

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2019 NOV 25 AM 8:28
STATE OF WASHINGTON
BY JK

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Heath Landon McMillian)
 (your name))
)
 Appellant.)

No. 53247-6-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Heath L. McMillian, 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.

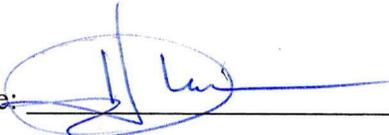
Additional Ground 1

NOTICE: Please reference my Additional Grounds 1 through 4 as presented in the enclosed "Attachments" identified as "A" through "D".

Additional Ground 2

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

Date: November 18, 2019

Signature: 

ATTACHMENT

A

Statement of Additional Grounds

Additional Ground 1:

No reasonable opportunity afforded to nor provided defendant at hearing specifically for prudent voluntary plea withdrawal upon court inquiry, after court's official notice of potential non-acceptance of SSOSA prior to plea acceptance and sentencing, as defendant steadfastly believed by placing his faith and trust in trial defense attorney primarily, along with prosecutor, this being reasonably determined as logically facilitated through repeated knowing misrepresentations, knowing improper encouragement, as defendant had reasonably relied wholeheartedly upon legal advice as coached to do so, effectively and improperly coerced to blindly obey and not to swerve from the conspicuously evident scripted written statements and subsequent testimony provided him to recite on cue, executed solely for defendant's pre-hearing compliance requirement qualifier imposed to avoid any and all incarceration and potential deviation from SSOSA approval.

Statement of Additional Grounds
Heath Landon McMillian, Petitioner
COA Div. II No.: 53247-6-II

ATTACHMENT A

Attachment A:

I. ADDITIONAL GROUND 1

1.1 COMES NOW, Heath Landon McMillian, Petitioner Pro Se, (McMillian), presenting for this honorable Court of Appeals a statement of the case to be incorporated herein throughout all additional grounds presented where relevant and applicable, that the record is clear and displays an unfair hearing and due process procedure prejudicing McMillian which should result in reversal or minimally for evidentiary hearing, especially due to no record (i.e., Verbatim Report/transcript) of first trial continuance hearing which is confirmed by appellate attorney letter dated October 22, 2019 (McMillian restricted by prison copying policies/procedures and unable to produce timely copy for this Court at time of filing for this Court's confirmation and review), again the record is clear albeit in significant part silent at times, referenced below as relevant to the Verbatim Report of Proceedings at Plea Hearing (RP1), Sentencing (RP2), Stay of Sentence (RP3), and Statement of Defendant on Plea of Guilty to Sex Offense (SD), which in tandem reasonably collectively concludes that McMillian was afforded no reasonable opportunity to withdraw his guilty plea, albeit being unintelligent, unknowing, and involuntary, considering the record and what

the deficient court appointed trial defense counsel had known, or should have known, in significant part that SSOSA was a foregone conclusion to have a very high likelihood of not being granted due to precedent and well-established Washington case law, defense counsel failing to inform McMillian and/or failing to diligently inquire and/or failing to secure a more definite assurance of the prosecution's expressed prior approval for Special Sex Offender Sentencing Alternative (SSOSA) and/or defense counsel failing to reasonably inquire of McMillian at least relevant to timely objection subsequent to the revelation of surprise denial of SSOSA that McMillian clearly trusted and relied upon, resulting from being improperly coached through the entire plea bargaining process and SSOSA preliminary approval process to qualify for a plea acceptance involving granting SSOSA, which McMillian clearly states in the record that he was relying upon and opting to take advantage of, due to presented assurances and encouragement from his trial counsel, and supported in significant part by the prosecution, all packaged neatly, strategically, and presented in concert under the color of authority and trust promulgated to McMillian, that if he was unwaiveringly compliant, fulfilling his end, and acted in accordance to the coached way that he was professionally

prepared to do by defense counsel, thus fudging the truth, so to speak, not unlike a proverbial trained circus bear and/or trick-performing seal, which can be reasonably considered and ultimately determined by this Court in favor of McMillian's factual claims by simply reviewing the record and taking focused note of the specific language, verbiage used (i.e., legalese) which being unnatural to McMillian's normal speech, displays glaringly for this Court in both the pre-plea's Statement of Defendant on Plea of Guilty to Sex Offense and at the Plea and Sentencing hearings. See, RP1, RP2, RP3, SD.

1.2 Additionally, McMillian had suffered harmful error and irreparable prejudice through repeated and convincing misrepresentations from defense counsel and in part the prosecution, as a result of the knowingly improbable granting of SSOSA due to well-established precedent case law, prior to plea hearing, effectively coming to light for McMillian only at Sentencing initially by having the rug pulled-out from under him, when the lower court denied SSOSA in significant part to McMillian's prior initial denial of any guilt to the charges alleged and his reluctance to accept full responsibility and to plead guilty from the beginning without delay, (See, RP2) and then additionally leaving him fatally unstable with his

legs cut-out from under him, which is when McMillian was originally presented with the SSOSA option, it was a knowing misrepresentation not unlike a proverbial carrot hung from a string on a stick placed directly in front of the horse but just out of reach, indeed bait, indeed never reasonably considered to be awarded, all presented from a point of authority and trust, acting as fiduciary allegedly protecting his rights in the form of his trial defense counsel, but it was nothing more than a heinous illusion presented to McMillian from the beginning, a textbook definition of being double-blindsided, supported and reinforced through improper deceptive methods and misrepresentations of facts, involving officers of the court of justice apparently knowingly engaging in unconscionable ethical and moral violations of a client's faith and trust, because unbeknownst to McMillian, he would never reasonably qualify for SSOSA approval and unknowingly had no true meaningful expectation of being granted SSOSA in light of the facts and precedent case law, which deficient trial defense counsel had known or should have known and had a duty to disclose to McMillian to allow him to form an independent informed determination for decision of whether to go to trial or enter into plea bargain negotiations, which was never afforded McMillian, supported

by and focusing on the specific language he uses on the record, albeit scripted and coerced legalese demanded of him to qualify for SSOSA approval, and not surprising but apparently confirming the SSOSA approval procedural illusion presented prior to plea acceptance, and running contrary to prior support for SSOSA, the prosecution flipped at the Stay of Sentence hearing, effectively emphatically supporting denial of SSOSA, showing their proverbial true colors. See, RP1, RP2, RP3, SD.

a) Did McMillian suffer irreparable actual and substantial prejudice and harmful error by not being afforded the opportunity to withdraw his plea of guilty upon notification of court's denial of SSOSA at Sentencing?

1.3 No reasonable opportunity afforded to nor provided McMillain at Sentencing hearing specifically for prudent voluntary plea withdrawal upon void court inquiry, after court's official notice of potential non-acceptance of SSOSA prior to plea acceptance and sentencing, as defendant steadfastly believed, placing his faith and trust in trial defense attorney primarily, along with prosecutor, this being reasonably determined as logically facilitated through repeated knowing misrepresentations, knowing improper encouragement, as defendant had reasonably relied wholeheartedly upon legal advice as coached to do so, effectively and improperly coerced to blindly obey and not

to swerve from the conspicuously evident scripted written statements and subsequent testimony provided him to recite on cue, executed solely for defendant's pre-hearing compliance requirement qualifier imposed to avoid any and all incarceration and potential deviation from SSOSA approval. See, RP1, RP2, RP3, SD.

1.4 Reasonably considering prosecution's SSOSA recommendation and defense counsel's encouragement and coaching to accept (See, SD: 6(j), (t), (11)) and more importantly defense counsel's knowing or should have known very high likelihood, if not foregone conclusion of its non-acceptance relevant to plea circumstances of timing and reluctance to plead guilty initially, especially prior to Sentencing involving the heavy weight afforded the submitted Presentence Investigation which was not supportive of approving SSOSA, McMillian was not afforded effective counsel exemplified in failing to object and/or failing to motion for withdrawal of guilty plea, knowing McMillian's reliance on SSOSA as presented to him and reflected in the record, noting McMillian's specific language "I wish to take advantage of the State's offer" and "I'd like to stand as I read" and that which follows, referring to the scripted statement, especially in the unnatural legalese exemplified by McMillian in his Statement

of Defendant on Plea of Guilty to Sex Offense, and more importantly after Ms. Zan Robbins' statements inflaming the passion and prejudice of the Court at Sentencing that were also afforded exceptional weight over the actual alleged minor victim's preference of awarding SSOSA and specifically no prison incarceration, and additionally when the court exemplified in referencing "But that's not where you were when this started, and that's where you were on September 29, and it's certainly not where you were on January 30", along with precedent support that McMillian should have been afforded opportunity to withdrawal of plea of guilty after SSOSA denial, see e.g., In re Morgan, 506 F.3d 705, 711-13 (9th Cir. 2007), and "Court must specifically advise defendant that if recommendation is rejected, defendant cannot withdraw plea", see, e.g., U.S. v. Martinez, 277 F.3d 517, 530-31 (4th Cir. 2002), and "Failure to explicitly warn defendant of inability to withdraw plea, the decision to plea verses going to trial hinged on acceptance of plea agreement by the court, which had a significant influence on defendant's decision to plead guilty, thus not harmless error", see e.g., U.S. Kennell, 15 F.3d 134, 136 (9th Cir. 1994), and "If court rejects plea agreement, must give defendant opportunity to withdraw plea", see, e.g., U.S. v. Lewis, 633 F.3d 262,

270-71 (4th Cir. 2011), see also, RP1, RP2, RP3, SD.

b) Did McMillian suffer irreparable actual and substantial prejudice and harmful error by not being afforded the opportunity to withdraw his plea of guilty upon notification of court's denial of SSOSA at Sentencing based on McMillian's shock at Department of Corrections' CCO's report revelation and trial court's weight given to unfavorable Presentence Investigation and reluctance to accept full responsibility by McMillian, in tandem with deficient defense counsel's failure to object/motion for withdrawal of plea of guilt.

1.5 McMillian suffered irreparable prejudice, harmful error, and due process violations resulting from defense counsel's knowing and/or should have known, court's very high likelihood of rejection of plea agreement's SSOSA recommendation would trigger prudent and timely filed Motion to Withdraw Plea, a duty owed to a client to protect rights and preserve appeal, this in tandem with the proverbial dog and pony show executed by trial counsel and prosecution presented to McMillian relevant to no reasonable expectation of receiving SSOSA approval by the Court, resulting in prejudice and deficient counsel due in significant part to deficient explanation provided to McMillian relevant to regardless of complete compliance with all steps and procedures prior to sentencing to qualify for SSOSA recommendation, and probability of court rejection of SSOSA, diligent and zealous defense representation was effectively non-existent exemplified by

McMillian's steadfast adherence to State's and defense counsel's promulgated requirements, albeit a heinous, unconscionable illusion known by both officers of the court of justice that SSOSA never actually had even a reasonable chance of acceptance, due to "Defendant's who express acceptance of responsibility in a perfunctory or delayed manner are unlikely to receive the reduction", see, e.g., U.S. v. Garrasteguy, 559 F.3d 34, 39 (1st Cir. 2009), along with McMillian's request for legal counsel and defense counsel's failure to attend Presentence Investigation, resulting in flat denial of defendant's exercised request for his trial defense legal counsel to attend, which ultimately resulted in negative recommendation from CCO and that which plays a critical role in the judge's determination, and in imposition of appropriate sentence. See, RP1, RP2, RP3, SD, State v. Bolton, 23 Wn.App. 708, 598 P.2d 734 (1979), State v. Cherry, 15 Wn.App. 547, 550 P.2d 543 (1976), U.S. v. Leoni, 326 F.3d 1111, 1119-20 (9th Cir. 2003), U.S. v. Petty, 80 F.3d 1384, 1387-89 (9th Cir. 1996), State v. Keith Dwain Birch, No.: 26635-4-III (citation not available to McMillian at time of filing), State v. Thieffault, 160 Wn.2d 409, 158 P.3d 580 (2007), State v. Mcfarland, 127 Wn.2d 322, 899 P.2d 1251 (1995), State v. Thomas, 109 Wn.2d 222, 743 P.2d 816 (1987).

ATTACHMENT

B

Statement of Additional Grounds

Additional Ground 2:

Plea was not reasonably considered as knowing, intelligent, nor voluntary, in light of defendant's record evidence, due in significant part to deficient defense counsel failing to provide adequate, critical, and well established information relevant to ultimate consequences of defendant entering a plea of guilty and its crucial decision making process, in tandem with trial defense counsel failing to reasonably protect and/or preserve rights through simple inquire of defendant nor reasonably object knowing defendant's trust in the SSOSA's presentation, and its encouraged reliance through counsel, based upon plea agreement through defendant's compliance, this prejudicial deficiency of trial counsel triggered upon instant notice of court denial to approve and impose SSOSA as presented and improperly weighed.

Statement of Additional Grounds
Heath Landon McMillian, Petitioner
COA Div. II No.: 53247-6-II

ATTACHMENT B

Attachment B:

II. ADDITIONAL GROUND 2

DID MCMILLIAN PLEAD KNOWINGLY, INTELLIGENTLY,
AND VOLUNTARILY IN LIGHT OF RECORD EVIDENCE?

a) Did the trial court adequately inform McMillian
of his rights pursuant to CrR 7.2 Sentencing?

2.1 McMillian challenges the trial court's requirement to inform a defendant of his rights at Sentencing pursuant to fundamental procedure CrR 7.2(b) and the relevant deficient reading into the record the six rights to appeal, in significant part below:

CrR 7.2 Sentencing.

(b) Procedure at sentencing. The court shall, immediate after sentencing, advise the defendant: (1) . . . (6) . . . If this advisement follows a guilty plea, the court shall advise the defendant [additionally] that the right to appeal is limited. (emphasis McMillian)

2.2 McMillian's contention is that the court failed to read critical relevant parts CrR 7.2(1) through (6), compounding the information deficiency suffered McMillian in part, these rights and restrictions are relevant to appeal according to the record and rule, albeit appeal was filed, but McMillian claims it fails to adequately cure violation and supports the contention that McMillian was continually not adequately informed from arraignment onto sentencing at critical stages, some resulting in harmless error, some that prejudice attaches,

but cumulatively the fact cannot be avoided that McMillian claims being inadequately informed to make a plea determination in lieu of going to trial, along in tandem with the failure to advise of ultimate consequences of pleading guilty, which is apparently evident even at Sentencing, relevant to CrR 7.2, with the court stating only:

And because this is a Judgement and Sentence that follows your guilty plea, your rights to appeal are limited.

2.3 McMillian feels it is an inadequate qualifying ending statement from the court to satisfy court rule and constitutional rights' violation(s) of defendant, as the record is silent of McMillian being adequately informed of these appeal rights, and direct consequences of pleading guilty, in part. See, RP1, RP2, RP3, SD, In re Pers. Restraint of Bradley, 165 Wn.2d 934 (2009).

b) McMillian suffered prejudice due to deficient counsel relevant to failing to provide adequate and factual information to base decision-making process upon relevant to going to trial or entering plea of guilty.

2.4 McMillian's plea was not, could not be reasonably considered as adequately knowing, intelligent, nor voluntary, in light of record evidence, due in significant part to deficient defense counsel failing to provide minimally adequate, well-established critical

information and statistical probabilities to discuss and base defense case strategy upon, relevant to ultimate consequences of McMillian considering entering a plea of guilty and its crucial pre-plea decision-making process, in tandem with trial defense counsel failing to reasonably make a minimal effort to protect and/or preserve rights through simple inquire of defendant for the record nor reasonably making a minimal effort to timely object knowing McMillian's belief and trust placed in the pre-plea SSOSA presentation, and its promulgated encouraged reliance of alleged forgone conclusion of SSOSA being granted, based on McMillian's compliance and minor victim's desire for no prison incarceration, this court acceptance of SSOSA to be granted at Sentencing, this predicted approval expressed through both defense counsel and prosecution, which would be based upon court review of plea agreement's mandatory qualifying requirements dependant solely on McMillian to flawlessly execute or SSOSA would be pulled from the prosecution's table, so to speak, and exemplified through McMillian's untarnished pre-SSOSA compliance, as this prejudicial deficiency of trial counsel and due process violations were triggered upon instant notice of court's denial to approve and grant SSOSA as presented and that which was based heavily upon being improperly apparently

weighed by the court.

2.5 McMillian contends that the nature of the plea's plan presented to him is that whatever is written-in by the defense counsel, presented by the prosecution relevant to SSOSA at plea and sentencing hearings is to be just agreed to by McMillian, in lieu of the facts and truth of the matter, because it is the pattern and practice of plea agreements, and the court, to just push through it and get on to the next case, so McMillian being in a vulnerable position, loyally suppressed any independent statement he had that was not scripted for him to recite, this to ensure SSOSA being granted and to show good faith effort on McMillian's behalf to the court as a whole, exemplified in McMillian's statement below, albeit Statement of Defendant on Plea of Guilty to Sex Offense was scripted for him glaringly in legalese and even citing case law he was oblivious to, kept effectively in dark informationally speaking, which would reasonably confirm McMillian's behavior in light of the evidence and record, behavior displayed just like a controlled, compelled loyal little puppy, he states:

"[B]ut I wish to take advantage of the State's offer" whereas additionally McMillian was effectively compelled to sign and repeat at all hearings, this directive promulgated

to McMillian by both defense counsel and prosecution was that it was McMillian's only chance to ensure SSOSA being granted at Sentencing period, otherwise he was informed that he would suffer greatly at trial, potentially a very severe sentence and exceptional sentence along with that, which is reasonable to consider when seriously weighing plea verses trial, knowing the circumstances of sex cases. See, RP1, RP2, RP3, SD.

ATTACHMENT

C

Statement of Additional Grounds

Additional Ground 3:

Any and all relevant appellate costs and fees associated with this defendant's Direct Appeal onto finality, to be deemed reasonably, appropriately, and prudently waived due in part to ripeness, and pre-approved confirmed defendant's indigence through prior court approval and determination.

Statement of Additional Grounds
Heath Landon McMillian, Petitioner
COA Div. II No.: 53247-6-II

ATTACHMENT C

Attachment C:

III. ADDITIONAL GROUND 3

DOES MCMILLIAN QUALIFY FOR ALL RELEVANT APPELLATE COSTS AND FEES ASSOCIATED WITH THIS DIRECT APPEAL ONTO FINALITY, TO BE DEEMED AS WAIVED, DUE TO MCMILLIAN'S CONFIRMED INDIGENCE, THE MATTER BEING RIPE?

3.1 McMillian contends that the issue of direct appeal appellate costs and fees relevant should be reasonably deemed waived, due to his currently confirmed indigence, and this is to be applied onto finality of direct appeal.

3.2 The nature and occurrence of legal financial obligations (LFOs), especially in direct appeal, being automatically applied to appellant is a matter of apparent standard operating procedure, thus McMillian desires to get in front of this matter, being ripe, so that the subsequent incurred financial burden will not come to fruition, since more than likely this honorable Court's decision ultimately will arrive after McMillian will be released from confinement due to the time left until his early/earned release date of a projected late January 2020.

3.3 McMillian agrees that the current record may not be sufficient for this Court to determine waiving any and all appellate costs and fees associated with this direct appeal at this time, but he is hopeful that this Court can observe the fact of the claim being legitimate

and will consider to grant in favor of McMillian and provide reasonable assurances and/or financial burden relief, so that for both judicial economy, meaning prudently avoiding any additional court congestion pursuant to filing for financial relief, etc., and to ensure a more sustainable and a higher likelihood of successful re-entry back into society for McMillain, especially financially speaking, that this Court can reasonably determine this simple legitimate LFO point at this time. Thank you in advance.

ATTACHMENT

D

Statement of Additional Grounds

Additional Ground 4:

Deficient performance from court appointed trial defense attorney relevant to inadequate crucial information being provided to petitioner for critical determination concerning specifically the first trial continuance, reasonably considered involving a textbook definition of a "Hobson's Choice" scenario in tandem with a suspiciously silent record involving relevant colloquy, reasonable court inquiry confirming informed intent triggering mitigating constitutional rights violation, effectively establishing attorney, albeit improperly, formally waiving defendant's Constitutional "Speedy Trial" right violation potentially cured/remedied by court's "dismissal" provision (with/without prejudice) in lieu of defendant proceeding improperly compelled, with self-declared unprepared court appointed defense trial counsel, and no court record exists of hearing, rendering incomplete record on appeal compelling reversal.

Statement of Additional Grounds
Heath Landon McMillian, Petitioner
COA Div. II No.: 53247-6-II

ATTACHMENT D

Attachment D:

IV. ADDITIONAL GROUND 4:

DID MCMILLIAN SUFFER AN IMPROPERLY COMPELLED "HOBSON'S CHOICE" RELEVANT TO THE FIRST TRIAL CONTINUANCE THAT WAS NOT CURED NOR RENDERED MOOT AT PLEA OF GUILTY?

4.1 McMillian contends that a lingering valid constitutional right was denied him, an unconscionable and heinous speedy trial violation that was the direct result, unbeknownst to McMillian at the time, the proximate cause of being presented only one-half of a truth, of a court rule, of a constitutional right, crucial information being hidden in plain sight by a fiduciary, so to speak, through apparent glaring knowing misrepresentation and/or fatal omission concerning the crucial second part of the information necessary for an ethically and morally complete explanation of this specific first trial continuance after arraignment decision, this constitutional violation suffered McMillian but-for the direct actions and/or omissions presented to McMillian by trial defense counsel.

4.2 This honorable Court should take notice of the potentially loudest record evidence, and that is displayed surprisingly in the silent record of this specific first trial continuance hearing, allegedly stipulated by trial counsel without even the court ensuring a record as a prudent and proverbial safety net of sorts for future

reference in situations such as this, and it is irrefutably recently confirmed by McMillian's current appointed appellate counsel Jennifer J. Sweigert in her response letter to McMillian dated October 22, 2019, where she states to McMillian in relevant part:

In a previous letter, you asked for transcripts from arraignment and the first continuance in your case . . . The court reporter informed us that the first continuance appears to have been an agreed order which was simply handed to the judge without any discussion on the record. Therefore, there is nothing to transcribe.

and unfortunately, although McMillian and appellate counsel have this written evidence, he was unfortunately not able to provide a copy of it for this Court's consideration and review, due specifically to prison delays, restrictions, and policy relevant to legal copies at the time of this filing.

4.3 McMillian's point is paramount to comprehend in that unbeknownst to him at the time of first trial continuance onto through Sentencing, this constitutional magnitude speedy trial violation was not presented to him, nor was he informed of it, which, if he was was informed completely by trial defense counsel at the time of this first trial continuance presentation for a determination to present it to the court for approval, McMillian would have had a high likelihood of not choosing to plead guilty and

would not even be in the position to, since denial of agreeing to a first trial continuance should have resulted in either dismissal with or without prejudice at that time, which is reasonable to assume under the circumstances of it, again additionally which is also reasonable to assume is that a prudent defendant provided complete information on the subject of first trial continuance, would readily choose dismissal.

4.4 Deficient performance from retained defense trial counsel relevant to providing McMillian with clearly apparent knowingly inadequate critical first trial continuance information, i.e., constitutionally protected speedy trial rights and continuance verses dismissal determination, to base McMillian's decision upon, again, unbeknownst to McMillian until after Sentencing, this being a critical stage in the trial proceedings, McMillian presents to this honorable Court that it should not be considered cured by his subsequent plea of guilty, since he only discovered it only while incarcerated thus preserving the right to relief for first time on appeal, and trial defense counsel had knowingly concealed it from McMillian at time of crucial decision continuance deadline.

4.5. McMillian's decision-making process was apparently knowingly sabotaged by the repeated pattern and

practice of trial defense counsel to misrepresent and/or through silence/omission, unethically relevant to this point being to only strategically minimally inform the defendant that a trial continuance is necessary, for example, due to needing time to secure expert witness(es), interviews, etc., or the counsel's case load is too heavy to effectively defend the case, thus it is suggested to the defendant that it is necessary to opt for a critical first trial continuance solely resting on the defense counsel being not prepared for trial, and rhetorically speaking: What defendant would ever question the attorney opting for continuance, and what defendant would want an unprepared attorney knowingly proceeding to trial? Captain Obvious's answer: None. Conversely, if a defendant were properly informed completely on continuance, and potential dismissal if defendant did not agree to it, rhetorically again: What defendant would not choose dismissal over continuance, sepecially in a sex offense case? Captain Obvious's answer, reasonably, again is: None.

4.6. McMillian was presented with this scenario of unpreparedness of trial defense counsel, but McMillian was knowingly not informed of the second-half of the critical information to make an informed continuance decision, i.e., dismissal option, and a mandatory requirement of defense

counsel rests for a more complete determination based on the complete information and ultimate circumstances and/or consequences of a first trial continuance being agreed to, or denied, of which unfortunately McMillian was unconscionably denied a proper decision-making process by an ethically and morally deficient trial defense counsel, an officer of the court of justice that McMillian placed his life, liberty, and pursuit of happiness in the professional legal hands of, so to speak, the trial court improperly contributing to the violation in part by not ensuring a record for potential review, but defense counsel apparently strategically omitted the crucial option for dismissal (with/without prejudice) by the court information if McMillian did not agree with the first trial continuance, and opted for the trial to take place on the pre-scheduled date in question, which would surely result in a speedy trial violation if defense counsel could not proceed timely, due to defense counsel testimony of not being able to be prepared for trial on the proposed date, which would not be reasonably considered rescindable, resting on court testimony from an officer of the court of justice.

4.7 This placed McMillian in a compelled position to improperly choose between two constitutionally protected rights, which is well-established as a textbook definition

of a "Hobson's Choice" in McMillian's situation.

4.8 The suspiciously silent record on this most critical of trial stages is unreasonable to allow no record to be made, especially in light of a potential appeal in any case, and in McMillian's opinion it would seem that the trial defense counsel should not be allowed to waive a defendant's constitutionally protected right(s) without either a minimal court's public inquiry of defendant, or a record being produced to cure and/or mitigate any potential violations of a defendant's rights period, especially in an appeal process.

4.9 No accused defendant, especially in a sex offense case, would ever willingly choose to chance his life, liberty, etc., and risk everything by proceeding to trial, not even defense attorneys would risk that fatal move, in lieu of a court granting a dismissal (with/without prejudice) based upon this first trial continuance scenario, as it would be simply unreasonable to believe that outcome to risk a trial statistically probable for ensured conviction due to the nature of the case and/or against the advise of a competent defense counsel to opt for dismissal, when a defendant is properly and adequately informed, albeit unfortunately McMillian was not afforded this opportunity.

4.10 Deficient trial defense counsel triggered original core foundational violation of the court's jurisdiction, of constitutional magnitude, when McMillian was denied the crucial continuance information necessary at a minimum to make an informed decision, whether to accept (against all sound logic) or deny the first trial continuance, verses dismissal, due to a Hobson's Choice suffered under, and it would not, should not be cured/remedied and/or waived for appeal by a subsequent plea of guilty decision, again, because of a knowing omission of critical decision-making information by trial defense counsel, being evident in the silent record, and against all sound competent unbiased legal logic, and failing McMillian a fundamental duty, fiduciary duty owed to a client, as all of this crucial continuance/dismissal information was unbeknownst to McMillian at the relevant hearing's time and only discovered after Sentencing.

4.11 McMillian suffered coercion, improper and unethical amoral manipulation of a client, directly negatively affecting McMillian's decision-making process of proceeding to trial or pleading guilty, and extending out to court jurisdiction relevant to potential dismissal, which McMillian was not informed of his right to appeal jurisdictional matters at Sentencing's colloquy concerning

available and waived appellate rights, also affecting an alleged informed, intelligent, knowing, voluntary plea that McMillian was fundamentally and procedurally denied, and having a silent record, or more importantly no record, reasonably considered to be knowingly waived by both counsel and the trial court, albeit improperly in McMillian's view, is serious error due to not having a complete record for review.

4.12 McMillian rests after this point for consideration and review of a favorable determination of a legitimate Hobson's Choice violation, meaning the relevance and legitimacy of the violation rests not upon whether trial defense counsel would claim either that he informed/omitted the entire options, benefits, consequences of first trial continuance, because surely no reasonable person would have ever knowingly chose to chance a trial conviction verses a dismissal determination at this earliest critical of trial procedural stages, and ethically, morally, surely no competent trial defense counsel would ever place a client in jeopardy of losing his liberty, etc., which trial conviction is confirmed extremely high likelihood statistically in sex offense cases, verses a constitutionally valid dismissal, and in light of well-established precedent supporting case law.

Note: Collectively above see, RP1, RP2, SD., U.S. v. Marion, 404 U.S. 307, 313, 320 (1971), U.S. v. Tan Huu Lam, 251 F.3d 852, 856 n.6 (9th Cir. 2001), U.S. v. Reyes, 313 F.3d 1152, 1159 (9th Cir. 2002), State v. Teems, 89 Wn.App. 385, 985 P.2d 1336 (1997).

V. CONCLUSION AND RELIEF SOUGHT

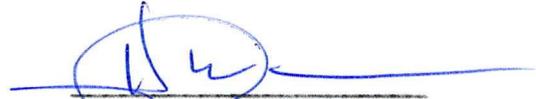
5.1 McMillian contends for the collective above mentioned contained herein throughout Additional Grounds one (1) through four (4), that he has made a substantial and effective showing for relief and remedy, based upon the record, silent record, and evidence presented for this Court's meaningful consideration, review, and determination, for any of these offered alternatives: (a) reversal, dismissal, (b) reversal, remand for further proceeding, (c) reversal, resentencing, (d) evidentiary hearing, (e) any appropriate decision this honorable Court deems appropriate.

DECLARATION

I, Heath Landon McMillian, declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 18th day of November 2019 at Connell Washington.

Respectfully,



Heath Landon McMillian

Declaration of Mailing (GR 3.1)

I, Heath Landon McMillian, on the below date, placed in the U.S. Mail, postage prepaid, one (1) envelope(s), each individually addressed to the below listed individual(s):

Derek M. Byrne, Court Clerk
Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

Jennifer J. Sweigert, Attorney
Nielsen, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA. 98122

FILED
COURT OF APPEALS
DIVISION II
2019 NOV 25 AM 8:28
STATE OF WASHINGTON
BY 
DEPUTY

I am a prisoner confined in the Washington State Department of Corrections ("DOC"), housed at the Coyote Ridge Corrections Center ("CRCC"), 1301 N. Ephrata Avenue, P.O. Box 769, Connell, WA. 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents:

One (1) copy and/or original of:

- a) Petitioner's Pro Se Statement of Additional Grounds.
- b) Court Clerk's cover letter.
- c) Appellate Defense Counsel cover letter.
- d) Declaration of Mailing.

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18th day of November 2019, at Connell Washington.

Respectfully,


Heath Landon McMillian

Heath Landon McMillian 413273
FA-40
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA. 99326

* LEGAL MAIL *

RECEIVED

NOV 25 2019

November 18, 2019

Derek M. Byrne, Court Clerk
Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Re: 1) Enclosed please find the timely filing of my pro se Statement of Additional Grounds Form 23 with Attachments, to be filed, along with my Declaration of Mailing.

State v. Heath Landon McMillian
Thurston County Superior Court
Docket No.: 18-1-00396-34

Court of Appeals Division Two
Docket No.: 53247-6-II

Derek M. Byrne:

Hello. First and foremost please find enclosed my pro se Statement of Additional Grounds Form 23 with Attachments, and my Declaration of Mailing, for the above mentioned appellate court docket number.

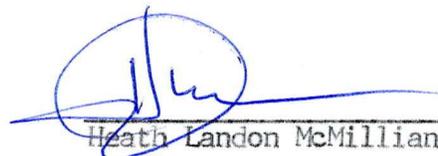
Second is that I am unfortunately unable to provide timely additional copies, if necessary, to the prosecutor's office, due to prison restrictions and that which involves legal copies specifically, which I have notified my court appointed appellate counsel of so that a timely facilitation of a copy forwarded to the prosecution can be facilitated without violating a time-bar and court rule, as it is my only available alternative option to ensure compliance relevant to proof of service to all parties, again, if necessary.

Being confident that any potential unfulfilled filing logistics will be remedied in a timely manner, I will look forward to this honorable Court's response.

If you have any questions and/or concerns whatsoever, please do not hesitate to contact me for a prompt response.

Thank you in advance for your valuable time, gracious consideration, and for your continued professionalism in this matter. I will await your timely response. Have a wonderful day.

Respectfully,


Heath Landon McMillian

cc: File
Enclosure