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

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|----------------------|---|-------------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | NO. 63231-1 |
| |) | |
| V. |) | STATEMENT OF ADDITIONAL |
| |) | GROUND FOR REVIEW |
| CARL S. CHANEY, |) | |
| |) | |
| Appellant, |) | |

I, Carl S. Chaney 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 GROUNDS 1

MOOTNESS

Although the appellate attorney addressed the issue of this appeal being moot and the importance of this court reviewing the appeal, the issues raised in this Statement of Additional grounds addresses issues of how the Department of Corrections (DOC) applies the State law (RCW's), Washington Administrative Code (WAC) and DOC policy.

This courts ruling will further give direction to the DOC as well as those people who have received violation notices from the DOC.

ADDITIONAL GROUNDS 2

**DID THE DEPARTMENT OF CORRECTIONS VIOLATE CHANEY'S DUE
PROCESS RIGHTS WHEN THEY FAILED TO SERVE HIM TIMELY NOTICE**

OF THE VIOLATION AND FAILED TO HOLD THE VIOLATION HEARING IN A TIMELY MAONR?

Chaney has been arrested by the DOC for violations on several occasions. The first arrest was February 1, 2008. The violation report was not written until February 18th, 2008 and Chaney did not receive the violation report until March of 2008. The court held the first of many hearing on this violation on 3 March, 2009.

Chaney's second arrest for a violation was May 22, 2008. The violation report was not written until May 30, 2008 and was not served on Chaney until many days later. Chaney had his first court appearance on this violation on June 9, 2008. (CP 196)

Chaney's third arrest for a violation was on or about July 16, 2008. The violation report was not written until August 4, 2008 and not served on Chaney until the day before the court hearing on August 15, 2008.

Chaney was arrested for the fourth violation on October 15, 2008. Although the report claims to be written on the same day as the arrest, Chaney did not receive it until he appeared in court on November 14, 2008.

Chaney was arrested on February 14, 2009. The violation report was written on February 18, 2009 and not served on Chaney until several days later. The first of the hearings for this violation was not held until March 5, 2009.

This court should note that of all the violation reports that Chaney was sent to jail on there is only one Notice of Violation and one violation report that was ever filed in to the record. (CP 236)

At each of these violation hearings Chaney objected to Judge Fleck that the hearings needed to be dismissed due to the Due Process violations based upon the fact that the DOC failed to follow the State law, WAC's and DOC policy on notice and hearings.

Chaney cited RCW 9.94A.631 through 9.94A740, WAC 137-104-020 through 137-104-050 as well as DOC policy's 350.155

The State through Ms. Carlstrom objected stating that because Chaney was serving his supervision on Community Placement and not Community Custody that these laws and rules did not apply to me.

Judge Fleck agreed stating that Chaney was under some other rules and these did not apply because of my Community Placement status.

I pointed out RCW 9.94A.030 (7) and WAC 137-104-020 (3) which state in part:

RCW 9.94A. 030. (7) "Community Placement" means that period during which the offender is subject to the *conditions of community custody* and/or post release supervision, which begins either upon completion of the term of confinement

(postrelease supervision) or at such time the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely of community custody, entirely postrelease supervision, or a combination of the two. (Emphasis mine)

WAC 137-104-020 (3).. community custody includes those subject to community placement ...

In the transcripts dated March 5, 2009 starting on page 8, line 4 through page 10 line 24 this court can see that Chaney again raised these issues.

The court can see that Ms. Carlstrom responded with:

“Your Honor, I think it’s the same issue thing we’ve addressed before. We’re not under the rules that Mr. Chaney is talking about here ...”
This issue had been raised by Chaney but the court continues, with out setting out which rules apply, to state that he has no standing.

In *State v. Ziegenfuss*, 118 Wn App. 110, 74 P3d 1205 (2003) a division one case which this court stated:

Ziegenfuss next argues that the DOC regulations violate due process because she could be incarcerated pending a hearing on the merits of the alleged violation. she does not explain, however, why such incarceration necessarily violates due process. The incarceration is not indefinite: WAC 137-104-050 (5) requires a determination of probable cause within three working days after an “offender is arrested and detained, without a warrant, for violation of conditions of supervision.” this procedure is actually more protective than the previous judicial procedure, which a permitted an offender accused of a violation to be arrested “without a warrant pending determination by the court.” (I omitted footnotes)
Ziegenfuss at 115-16

In looking at any of the violation reports in the lower left hand corner it shows several DOC policies and RCW’s that control the violation process.

If the States argument is correct that RCW’s and WAC’s that Chaney quoted to the trial court does not apply to him, than the notice of violation has provided Chaney with the improper notice and all of the violation hearings should be dismissed for failure to give proper notice.

In a motion filed to the trial court by the State after Chaney’s supervision had expired (CP 259), the State asked the court to supervise Chaney. In the motion the State (Ms. Carlstrom) quotes RCW 9.94a.631 and others in support of her motion for the courts Continued supervision.

Chaney filed a response to the States motion (CP 260) in which he pointed out to the trial court that the State was now arguing the opposite side of the same argument and was now trying to get the court to apply the laws to Chaney that the trial court had refused to do

during the violation hearings. The trial court, without giving any reason why ordered that the court would not continue supervision. (CP 262)

The state in this brief to the trial court never explained how all of the sudden that the laws should now apply to Chaney when the State has steadfastly claimed they did not. This court should require the State to do so now.

It is clear that the rules governing violation hearings applied to Chaney and this court should overturn the trial courts finding of guilt and issue directives to the DOC to follow the rules that are set out in DOC policy, the WAC's and RCW's.

When Chaney filed his notice of appeal in this action he requested the trial court approve funding for the transcripts from all of the other hearings in this case so that the court of appeals could see that the issues raised here are the same as the ones throughout the violation hearings but she refused to do so.

ADDITION GROUND 3

DID THE TRIAL COURT ERROR WHEN THE FAILED TO HOLD THE PROSECUTOR AND THE CCO'S IN CONTEMPT?

FACTS

At a hearing dated Chaney requested that the court hold his CCO Jeffery Brown and the prosecutor, Ms. Carlstrom in contempt for failing to follow any of the trial court orders. The trial court held a hearing, and then set it over until. Before the hearing date the trial courts bailiff, Ms. Allen contacted Chaney saying that the hearing was struck. This hearing has never been rescheduled by the court nor has there been a final order either way issued by the trial court.

At the violation hearing, Chaney's first CCO Neil McDonagh testified by phone to the same facts that he wrote in the violation report which was that the CCO believed that Chaney had had contact with Jaimie Patchin.

At this hearing Chaney asked the trial court to order Holly Gilmore of the King County Prosecutor's Office to appear as a witness to testify to the efforts made by there office to contact Jaimie to see if Chaney had contacted her. It was then that Ms. Carlstrom admitted that their office had spoke to Jaimie and there was no contact between Chaney and Jaimie.

Chaney complained to the trial court then and subsequently that the state had not only violated the rules of discovery for not informing Chaney that they new there was no contact between Chaney and Jaimie but the State had a duty as an officer of the court to inform the trial court that there witness was testifying to something that the prosecutors office new to be a lie thus covering the CCO's perjured testimony.

The Court of Appeals should note that this was not Neil McDonagh's first time to commit perjury before the trial court in a violation hearing concerning Chaney. At the first hearings on the first violation hearings stemming from the February 1, 2008 arrest McDonagh stated in the violation report and his live testimony that he (McDonagh) did not learn of problems between Chaney and Brian Cobb until the morning of the arrest. At the hearing for the violation Chaney questioned McDonagh about when he learned of these alleged problems that the violation was based upon. After McDonagh had again stated that he only learned of the problems the morning he made the arrest Chaney confronted McDonagh with an e-mail that McDonagh had sent to Chaney that was dated January 28, 2008 (3 days prior to the arrest) that stated that The "Ice was getting thin" and that "You had better get them worked out". McDonagh could not explain adequately how he was able to send Chaney an e-mail 3 days prior to having any knowledge of the issues. Chaney raised the issue of the perjury with the trial court several times but the trial court refused to address the issues

Chaney was first tried by jury in 1999 and was found guilty. After trial but before sentencing the trial court overturned the conviction and ordered a new trial. At the hearing for a new trial the prosecutor, Ms. Carlstrom informed the trial court that she new about the errors in the jury instructions, that she discussed the errors with others in her office and she decided not to inform the trial court. Chaney was again tried by jury and found guilty. Chaney then filed an appeal to the Court of Appeals, division one. In that appeal Chaney argued that he should not have been tried a second time because Ms. Carlstroms actions in not informing the court of the errors was deliberate misconduct barring retrial. The court of appeals rules in an unpublished opinion on the issue that :

"this was clearly bad judgment on the prosecutor's part; the instruction should have
Been corrected"
State V. Chaney, 110 Wn App 1083 at3

At the conclusion of the first violation hearings the trial court found Chaney not guilty of having contact with his daughter Emily (count 4 CP 192). During McDonagh's testimony on the subject of Chaney's contact with his daughter Emily McDonagh stated that he had allowed Chaney visitation with Emily. After the trial court found Chaney not guilty of the violation the CCO McDonagh informed Chaney that he could no longer see Emily. Chaney complained to the trial court and a hearing was held. McDonagh testified that although the trial court found Chaney not guilty of the violation he felt he was guilty and imposed the ban on visitation any way. The trial court refused to intervene and uphold their not guilty finding. When an offender is found not guilty of an infraction of the rules he is to be returned to the status that he had prior to the infraction.

Chaney was then assigned to another CCO named Anton Harb. The trial court ordered Harb inter alia to provide Chaney with a list of housing alternatives so that he could try to

end the homelessness that he was facing. The trial court instructed Harb to provide the court with a copy of the list within two weeks.

When Harb failed to provide the list of housing and comply with the other requirements of the court order Chaney again complained to the trial court. Again the trial court refused to hold the CCO accountable for their failure to comply with a court order.

While under the supervision of Harb he was required to pay for an evaluation with a Bill Satoran. Because Chaney only had 800.00 Satoran refused to complete the evaluation. (This 800.00 was to pay the remainder owing to Cobb for the evaluation that he was doing and the one that the DOC had refused Chaney to complete.) The trial court ordered Harb to have the DOC pay the remaining amount.

During this time Chaney was reassigned to a new CCO Jeffery Brown. Brown was ordered several times by the trial court to pay for the evaluation. Brown was also ordered to meet with Chaney and his stand by counsel so that a plan for work search could be worked out and to pay for the evaluation. Brown had also been ordered by the trial court to give Chaney written notice of any future polygraphs.

When Chaney reported to the DOC office on he was ordered to take a polygraph right then or face being put in jail. Chaney reminded Brown that he was to be given written notice of the polygraph Brown threatened to put Chaney back in Jail.

Chaney again complained to the trial court that brown had not complied with the trial courts order and a hearing was held. Brown testified that he did not give notice to offenders for polygraphs and that DOC would not pay for the evaluation because Satoran required that Chaney undergo a plethysmograph.

The trial court ordered that the DOC policy be presented to the trial court. Chaney paid for the plethysmograph.

This court should also note that just prior to Chaney's supervision ending his CCO, Jeffery Brown ordered Chaney to under go one last polygraph which Brown gave Chaney written notice. By Brown giving Chaney written notice for the last polygraph he admits that he violated the trial courts prior order of giving Chaney written notice of all polygraph and should be held accountable.

Chaney's DOC supervision ended on September 26, 2009. Just prior to the supervision ending the State filed a motion to the trial court to continue supervision under the courts control. In an e-mail from the trial courts bailiff the court instructed the state to produce the DOC policy on the DOC not paying for the plethysmograph and also that the CCO was to appear in court at the time the court heard the states motion.

Chaney requested that he be provided with the Doc policy in advance so that he had a chance to review it.

When the hearing commenced Chaney had not been provided the DOC policy. (Another discovery violation) and CCO brown did not appear as required by the trial court. The trial court refused to grant the States motion to continue supervision.

It is clear that the State through Ms. Carlstrom and all of the CCO's had their own agenda and not even the trial court would be allowed to interfere with their plans. The State and the DOC routinely disregarded the trial courts orders when it suited them. They all

should have been held in contempt of court for this flagrant disregard of the trial courts authority and the trial court should be held accountable for her refusal to hold them accountable.

The Court of Appeals should order all of the transcripts from the violation hearings produced so that they can see the extent of the disregard by the state and the measures that Chaney went to so that his rights would be protected.

CONCLUSION

This court has the authority to review the issues in this brief although Chaney has been released from supervision. It will give guidance to the State and the Department of Corrections in their future dealings with violation hearings.

This court should require Chaney's appointed attorney's to better put forward the arguments raised by him in this additional grounds and also order all of the transcripts produced.

This court should find that Chaney's Due Process rights were violated each and every time the Department of Corrections violated his supervision for failing to serve proper notice and hold the hearings in a timely manor.

This court should also rule that the trial court was in error when they refused to hold Ms. Carlstrom in contempt for withholding material evidence and failing to comply with court orders.

This court should also find that all of the Community Corrections Officers assigned to Supervise Chaney failed to comply with numerous trial court orders and should be held in contempt.

Finally, this court should find that the trial court failed to discharge her duties by failing to enforce her own court orders.

Dated this 16th day of December, 2009



Carl S. Chaney