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COURT OF APPEALS DIVISION I  
STATE OF WASHINGTON

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NO. 66118-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

JASON VRIEZEMA,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SHARON ARMSTRONG

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**BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

To justify appointment of new counsel, a criminal defendant must show good cause. A general loss of confidence or trust in counsel is insufficient reason to warrant substitution of counsel. A month before his trial date, the defendant sought to discharge appointed counsel for not having visited in jail and for advising him to resolve his case with a plea. Defense counsel informed the court she had numerous contacts with the defendant and it was not in her practice to advise clients to plead guilty. The court denied the defendant's motion to discharge counsel. Based on this record, has the defendant failed to show that the trial court abused its discretion by denying his motion to substitute counsel?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State charged Jason Vriezema by amended information under count I with Robbery in the Second Degree, count II with Assault in the Third Degree and count III with Escape in the Second Degree. CP 19A. Counts I and II each had a rapid recidivism enhancement. CP 19A. The trial court granted a defense motion

to sever count III for trial. 2RP 11-13.<sup>1</sup> A jury convicted Vriezema under count I of the lesser included offense of Theft in the third Degree and found Vriezema guilty as charged under count II. CP 21A-C. The jury also returned a special verdict under count II of rapid recidivism. CP 23. After the jury reached a verdict on counts I and II, Vriezema pled guilty to count III. CP 29; 5RP 24-31. The trial court imposed the high end of the standard sentencing range, 60 months. CP 33; 6RP 4.

## 2. SUBSTANTIVE FACTS

On August 3, 2010, approximately a month before his trial date, Vriezema moved to discharge his appointed counsel. 1RP 3-4. Vriezema told the court his counsel had "not come and seen [him], not once; and, two, she is already making [him] plead out to a Robb II". 1RP 3. Vriezema went on to tell the court that his attorney had not heard his side of the story and he did not have trust in her. 1RP 3-4. After inquiry by the court, defense counsel indicated that she had "numerous contacts with [the defendant]." 1RP 4. She further stated she was representing him on two matters and believed she had sufficient contact with him and it was

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<sup>1</sup> The Verbatim Report of Proceedings consists of six volumes, designated as follows: 1RP (8/3/10), 2RP (9/9/10), 3RP (9/13/10), 4RP (9/14/10), 5 RP (9/15/10) and 6RP (9/16/10).

not in her practice to advise her clients to plead guilty. 1RP 4.

After hearing from defense counsel, the court denied Vriezema his request for substitution of counsel. 1RP 4.

C. **ARGUMENT**

**THE TRIAL COURT PROPERLY DENIED VRIEZEMA'S  
REQUEST FOR SUBSTITUTE COUNSEL.**

A criminal defendant does not have an absolute Sixth Amendment right to choose a particular advocate. State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008 (1998). Nor does the Sixth Amendment guarantee a "meaningful relationship" between the defendant and his attorney. Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 75 L. Ed. 2d 210 (1983). A general loss of confidence or trust in counsel is not sufficient to warrant new counsel. Stenson, 132 Wn.2d at 734; State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004).

To justify appointment of new counsel, a defendant must show good cause, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication. Stenson, 132 Wn.2d at 734. When reviewing a trial court's refusal to appoint new counsel, the court considers: 1.) the extent of the conflict, 2.) the adequacy of the inquiry, and 3.) the timeliness of the motion. State

v. Cross, 156 Wn.2d 580, 607, 132 P.3d 80, cert. denied, 549 U.S. 1022 (2006). Whether an indigent defendant's dissatisfaction with appointed counsel is meritorious and justifies appointment of new counsel is within the trial court's discretion. Stenson, 132 Wn.2d at 733. "When an indigent defendant fails to provide the court with legitimate reasons for the assignment of substitute counsel, the court may require the defendant to either continue with current appointed counsel or to represent himself." State v. DeWeese, 117 Wn.2d 369, 376, 816 P.2d 1 (1991).

At the August 3<sup>rd</sup> hearing, Vriezema failed to provide the court with a legitimate reason to substitute counsel. Vriezema told the court his counsel was "ineffective" because she had not come to visit him and advised him there was enough evidence to convict him of Rob II. 1RP 3. None of Vriezema's stated reasons warranted the court appointing him new counsel. Vriezema did not claim he had a conflict of interest, an irreconcilable conflict with counsel nor was there a complete breakdown in communication with counsel. Although he claims his attorney had never gone to see him, she at some point gave him advice to plead guilty. When defense counsel was given an opportunity to speak, she clarified

that she had numerous contacts with the defendant and it was not in her practice to tell her clients to plead guilty. 1RP 4.

The Court inquired with both Vriezema and his counsel as to the extent of the conflict. Vriezema's general dissatisfaction with, and loss of confidence in his counsel was not a legitimate reason to appoint new counsel. See Varga, 151 Wn.2d at 200-01 (holding that the trial court did not err by denying defendant's motion for new counsel based on defendant's "general dissatisfaction and distrust" of counsel). Even if Vriezema's claims were true about his counsel not visiting him in jail, his complain is an insufficient reason to substitute counsel. See State v. Staten, 60 Wn. App. 163, 166-169, 802 P.2d 1384, review denied, 117 Wn.2d 1011 (1991) (holding that the trial court properly denied defendant's motion to substitute counsel based on appointed counsel's failure to return the defendant's calls and visit him in jail).

The extent of the Court's inquiry was adequate given the information provided was sufficient to allow the Court to make an informed decision. Vriezema relies on Ninth Circuit Court cases in which the court found irreconcilable conflict. United State v. Adelzo-Gonzalez, 268 F.3d 772 (9<sup>th</sup> Cir. 2001); United States v. Nguyen, 262 F.3d 998 (9<sup>th</sup> Cir. 2001); United States v. Moore, 159 F.3d

1154 (9<sup>th</sup> Cir. 1998). Irreconcilable conflict occurs when the breakdown of the relationship results in the complete denial of counsel. In re Pers. Restraint of Stenson, 142 Wash. 2d 710, 16 P.3d 1 (2001). In particular, he relies upon United States v. Nguyen for the proposition that a trial court should question the attorney or defendant " 'privately and in depth' " and examine available witnesses in order to make a sufficient inquiry into a criminal defendant's request for substitution of appointed counsel. Nguyen, 262 F.3d at 1004 (quoting Moore, 159 F.3d at 1160). The facts of Nguyen however, are significantly different than those here. In Nguyen, a non-English speaking defendant repeatedly asked to substitute privately retained counsel for his public defender with whom he ceased communicating. Id. At 1002. Nguyen offered witnesses to support his claim about his public defender's conduct but the court did not pursue any of the allegations. Id. Rather, the court decided the matter at a pretrial meeting for which the defendant was neither present nor aware of and then refused to give Nguyen a full hearing on the issue. Id. at 1003. On appeal, the Ninth Circuit Court of Appeals found the trial court's decision was based more on keeping its schedule than on any inquiry into Nguyen's contentions. Id. at 1005.

The court in the present case, unlike Nguyen, explored the issues with Vriezema. In further contrast with Nguyen, Vriezema did not offer any witnesses to support his claims. Here, the record shows displays examples of fully effective and appropriate representation upon the part of Vriezema's counsel.

Having failed to provide the court with a legitimate reason to appoint new counsel, the court did not abuse its discretion by denying Vriezema's motion to substitute counsel.

**D. CONCLUSION**

For the reasons stated above, the Court should affirm Vriezema's conviction.

DATED this 11 day of July, 2011.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

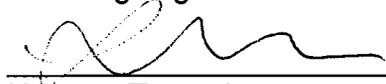
By: 

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Marla L. Zink, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of Brief of Respondent, in STATE V. JASON VRIEZEMA, Cause No. 66118-3-I, in the Court of Appeals, Division I, for the State of Washington.

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



\_\_\_\_\_  
Name Tuyen Lam  
Done in Seattle, Washington

7/11/11  
\_\_\_\_\_  
Date