Taplin's judgment and sentence to strike the 12-month term of community custody imposed in conjunction with count 3, the order constituted a new, intervening judgment because it changed the duration of confinement. Magwood V. Patterson, 561 U.S. 320 (2010); and Turner V. Baker, 912 F.3d 1236 (9th Cir. 2019).

Appellate counsel is clearly ineffective for not addressing Appellant Taplin's right to counsel at the resentencing, his right to be present at that resentencing, and the OBVIOUS courtroom closure through ex parte order. Basic rights are blatantly being denied.

Appellant Taplin requests immediate release from confinement based on the Pierce County Superior Court's failure to impose a valid judgment after granting state habeas relief. The United States Supreme Court held in Wilkinson V. Dotson, 544 U.S. 74 (2005) that:

"The prisoner who shows that his sentencing was unconstitutional is actually entitled to release, because the judgment to which he is confined has been invalidated and the trial court failed to enter a valid one."

Tysuan Taplin

Dated: 9/15/19

Morgan's vs. states Marine Lines Inc.,398 U.S. 375,403,23 L.Ed. 2d 339,90 s.ct. 1772 (1970).

State vs.Haddock 141 Wn.2d 103 (1999)
Rabon vs. City of Seattle,135 Wn. 2d 278,284,957 P.2d 621(1998).
State vs. Williams, 135 Wn. 2d 365,368, P.2d 216(1998).
State vs. Porter,133 Wn. 2d 177,181,942 P.2d 974 (1997).
State vs. Vike, 125 Wn.2d 407 (1994).
Brown vs. Ohio,432 U.S. 161,53 L.Ed.2d 187,97 S. ct. 2221(1977).
State vs. Ford,137 Wn. 2d 472 (1999)

In Re Personal Restraint of Williams, 111 Wn. 2d 357,759 P. 2d 436 (1988).

In Re Personal Restraint of Goodwin, 146 Wn. 2d 861 ,864 (2002).

Torres vs.United States, 140 F.3d 392,404 (2d Cir. 1998).
Safirstein vs. United States, 827 F.2d 1380,1385-87 (9th Cir.1987)
Bass vs. United States, 175 U.S. App. D.C. 282,535, F.2d.110,118-19(D.C. Cir 1976)
Looney vs. United States, 501 F.2d 1039,1042 (4th Cir 1974)
State vs. Johnson, 856 P.2d 1064,1071 (Utah 1993)
State vs. Mayes , 604 A.2d 839,843 (Del. 1992)
State vs. Herzog , 112 Wn. 2d 419,426,771 P.2d 739 (1989)
Ibarra vs. United States 737 F.2d 825,827(9th Cir 1984)
Baylin vs. United States 696 F.2d 1030,1040 (3rd Cir 1982)
Ward vs. United States 68 F.3d 146,149 (6th Cir 1995)
Fatico vs. United States 458 F. Supp. 388,397,398(E.D.N.Y. 1978)
Malcolm vs.United States 432 F.2d 809,816, (2nd Cir 1970)
Weston vs. United States 448 F.2d 626, 634(9th Cir 1971) Fatico, 458 F.Supp. at 398.

State vs. Bresolin, 13 Wn. App.386,396,534, P. 2d 1394(1975)
State vs. Woldegiorgis, 53 Wn. App. 92,95,765 P. 2d 920(1988)
State vs. Balkin, 48 Wn. App. 1,4, 737 P.2d 1035 (1987)
State vs. Russell, 31 Wn. App. 646(1982)
State vs. Giebler, 22 Wn. App. 640 (1979)