

FILED

MAR 19 2019

WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
William Alvarez-Calo,
Petitioner.

Supreme Court No. 96743-1

Answer To Counsel's Motion
To Withdraw As Counsel

Petitioner, William Alvarez-Calo, now acting pro se, submits his answer to his former appellate counsel's Motion To Withdraw as counsel.

I) Identity of Subjects.

A) Lisa Tabbutt, attorney at law, was the petitioner's appointed counsel on direct appeal to the State Court of Appeals.

B) Petitioner, William Alvarez-Calo, is a Puerto Rican native and native Spanish speaker, who has limited English language skills, and who has an established disability due to dyslexia. He also has little formal education and does not even possess a G.E.D. He is currently incarcerated at Washington State Penitentiary, serving a substantial prison sentence. He has limited access to and use of the prison legal library, and has only rudimentary understanding of the legal system. He is unfamiliar with the law and court rules and procedures. He is indigent and is unable to afford counsel. He is dependent on either appointed counsel or the assistance of other prisoners to deal with the complexities of his legal case.

II) STATEMENT OF FACTS.

A) Lisa Tabbut filed the Brief of Appellant on November 16, 2017, while acting as petitioner's appointed counsel.

B) Petitioner, William Alvarez-Calo, subsequently filed a RAP 10.10 Statement of Additional Grounds on January 19, 2018.

C) Petitioner's SAG Ground 13 claimed Ms. Tabbut provided ineffective assistance of counsel on appeal.

D) The basis of the petitioner's Ground 13 claim of ineffective counsel, as stated in the SAG, was the contention that counsel was ineffective for not assigning error to issues raised elsewhere in his SAG, particularly issues of judicial bias and jury instruction. He also raised the issue of counsel's unmanageable caseload, and her inability to dedicate sufficient time to his case.

E) The petitioner's SAG was prepared by a "jailhouse lawyer" who himself had only a rudimentary understanding of the law and court rules and procedures, and who convinced the petitioner that his arguments had merit.

F) The "jailhouse lawyer" in question has a notorious reputation for preparing meritless court documents for vulnerable and impressionable prisoners for a profit motive.

G) The Court of Appeals issued its opinion on December 27, 2018, affirming the petitioner's convictions. Appellate counsel, Ms. Tabbut, mailed a copy of the opinion to the petitioner on December 28, 2018, with a letter in which she indicated that she could file a Motion for Reconsideration and a Petition for Review with the State Supreme Court, but that she would not be willing

to include petitioner's claim of ineffective assistance of appellate counsel.

H) Petitioner discussed his case with a different prisoner, who, after reviewing all of petitioner's Superior Court and appellate court documents and the COA opinion, proffered the opinion that appellate counsel had done a quite capable job, and further advised petitioner to write to Ms. Tabbut immediately and request that she indeed file both a Motion for Reconsideration and the Petition for Review, and suggested further that the petitioner apologize for the claim of ineffective counsel. He authored a letter for the petitioner dated January 6, 2019, asking Ms. Tabbut to file the Motion for Reconsideration and the Petition for Review. In this letter, which was a faithful representation of the petitioner's verbal instructions, petitioner apologized for making the ineffective counsel claim and referred to the claim as "ill-advised." Petitioner stated that he understood that she would not proceed with a Petition for Review that included his claim of ineffective assistance of appellate counsel.

I) On January 10, 2019, petitioner telephoned Ms. Tabbut per her request, to discuss her proceeding with the motion and petition. At this time, petitioner interpreted her December 28, 2018 letter as an indication that she intended to file both the motion and the petition. Therefore, he was shocked to hear Ms. Tabbut tell him that she was "off his case" and that she had no intention of filing a Motion for Reconsideration or the Petition for Review. This left him unassisted by counsel with only two weeks to prepare a Petition for Review with the highest court in the state, and Ms. Tabbut's stating that she would file for an extension of time

did nothing to comfort his distress and anxiety about being suddenly abandoned by his legal counsel at a critical juncture.

J) On January 14, 2019, again with the assistance of an English-speaking and writing inmate who is experienced with legal matters, the petitioner sent a letter to Ms. Tabbut indicating that he expected her to proceed with the Motion for Reconsideration and the Petition for Review, and further that he expected her to represent him with all of the zealousness required by the Canon of ethics of her profession. He also indicated his intent to pursue a complaint with both the WSBA and the ABA if she failed in her professional responsibilities to him, and suggested that he might even pursue legal action for professional malpractice. He also indicated that in the future he preferred communications in writing, so that he could better grasp the complexities that escaped him during phone calls, and so that there would be a clear record of what was said by who.

K) Ms. Tabbut failed to respond to petitioner's January 14, 2019 letter, and also failed to accept phone calls that he attempted to make to her to discern her intent. At this point, the petitioner had a reasonable belief that he was no longer represented by Ms. Tabbut, and again with the assistance of another inmate, he filed pro se motions with the court for an Extension of Time To file A Petition for Review, and a motion requesting the court Appoint Counsel to assist him, both dated and filed on January 22, 2019. Petitioner also began seeking alternative legal assistance, writing to the University of Washington Innocence Project, Gonzaga University's Institutions Project, Columbia Legal Services, the Public Interest Law Group, and D.O.C. contract attorney George Marhton,

all without success.

L) On January 24, 2019, the petitioner unexpectedly received a copy of a Motion for Extension of Time for Filing A Petition for Review, which was prepared by Ms. Tabbutt after she made it clear that she was no longer representing him, which was filed with the court on January 16, 2019.

M) In this Motion for Extension of Time, Ms. Tabbutt repeated her clear intention to not file a Petition for Review on the petitioner's behalf (page 1, # 3: "I do not intend to file a Petition for Review on his behalf.")

N) In the same paragraph, she untruthfully represented to the court that the petitioner "is working on filing the petition" himself. Ms. Tabbutt's last communication with the petitioner was on January 10, 2019 during a phone call, and he certainly was unprepared to even consider filing his own petition on that date; Ms. Tabbutt had no knowledge of his intentions after that date, except for his attempts to get her to proceed with the Petition for Review, which went unanswered by her.

O) On January 28, 2019, the petitioner received a Petition for Review prepared by Ms. Tabbutt on January 25, 2019 and filed with the court.

P) The petitioner considered the Petition for Review to be unauthorized by him, since Ms. Tabbutt had clearly withdrawn from the case. He felt that she was no longer empowered to act as his attorney. He immediately prepared a letter, again with inmate assistance, ordering Ms. Tabbutt to "cease and desist

(her) misrepresentations about being my attorney. You are not empowered to act as my counsel. You have no right to file documents with the court in my name. Your actions are unauthorized and illegal. You need to notify the court that no document you filed was authorized, and that you are not my attorney." His letter was dated January 28, 2019.

Q) Two days later, on January 30, 2019, and again with the assistance of another inmate, petitioner filed an Omnibus Motion with the court, requesting that the court (1) not consider the petition filed by Ms. Tabbut; (2) grant the petitioner leave to file an amended petition; (3) grant an extension of time to file an amended petition; (4) appoint new counsel to assist petitioner with preparation of an amended petition.

R) On February 26, 2019 petitioner received a copy of Ms. Tabbut's Motion To Withdraw As Counsel, in which she attempts to portray him as an indecisive, vacillating, and impulsive client responsible for the entire situation, and in which she further implies that the petitioner intends to commit or has committed "a criminal or fraudulent act."

III) ANSWER.

Ms. Tabbut has used deceit and intentional misrepresentations to the Supreme Court of the State of Washington, to place the onus on her clients and distract from her failure to abide by her profession's Rules of Professional Conduct.

In her January 16, 2019 Motion For Extension of Time, Ms. Tabbut untruthfully reported to the court that "Mr. Calo is working on filing the

(b)

petition" instead of her. Petitioner made no such representation to her during their last communication on January 10, 2019 when they spoke on the telephone. Petitioner was shocked by her abrupt and unexpected withdrawal from his case, and was desperate to change her mind. He was, and remains, wholly unprepared to, and incapable of, filing a Petition for Review by himself.

In her Motion To Withdraw dated February 22, 2019, she further misrepresents to the court that "Mr. Calo has filed reasoned and adequate briefing throughout his appeal. He was capable of writing and filing a petition for review." (P. 3, paragraph 2, lines 12-14). Ms. Tabbutt was petitioner's appointed appellate counsel for well over 1½ years. She is aware of petitioner's difficulty with speaking and reading the English language, his underprivileged background and limited education, his history of dyslexia, and his reliance on appointed counsel, and his reliance on inmate "jailhouse lawyers." She is also aware of his relative ignorance of the law, and his unfamiliarity with court rules and procedures. On page 7, paragraph 4, of the Appellant's Brief that was prepared and filed by Ms. Tabbutt on November 3, 2017, she describes the petitioner as being "from Puerto Rico, a native Spanish speaker, (who) has limited English language skills." (from cite of RP 146; RP 6482). On page 11, paragraph 3, she points out that "There was no Spanish interpreter assisting Mr. Calo during any of the three interrogations."

So at what point did the petitioner suddenly become capable of writing and filing a petition for review? What "reasoned and adequate briefing" has he prepared? His SAG was found to be completely without merit by the Court of Appeals.

In reality, all of his motions and letters have been prepared for

for him by a parade of "jailhouse lawyers" with varying degrees of competence and facility with English, and Ms. Tabbut is fully aware of this.

She is also aware that, without assistance of some kind, the petitioner's efforts to file a Petition for Review are doomed to fail, and that he is in no way capable of filing a petition for review by himself. She has attempted to deceive the court to justify her professional failures.

The petitioner genuinely regrets his claim of ineffective assistance of appellate counsel, and the damage it did to his relationship with Ms. Tabbut. Like any client embroiled in a complex legal case where a negative outcome would result in many, many years in prison, petitioner was concerned if his counsel was providing the best possible representation, and in his letter to Ms. Tabbut on January 6, 2019, he acknowledged her observation that prison and the appeals process were indeed stressful and had affected his judgment.

But his minor complaints about her representation, coupled with his ignorance, illiteracy, and impressionability, made him an easy target for a "jailhouse lawyer" who inflated his concerns into a convincing argument that her representation of him rose to the level of ineffective counsel.

Once a more experienced and reasoned eye examined and explained his appellate paperwork, he came to understand that he had been talked into presenting a meritless argument in a futile attempt to find all the grounds possible to overturn his conviction. He wishes he had never pursued that argument, and even now, embroiled in a separate controversy, he stands convinced that Ms. Tabbut did indeed provide quite capable counsel.

He understands that he was susceptible to the suggestions of a charlatan promising false hope for profit.

The real turning point in his relationship with Ms. Tabbut, and the place where she really failed in her professional duties to her client, was after the January 10, 2019 telephone call, and after his letter to her on January 22, 2019.

She tries to paint a picture of the petitioner as changeable and impulsive, but it is hard to keep up with the vacillating opinions and conduct of Ms. Tabbut after January 10, and her failure to communicate with her client as required by the Rules of Professional Conduct (1.4)(a)(1).

On January 10, she advised the petitioner she was "off his case" effective immediately, despite his pleas with her to follow through and file the necessary motions and petition. Petitioner was left believing that she no longer represented him.

On January 16, Ms. Tabbut filed a Motion for Extension of Time in which she clearly stated that she had no intent to file a petition for review, and claimed that the petitioner was working on it himself.

But then she states that after receiving his letter of January 14 on January 22, and "consulting with colleagues." She "decided to abide by Mr. Calo's directive, i.e., file a petition for review."

If only she had communicated with the petitioner as required by the Rules of Professional Conduct, this controversy might have been averted. But she did not. She did not answer his letters or accept his phone calls. Anyone in the petitioner's position would have reasonably assumed

that he was no longer represented by counsel, and would have taken the steps the petitioner did: he sought help from an inmate he trusted for assistance in writing letters to potential sources of legal representation, while also filing motions with the court seeking an extension of time and appointment of counsel.

Nor it is a surprise that when he received an unexpected copy of a Petition for Review on January 28, he viewed it askance with suspicion and distrust. His "former attorney" had advised him on January 10 that she was off the case, and repeated the assertion in her January 16 motion, stating "I do not intend to file a petition for review." Was it reasonable to trust that she had done an adequate job preparing a petition at the last minute, in response to his stated intention to consider filing a bar association complaint and/or lawsuit for malpractice? He did not feel it was.

After reviewing the Petition for Review that Ms. Tabbut prepared, it seemed clear to the petitioner that it was of mediocre quality and inadequate in scope and presentation, and that Ms. Tabbut had simply prepared the petition to protect herself from a bar association complaint or litigation.

The petitioner faces many, many years in prison if a meritless petition is filed. He deserves a properly completed Petition For Review that presents all possible arguments and is prepared by an attorney who is fervently motivated to represent his client aggressively and thoroughly.

The petitioner also feels that he was reasonable in assuming that he was no longer represented by Ms. Tabbut, and that he was also reasonable in asserting in his January 28 letter to

Ms. Tabbutt that she was no longer authorized by him to represent herself as his attorney, and that she should cease and desist in her misrepresentations to the court.

If Ms. Tabbutt changed her mind and wished to represent the petitioner with the zealotness he deserves, she should have communicated her intent to him clearly. But in this, she failed miserably.

The Rules of Professional Conduct (1.4) state that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent... is required; further, that the lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished; that the lawyer shall keep the client reasonably informed about the status of the matter; shall promptly comply with reasonable requests for information; that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation; that reasonable communication between the client and the lawyer is necessary for the client to effectively participate in representation; that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take; that the lawyer shall reasonably consult about the means to be used to accomplish the client's objectives; the lawyer must act reasonably to inform the client of the actions the lawyer has taken on the client's behalf; and that when a client makes a request for information, prompt compliance is required.

Ms. Tabbut failed in these duties. She failed to keep the petitioner informed about the status of the matter, and denied him the opportunity to participate in his representation.

The petitioner deserved to have sufficient information about Ms. Tabbut's representation, so that he could participate intelligently in all decisions concerning the objectives of the representation and the means by which they are pursued.

Ms. Tabbut's failure to fulfill her duty to communicate with her client was not consistent with her duty to act in his best interests.

Instead, she attempted to deceive the court, making false representations about the petitioner, and by citing RPC 3.3(a), she implied that the petitioner intended to commit a crime or perpetrate a fraud upon the court.

Yet she has offered no evidence of any crime or fraud, and the only glaring fraud in this case is her false representations about the petitioner, and the glaring omissions in her account.

Ms. Tabbut's deceit and neglect to perform her professional duties illustrate her failure to pursue the best interests of her client. Her attempts to further her self interests and protect herself from a complaint or litigation only resulted in her failure to pursue a legal matter entrusted to her in a manner consistent with the ethical standards of her profession.

She also violated RPC 1.2(f) by purporting to represent a person without authority. She clearly surrendered her right to act as the petitioner's attorney.

The petitioner fully supports Ms. Tabbut's Motion to Withdraw as counsel, but for a much different reason than the feeble and fraudulent justification cited by Ms. Tabbut.

IV) CONCLUSION.

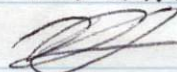
Petitioner has clearly established that Ms. Tabbut has failed to perform her duties in his best interests, and that the Motion To Withdraw should be granted.

Petitioner has further clearly established that his Omnibus Motion should be granted in entirety, and that new counsel should be appointed by the court.

Petitioner, William Alvarez-Calo, declares under penalty of perjury that the statements made in this document are true and correct to the best of his knowledge.

Respectfully submitted,

William Alvarez-Calo
Petitioner Pro Se



D.O.C. # 395946

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AFFIDAVIT OF SERVICE

WILLIAM ALVAREZ-CALO

By MAILING

I, William Alvarez-Calo, being sworn upon oath, do hereby certify that I have served the following document(s):

Answer to Counsel's Motion
to Withdraw As Counsel

UPON: The Supreme Court of the State of Washington

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Temple of Justice

P.O. Box 40929

Olympia, WA 98504-0929


By PLACING SAME IN THE UNITED STATES MAIL AT:

WASHINGTON STATE PENITENTIARY

1313 N. 13th Ave.

Walla Walla, WA 99362

ON THIS 7th DAY of MARCH, 2019,



William Alvarez-Calo

#395946

Affidavit pursuant to 28 USC § 1746, Dickerson v. Wainwright, 626 F.2d 1184 (1980);

Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

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