

71907-6

FILED
June 17, 2015
Court of Appeals
Division I
State of Washington

71907-6

No. 71907-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JESSE SOTO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

When the trial court denied Mr. Soto’s motion to substitute his court appointed attorney, it violated his constitutional right to counsel.

A trial court is required to conduct “such necessary inquiry as might ease the defendant’s dissatisfaction, distrust, and concern” before ruling on a motion to substitute counsel. *United States v. Adelzo-Gonzalez*, 268 F.3d 772, 777 (9th Cir. 2001) (quoting *United States v. Garcia*, 924 F.2d 925, 926 (9th Cir. 1991)). When Mr. Soto initially moved to substitute his court appointed counsel, he informed the court:

I would like to fire my attorney because that’s why we’re here. He’s my attorney and went – I went to prison on similar charges and he told me to wait without telling me that I couldn’t come to trial. Instead, he let me take a deal on my waive – to DOC.

So I would like to fire my attorney because I have reason, because he told me in a way without telling me that I could have gone to trial on similar charges, and he let me take a deal. I was on my way to DOC, so I would like to fire my attorney for that reason.

9/12/13 RP 4.

In its response, the State claims Mr. Soto’s comments were “vague, unintelligible complaints” and that “it was within the trial court’s discretion to determine that Soto’s vague, contradictory allegations were insufficient to establish an irreconcilable conflict.”

Resp. Br. at 17, 19. This is incorrect. The trial court was not permitted to rule on Mr. Soto's motion to substitute counsel without evaluating several factors, including the depth of any conflict between the defendant and his counsel, and the extent of any breakdown in communication. *Adelzo-Gonzalez*, 268 F.3d at 777.

Despite claiming Mr. Soto's comments were "unintelligible," the State acknowledges Mr. Soto was expressing dissatisfaction with his counsel. Resp. Br. at 18-19. Even if Mr. Soto's initial statements did not establish an irreconcilable conflict, the court was required to engage in an additional inquiry of Mr. Soto in order to ascertain the extent of the conflict or breakdown in communication with his counsel. *Adelzo-Gonzalez*, 268 F.3d at 777. Indeed, in most circumstances the court will only be able to gather this information by asking "specific and targeted questions" of the defendant. *Id.*

The trial court failed to make this inquiry. Instead, it responded to Mr. Soto's request with only one question, asking "And who do you plan on hiring?" 9/12/13 RP 4. When Mr. Soto clarified he was requesting new appointed counsel, the trial court quickly denied his request, finding Mr. Soto had not provided sufficient information to grant the motion for substitution. 9/12/13 RP 4-5. The State claims

that the burden was on Mr. Soto “to articulate a legitimate reason for his loss of trust.” Resp. Br. at 20. However, the burden was on the trial court to ask additional questions once Mr. Soto raised this issue.

The State argues no such inquiry is necessary, and that indeed all that is required is the trial court allow the defendant and counsel to fully express their concerns. Resp. Br. at 23. The State relies on *State v. Schaller* for this assertion. 143 Wn. App. 258, 177 P.3d 1139 (2007). But in *Schaller* the trial court explored the issues raised by the defendant. *Id.* at 269. This Court found the defendant was questioned by the judges, given the opportunity to enumerate his concerns, and queried about whether the conflict affected the defendant’s case. *Id.* at 271.

Here, no such inquiry was made. The State’s assertion that Mr. Soto’s complaint was unclear only further underscores the need for the trial court to engage in an additional inquiry. Because the trial court failed to do this, and for the reasons stated in the opening brief, the trial court erred when it denied Mr. Soto’s motion to substitute appointed counsel. Because the erroneous denial of a motion to substitute counsel is presumptively prejudicial, Mr. Soto’s convictions should be

reversed. *Daniels v. Woodford*, 428 F.3d 1181, 1199 (9th Cir. 2005);
United States v. Nguyen, 262 F.3d 998, 1003, 1005 (9th Cir. 2001).

B. CONCLUSION

For the reasons stated above and in his opening brief, the trial court erred when it denied Mr. Soto's motion to substitute counsel and his convictions should be reversed.

DATED this 17th day of June, 2015.

Respectfully submitted,



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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. 71907-6-I |
| v. |) | |
| |) | |
| JESSE SOTO, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17TH DAY OF JUNE, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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