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A. SUMMARY OF ARGUMENT

An accused's constitutional right to counsel is violated if he is forced to proceed with an attorney with whom he has an irreconcilable conflict. Where a defendant moves to discharge counsel on this basis, the court must conduct an inquiry into the nature of the conflict before determining if discharge is necessary.

Over a month before trial, Jason Vriezema moved to discharge counsel because he had no trust in his attorney and was not comfortable proceeding to trial with her. Mr. Vriezema's attorney had not come to visit him or listened to his version of events. Nonetheless, she advised him to plead guilty on a charge of which he was ultimately acquitted. The court denied the motion after posing only one question to his attorney, which related to scheduling and not the substance of the conflict.

Because Mr. Vriezema was forced to proceed despite a substantial conflict with his attorney and without sufficient inquiry from the court, his conviction must be reversed.

B. ASSIGNMENT OF ERROR

The trial court violated Mr. Vriezema's right to counsel under the Sixth Amendment and article 1, section 22 by denying his motion to discharge counsel.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

An accused's constitutional right to counsel is violated where he is forced to proceed with an attorney with whom he has an irreconcilable conflict, i.e., where there is a serious breakdown in communication. Mr. Vriezema moved to discharge counsel because he had no trust in his attorney, he did not feel comfortable going to trial with her, she had not come to meet with him, and his counsel had not listened to his side of the case. The trial court inquired only cursorily into the nature of the conflict. Was Mr. Vriezema's right to counsel violated when the trial court denied his motion to discharge counsel?

D. STATEMENT OF THE CASE

Mr. Vriezema was charged in an incident arising out of his theft of food from a supermarket in Seattle.

A month before his trial date, Mr. Vriezema moved to discharge his appointed counsel. 8/3/10RP 3. Mr. Vriezema explained the nature of the conflict to the court:

I don't think she has my best interests in mind. She has not come and seen me, not once; and, two, she is already making me plead out to a Rob II . . . I mean, she haven't [sic] even went over - - she haven't [sic] even heard my side of the story, you know what I mean, so - - and I don't have no trust in her, you know, for one. She's already telling me to plead out. Come on, I mean, you don't even - - you haven't even came [sic] and seen me yet. You haven't heard my side of the story, you know what I mean? And I just don't feel that I feel comfortable with going to trial with

. . .

8/3/10RP 3-4. The court interrupted Mr. Vreizema and asked a single question of trial counsel: "you got the case within the last two weeks, right?" Counsel responded affirmatively and told the court she believed her "numerous contacts" with Mr. Vriezema were sufficient. 8/3/10RP 4. Without any additional inquiry, the court denied Mr. Vriezema's motion. 8/3/10RP 4; CP 5.

After a jury trial, Mr. Vriezema was acquitted of robbery in the second degree—the charge on which he disagreed with counsel regarding a guilty plea. Mr. Vriezema was found guilty of one count of assault in the third degree and one count of theft in the second degree. CP 27-29.

E. ARGUMENT

THE TRIAL COURT VIOLATED MR. VRIEZEMA'S RIGHTS UNDER THE SIXTH AMENDMENT AND ARTICLE 1, SECTION 22 BY DENYING HIS MOTION TO DISCHARGE COUNSEL.

1. A court must honor the accused's constitutional right to counsel when considering a motion to discharge.

A trial court has the discretion to grant or deny a motion for substitution of counsel. In re Pers. Restraint of Stenson, 142 Wn.2d 710, 733, 16 P.3d 1 (2001). However, this discretion is constrained by the accused's constitutional rights. United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2002). A claim of denial of counsel is reviewed *de novo*. United States v. Moore, 159 F.3d 1154, 1158 (9th Cir. 1998).

Both the federal and state constitutions guarantee the right to counsel in criminal proceedings. U.S. Const. amend. VI; Const. art. I, § 22. The right to counsel is violated where a defendant is forced to proceed with an attorney with whom he has an irreconcilable conflict, even if the attorney is competent. Brown v. Craven, 424 F.2d 1166, 1170 (9th Cir. 1970); Nguyen, 262 F.3d at 1003-04. An irreconcilable conflict exists where there is a "serious breakdown in communications." Nguyen, 262 F.3d at 1003 (citing

United States v. Musa, 220 F.3d 1096, 1102 (9th Cir. 2000), cert. denied, 531 U.S. 999 (2000)).

A defendant is denied his Sixth Amendment right to counsel when he is “forced into a trial with the assistance of a particular lawyer with whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate.”

Id. (citing Craven, 424 F.2d at 1169). Where “the relationship between lawyer and client completely collapses, the refusal to substitute new counsel violates [the defendant’s] Sixth Amendment right to effective assistance of counsel.” Moore, 159 F.3d at 1158.

In determining whether a motion for substitution of counsel was improperly denied, a reviewing court considers: (1) the adequacy of the trial court’s inquiry into the conflict, (2) the extent of the conflict between the accused and his attorney, and (3) the timeliness of the motion. Stenson, 142 Wn.2d at 724 (citing Moore, 159 F.3d at 1158-59).

2. The court violated Mr. Vriezema’s constitutional right by failing to grant his motion to discharge counsel.

An evaluation of the three factors in this case shows the denial of the motion to discharge counsel was improper. First, the court essentially failed to conduct any inquiry into the conflict. “For an inquiry regarding substitution of counsel to be sufficient, the trial

court should question the attorney or defendant 'privately and in depth.'" Nguyen, 262 F.3d at 1004 (quoting Moore, 159 F.3d at 1160). "[I]n most circumstances a court can only ascertain the extent of a breakdown in communication by asking specific and targeted questions." United States v. Adelzo-Gonzalez, 268 F.3d 772, 777-78 (9th Cir. 2002). An inquiry is adequate if it "ease[s] the defendant's dissatisfaction, distrust, and concern and provide[s] a sufficient basis for reaching an informed decision." Daniels v. Woodford, 428 F.3d 1181, 1198 (9th Cir. 2005) (citing Adelzo-Gonzalez, 268 F.3d at 777).

Here, the inquiry was cursory and did not ease Mr. Vriezema's dissatisfaction, distrust, and concern. The court asked only a single question, which was directed at defense counsel: "you got the case within the last two weeks, right?" 8/3/10RP 4. The court did not ask any questions of Mr. Vriezema. See generally 8/3/10RP3-4 (brief exchange with defendant centered around prudence of advice regarding guilty plea). The entire hearing lasted three minutes. Compare 8/3/10RP 2 (hearing commenced at 8:57 a.m.) with 8/3/10RP 4 (hearing adjourned at 9:00 a.m.).

This lack of inquiry was even more egregious than in Nguyen, where the trial court "asked [the defendant] and his

attorney only a few cursory questions, did not question them privately, and did not interview any witnesses.” Nguyen, 262 F.3d at 1005. As in Moore, while “[t]he court did give both parties a chance to speak and made limited inquiries to clarify what was said, ... the court made no inquiries to help it understand the extent of the breakdown.” 159 F.3d at 1160.

“A court may not deny a substitution motion simply because it thinks current counsel’s representation is adequate.” Daniels, 428 F.3d at 1198 (citing United States v. D’Amore, 56 F.3d 1202 (9th Cir. 1995)). In focusing on the attorney’s schedule and the prudence of her advice rather than the breakdown in communication and trust, the trial court conducted an inadequate inquiry. This factor cuts in favor of reversal.

Second, though the court’s lack of inquiry prevented development of a record on the irreconcilability of the conflict, the conflict between Mr. Vriezema and his attorney was clearly substantial. Mr. Vriezema had completely lost trust in his attorney. 8/3/10RP 3. He lacked confidence that his attorney had his “best interests in mind.” Id.

In addition to this breakdown in the attorney-client relationship, Mr. Vriezema explained to the court that they

disagreed on the substance of his case. Mr. Vriezema told the court that without listening to his side of the story, his attorney was “telling [him] to plead out” on the second degree robbery charge. 8/3/10RP.

Moreover, Mr. Vriezema’s counsel had not visited him. Cf. Nguyen, 262 F.3d at 1000 (irreconcilable conflict found even though attorney visited client 6-7 times); Stenson, 142 Wn.2d at 728, 730 (no irreconcilable conflict where attorney visited client twice a week for 8 months—approximately 34 times total). Because the attorney had been assigned the case for two weeks and trial was a month away, Mr. Vriezema found it significant that his attorney had neither visited him nor listened to his version of events. 8/3/10RP 3-4. The breakdown in the attorney-client relationship between Mr. Vriezema and his lawyer constituted a substantial conflict that should have been addressed by granting the motion to discharge counsel. See Moore, 159 F.3d at 1160.

Third, Mr. Vriezema’s motion was timely. He moved to discharge counsel over a month before trial, and within two weeks of her appointment. 8/3/10RP 3-4. Mr. Vriezema did not seek a continuance, and the court did not inquire into timing. See Nguyen, 262 F.3d at 1005 (inquiry inadequate where judge failed to inquire

into timing of motion and need for continuance). In Moore, 159 F.3d at 1159, 1161, defendant's motions were held timely when made one month and again two weeks before trial. Moreover, in Nguyen, 262 F.3d at 1003, the motion was timely when it was made the day trial was set to begin.

In sum, the trial court violated Mr. Vriezema's constitutional right to counsel by denying his motion to discharge and forcing him to work with an attorney with whom he had a serious breakdown in communication.

3. Reversal is required.

The erroneous denial of a motion to discharge counsel is presumptively prejudicial and requires reversal. Nguyen, 262 F.3d at 1005; Moore, 159 F.3d at 1161. Here, the trial court erred in denying Mr. Vriezema's motion to discharge counsel. This error requires reversal and remand for a new trial. Nguyen, 262 F.3d at 1005.

F. CONCLUSION

Mr. Vriezema's conviction must be reversed because the denial of his motion to discharge counsel violated his constitutional right to counsel.

DATED this 12th day of May, 2011.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 66118-3-I
)	
JASON VRIEZEMA,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, ANN JOYCE, STATE THAT ON THE 12TH DAY OF MAY, 2011, I CAUSED THE ORIGINAL **OPENING 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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