

69526-6

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No. 69526-6-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SHAWN LLOYD,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

The trial court's refusal to appoint Shawn Lloyd an attorney violated the Sixth and Fourteenth Amendments and Article I, section 22.

Several months ahead of trial, and after a proper colloquy Mr. Lloyd waived his right to counsel. 3/28/12 RP 8-15. The court appointed stand-by counsel. *Id.* at 15.

Four months later, Mr. Lloyd asked the court to reappoint counsel. 7/20/12 RP 16. The court denied Mr. Lloyd's motion. *Id.* at 16-17.

Nearly one month later, during the course of a suppression hearing, Mr. Lloyd again asked that stand-by counsel be allowed to represent him. 8/14/12 RP 100. Saying "It's a done deal" the court again refused to reappoint counsel. *Id.* at 109.

By way of the Fourteenth Amendment Due Process Clause, the Sixth Amendment right to counsel requires states appoint counsel for indigent defendants. *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932). Article I, section 22 of the Washington Constitution explicitly guarantees a defendant the right to "appear and

defend in person, or by counsel.” *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). The United States Supreme Court has recognized the Sixth Amendment implicitly provides a right to self-representation. *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

Washington courts have held that once a person validly waives his right to counsel, there is no absolute right to reappointment and instead it is a question left to the trial court’s discretion. *State v. Deweese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991). However,

[b]ecause self-representation is a grave undertaking, one not to be encouraged, the request for reappointment should be granted absent reasons to deny.

State v. Canedo-Astorga, 79 Wn. App. 518, 525, 903 P.2d 500 (1995) (internal citations and brackets omitted). Moreover, as with the exercise of its discretion to grant a request to proceed pro se, the court’s discretion to deny reappointment lies on continuum with the greatest degree of discretion when a request is made on the eve or after trial as begun. *State v. Modica*, 136 Wn. App. 434, 443, 149 P.3d 446 (2006); *affirmed on unrelated grounds*, 164 Wn.2d 83 (2008). Conversely, the court’s discretion is substantially limited with respect to requests made before trial, and such requests should be granted as a matter of law. *Id.*

Here Mr. Lloyd requested reappointment of counsel several weeks prior to the start of trial. 7/20/12 RP 16. There was no indication Mr. Lloyd was seeking to delay trial or disrupt the proceedings. The sum of the court's ruling was "I'm going to deny the motion." *Id.* 17. The court offered no justification for its decision. Because the request was made weeks before trial, and the court offered no justification to deny the request, the court plainly abused its discretion. The request should have been granted as a matter of law. *Modica*, 136 Wn. App. at 443.

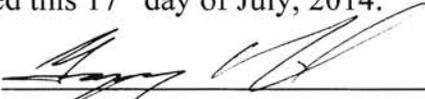
The State attempts to recast the issue in this case as a motion to substitute counsel. Brief of Respondent at 9-10. But because Mr. Lloyd was not then represented by counsel there was no counsel to substitute for. Neither *Modica* nor *Canedo-Astorga* limited their rules to motions to reappoint prior counsel. The State has not cited a single case which limits a pro se defendant's ability to have counsel reappointed to prior counsel.

Mr. Lloyd was denied the assistance of counsel throughout trial. This Court must reverse his conviction and remand the matter.

B. CONCLUSION

For the reasons set forth above and in Mr. Lloyd's previous brief, this Court should reverse his conviction.

Respectfully submitted this 17th day of July, 2014.



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DIVISION ONE**

STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 69526-6-I
v.)	
)	
SHAWN LLOYD,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF JUNE, 2014, 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:

[X] MARI ISAACSON, DPA	(X)	U.S. MAIL
KING COUNTY PROSECUTOR'S OFFICE	()	HAND DELIVERY
APPELLATE UNIT	()	_____
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SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF JUNE, 2014.

X _____ 

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