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COURT OF APPEALS
JUL 14 2011 PM 1:29
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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

34208-1 Direct Appeal.
35180-3 PRP

IN RE THE PERSONAL RESTRAINT
OF Joshua M. Ice

PETITIONER'S REPLY BRIEF

Joshua M. Ice, Pro Se

STATE OF WASHINGTON

COURT OF APPEALS

DIVISION II

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BY
PR:29

In RE The Personal Restraint Petition
of Joshua M. Ice

Petitioner's Reply Brief

COMES NOW, the petitioner, Joshua M. Ice, Pro-Se, in reply to the States response submitted on October 6th, 2006. I would like to reply to the States response regarding the following issues.

1. PREJUDICE

The respondent asserts that the petitioner has not met his burden of of establishing that a manifest injustice occured with regard to his guilty plea and also that he failed to make an effort to demonstrate that his newly discovered evidence would probably result in an acquittal at trial.

The defendant asserts that a manifest of injustice has ,infact, occured due to ineffective assitance of counsel provided through the state by a Mr. Sam Meyers. In many conversations between the defendant and his court appointed attorney, as well as some conversations ,in which the defendants parents were present, the defendant claimed that he was infact not guilty of the charges. Mr. Meyers informed his client that the state's prosecutiong attorney would not offer the defendant a plea bargain unless they had a faulty case against the defendant. During pretrial hearings the defendant often was misled by Mr. Meyers. For Example: During the first pretrial hearing Mr. Meyers obtained the defendants signature on a document which then made it impossible for the defendant to obtain a speedy trial. Mr. Meyers never admitted or declared to the defendant that by signing the document he would be waiving his right to a speedy trial. The defendant then later asked Mr. Meyers abot his speedy trial rights and was then informed that he had waived them sometime ago.

Later on, during, yet again, another pretrial hearing the defendant spoke with Mr. Meyers about the Alford's plea as well as the first time offender deal. The defendant specifically asked his counsel if he was eligible for either of the two options. Mr. Meyers informed the defendant that he did not meet the requirements to seek an Alford Plea and that it was the state's discretion to give the defendant a first time offender deal. The defendant, having no knowledge of criminal law, trusted his lawyer to tell him the truth and give accurate accounts of what the law stated so that the defendant could make accurate decisions regarding his case. The defendant has now found out that he could have, in fact, taken an Alford's plea on his plea bargain agreement which would make it easier to then withdraw his guilty plea based on ineffective assistance of counsel.

The defendant didn't feel he had stable and competent counsel representing him and allowed his mother and father to come sit in during their conversations in order to obtain their opinions of what he had already come to conclude. Mr. Meyers continued to claim that hiring a road investigator or a crash reconstructionist would not help the defendant in trial. The defendant now believes that if the state and, especially, the defendant's counsel had in fact hired a road investigator, gotten testimony from the White's road investigator, and hired a crash reconstructionist as he had asked his counsel to do that he would have in fact been found not guilty of the charges against him if not completely acquitted. The defendant finds it hard to believe that there is sufficient information to find himself guilty without proper investigation of the cars involved, crash scene, and all current witnesses now claimed to be at the scene. The state claims that the defendant spoke to Mr. Godwin regarding the accident. The defendant has only mentioned to Mr. Godwin the color, make, and model of the vehicle he was driving, where the crash had taken place, and the person that had died due to the wreck. No further information or coaxing was given to Mr. Godwin. In fact, Mr. Godwin came forward without any knowledge of who the defendant was or even knowledge of the defendant's previous relationship with Stephanie White other than that they were friends, but he has no clue how much the defendant and Stephanie White "hung out" or what kind of activities they participated in together. Mr. Godwin and the defendant, although both friends of Stephanie

M. White, had no prior knowledge of each other but the defendant did learn that they both knew other people from the defendants neighborhood although they did not know eachother.

The defendant further told Mr. Godwin that he wanted to know information from where the Lake Lawrence fish sign hung where the defendant turned on to Vail only up until the fire station just before the crash as he did not remember anything passed that particular stretch of road. The defendant also told Mr. Godwin at that time he was not going to pursue a withdraw of guilty plea based on his coming forward with information. However, the defendant then decided that Stephanies parents should know the truth about what happened to their daughter to perhaps relieve their grief and anger striken hearts. It is then the defendant first sent his withdrawl of guilty plea into the Thurston County Courts which was subsequently denied. Mr. Ice provided information for Mr. Meyer so Mr. Godwin could give a statement over the phone in order for Mr. Meyers to stand before the courts in favor of the withdrawing of the guilty plea. The records then show that Mr. Meyers didn't stand in front of the judge with new knowledge of the case and that only a prosecuting attorney had and that the defendants withdraw of guilty plea motion was denied. It is also unsure to the defendant if he will be losing his drivers license for any period of time either since his sentencing or after his release from confinement. The defendant would like to point out that any loss of driving privilage is a direct consequence of a guilty plea and he has never been informed of such an action. The defendant was also only made aware of his constitutional right to vote and to carry firearms as being lost if convicted of a felony.

The defendant would also hope that the court acknowledge that the defendant was under extreme ammounts of stress as well as sever depression warranting 100mg of Zoloft 1-2 times per day as well as the defendants use of mind-altering perscription pain relief and muscle relaxants since May 9th 2004 due to injuries sustained in the car accident. Mr. Ice informed his lawyer that he could no longer go on with the ammount of stress and depression that he was undergoing. There has even been an instance where a Sherriff had came to the defendants address due to a report of taking too many perscription pills in order to comitt suicide. The defendant has continued to feel ashamed about this incident

and has never even told his parents about it.

The courts never established whether the defendant was even competent to make a plea bargain. Citing the Georgetown Law Journal Volume 90 Number 5 May 2002 on page 1498, "Rule 11 establishes guidelines to ensure that a guilty plea is made knowingly and voluntarily" See Fed. R. Crim. P. 11(c)-(d) and also U.S. v. Hernandez-Fraire, 208 F.3d 945, 949 (11th cir. 2000) in which "a courts failure to address the core concerns underlying Rule 11- absence of coercion, understanding of charges, and knowledge of consequences of guilty plea- mandate that plea be set aside". The defendant comes to understand that while Rule 11 is not constitutionally mandated that it is, indeed, used by federal courts to evaluate if a guilty plea satisfies due process requirements. Citing the Georgetown Law Journal Volume 90 number 5 May 2002 on page 1498-1503; "To ensure that a plea is made knowingly, a judge must address the defendant in open court to establish that ~~the~~ defendant understands (1) the nature of the charge; (2) the mandatory minimum and maximum sentences for the charge, including any special parole, supervised release, and restitution terms; (3) the constitutional rights waived by a guilty plea; and (4) that answers to the court's questions, if under oath, on the record, and in the presence of the defendant's counsel, may be used against him or her in a subsequent proceeding". The defendant believes that not only did the court not ensure that the plea was made knowingly, voluntarily, and intelligently, but also that due to ineffective assistance of counsel, in which, the defendants counsel did not identify the consequences and charges to the defendant. Had the counsel been effective they should have noticed that in the vehicular charge ,count 1, that in the Third Ammended information the prosecutor says that Rachel Gomez recieved substantial bodily injury and/or that the defendant was driving a vehicle with disregard to the safety of others. However, the state ~~where~~ no correlation exists between the way the defendant was driving and Rachel Gomez's injuries. Had the defendants counsel been competent he would have caught this error and had the defendant acquitted from count 1. The counsel should also argue that no matter what the state ~~claims~~ in the first ammended information it is the last and most recent information that the court MUST make a judgement on and even the court did not correctly inspect the ammended information which would

have shown that what the state was charging the defendant with and the nature of the charge are incorrect and thus would either be acquitted from, found unable to make a knowing plea bargain, or the charge dropped altogether. Also when explaining a charge the court must take into account the complexity of the charge and the sophistication of the defendant. Also it is the courts job to take into consideration any drug use or mental health situations such as P.T.S.D. , which the defendant has been diagnosed as having, or severe depression that might otherwise create a conflict of making a valid knowing and intelligent guilty plea. With the defendant under the use of SSRI drugs and other mindaltering prescription drugs such as Soma 350mg which is a high strength muscle relaxer that does bring a mind altering effect to the brain.

It is also now known to the defendant that the court cannot allow hearsay evidence into the court. However, the court allowed a witness statement by a Melissa Didier as evidence into the courts records against the defendant. Citing Northrop v. Trippett, 265 F.3d 372, 384 (6th cir. 2001) "Counsel's failure to seek suppression of [hearsay] evidence clearly...was prejudicial because evidence would have been excluded had counsel objected". Also the defendant claims that "Counsel's failure to interview witnesses, conduct any legal research or obtain and review any records was ineffective assistance" Citing Groseclose v. Bell, 130 F.3d 1161, 1170 (6th cir. 1997). In regards to the defendants mental health, Williamson v. Ward, 110 F.3d 1508, 1516 (10th cir. 1997) states that " Counsel's decision to limit mental health investigation to scant and outdated documents and failure to seek competency test was ineffective assistance" and so it must be logical that counsels complete lack to even investigate the defendants mental health status must also show ineffective assistance of counsel.. Also according to Hall v. Washington, 106 F.3d 742, 749 (7th cir. 1997) in which "Counsel's failure to engage in reasonable investigation, make logical argument, contact defendant, or offer reason to spare defendant's life was ineffective assistance".

ANALYSIS

The defendant believes that he has shown "that a counsel's performance was deficient
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and that the deficient performance prejudiced the defence", citing State V. Horton, 116 Wn. App. 909, 68 P.3d 1145(2003) The defendant believes that the court can conclude that a manifest of injustice has occurred in regards to his guilty plea based on the factual showing of ineffective assistance of counsel. The defendant also believes he has shown just cause that the Superior court has gone out of it's jurisdiction in finding the defendant guilty of a crime that does not follow the statutory laws of RCW governing Vehicular assault and that this also constitutes a manifest injustice not to mention coupled with the facts that the court did not properly evaluate the mental health status of the defendant which had led to an unknowing, unwilling, and unintelligent guilty plea.

CONCLUSION

The defendant asks the court to find in favor of acquitting the defendant of Charge 1 of Vehicular Assault, and that the defendant also be allowed to withdraw his guilty plea based on ineffective assistance of counsel for Charge 2- Vehicular Homicide and Vacate the defendants current sentence allowing him to be withdrawn back to Superior Court in order to effectively defend himself against the charge of Vehicular Homicide.

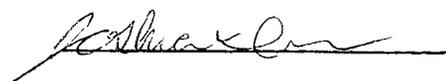
RELIEF

The defendant seeks Acquittal of the first charge of Vehicular Assault with disregard for the safety of others, His current sentence to be Vacated, and that the defendant also be allowed to withdraw his guilty plea in regards to count 2- Vehicular homicide.

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

DATED this 3rd day of Decm, 2006 at MCC in Monroe
Washington.

Respectfully Submitted,


Joshua M. Ice, Petitioner Pro Se
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