NO. 34335-5-II
(05-1-04377-8)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

APPELLEE ,

V.

CORY LAMONT THOMAS

APPELLANT.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable James Orlando,
The Honorable Kathryn J. Nelson,
The Honorable Lisa Worswick, and
The Honorable sergio Armijo, Judges

APPELLANT'S SUPPLEMENTAL BRIEF AND STATEMENT OF ADDITIONAL AUTHORITIES RAP 10.10

CORY LAMONT THOMAS
APPELLANT

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Appellant comes into this Trial De Novo "Bifurcated" if this court will? Appellant comes that way based on the verdicts rendered in this matter, appellant was convicted in Count I, of Burglary First degree's, Lesser included offense of Assault in the Fourth degree.

In a seperate count, Count II, appellant was convicted of Assault in the second degree. The seperate assault conviction returned in Count II, relied on the same set of facts used to return a verdict of guilt in Count I.

Because in Count I, appellant was convicted of a lesser and included offense of Burglary first degree, Appellant is and has asserted a Plea of Former Jeopardy, as attached to Count I's lesser included offense convcition of assault fourth degree.

Appellant MOVES this court to reverse and or vacate the seperate assault conviction returned in count two, as it had no independant act, nor seperate victim, neither did the seperate assault conviction returned in count II relying on any facts outside of those facts relied upon in prosecuting Count I, Burglary First Degree.

Appellant MOVES this court to conduct review in "Phases" so as to preserve and respect petitioners plea of former jeopardy.

The phases appellant MOVES this court to take are (1) Former Jeopardy "Double Jeopardy Conviction(s) AND Double Jeopardy Sentence(s).
(2) Anti Merger Constitutionality as applied in petitioners case at bar.
And (3) the remaining 20 plus grounds attacking the conviction on various fronts.

At this outset, Appellant **IS NOT APPEALING** the conviction for Count I, Assault in the Fourth degree.

Appellant wishes to have that conviction affirmed alone.

ONLY in the event that the court does not grant the relief requested in phases 1 and 2, does appellant have to move forward and challenge the remaining conviction on various grounds, as at that point they are convictions of record per this courts determination.

In Sum, appellant does not WAIVE and in fact ASSERTS a plea of Former jeopardy.

Phases 1 and 2, have been transferred to this court as consideration as a personal restraint petition, a progeny of a Cr.R 7.8 motion made to the Superior Court for Pierce County.

DESCRIPTION ABBREVIATIONS

VRP's WILL BE REFERRED TO AS e.g. 3RP9

3= Volume Identified by Counsel in her Opening Brief
9= Page referenced in the preceeding volume

THE FOLLOWING APPLY TO THE PARTIES CITED;

St:= State Prosecutor "Marcus Miller" or "John Sheeran"
Cn:= Counsel for appellant at hearing in Superior Court
Ap:= Appellant "Cory Lamont Thomas"
JS:= John Sheeran (specifically)
DD:= Danielle Fletcher
LB:= LaVisha Bonds
LP:= Tacoma Police Officer Linsue Peterson
LH:= Washington State Bar Member Lembhard G. Howell
Ct:= Court and or Judge presiding at hearing being discussed

Appellant has for this courts viewing a packet with approximately 40 pleadings, and objections filed in the various trial court hearings. Appellant was unbale to pin point which pleadings were which, due to the Superior Court journal entry's reflecting them all to be "Letter From Defendant", notwithstanding the fact that they were all "Motions" and "Objections" and captioned as such.

Should this court desire to see any one in relation to the various grounds, appellant request this court to allow appellant the right to file such pleading, upon this courts request?

Appellant has not sent it do to Postage Limitations at my current facility as well as it may become redundant, in light of the record nonetheless, appellant has all pleadins should this court not be able to locate it by the various records on appeal.

GROUND 4

PROBABLE CAUSE

Before jumping to the front of these errors, though this ground was never ruled upon after motion, and objection, it was dicussed at various parts of the trial, and it should be determined that Probable Cause is lacking in this case, and for that reason alone appellant is seeking dismissal.

After this ground should the issue(s) of, (1) Double Jeopardy Sentences and Convictions not have warranted Dismissal, (2) Anti Merger not warranted vacation of assault two. (3) erroneous instructions not warranted vacation, then appellant raises in two different aspects how the convictions should be vacated (i) being this ground, and (ii) being all of the other errors being cumalative errors discussed in their various grounds.

Appellant apologizes for having to raise them in five differnt aspects but thats where the verdict(s) have left appellant.

Appellants arraignment is not included in the VRP's requested (to wit objection has been filed) Notwithstanding;

AP: I object to the arrest without a warrant in this case, 05-1-04377-8, and also ask the court to make a finding as to Probable Cause, to when the police arrested me, 7RP4
I was arrested more than two weeks later, three weeks later after this, No summons was sent out. The Pierce County Prosecutor hadn't charged me.7RP4
And when I asked what I was being arrested for, My probable cause [was] expired. The Police Department told me because I sued the Police Department, My Probable Cause was pretty much indefinite. And they didn't have Probable Cause to arrest me. 7RP5
And it's my position that these charges are going foward because the State, It was told to me from previous counsel that the state can't dismiss them at this time because if they do the City is liable for incarcerating me on these charges. 7RP5

This was the second occasion that appellant had raised Probable Cause (1st Arraignment) and (2nd trial judge). Appellant was arrested without P.C., as told to the appellant by the officers becuase he had sucessfully sued The Tacoma Police Department, the City of Tacoma, City Manager, Mayor, Chief of Police, and 22 individual officers, and for that reason P.C. was and is "pretty much indefinite."

Petitioner through the period of 2001-2005 litigated in United State District Court, Western District at Tacoma, Appellant prevailed on 1 count of "4th amendment right to be free from unlawful search seizure and arrest" recouping $15.000 in compensatory and $20.000 in punitive damages against the City.

The Federal Court denied attorney's fees to plaintiff and counsel, which went to the United States Court of Appeals for the denial, Published opinion at Cory Lamont Thomas v City of Tacoma 410 F3d 644(2005).(Holding where plaintiff prevailed on unlawful arrest, plaintiff was entitled to attorney' fees).

The Attorney fees were awared on September 09, 2005 Appellant was arrested only days before that award grant, "Generally appellant do not recieve any of the attorney fees as they are 'attorneys fees' " however in this case the City and Court was made aware of the fact that appellant attorney had agreed to give appellant 50% of any fee recovered, as there was no gaurantee of award. And appellant counsel felt that because appellant had vacated a judgment against the City and gave back $25.000 of the award, in an effort to resolve a counterclaim that the City had brought against appellant uncle[who was a seperate plaintiff] in an effort to seize the home and assets of the appellants uncle.

The trial Court denied defense motion to call arresting officer, and the Court also refused to allow the jury to hear the testimony of the witness present at appellants arrest.

Appellant was apassenger in a vehicle which was operated by Darrell Lee, whom had a vaild license at the time of this stop, Darrell Lee was later aquitted of all offenses arising out of this incident, and the judge in that matter dismissed all traffic infraction against Mr. Lee. [City ofTacoma v Darrell M Lee 2005] Appellant has requested the trial transcript in that matter however counsel was not able to because it was a different case than appellants case on appeal.

The officer noticed appellant,knew who he was and then arrested Mr. Lee in an effort to arrest appellant, One Tacoma police officer who was not at this arrest but testified as to her response to the residence,date of the alleged offense involved that officer, Officer Linsue Peterson testies;

LP: Now you don't know Mr. Thomas do you officer?

CN: I do not

CN: Yet you know his name?

LP: Yes, I do

CN: How is it you know his name

ST: Objection relevance?

CT: Objection denied

LP: I've seen his name on several bulletins within our department.

CN: Have you ever heard that a sergeant MUST be called when Mr. Thomas is involed in an Arrest?

LP: I've heard that before

CN: where did you hear that?

LP: The rumor Mill. (all the above at 7RP185.)

Appellant introduces that to show that even officer who dont personally know me. know me within the department.

Counsel tell the court at another point:

CN: Mr. thomas been involved in litigation over the years with Pierce County and the City of Tacoma over police harassment...federal Courts havegiven him ajudgment ...Only recently for false arrest, malicious prosecution...The TPD is under an obligation of Federal Court not to have contact with Mr. Thomas unless theres a Sgt. or higher present...And indeed when he was arrested, three weeks after this incident taken into custody without no Probable Cause, because it was a Stale 3 weeks later, there was a lieutenant present who told Mr. thomas that "we always have Probable Cause when you're involved. 7RP169

After the State rest's and defense ask's for directed verdicts, The state tells the court;

ST: You honor the State would rest and I believe counsel intends to call Mr. Lee as his first witness, and I think we're in need of an offer of proof ..before we put that testimony before the jury, because the State is going to object on the grounds of relevance

CT: Whats the relevance?

CN: We'll put Mr. Lee on and make an offer of proof

CT: lets do it now, without the jury

CN: Sure Mr. Lee come foward.

Mr. Lee was sworn in and testifed as follows;

CN: Directing your attention to Sept of 2005, Do you recall driving your car with Mr. Thomas?

DL: yes...

CN: Do you recall an officer tried to stop you?

DL: Yes

CN: What did you do at the time

DL: We drove across the bridge--well, the reason we turned around in the begining was because I was running out of gas so we did a u turn on the bridge and I accellerated the car alittle bit so I could get to the gas station. And the police he was sitting in this little cut thing on 38th street bridge, where they always be so they can give people tickets.

When he hit the lights on us, we pulled into the gas station and when he pulled into the gas station he asked me for my license and I gave it to him. 7RP279

CN: What happened next/

DL: After that we sat there for about 5, 10 minutes and then all of a sudden a whole bunch of different police officers started coming up, pulling up. I thought. I thought he was just giving me a drivers ticket right I aint did nothing else, I got a license, whats all the extra officers for?

CN: Did you discuss with Mr. Thomas why this might be happening?

DL: no, we didn't really discuss, he didn't tell me nothing about what was going on, about whey [why] they was pulling us over. the officer had told me he was pulling me over for a ticket. he never asked Mr. Thomas nothing. he never asked him his name or nothing.All he did was sit over there on the passenger side. And then after all the other officers came to the gas station, they all started surrounding the car. And I had my doors locked and he asked me to open my door and I said "what you want me to open my door for? Whats the reason you keep asking me to open my door?" 7RP240 And he wouldn't tell me that, well, we got a warrant for Cory Thomas, or none of that. And then he told me he's placing me under arrest for not following the officer's order or something like that, and I was like "well, what are you placing me under arrest for if I got a license? I shouldn't have to open my door to you. I shouldn't have to unlock my door, you got my license, you told me what I was charged with.

CN: What happened next sir

DL They pulled out a taser gun and made me open my door, then they got us both out the car and I was like "what you all messing with him for? and they said, dont worry about that, he got other issues to deal with." I was like "oh"-- I got arrested myself for, you know just driving.

CN: did you hear Mr. Thomas say anything to the officers?

DL: No, he didn't , no he didn't say nothing to them. He just went along with them and let them--he asked for a Sergeant to be there, Thats one thing he did ask them for, for a Sergeant to be on site when they arrest him and stuff.

CN: Was there a Sergeant there?

DL: Yes, a sergeant did come eventually

CN: What did the Sergeant say

DL: He came over to the car and then they got cory out of the car and took him around to to another car--and then--well, they got me out the car before they got him out of the car, because I had to unlock my door. When they took me out of the car, They got him out of the car and then they just took us both downtown from there.

CN: did you hear any question about Probable Cause?

DL: well, they told him, like pretty much they said, "Mr. Thomas, with you there's always probable cause" and they were saying something like "well you think because you got our money--now were going to get some of it back."

CN: What do you mean got out money?

DL: Talkin' about the lawsuit he had going on with the State, Talking that they going to get some of their money back one way or another. eventually you going to give us the money back if we keep arresting you, pretty much is what they were saying.

CN: other than the taser, did they have guns drawn if you noticed ?

DL: I dont know, the dude put the taser on me, man, I was like whoa, because he stuck it all

down in the car and put the red light on me, I was like whoa, pretty much, I was worried if he was going to shoot the taser up in the window or not. It was a routine traffic stop at first, thenit just turned into--it escalated, they never asked him name, thats why I was like why aren't you asking him to open his own door? you got a warrant, why dont you all ask him to open his own doorfor you guys? why you guys want me to unlock the door? any other time I get pulled over and get a traffic ticket, they never do that. 7RP242

Counsel then shortly thereafter finished with Lee, the prosecutor said he had no questins for the witness, and the as the witness was being excused he asked the witness if he knew the date that this arrest was on, Lee told the prosecutor that He does not know the exact date but that he got arrested on the same day. 7RP244

The State then tells the court that he see's no relevance for the jury to hear this

Counsel tells the Court he tried to subpeona the Lieutenant but that he could because he didn't have time to.[later ground] The Court States;

CT; We have an incident thats been testified to, August 27th the alleged victim and the alleged friend take the stand, it did happen, we have another incident in september where the defedant was arrested...whatever the police department has to do with Mr. Thomas, how is that relevant to what the victim testified to,...thats the hole core of this case I dont see the relevance. 7RP247

That was the extent of the objection and motion, nonetheless the court failed to rule if Probable Cause existed that issues as well, now before this court.

ARGUMENT

The question as to whether probable Cause for arrest exist is a question of law, and review is de nove. In Re Detention of Peterson 145 Wn 2d 789,799. The Federal Court has articulated the the determination for probable cause is twofold and that each step requires a different level cf appellate review. First the Judges must determine the "Historical Facts" that is the events which occured leading up to the stop or search, and second, judges are to decide whether these historical facts,viewed in the standpoint of a reasonable police officer amount to P.C. Ornelas v United States 236 F2d 924. There are four proceedures authorized for for commencement of criminal proceedings, that is (1) the filing or aninformation by the prosecutor in Superior Court (2) grand jury indictment (3) Inquest proceedings and(4) filing of a criminal complaint before a magistrate. All are established, recognized and legally permiisable methods for determinig the existence of probable cause. State v Smith 97 Wn 2d 862 State v Jefferson 79 Wn 2d 345.

In the Case on appeal the proceedures outlined above may not be able to be met without a proper record made by the court on the matter, Appellant did raise this issue when asking the court explicitly to make a ruling as to P.C. which the court did not, nor did the court allow the arresting officers to testify, the officer made a mere assertion of P.C. being indefinite due to lawsuit, appellant assert that is not lawful, and, Mere expression of officers opinion without more, cannot form the basis of issuance of an arrest warrant. State v Spencer 9 Wn 95. Counsel did attempt to call the officers but did not and counsel told the court he mainly wanted to call the officer to point out bias, Defendants counsels failure to challenge validity of defendants arrest was ineffective assistance of counsel, since such failure could not be characterized as a tactical decision or a sensible strategy." State v McFarland 73 Wn App 57.

Where issue as to whether officer has PC to effect arrest is injected at trial by reason of charging part of information, factual issue is presented to the jury to decide, State v Hutton 502 P2d 1037 A warrantless search [or seizure] is not valid unless the state proves that it falls within one of the specific and carefully drawn exceptions to the warrant requirement of the 4th amendment. State v Houser 95 Wn 2d 143, State v L.K. 95 Wn App 686 If a search and seizure is conducted outside the judicial process without prior sanction by nuetral and detached magistrate, the State has the burden of justifying the search [or seizure] under one of the exceptions to the warrant requirement State v Marcum 24 Wn App 441(citing Arkansas v Sanders 99 S. Ct. 2586)

This gound warrant DISMISSAL and that is appellant remedy requested.

GROUND 5
CONFLICT OF INTEREST NOT PROPERLY ADDRESSED

Appellant at various hearings, raised the issue of 11 conflicts of interest, in which two courts failed to make any inquiry, until several hearings later.

ST: "This matter comes before the court on the day of trial, Both parties are agreeing to a continuance in this matter. I believe Mr. Thomas is not agreeing to that continuance... Both the state and defense counsel are asking to continue this matter until Oct. 27. **1RP1**
Counsel for appellant also make a continuance record.

Ap: First of all I object to the continuance. If I have to, I'm prepared to go pro se and represent myself. Today is my trial. My last attorney asked me to do a 30-day continuance and said that today would be my last day to go to trial. And like I said I will represent myself. **1RP4**
Secondly, I'd ask that the court find a conflict of interest in my case with the Department of Assigned Counsel. They represent the victim in this case, they represent my co-defendant in this case, and they represent a victim in my other case. **1RP4**
Seperate from that I sued the City of Tacoma and prevailed. There's two attorney's who worked in the City of Tacoma Civil Division and are now employed by the Department of Assigned Counsel, And for those reasons I ask that the court find a conflict in my case **1RP4**

Cn: Your Honor, If I can address that matter, Mr. Thomas did bring this to my attention. Last Week in a telephone conversation... and I'm going to look into that **1RP4,5**
I'm not aware that we have any current employees of Department of Assigned Counsel that used to be employed by the City of Tacoma Attorney's Office, But in any event, I understand what he's saying regarding other conflicts with victims (and) co-defendants (and) witnesses and I will look into that if there is a true conflict, then we'll address that and I'll address it with my supervisor. So that's not the reason I'm asking for the continuance... But in any event at this juncture today, I'm his lawyer and I'm not prepared... **1RP5**

Appellant explains that I have spoken to his supervisor who recognizes conflict(s) that I have been conflicted out before, but the supervisor is not going to conflict me out again. **1RP5**

Appellant ask the court to find a conflict in the other case [34335-5] and that I will represent myself in [34328-2] the court conduct a pro se colloquy and allow pro se, the State moves again for 1 cure period.

Ap: I got a couple of motions. When I was dealing with that, I wasn't quite clear, but it was before the court that I made a motion for the court to make a ruling on the conflict of interest in this case, and I ask that the court make that ruling before signing the order to allow me to represent myself, because there is a conflcit in this case here, **1RP10**

Appellant then again raises specific conflicts, the State addressed one of them, counsel who was conflicted states:

Cn: At this point he's proceeding pro se so there's no longer a conflict on this case. **1RP10**

Ct: I am not removing the Department of Assigned counsel based on any alleged conflict I am granting Mr. Thomas's motion to allow him to represent himself. **1RP10**

Appellant then make a second motion for the court to dismiss due to state unpreparedness and that a order be drafted for the P.C. Jail to provide pro se materials, tools. **1RP11**

Ct: I would consider allowing it to the jail to give you access to the materials you need to defend yourself... 1RP12

The court denies the motion to dismiss, the ct further stated:

Ct: I granted the State a reasonable time period to subpeona their witnesses and have them here for the next trial date 1RP12

Cn: So the record is clear on my behalf, I informed the appellant that I would be requesting a continuance. 1RP12

Ap: I asked the counsel to let the State know I would proceed pro se if he was not prepared, and that I would be prepared to go to trial. And for that reason to have the State to have it's witnesses their. 1RP12

The State nor Conflict Counsel gives a rebuttal.

Ct: It's a matter for debate. 1RP13 (court adjourns)

Order never drafted, conflicts not inquired into, at all by the court before signing pro se order.

(Argument below next ground, as grounds both relate just different court departments)

GROUND 6

2ND INSTANCE OF CONFLICTS NOT PROPERLY ADDRESSED

Both [34328-2],[34335-5] before CD1, the last ground was before CDPJ. The State and Conflict Counsel represent to this different Judge.

> Noticed that the continuance order that we filed last week had some errors on it, one of which was the cause number was wrong, And it also had, under the expiration of speedy trial it said 10/11 when it should have been 11/11/05. 2RP3

Appellant first asserts mismanagment, on behalf of the State and conflicted counsel whom, prepared the orders, appellant asserts that this seamingly minor error become grave later in the issue of both appeals 'Proceedural Management'.

Appellant second asserts the State and "Substituted" Conflict Counsel, in err misrepresents facts to the court. Clearly on 09/27/05 CDPJ when asked by appellant to explain how speedy trial expires the court stated:

Ct: Thirty days after todays date. 1RP8

Thirty days from 09/27/05 is 10/27/05. Where the lawyers got 10/11 or 11/11 from is unknown to appellant but it clearly is not supported by the record, further how "Substituted" Conflict Counsel for "pro se representation", discussed this alleged error with the State when he was no longer a party to this cause number, is troubling in thought, as the State and "Substituted Conflict Counsel" obviously had subsequent conversations about constitutionally related matters involving myself.
At the very least, this "New" expiration date, that is in err, will forever effect later Speedy Trial or "Time For Trial" dates.
Conflicted Sub.. Counsel goes back again onto the record and begins making representations. 2RP4
Additionally, the State, in representation at a Bail increase hearing, represents.

St: The State under the 436-4, currently has bail around $33.000, The State would ask to increase that to a Hundred Thousand because of the newest charges. 2RP4

Appellant contends though it is seemingly monor, in relation to the amount being requested, for the State to comment "Around" $33.000 at a bail hearing is again mismanagement. What if bail "Around" $55.000?

Conflict Substituted Counsel in "Proposing" a new order to this court, again makes misrepresentations

Cn: The proposed order is identical to the one that we prepared last week, it just has the wrong cause number on it. 2RP4 and again misrepresents: The order that you have in front of you, Mr Miller has prepared, has identical language to it as the other court order, which is in the courts wrong file. 2RP4

Ct: Except for the correction on the Speedy Trial date. 2RP5

Thanks to the court for catching these misrepresentations at least in part. Appellant recognized it before I even got to that portion of these VRP's.
After the Misrepresentaions by two officers of the court Sub..Conflict Counsel has the gall to utter:

Cn: Thats correct, those are the two things that need to be corrected, so I would ask that--

That you sign that and make it effective NUNC PRO TUNC, and just take care of that - "Housekeeping Matter". 2RP5

That was outrageous and unbelievable, not only the misrepresentations but now Substituted Conflict Counsel makes a NUNC PRO TUNC order request in a case that not only is he not a party to, but tried to manipulate the court into signing a (in effect) Nunc Pro Tunc, and Speedy extension order, before even uttering that it would have Nunc Pro Tunc effect, affecting other matters as well, by representing it was "Cause Number Only" under the guise of "Housekeeping Matter". The Court in Stating "correction" to the speedy trial date, is in the right mindframe, but is still yet, in another way having the wool pulled over her eyes; The "Correction" is an "extension". The State clearly said when the last court date was Sept. 27. 2RP5. yet the order "Proposed" still has a date further out than 30 days, of last hearing.
The Appellant refused to sign the erroneous order. 2RP4
After all of the misrepresentation are made and counsel is then exposed, all of a sudden, maybe 'ethically' Substituted Conflict Counsel states:

Cn: On that cause number, your honor, Mr. Thomas requested and was allowed by judge Orlando to proceed in this case pro se, so he's going to represent himself today in that bail hearing. 2RP5

Perfect timing for counsel to allow a Pro se litigant to proceed pro se.[to the reviewers of this appeal, appellant does not intend to raise seemingly trivial matters, but in the context of 'cumalative error' these collateral errors begin to affect the fairness of the proceedings too].

Substituted Conflict Counsel again on the record in this appeal, raises the issue of the conflicts because "they were on her docket", These are the same conflicts that appellant raised before CDPJ 1RP9, Those being the same conflicts that CDPJ refused to make inquiry into before signing the pro se order 1RP10.
Appellant by CDPJ's actions was not being afforded effective assistance, nor was being granted a speedy trial, thus appellant proceeded pro se, in an attempt to secure a speedy trial, and because "conflict" counsel is "ineffective assistance of counsel" or a State v Campbell continuance, by an attorney who is conflicted. And recognizes it,at subeseqent hearing. 2RP6
At this hearing in CD1 appellant ask's the court to appoint seperate counsel, since we are on her docket today, for the issue of conflicts. 2 RP5

Counsel who is representing a conflict and whom has been substituted knows there is a conflict in at least one way, and tells the court so, and furthers:

Cn: I'm going to strike that motion today and may have that revisited in the near future. I'm Looking into some of the issues that Mr. Thomas has brought to my attention. 2RP5,6

Counsel in addressing the issue with a couple of conflicts in regards to witness 2RP6, ends with:

Cn: I dont know if that rises to the level of conflict with you. I'm going to talk to my supervisor about that. And I've done a conflict check with all of the witnesses, there are some conflicts there. 2RP6 A couple of City Attorney's are in our office. 2RP6

Counsel here in CD1, recognizes more conflicts thatI long ago brought to his attention and last week brought to the CDPJ's attention, in fact counsel states while in CDPJ that he had been notifed "Last Week" about the conflicts. 1RP4
So by counsels own representations at the very least to this court, he has actively been operating under known conflicts since approximately 09/20/05, it is now 10/04/05. Nonetheless, counsel states: I'm not sure they rise to the level of necessity that we get another attorney outside of our office for Mr. Thomas, but I'm going to look into that at his request. 2RP6

Cn: So at this juncture, I'm not prepared to proceed on that, I'll just simply strike that Motion. 2RP6 So again all we have left is the bail hearing, and again, Mr. Thomas is pro se on that matter, so, with the courts permission, I'll ask that I be excused. 2RP6

Ct: You're excused. 2RP6

Cn: Thank you. 2RP6

No inquiry into anything whatsoever, by now two courts, and what about the Nunc Pro Tunc "Corrections", the Court signs them.

Appellant tells the court 'after their record' after reciept of discovery I dont think I can represent myself on this case [34328-2] and can I get an attorney seperate. [from DAC].2RP7

Ct: You were allowed to go pro se after rejecting the lawyer that the State had provided you. It now appears that there's some question as to whether or not that lawyer that's handling your other two cases can handle those cases, and if he cant handle those cases, either, at which time someone would be appointed for you for all three matters in one regular course. 2RP7. But currently we are not at that point yet. So I think you need to wait and see what happense with your other two cases before we solve the final issue of who should represent you at trial. 2RP7

The court make this statement like counsel did not just tell her that we are on her docket for those reasons [conflict] 2RP5,6
At this point appellant asserts that either the court erred in failing to ask any questions whatsoever regarding the conflicts, and if this court should find that counsel who was conflict -ed made a record regarding the issue(s), then appellant would assert that counsel was utterly ineffective for knowing of such error for several weeks now and it still not be resolved at this point. Counsel clearly acnowledges them 2RP6(these issue bearing on Speedy Trial) Further it was ineffective and in err for the court and counsel to not, set any future date to deal with the issues, no approximate date, no reserved ruling, nothing other than a continued I'm going to look into it. Counsel states how he will Just Simply strike the motion 2RP6, not being sarcastic, but in realest terms how I was feeling, why dont we just simply continue my speedy trials, simply keep setting this matter over, Like when CDPJ just simply decided to say. I'll take those up when those cases are before a Judge.1RP9 we are now before a judge in CD1.

Ct: So currently, your in a situation of being pro se, and the only matter were addressing is the amount of bail in this case. Do you feel comfortable continuing with just that limited matter right now? 2RP8 as if counsel did not state; The other issues there is also on your docket today, and at Mr. Thomas's request , is a motion to consider substitution of attorney's. 2RP5

Ap: Thats fine. 2RP8

Ct: Okay 2RP8

Ap: And-- 2RP8 (Appellant is cut short when trying to set a date to address conflicts)and proceeds on the issue of bail.

Appellant is in custody without the order the CDPJ's order for pro se materials, with errors from the first courts proceedings, wrong cause numbers issue, substituted conflict counsel is in essence representing a pro se litigant, Conflict counsel has obviously been in contact with the State regarding errors that are constitutionally related without appellants knowledge, he has in essence and in fact extended the trial by his misrepresentations, Proposing orders in a case he is not even a party to. after being discovered in his misrepresentations, then and only then does he change his limited proposed order theory to we are on the record at my request in regards to conflicts, conflict counsel has controlled the case to the point that we dont have a date to readress the cpnflicts, because he is going to look into them, later that hearing in addressing the conflicts he represents that I should have an attorney immediately [referring to another lawyer due to his conflicts] and yet turns around and says "He thinks" the best thing to do is reappoint himself. 2RP13 but at the very next hearing agains agrees that conflicts exist and he should be disqualified.
I submit when I said "Thats fine" I was not wholly in charge of my case. If for some reason this court accepts my "Thats fine",thetrial court nonetheless failed to conduct it own inquiry. and erred in reappointing conflict counsel in light of his acknowledged conflicts, should the court not be in err, counsel was ineffective for waiting this many weeks and ongoing as to a simple issue of does a conflcit exist? Instead the courts just simply took counsels assertions even when he was not a party thereto and set me over again, with the NUNC PRO TUNC order entered over my refusal to sign it. In regards to this "Housekeepin" matter appellant asserts it is clear I was not a resident..

CONFLICT OF INTEREST INQUIRY FAILURE ARGUMENT

Failure of court to inquire into conflcits of interest after defense counsels pre trial warnings of conflict, violated right to effective assistance of counsel because the court has the DUTY to avoid potential conflcits. Holloway v Arkansas 98 S. Ct. 1173. The court has the duty because "6th amendment holds, where a constitutional right to counsel exist, there exist the correlative right to representation that is free of conflicts of interest" Wood v Georgia 101 S. Ct. 1097. The court in these instance(S) neglected its duty to ask even one question from counsel at all, or set a date to address the issue based on his and appellants assertions and for no articuable reason, at all. whether or not a actual conflict exist when the court is made aware of such conflicts or "when the court knows of possible conflict, it has the duty to make inquiry" Cuyler v Sullivan 100 S. Ct 1708.

This court simply chose not address the issue's. "A trial court must make a factual inquiry if it knows or reasonably should know that defense counsel has a conflict of interest. State v Jensen 125 Wn App 319. Under Strickland which perhaps is one of the hardest test to overcome it was held; "Right to effective assistance of counsel impaired when defendants counsel operates under conflict, because counsel breaches the duty and loyalty, perhaps the most basic of counsel's duties, Strickland v Washington 104 S. Ct. 1097

It is a constitutional violation to do what both of these courts did "because the trial court knew of the conflcits and failed to conduct further inquiry" U.S v Greig 108 F3d 1272 1282. See also In Re Matter of Richardson 100 Wn 2d 699(holding it is reversible error if the court fails to make inquiry, no prejudice need be shown.) State v Hartfield 51 Wn App 408 (holding defendant alleging counsels conflict of interest need only show the court knew or reasonably should have know but failed to inquire as to whether conflict actually existed) U.S. v D'Amore 56 F3d 1702(holding absent compelling purpose it is a vioaltion of 6th amendment to deny motion for substitute counsel, and error is error that must be reversed regardless of whether prejudice results) Atley v Ault 191 F3d 865,875(holding harmless error standard does not apply to failure to make inquiry into conflicts) U.S. v Gallegos 108 F3d 1272, 1282 (holding right to effective assistance violated because court failed to obtain waiver to conflict free representation) U.S. v Prochilo 187 F3d 221,225 (where the record voices objection to appointed counsel...court should inquire into reasons for dissatisification.) U.S. v Anderson 189 F3d 1201, 1210; Stouffer v Reynolds 168 F3d 1155, 1161; U.S. V McCullah 76 F3d 1087, 1098-1099(holding prejudice presumed where trial court fails to adequately inquire...)

Where the court failed to do these mandatory holdings, REVERSAL is required, in light of all the errors subsequent hereto DISMISSAL is requested.

B

Appellant at the first hearing also requested that a order be drafted for pro se materials. "The 6th amendment right to self representation inlcuded the right to access to law books, witnesses, and other tools necessary to prepare a defense... A incarceated defendant may not exercise his right to represent himself without access to law books, witnesses, and other tools to prepare a defense" Taylor v List 880 F2d 1040, 1047

Appellant asserts it was also REVERSIBLE error to not draft this order after knowing that appellant was in custody and specifically requested these tools.

C

Appellant asserts that the CD1 court erred when it not only told appellant that in essence I would have to proceed under the same limitations or accept a conflicted counsel. "A defendant cannot be forced to choose between incompetent [or Conflict] counsel and no counsel at all, it implicates the fundamental fairness and accuracy of the criminal proceedings and a showing of prejudice therefore not required" Crandell v Bunnell 144 F3d 6, 12-13.

Where appellant did not have the proper tools to be my own counsel, in essence appellant was made to choose between both ineffective pro se or counsel Counsel and no counsel at all. this placed appellant in a dilemma of a constitutional magnitued, regrettably, and reluctantly, choosing the lesser of two evils. appellant had to forego pro se representation. and proceed with conflict counsel as, conflict counsel was better than no counsel at all, self or otherwise. Third is conflict counsel or no Counsel at all

A criminal defendant may be asked to choose between waiver and another course of action as long as the choice presented is not constitutionally offensive. Illinois v Allen 90 S. Ct. 1057 Brady v U.S. 90 S. Ct. 1463 "The decision is therefore voluntary unless it places him in a dilemma of a constitutional magnitude." Maynard v Meachum 545 F2d 278.

Appellant submits that my decision in "Thats fine" was not wholly voluntary, I was entitled to proceed pro se with meaningful tools, and was not given those. I submit that I also had to forgo one right in order to secure another one.

An inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected. Allen v City of Honolulu 39 F3d 936 (9th Cir)

For the aforementioned reasons appellant move this court to DISMISS.

GROUND 7
UNREPRESENTED FOR THE PURPOSE OF HEARING

After all of the conflcit assertions, appellant is now back before CDPJ The State opens:

St: Mr. Quigley has determined --Ishould say Department of Assigned Counsel and Mr. Quigley Have determined that while a conflict may not exist. 3RP1
The relationship has broken down to the point where he needs to be disqualified and substitute counsel brought in. 3RP1
Mr Schoenberger has agreed to be the substitute counsel. He does not work for the Department of Assigned Counsel and has agreed to sign in. 3RP1
Because of that, because of Mr. Schoenberger's trial schedule, we will be asking that the court set continuance motions next week. 3RP1

Ct: Mr. Quigley

Cn: Your honor this is Mr. Thomas's motion today...I think the main gist of what Mr. Thomas wants from the court is to have the Department of Assigned Counsel disqualified from this case. We brought this to your attention last week. I indicated at that time that I dont believe that the conflicts that Mr. Thomas believes are conflicts, rise to the level of necessity that a new attorney be appointed...3RP2
I have talked to Mr. Kawamura of my office, who is my supervisor, who has indicated he does not believe its a conflict. 3RP2
The second conflict is what I would call routine conflicts in these matters. 3RP2
Mr. Kawamura agrees what should be done is to send letters out to other attorney's in the office, to not discuss the matters... So I dont believe that those conflicts are what give rise to the necessity that I be disqualified. It think what does is the content of Mr. Thomas's motion, which lays out numerous facts. Some of which I agree with, most of which I dont... 3RP3 (see Exhibit #)
I had Mr. Schoenberger sign a proposed order which I will hand foward at the appropriate time substituting him in as counsel for all three of the cases. If I am allowed to withdraw and be disqualified. Mr. Schoenberger is not present today. He's at McNeil Island conducting some interviews... 3RP4
Mr. Schoenberger has advised me he wouldn't be available to try this case for at least a month. 3RP4 and my understanding of the court rules is if I am disqualified today. Today is the new commencement date for all three of the files. 3RP4

The court ask's appellant if he would like to speak?

Ap: Yeah I do, First one, I guess I would object to any continuance of my speedy trial dates. I have raised these issues long time ago and they have been ongoing because the court allowed them to go on. None of the issues are pretty much new, They all have been back--dated issues and it should have been addressed a long time ago. In the event that they were, My trial dates might not have had to be continued... 3RP5

((at this point appellant will for the first time say "But for Counsels actions"..))

Ap: I did want another counsel, but after all the errors I brought to this courts attention I believe that constitutes a manifest injustice and I make a motion for DISMISSAL on these cases. I dont know if this court is going to rule on that or not But that was-- My initial motion was for DISMISSAL because of the manifest injustice due to all the errors. 3RP5 It is clear now that what I am raising is a factor and has been a factor, and is kind of late in my proceedings to say, okay, well, start over with a new lawyer, here we go again with a whole another speedy trial frame. 3RP6 And so I would just object to my trial dates being continued 3RP6 And, so I'm prepared for my defense, I guess I will ask again that the court give me an order for pens, and highlighters and my cases at the jail, and access so I can assist my [self] and my new counsel in my case 3RP6 [mistype]

Ct: I guess I'm not entirely sure what it is that you are objecting...3RP6

Ap: On My Burglary one and Assault two cause number [34335-5]If I have to, I am prepared to represent myself and go to trial next week, which is when my trial is set for. I dont necessarily want to represent myself, but I will, if I have to, if thats what it means to get to trial, or if thats what it means to take it to trial. Because I have been raising these issues, they should have been addressed long time ago. 3RP6,7 Its not my fault they weren't ready. I believe it it's partly my attorney's fault, partly this courts fault why they weren't addressed. But nonetheless, I am here now and have to continue my trial dates because of issues that I've raised since my arraignment, some month and a half ago. And I would object to all of my cases being continued, if the court does, thats discretionary, thats what the court does. 3RP7

St: Your Honor, maybe we could get an- it sounds like Mr. Cory is agreeing for the substitution disqualification and substitution, any continuance motion can be addressed next week 3RP7

(reviewers please do forget i'm unrepresented)

Ap: Okay if it is necessary to address the continuance motion next week, I guess what i'll say for the record is that I will go pro se. And I ask the State to have their witnesses available on my trial date, right now set for, which is next week. 3RP7

Ct: Well-- 3RP7

Ap: I want to go to trial on my cases and I shouldn't have to be subjected to sitting in jail on this excessive bail, because of errors I have been trying to bring to this courts attention, this should have been addressed a long time ago, and I wouldn't have to be here at this point today. I figured that thats what would happen, I would get all the way down to the end of my speedy trial and then the court would agree or my attorney would agree that these are valid and then say, well, we need a new attorney, he we go again. With speedy trial all over again. 3RP7

The court then impudently states: "You apparently suffer from selective hearing. the courts never ruled upon the validity of any of your motions. 3RP8 ((Really))

Ct: The delay in this case primarily was brought about by the first, your request to go represent yourself, which I granted, and then you shortly thereafter turned around and said you wanted to have an attorney. 3RP8

Ap: And the reason I will state again for the record that I said I wanted to have an attorney was because this court erred in not sending the proper materials upstairs for me to recieve what I needed to defend my case. I asked for pens, highlighters,law library access then and a few other things, I dont remember off the top of my head. 3RP8 And the court said it would send it up; the court didn't, therefore causing a due process violation.3RP9 So its not that I chose to have him put back on my case, as you're representing; I didn't want him there from the get-go. And had the Court done what it was supposed to have done, or told me it was going to do, then I would have never had to have had him substituted back in. I would still be pro se, and again I will add that my cases were continued again after the original date you said. And speedy trial had expired on a Nunc Pro tunc order. 3RP9 You continued them out two weeks, said I would have trial that day, and two weeks from there I didn't have trial, and they have been set out again. They continue to be... and I dont agree...This constitutes what I believe to be a manifest injustice, and I made a motion for DISMISSAL, or thats the motion I'm making.3RP10

Ct: I'll deny your motion...appoint Mr. Schoenberger as substitute counsel. 3RP10

Ap: And this Court-- 3RP10 ((I am again cut off)).

Ct: I dont find an equivocal request for Mr. Thomas to represent himself in all of his proceedings. 3RP10 I am not going to seperate these cases, have him represented in two and not in one case, which is actually the much more serious case.3RP10

Firstly, what part of I WILL GO PRO SE is not an equivocal Demand?, secondly I assert that the reason relied upon is untenable, I dont think he has the discretion to "Not seperate" cases that have seperate cause numbers and are unrelated to each other. in addition to the "equivocal" request what part of "And so I can prepare my defense I guess I will ask again for the court to give me an order for pens..." ect. ect. 3RP6 I guess what I'll say for the record is I will go pro se. 3RP7 It's not that I wanted him back I didn't want him there from the get-go.3RP9

Then in the most contradictory manner the court states:

Ct: I think its abundantly clear, he demonstrates some ability to file pleadings. But lacks, I think the ability to truly represent himself adequately. 3RP10

I think the only way I cant adequately represent myself is when I am not provided the tools that are recognized as being detrimental to a pro se defense or any defense. compare

Ct: I'll let him represent himself 1RP7, 3RP11

appellant then tries to address two seperate issues for the record, keep in mind I dont have any representative and we've already had this lengthy of a record. The State Says:

St: There's no reason to address any of them now. 3RP11

Ap: I will just add one thing. 3RP11

Ct: No, you are done. 3RP11

The court clearly stopped me from preserving my issues for appellat review [other issues].

These are more collateral issues surrounding the primary ground, and ask the court to now begin reviewing alot of these as clear error with clear error standard as well. [it is at this hearing that appellant files "notice to answer" which becomes a later ground and exhibit];this court room is our presiding department. Appellant asserts this was a critical stage, which I was not represented, at issue on this hearing date, thus far, is; issue of conflict counsel, reappointment of conflict counsel, due process, violation(s) of right to proceed pro se, pro se materials limitations, speedy trial and many I am probably not aware of.
Though the court gave no tenable reasons for its denial the State later comments "he was mad".

A

Appellant had to forgo his pro se, but at the very next hearing in which I had no representatio I demanded to go pro se, waive counsel, and have this court draft the order previously agreed it could have become less prejudicial but the court did what it did. "An accused is not imprisoned within his rights and may waive his previously invoked right to counsel." State v Marcum 24 Wn App 442,445 (citing U.S. v Womack 542 F3d 1047 (9th Cir))(citing as well North Carolina v Butler 99 S. Ct 1755.) Not only was it erroneous to deny pro se with no truly articuable reason. it was also error to imprison the appellant within my right to previously invoked right to counsel, that not only was I in essence forced into, I was unrepresented at this hearing.

B

The court not only erred in both imprisoning me within a right, and pro se denial, the court erred in yet another way; By making a appointment of this "New Counsel" who was to represent me over objection, When he wasn't even there (in the courthouse for that matter).This court left me unrepresented at a critical stage of my proceedings in which various rights, loss of rights were at question, as argued above.

"The courts gaurantee of assistance of counsel cannot me satisfied by mere formal appointment. U.S. v Cronic 104 S. Ct. 2039,2044 Aver v Alabama 60 S.Ct.321,322.
Also "Defendant was entitled to be represented by counsel at hearing on motion which he sought appointment of new counsel, because of alleged incompetency [or Conflicts] of his present Counsel." U.S. v Wadsworth 830 F2d 1500 (9th Cir)

"Few circumstances give rise for per se violation of 6th amendment, one is no counsel present at all or counsel not present at critical stage." Cole v U.S. 162 F3d 957,958 "We have found a constructive denial of counsel in cases involving the absence of counsel from the courtroom." Jackson v Johnson 150 F3d 520,525. "In extraordinary situations a petitioner may be relieved from makin·a specific showing of prejudice in support of his [ineffective] claim, that approch is limited to the rare cases where a petitioner has been denied counsel at critical stages." Young v Catoe 205 F3d 750,762-763. "A critical stage in the prosecution during which a defendant is entitled to be represented by counsel under the 6th amendment [is a trial like confrontation] in which substantial prejudice to a defendants rights inheres, and in which counsel may help to avoid that prejudice." U.S. v Leanti 322 F3d 1111(9th Cir).

Had counsel been present he could have surely, at least (helped) to avoid those adverse affect on the 5-6 rights at question. Appellant was again subjected to violations of right to effective assistance, right to proceed pro se, speedy trial, pro se limitations, ect ect. But the only counsel representing appellant was no counsel.
This Ground warrants DISMISSAL as well.

GROUND 8
PRO SE DENIALS, AND OTHER ERRORS

Oct 24 2005; Counsel Schoenberger actually appears, but the record fails to evidence where he filed any formal notice of appearance etc. The Court grants another State v Campbell continuance, at Counsels request, and sets trial for Nov 28 with an Omnibus Hearing set for Nov 9 the judge does state: I take notice Mr. Thomas has indicated a refusal, I also changed the language saying that this isn't by agreement, it is actually based on State v Campbell and required in the administration of justice. 3RP14

Nov 21 2005; Before appellant is even in the Courtroom the state comments:

Ct: Cory Thomas Your Honor 3RP15.

When I get in court the State conducts its formal opening, defense counsel moves for another continuance of trial to January 3rd 2006 with an Omnibus Hearing of 12/02/2005

Cn: I would state that Mr. thomas does not agree. he feels he has speedy trial issues. And I believe he has some other issues he would like to bring to the attention of the court.3RP16

The State notes this case is 187 days old 3RP16

Appellant tells the court I apologize, if the court felt the issues previously raised were disrespectful or rebellious in nature and that "Basically I am trying only to protect my rights here, though, and it appeared to me and in some instances it appears to me, that this court is not concerned with those, and more concerned with the conviction. rather than ensuring my rights. I object to this court date being set out past my speedy trial deadline of the 60 days. and that I object to this court [date] being set , as this is my 'Second' commencement restarting date for my trials. 3RP17 I request or make a request of this court that the court allow me my discovery under the public information act, and as [a] legally interested party to this case, I dont want there to be a State v Campbell issue as far as not being ready for trial, when I can be prepared myself, but the court has ruled it wont allow me to represent myself after it had allowed me to represent myself on these cases before. Two other issues I haven't been able to address these issues because I wasn't allowed to go into my last two hearings that I had scheduled. 3RP18 The record will reflect I was not present, I have the right to be present at all proceedings (argued infra) "I would ask at this time if I could file a notice of intent to seek discretionary review based on some of the rulings that you've made, so that my notice of intent to seek discretionary review is timely.3RP18
((at this hearing appellant filed a motion for extraordinary writ with division two, Exhibit))

Ct: Grant the requested continuance under State v Campbell to Jan 3rd trial date... Omnibus hearing date for Dec 8th. 3RP18 You are represented by counsel, any motion that you wish to bring, you need to run through your attorney. 3RP18

Ap: **Okay I choose to go pro se.** 3RP18 (no question as to equivocalness, clear demand)

Ct: We are not having that dicussion, it's already been ruled upon. I am not ruling on it again. 3RP19 (with absolutely no further record on the matter)

Ap: I am asking at this point if you can state for the record why you are not allowing me.3RP19

(if any question as to equivocalness it could have been cleared here again but the court refused, This was another clear demand.)

Ap: I choose to go pro se. 3RP18

Ct: It's already been ruled upon. I am not going to revisit the issue. we have had this discussion on numerous occasions Mr. Thomas. 3RP19

We actually have not had this "discussion" I've been denied, the strongest possible reason if it existed would have been like he said "I dont find an unequivocal request" well that logic has again been shot down, this hearing and the hearing before last.

Ap; Well, theres a couple issues I ask that you make **administrative or judicial determinations** on, and the first one is--3RP19 ((cut off again))

Ct: Hold on a second, I have already ruled, I dont need to hear anything from you. 3RP19

Clearly appellant just told him there were a couple of issues for admin..determinations?

Ap: So is this court again allowing me not to speak, which is my right? I mean, its a canon that as a legally interested party I have the right to make a full record of speech. Obviously if my attorney's not raising the issues for me, I should be able to raise them with the court myself. 3RP 19.....

Ct: ----

Ap: well can I seek my notice of intent to appeal can I file that? Thats my right. I want to file a Notice of intent to seek discretionary review. 3RP20

Ct: You can file documents with the Court of Appeals that you deem appropriate.

Appellant then asked the court to provide a copy for me to fill out (RAP 5.2 J) The judge says its not a document they provide and told me to talk to my attorney, Appellant submits my attorney was doing absolutely nothing Ø. as the record reflects the RAP further states that if the document is requested in open court the Clerk Shall provide it, I later tell the court this and he still at that point does not provide it.
The Court erred in denying this form and my pro se demand, aside from not allowing me to create a record for appellate review and all other errors above,(It should be noted that after appellant provided the court and the State with a Copy of the Extraordinary writ motion sent to Division Two, did the State move on my behalf, not counsel nor the court but the State.)

NEXT HEARING **ARGUMENT TO PRO SE DENIAL(S)**

A

The Judiciary act of § 1789 1. Stat. 73, 92, 1789 Current version at 28 USCA §1654 provides: In all courts of the United States the parties may plead an manage their own cases personally or with the assistance of counsel if agreed "An accused is not imprisoned within his rights and may waive previously invoked right to counsel" North Carolina v Butler 99 S. Ct 1755

In Faretta v California the court in a precedent opinion held, "That in a State Criminal trial a defendenant has a Constitutional right to proceed pro se...Forcing a lawyer upon a unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so. The right to defend is given to the accused because it is he who suffers consequences if his defense fails, the counsel provisions of the 6th amendment speaks to "Assistance" assistance **meaning an aid** to the defendant. to thrust counsel upon the accused violates the logic of the amendment. allocation of a lawyer can only be justified by the defendants consent the choice to defend must be honored out of 'the respect for the individual which is the life -hood of law'".Faretta v California 95 S. Ct. 2525

Defendants have a right to represent self and unjustified denial of this right requires reversal. State v Stenson 132 Wn 2d 668. Where a demand to proceed pro se is made before trial without continuance motion, the right exist as a matter of law. State v Hegge 53 Wn App 345 The denial of right to pro-se is not subject to harmless error analysis. McKaskle v Wiggins 104 S. Ct. 962. The denial of right to self representation is per se prejudicial error and requires automatic reversal of conviction...once a defendant has stated his request to represent self clearly and unequivocal fashion, and the judge has denied it in equally clear and unequivocal fashion, defendant is under no obligation to renew motion thereafter

and may accept judges ruling as final and may take all proper steps deemed necessary to obtain best possible defense under the circumstances. U.S. v Arlt 41 F3d 416(9th Cir) In this case on appeal the State cannot counter that it was unequivocal 3RP7 applies to the most recent request though others have been detailed above. I suggest two additional factors if not the record itself, which can be no clearer, however I would offer that the reason provided to the new second CDPJ judge at the very first 01/03/2006 hearing was to the exact effect of "he was mad at Mr. Thomas" Appellant has filed with this court an objetcion to that portion of the proceedings as not being provided. Counsel for appellant on appeal did request two volume for that day, and appellant believes it was purely mistake she was not aware that there was a norning session that preceeded the morning session provided by the transcriber. That portion would therefore be(Supp 3RP___) Yet another telling event was the fact that after appellant sought outside review by way of writ, the State motioned on behalf of appellant, their motion is titled "Motion to Proceed Pro Se" CP___ as this court is well aware of by now the Court had once previously went through the colloquy, therefore the State cannot rebut that the colloquy was insufficent.

The 6th amendment rights were violated by courts appointing counsel to represent her at trial despite her wishes to represent herself, The defendant was competent to waive her right to counsel and she unequivocally stated her wish to represent herself, following exstensive discussion and advisement occuring before trial. U.S. v Ottley 66 Fed Appx 119 (9th Cir). Where commencing several weeks before scheduled trial defendant unequivocally and repeatedly demanded his constitutional right to represent self and no motion for continuance was made nor was there any suggestion that request was to delay, disrupt, or obstruct trial, and where it was at no time waived, court erred by refusing to allow defendant to represent self and new trial was required. State v Watkins 25 Wn App 358 Like Watkins the appellant continued to re-raise the issue, and continued to object, and the in the most basic wording the court after the first alleged finding that it was not unequivocal refused to ever again make any subsequent record as to why subsequent denials were made, and yet opined that, we have dicussed this previously and he was not going to "revisit" the issue even in the face of the appellant asking the "Court" to make an record of why it was being subsequently denied. 3RP19 and to also in a seperate sentence and statement "make a Admininstrative or Judicial determin--ation" as to why appellant was being denied 3RP19. Appellant submits for any effective review the ethical and legal thing to have done would have been to simply make a record, appellant and the judge had more discussions surrounding the issue than one simple record could have cured or possibly cured, I again submit the State gave the most honest assessment in stating the judge was MAD.

Summation; The 6th amendment right to self representation violated when the court denied defendants timely request to proceed pro se made after knowing and intellegent Waiver. Moore v Calderon 108 F3d 261,264(9th Cir). The right to self representation is either respected or denied, its deprivation cannot be harmless. State v Vermillon 51 P3d 188 and as for the first order drafting issue, "It cannot be abridged" State v Hoff 31 Wn App 345.

B

In only certain situations can a pro se request be denied, here the court recognized those not to being a foctor discussed below.(In another ground as collateral record to that ground.)

Erroneous denial of motion to proceed pro se requires reversal without any showing of prejudice... a right to self representation can only be denied by a showing that the motion is made for (1) improper purposes i.e. the purpose of unjustifiably delaying the trial or hearing, or (2) that granting the request would obstruct the orderly administration of justice. State v Breedlove 79 Wn App 101, 138 Wn 2d 298

Clearly REVERSAL is not only warranted but mandated but because this error ultimately violated speedy trial. DISMISSAL is warranted, and requested.

NEXT HEARING

GROUND 9

DISCRETIONARY REVIEW FILING NOTICE DENIAL RAP 5.2 (j) (2004) STATES UNTIMELY MOTION FOR APPELLANT TO PROCEED PRO SE

Only after the point of proceeding by way of extraordinary writ of proceedings to Div. 2 and filed the same in the trial court with a copy for the State, The State again in some conciliatory type act, motions on appellants behalf in formal motion apprximately 11 pages (Appellant does have with him at the time or typing) The State in its motion also took the liberty to specify approx, four dates that request/denials were made.
The State does make the misrepresentation that on 10/04/2005 that appellant requested an atty. "because he wanted one" 3RP21 Appellant clearly told the court the reasons that appellant requested an atty. 3RP8,9,10. Counsel goes on; On Oct 24 3RP21 "Defendant at that point requested again to go pro se...His request was denied."3RP22 "On the 21st the defendant then requested to proceed pro se. The court denied his request." 3Rp22 By this motion alone at the very least, the State recognizes at least two clear request, with clear denials. The State's brief goes on to note other dates as well.
Counsel for appellant, in one of another instances of implied ineffectiveness (in appellants eyes) states; Because he has handed me something for filing that he wants filed in captioned 'Supreme Court of Washington' ...I have no knowledge of whats going on until today, when Mr. Sheeran gave me copies of these letter and so...3RP24 Be it noted that counsel made his very first appearance on October 24, 2005. It's now a month later, notwithstanding the statement just made; Counsel states: "And he's filing documents and asking for discretionary review on things that happened before I was involved in the case. **So I'm confused whether I'm Stand By counsel, Primary Counsel, or not at all involved in this.** 3RP25
Clearly ineffective to not know your role after a month of being assigned.

Ap: ...Hopefully I will be fully heard today... 3RP25 First one I believe this Motion that the State is making is untimely, and its only after I sent this notice to the appellate court and the Supreme Court for discretionary review..And so I believe that this is-- I mean, The harm is pretty much already been done in this case... I appreciate the fact that the State is recognizing that it was my right...now they are bringing me back approximately 30 days before my'second commencement date' which is also past my speedy trial date. And is asking me if I want to go pro se. 3RP25, 26 I asked last week at my court appearance for a notice of intent to seek Discretionary Review...But under the rule of appellate proceedure I believe 2.3, or actually it is 5.2(j) The Clerk Shall provide that, if requested in open court. and I did request that and the court told me he wasn't going to give it to me. 3RP26 You told me simply file it when I got tothe appellate court level. And I object to not actually having that form. 3RP26 This motion here is only being brought after I have already sent that out to the appellate court. To seek Discretionary Review. And I think its untimely. And based on this error and the previous errors, I would renew my motion for DISMISSAL because I should have been able to go pro se then, and we wouldn't have been here today. And I asked you that, But you cut me off and you wouldn't let me speak, and that was my right to go pro se at that time And so I mean its pretty much useless at this point... And you know, what they raise in here is that you didn't ask me certain questions or things. but you did... As far as did I understand the law, have I represented myself before, do I understand the seriousness of the charges, and you did allow me to go pro se but it was only after I filed motions for DISMISSAL based on due process that you told me I couldn't go pro se anymore, And here they come with this motion...3RP27
So basically I think its untimely and my suggestion is that the case be dismissed because of that. And like I said, if not I have already requested Discretionary Review, and extraordinary writ on the appellate court level because of the errors in this case. 3RP28 I mean like last week, I clearly asked just for a form to seek Discretionary Review, and you told me no. The rule clearly states she's supposed to supply that to me, if, I request that in open court. And I dont even understand why that even happened that way. 3RP28 Like I said simply, I got an attorney, I am going to proceed with my attorney, but kind of late for this. 3RP29 You have already continuned my first trial commencement you have already continued my second trial commencement past speedy trial dates, if you did try to correct it at this point, it should have been applied at my first trial commencement, when I asked for it to be--to go pro se and it didn't happen because you didn't want to, But it was the law. 3RP29

Ct: ...A different Judge at at different time, for different reasons, reappointed counsel Mr. Thomas then renewed his request. **I think for the second or third time...**

St: If he wants an attorney. 3RP30

Ct: Thats the issue **I am not going to revisit this once again**. I think the record is clear It doesn't undo any of the errors, Mr Thomas believes occurred previously; Those are all preserved for the record, and will certainly have the ability to litigate those issues in a different forum. 3RP30

((And here appellant sits to sort out all of this mess for appellate review))

Ct: I dont think he's risen to the level of somebody who is abusing the system by frivolous filings. 3RP31

The court then on his own volition states into the record;

Ct: He's raised some legitimate inquiries in the past. And I know he has a lot of time on his hands in custody and he obviously is a very articulate young man. 3RP31

Needless to say, of the inquirie(s) the file lacks one single order, ruling, etc. or response from the State for that matter.

Appellant then Moves the court 1 more time to DISMISS 3RP31,32

Ct: I don't see a basis to dismiss the case at this time. 3RP32

Ap: Thank you and God bless you. (while being led off back to the jail)

Ct: Thank You, Mr. Thomas (Hrg's with this CDPJ judge ends with the end of year)

GROUND 10 /A/B/C

NEW PRESIDING JUDGE WITH THE CHANGE OF YEAR

A COMPULSORY PROCESS VIOLATION

B SPEEDY TRIAL VIOALTIONS

C DENIAL OF "AID"

A whole new presinding Judge with a Change of the year, very happily, all parties except appellant, more than like had a great time at end of the year holiday festivities.

Appellant at the first hearing (Morning that a Supplemental request has been sought for) raises all of the isses with the new judge and Makes a motion for DISMISSAL, on the record is appellant, Counsel, Marcus Miller, [John Sheeran did not show for this initial setting]

Because appellant does not have the entire VRP's I have to paraphrase this first part; The new presiding judge made an excellent record, in that the file is near deplorable standards theres no State responses to any of appellants motions, No written rulings, The state responded "Orlando was mad at defendant [in re pro se denials]" and that "Orlando was not requiring the State to respond to the Motions made by appellant." Appellant would have to say that though Marcus Miller committed other prejudicial errors on behalf of the State, He was the only attorney that Motioned on appellants behalf for pro se, he did make an attempt to make records, he did attempt to make or nave somewhat of a good repor with appellant, he did try exstensively to resolve his case and appellant was attempting to as well, however resolutior could not be met because John Sheeran demanded appellant plea to his cases 4 in a seperate cause number that appellant was subsequently aquitted of in a differnt court than the trial judge relevant hereto. Appellant has to admit that Marcus Miller was pretty Candid with this new courts inquiries, and was ethical and candid pretty much throughout, [does is no way diminish the errors committed by him thcugh] John Sheeran on the other Behalf totally vindictive, in fact he is the party relevant to a vindictive prosecution claim in [34335-5] for penalizing appellant for not waiving appeal rights Post-Trial. and several other outrageous acts in the other appeal. He was utterly reckless as the records do reflect.

To the record: Appellants case looked as though this court was about to dismiss the case and M.Miller and the Judge (I dont remember exactly how without the record) but it was determined JS needed to be called, as he had worked appeals for the county in the past and was chosen to represent myself in the other criminal matter.) M.Miller told him he needed to "Get Down Here" in a call from the J.A's phone in the court so the court took a recess for him to get down here. the following occurs; and the tarvesty of justice continues when he's Back:

In Comes J. Sheeran, Finger pointed at the judge as if to say you better not (and being transparent you all are judge's in you extra judicial activities it's verifyable) He is pointing his finger as if you better not, or as if he is somehow personal with her(and or) she owes him one.

JS: It's my undertanding the defendant walked in this morning and asked to go pro se, defendant has been playing this(game) with the court every since his was arrested. 4RP3

Ct: I have a courtroom available for him. 4RP3

JS: This is not the issue. 4RP3

Ct: Could Be 4RP3

Ap: Yes 4RP3

Be it noted, two things; (1) the states first comment "Def. walked in this morning"4RP3 that statement support appellants contention that there was a significant record earlier. (2) The court stated she has a courtroom available. And at earlier record when it was made clear that there was a courtroom available and that appellant could go to trial now if he wanted to [Cn/Ct] appellant again for the last time asserted his right to proceed because counsel for appellant was still not yet prepared and it would have at least meant that appellant could have finally got the ball roling by being assigned out.
But the court is playing a game There is no courtroom available, as later determined when I kept asking to be sent there.
It is of particular note that the State comments that my counsel had been assigned out already on another case. 4RP3,4 So even if there was as the court first purported My counsel had already, previously been assigned out before I came on the record, so he wasn't taking me to trial today anyway.(this is just reading between the lines) To be honest I dont know if my counsel was infact assigned out? remember it was this counsel many hearings ago was the same individual who stated he was not seeking a lengthy set out because I was in disagreement??

JS: you're being played with <u>because Orlando made decisions</u> 4RP4 (is he serious, decisions?)

Ct: I haven't seen the--4RP4

As if being totally unreasonable and utterly outrageous again

JS: I invite your honor to call Judge Orlando.4RP4 [who is assigned at Remann Hall now]

Ct: I'm not going to call Judge Orlando, **What I would do would be to review the transcripts of the hearings**.4RP4

In an honest assesment of the file the court States;

Ct: There are not orders in the files reflecting what everybody is trying to tell me what has happened one way or another. It's all been on the record. 4RP4

To support my contentiton that the court[Orlando] erred in not allowing me to proceed pro se I reiterated to this new CDPJ judge what M.Miller had said in explaining why he felt Orlando erred, it probably didn't need to be reiterated but I did because the State made the comment.:

Ap: I should have been able to go pro se. But like he [miller] said. Orlando was a little bit upset or irritated, which is not my problem. 4RP6

Clearly untenable reasoning for pro se denial and of all the parties, the State made this assesment and conclusion as to it's belief why the denial took place.

Ct: The State is not ready to go based on whats happened previously. 4RP4

As if I am the one to be disadvantaged because of the States mismanagment and failure to act sooner. As described herein I asserted my speedy trial and conflict since the first hearing following arraignment, and continued to until it was too late

With those issues long over, I continue with the record before us all.

To the issue of this courts failure to provide a compulsory process; The court:

Ct: It would be your obligation, if you proceed without an attorney, tp present your defense Subpeona witnesses, and represent yourself in a competent manner. 4RP4

The court then goes through extstensive pro se colloquy (15 VRP pages) and still continues the matter out from Jan 03 2006 to Jan 19 1006 and comments further;

Ct: We'll se if we can get him out. 4RP25

Ap: I motion for my case to be set out within a week. 4RP26

Ct: Denied 4RP26

Another officer of the court whispered in my ear to have it set within the 14 days that the cure period she is setting it pursuant to calls for(I knew 14 days but had forgot)

Ap: I object to it being a lengthy set out 4RP26

Ct: Denied. Your objection is noted, Jan 19. 4RP26

When I tried to request assistance for a compulsory process, the court would not allow me to make a record or the request and stated:

Ct: We're not here for you to make additional request...you dont get to sua sponte make motions...If you wish to make motions, you need to not e them up. 4RP27

Ap: I dont have the means to note them up. I would ask for stand-by counsel To help with these things. 4RP27,28 (Clearly denied a compulsory process)

Ct: Denied. We went through this for almost half an hour, Mr. Thomas. 4RP28

The record will clearly reflect that we never addressed; "I dont have the means to note them up ..can I have Stand By to; Help with those things.

and then makes the totally unfounded assumptions or better yet assertion:

Ct: At this point I find you're only trying to manipulate the system.

Two moments later while I am trying to make a rebuttal Statement

(Proceedings Concluded)

So I took the liberty of mailing these concerns to the Judge at the Courthouse, and also mailed the same to the clerk in Motion Format. Exhibit___CP____

The Items mailed were all seperate;

1) Objection to Compulsory Process Violation
2) Objection to denial of Stand by(for Compulsory Process as detailed therein)
3) Notice of intent to seek Discretionary Review.

(In the motions / objections I did make abundantly clear NO HYBRID)

this court clearly erred in Not providing a compulsory process for an incarcerated defendant and that denial over request / objection. This court also erred in continuing appellants case for lack of courtroom space as reflected in various continuance orders. This court also erred in setting another "Cure Period" buy going outside the 14 days, over objection.

The argument in support of error asserted will be argued after the next ground as they as all interwine,, and have related facts

GROUND 11

ANOTHER: DISMISSAL DENIAL, COMPULSORY PROCESS DENIAL AS WELL AS DENIAL OF "AID" AS CALLED FOR BY SIXTH AMENDMENT

Jan 19 2006 Trial Date.

Be it remembered that all parties also agreed that today the court would rule on the DISMISSAL Motion that the Court never ruled on, last hearing so that It could review the Transcripts

Yet not to forget trial is set for today and I've been afforded no Compulsory Process. nonetheless the court implied she would review the transcripts. 4RP4,

The State at this hearing labels the aforemention three pleadings all as:

St: Which I would have interpreted as him requesting, re-requesting, I should say stand-by counsel on these cases. 5RP4 (Fails to mention Comp. Proc. filed at same time)

Ct: Mm-hm. 5RP4

Then in another downplaying act, the state also threw the smoke screen up of The Offender Score Motion up as being important .

Appellant then corrects the record and raises the true isse of DISMISSAL as well, that was not ruled upon previously, but reserved 5RP4 in which the court said she would need to review transcripts [back at 4RP4] as well as issue of sending me out to trial. 5RP4
Counsel for the state says something that becomes the next ground. and is in fact the reason he is asking to have (one) of those motions set over to "This afternoon" 5RP5 In spite of the fact that we are now on the "Motion" docket with a time set for us, and our issue(s).

Counsel then states: "And if there is a court room available, assign us out to a courtroom.5RP5

(Please keep in mind there wasn't one on the 3rd of Jan either.)

After all of the conversation about reviewing the transcripts and about setting this motion as A Motion to rule on dismissal way back at[4RP4,23,26] At which point the court herself said:
Ct: Well we need to note up a date. 4RP23. (She now on this date 1/19/06 states;)

Ct: I dont have it docketed for this morning. The only thing that I have from you is a "Letter" from you requesting Stand by. 5RP6 (nothing about Comp. Proc. filed together)

Who is playing is the question I wished to ask J. Sheeran at the time but I did not. Though its clear at [4RP4 and again reiterated at 4RP23,26] but Now its not docketed??!! Not only is this a Joke it also clearly supports the assertion that I had no Compulsory Process to properly note matters or any compulsory process for that matter. In spite of the fact that this is was verbally acknowledged.

As to my compulsory process the court in insinuating I was somehow lying, States Now I am "rewriting history" By her apparent inability to discern what the contents of my objection and motion related to she so gracefully read it right into the record for me:

Ct: I want to express to you that it is my desire to conduct my own defense, but I did not intend to waive counsel with helping me do the things that I cannot from the jail.5RP7

The Court acted like her apparent inability to know what that meant, after reading it under--stood clearly. If not for the fact that they were in fact labeled, easch, (noted above)

The Court further elaborates that she has no "Motion" only a"letter" [this is why the appellant did not know how to distinguish what was in fact was filed on what date, because whether Motion/Objection/Notice to Answer whatever it was, it was simply filed as "Letter from defendant, and for that purpose has enclosed in this briefing all the copies, hereby identified as Exhibits]

So the appellant begins explaining that I have copies that are datestamped by the court so she should have them too, when I go to get them she comments: "OKAY" and moves on to the issue of Notice of Intent to seek discreticnary review. 5RP8

Why it has become so difficult to address, or so easy to avoid the issues of (DISMISSAL) and (COMPULSORY PROCESS) is beyond me. but talk about everything else.

The court then again leaves the subjects alone and asks me am I ready to go to trial if A courtroom is available? I say Yes! But still no ruling on Comp. Proc or DISMISSAL.

Ct: We dont have one this mornig, but we might have one this afternoon 5RP8

So I raise the issues again of Dismissal and I am told at this point:

Ct: I dont have a motion docketed, is the problem I have. 5RP9

Anyway around it huh? And Some More. shes back on Orlando:

Ct: So what you're telling is you have a motion to Dismiss pending too? 5RP9

Ap: [I tell her there are plenty (he) did not rule on. And also the State has never responded to any motion (either)] 5RP9,10

I think the court realizes I am not going to let up on her reserved ruling that she says she would address, and have to look at the transcripts.

She Takes her glasses off, rubs her temple and we need a recess.....

(Recess Taken)

After recess

Ct: I've reviewed all the briefs on the Cory Thomas matter. 5RP10

St: Do you want me to call the case your honor

Ct: Yes. 5RP10 (State calls the case)

[Sidenote Misrepresentation forgotten; While discussing the issue of Offender Score I ask the Court to look up a case, she tells me "I dont Have the case" 5RP20 yet she has a whole wall of Washington 2d cases as well as Washington App.--The State grabs the book and gives it to her.

The Court then addresses my motion to dismiss at 5RP21 aside from the issues already for her consideration of dismissal, I ask her to also include the error she made of continuing my "Cure Period" past 14 days over objection. 5RP27

In preparing to deny my DISMISSAL motion the Judge States;

Ct: It is your motion to dismiss and it would be your obligation to provide me the facts upon which I need to base an opinion. I do not have those before me.5RP35
I'm Going to deny your motion to dismiss. I believe we have a courtroom available. 5RP35

----------So that this issue is clear and not misunderstood----------

Appellant had Judge Felnagle as my arraignment Judge whom I knew gave me an excessive bail contrary to the facts that before these convictions on appeal, I had no adult felonies. Based on Judge Felnagle's excessive bail coupled with the fact that It was quite clear I would be leaving jail no time soon, adding to the fact that I had given testimony on two different occasions in a jury trial before Felnagle[Unrelated to myself, if the cases names are desired I will provide them] in which time(s) he threatened to have me held in contempt, for a action totally beyond my control elicited by the officer of the court, on top of the fact that I knew Many judges not to like me based on the history of Cory Lamont Thomas v City of Tacoma 410 F3d 644(2005)(9th Cir.)[I felt this case had alot to do with the manner of my prosecution and in fact is the very first ground in re unlawful arrest in34335-5] I knew this would be an uphill battle, in which I am still climbing.
I thought it very wise to Make a change of venue / Change of Judge motion in both cases that are on appeal.(Later denied by trial judge) Identified my LINX and the CP's in this appeal, on the actual record of 34335-5 in which I have not yet recieved. I say all of that so it is clear to the reviewers that this had benn considered and addresses, in part months ago.
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After the court says she believes there is a courtroom. I say

Ap: I have a question. Can I ask who my trial judge? Who my case has been assigned to as far as my trial Judge? If it is Felnagle, I would like to file an affidavit of prejudice! If not I ask to be sent out to trial. 5RP37

Ct: It is Judge Felnagle, If You want to file affidavits of prejudice. You can certainly do that now. 5RP37

It is already past 4;00PM and the State moves to continue to Monday Morning 5RP39

It is in fact very ironic that he J. Sheeran wished to continue me to Monday Morning at that time, and it is also ironic that this supposed judge is the one available, it is more ironic that this contintuance motion by J. Sheeran is made only after 4:00 'the close of Ct.' J. Sheeran know a couple more things I dont know; Follow this colloquy:

Ct: Judge Felnagle is going to be in CDPJ in the morning [on Monday] we should probably continue it , As to the affidavits, he's signed affidavits against Judge Felnagle who will be presiding. Just bring him back in the afternoon. 5RP39

Appellant takes notice that the State still placed him on the 08:30AM Docket before[Felnagle] and points it out to the State, as the Judge is watching, she looks at her other order and states:

Ct: Again, These say 8:30, they can't say 8:30 on Monday.5RP40

Of the most ludicrous thing the State says:

St: Should I put that as 1:30 5RP40

I Submit Outrageous conduct (Recess Taken)

ARGUMENT IN SUPPORT OF THE ERRORS IN THESE TWO GROUNDS COURT DATES

SPEEDY TRIAL

Appellant understands that washington almost does not have a Speedy trial rule but as of current we still do, it's just a harder prong to meet appellant asserts that that hurdle is easily overcome. Speedy trial in this case was violated in several different ways in violation of other constitutional rights. Appellant asserts I was placed in a HOBSON and or MICHIELLI choice, No one in this case may claim that any exstentions were for appellants benefit , as I asserted the right to speedy trial more times in this case than either counsel, who were both later conflicted, did for the entirety of the case and proceedings,I Must add that they raised it ZERO times. and in one instance as described at the outset the Court refused to calculate the timeframes on the record at appellantrequest, appellants submits that while serveral other constitutional violations caused the continuances, In law there is the term "But For" and I would contend that But for the errors of Counsel(s) and the Court, as well as the Prosecution, the outcome of all of these proceeding would have been much different had they acted within the substantive and proceedural rules and laws in place.

Dismissal With Prejudice is warranted where a Speedy trial Violation has occured. Barker v Wingo 92 S.Ct. 2182 in fact the new presiding Judge appeared to be about to dismiss the actions but did not because the record was not before her, this record now sits before us.

As for prejudice, it is at every single stage, minus the one's I was kept out of the courtroom,that multiple prejudices exist as detailed in each case cited, for ever case cited those are many of the prejudices, and have been shown by the record. Appellant neen not show specific prejudices anyhow as,Speedy trial act does not require a showing of prejudice to a defendant if the time limits provided by statute are violated. U.S. v Adu 770 F3d 1511. The inability of the accused to pinpoint how exactly he was prejudiced is not fatal to his claim of Speedy trial violation , where it is clear that the court and government were responsible for the extraordinary delay, and it is clear the delay was caused by negligence rather than bad faith, prejudice can be presumed. The strength of that presumption grows as the length of that delay extends. State v Graham 128 f3d 372,376

As to the timeframe for speedy trial "When a court is put on notice that defendant wishes to assert the right to self representation, but nevertheless delays ruling on motion, timeliness of request must be measured from the date or inititial request. In Re Breedlove 79 Wa App 101. Where appellant did raise the issues with speedy trial issues with my counsel I assert he was ineffective for his statement and failure to make inquiry, after he was not the original counsel and did not know of exact dates that had been continued, counsel stated: "He feels he has speedy trial issues."3RP16 "If defense counsel learns of speedy trial violation at any point before speedy trial expires. She [he] has a duty to raise issue before period expires. State v Malone 72 Wn App 429 [emphasis addded] The record will reflect that neither attorney EVER raised even a issue of calculation, much less an objection.

At this point of the proceedings we have, speedy trial violations, violation of right to conflict free representation, pro se denials, hobson choice, unrepresented and many other collaterally attached errors, appellant asserts that the proceedings have long ago fallen into proceedural default, by themseleves(proceedures). The sentence obtained in this case has been obtained in violation of several State amd Federal Constitutional rights, "A sentence obtained through violation of a constitutional rights is a nullity." Horn v Bailey 309 F2d 167.

Appellant is aware that courts generally do not grant speedy trial violations that have seemingly short delays or continuances, that is not the case here, the State and Court through their inaction has appellant over 5 months of continuances, for untenable reason, many of which are not supported by the record, Our 9th Cirquit has previously held: Further incarceration of One Month qualifies as actual prejudice sufficient to justify a dismissal due to unecessary delay in bring defendant to trial. Yuan Qing Jiang 214 F3d 1099.

In this case the only record made was a continual State v Campbell, over objection, the appellant objected to State v Campbell contiunaces in the trial court because, appellant was ready to go to trial at all times, the last CDPJ asked the appellant if I was ready to proceed to trial, right now should there be a courtroom available, appellant answer with an affirmative yes. At 5RP8 this appellate court should hold State v Campbell inapplicable.

Had the court provided the proper tools, or allowed pro se after, second, third... demand, there would exist no Campbell issues. The court failed to give any other reason, and in fact continued to say I am not going to revist that. I contend that the court failed to make a tenable record in support of any continuance, in contrast to appellants records, Where a Court makes no findings on the record in support of a §3161[Speedy trial] continuance, Speedy Trial harmless error review is not appropriate. Zender v U.S. 126 S. Ct ____(2006). As far as an additional argument as to prejudice, though prejudice is not vital to a speedy trial violation, As for prejudice, it must be noted as one of the oddities of law that while the loss of speedy trial constitutes prejudice, when caused by vioaltion of another Constitutional right such as in the case of a late amended information...State v Michielli 132 Wn 2d 229 . Appellant asserts,as already asserted, other constitutional rights have been violated as well causing the same situation as Michielli(supra) Prejudice includes a threat to an accused's significant stakes--Psychological, Physical, and Financial--in the prompt termination of a proceeding in which may ultimately deprive him of life liberty or property. U.S. v Dreyer 533 F2d 112,115.

The right to a speedy Trial is as fundamental as any of the rights secured by the 6th amendment. Klopfer v North Carolina 89 S. Ct. 988.

I would be naive to not address it in the sense of an abuse of discretion standard as well, in this case not only was there an abuse of discretion(s), one court even refused to provide the form pursuant to the 2005 RAP5.2(j). nonetheless, Continuance will not be disturbed absent a showing of a manifest abuse of discretion. State v Williams 104 Wn App 516 520, 521 An abuse of discretion occurs when the trial court relies on untenable grounds or reasons. State v Feems 89 Wn App 385,388. Appellant has already discussed untenable reasons.

As A though in closing this ground. Appellant understands the reasoning held in State v Campbell, and counters; (1) appellants case does not compare to Campbell circumstaces. And (2) Defense counsel may waive a defendants right to speedy trial in the absence of a clear objection from him or herself...Defense Counsel does not have aCarte Blanche to waive speedy trial rules on behalf of a client. State v Franulovich 18 Wn App 290,State v Cunningham 569 P2d 1211, Especially when a defendant is objecting to such reasoning by way of pro se.

This Ground regarding Speed Trial warrants DISMISSAL and is requested.

DENIAL OF A COMPULSORY PROCESS OVER OBJECTION
(AND) DENIAL OF "AID" OVER OBJECTION "NOT HYBRID"

Compulsory process **ARGUMENT**

This ground is intertwined thus appellant hopes to not lose the reviewers. The right to counsel and the right to a compulsory process are both ingredients to a fair trial State v Burri 87 Wn 2d 175.

Thus is is indisputable that the right to counsel and the right to a compulsory process are seperates rights; likewise, the right to proceed pro se and the right to a compulsory process are seperate rights. In many instaces they both Correlate.

Appellant has given you the facts of myself being pro se and incarcerated, And the record does reflect that the appellant asked the 1st CDPJ judge for an order beacuse of that limitation, Which ultimately was not completed.

Appellant also requested that the 2nd CDPJ judge to in fact appoint "Stand By" for the purpose of "Aid" as related, I dont have the means to note them up. 4RP27,28 and I would ask for Stand By to help with these things. 4RP27,28 and at asubsequent hearing; I did not intend to waive counsel to help me w/ the things I cannot do from the Jail. 5RP7

Appellant not only sent a personal letter to this judge, but also mailed copies of two seperate motions to the court (that were filed and before this judge this date) in fact the last RP was read into the record by the judge. Nonetheless, that compulsory process was not provided, over objection. Appellant understands that it has been generally held that when a defendant proceeds pro se he loses many of the benefits associated therwith,

However appellant assert and contends that he loses no constitutional rights, as argued below, to be forced to surrender one, and one, right, to assert another places a defendant, and did place the appellant in a HOBSONS Choice. And that Unconstitutional.

Appellant asserts he should not have lost the rights to (i) A Compulsory Process, and (ii) The right to "Aid", for the purpose of a compulsory process, appellant made it overly clear to the court in the motions (written) and the record that I did not want "Hybrid".

The Right to self representation(and)the rights to assistance of Counsel are seperate rights depicted on opposite sides of the same 6th amendment coin. U.S. v Purnett 910 F2d 120,128 A defendant in a criminal proceeding is entitled to certain rights and protections, which derive from a variety of sources, he is entitled to all of them , he cannot be forced to barter one for another, when the exercise of one right is made contingent upon forebearance of the other both rights are corrupted. Miller v Smith 99 F3d 120,128 Forcing a defendant to surrender one constitutional right to assert another is intolerable. Miller(supra). A criminal defendant may be asked in the interest of orderly proceedings to choose between waiver and another course of action, so long as the choice presented to him is not constitutionally offensive. Illinois v Allen 90 Sct. 1057, Brady v U.S. 90 S. Ct 1443. The decision is therefore voluntary unless it places him in a dillemma of a constitutional magnitude. Maynard v Meachum 545 F2d 278. See Also Allen v City of Honolulu(holding An inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected. 39 F3d 936 (9th Cir.)).

Appellant asserts this situation in this ground as well as the situation before CD1 both placed the appellant into an HOBSONs CHOICE or MICHIELLI CHOICE. Appellant in no way waived such right to counsel, should this court feel as though I did in the 15 pages of colloquy Appellant brought the issue up at the very next hearing, at the very least it is clear that the appellant did not waive, and in fact, objected, to not having been provided a compulsory process Appellant told the court I did want to represent myself at trial, but wanted "AID" to help with the things I could not do from the jail, it was clear by the subsequent hearing that the court stated an issue was not "Docketed" after exstensive record in the previous hearing. And the same concern arises with subpeona's and scheduling witnesses for interview prior to trial, appellant could not even get DAC to serve subpeona's because they were not authorized to nor were they signed by the court, and appellant had no way of having the court sign them, sicne I couldn't just tell the jail, I'll be right back, I need to have the court sign this. one step further, I need to go and schedule a date so they can sign in. There are many different ways this can be argued, in the plainest sense it is known, that a incarcerated offender cannot provided himself a compulsory process by himself.

Then what right must one surrender, the compulsory process, or the pro se. Appellant asserts this court, I want to say abused it's discretion in not making an appointment for that limited purpose, but will opt and say that the court erred in failing to either make an appointment of "AID" or provide a compulsory process. It is well know that a court over objection of the accused may appoint standby. Why not when it is a necessity, to insure another right? It is of importance that appellant told the court that I wished to have the Assistance that Faretta calls for, Faretta which is precedent held that 'assistance' meaning an 'aid'. Faretta v California 95 S. Ct. 2525.

I submit the errors aforementioned are of a constitutional magnitude. And DISMISSAL is warranted due to cumalative errors, still cumalating.

And to second and reaffirm the erroneosness of the error asserted. J. Sheeran came to the jail, told appellant that he had never in his career been into the jail, and was there to provide appellant a letter, on pierce county letterhead, prepared and signed by him, that stated "The fact that you are pro se does not alter any of the previous prvisions of the No Contact Orders." [if for any reason this is misqouted it is because appellant doe not have it with me at the time of typing, but it is here included in the exhibits. Ex._____].

Government interfereance with defendants right to present a defense including calling witnesses, violates the constitution. U.S.v Deering 179 F3d 592. Criminal defendants have the right to government assistance in compelling the attendance of favorable witness at trial, (Compulsory)Pennsylvania v Ritchie 107 S. Ct 989. Because the right to offer the testimony of witnesses and compel their attendance, if necessary, is in plain terms the right to present a Defense. Washington v Texas 388 U.S. 14,19

This prosecutors affidavit alone shows a substantial interferance with a constitutional right to establish contact with all parties of the case, where the court has failed to provide me with such aid of counsel to do so.A Compulsory process is a fundamental elementary elemt of dues process. And a defendants right to a compulsory process includes the right to interview witnesses in advance to trial. State v Clark 765 P2d 916.

Either the court is wrong or the prosecution is wrong, in the case of the prosecution being wrong it has been determined: When improper prosecutorial activity interfers with the right of the accuses to effective assistance of his witnesses, it indicates a probability of incurable prejudice to his defense, the entire proceedings must be DISMISSED. State v Kearny 11 Wn App 394

Based on the argument fowarded in the first part of the argument and (b) above, DISMISSAL is yet again warranted, and requested.

ARGUMENT ON DENIAL OF "AID" (not hybrid representation)

As previously detailed Faretta holds the right to assistance is the right to aid. Faretta went to provide; Assistance of counsel is a constitutional right so basic to a fair trial that their infraction can never be treated as harmless error, and when a defendant is deprived of the presence of the assistance of effective counsel either through the prosecution or during a critical stage, reversal is automatic. (Applicable to being unrepresented ground as well)(and the ineffective portion is applicable to conflict hearings as well). Faretta v California 95 S. Ct. 2525 [Parenthesis mine]. Denial by State of right of accused to have assistance of counsel may in specific case operate to depreve him of Due Process of law in Violation of the federal constitution, where, ignorance, youth, or **incapacity**, of accused makes trial without counsel fair. Thorne v Callahan 39 Wn 2d 43.

To deny[stand by] counsel is not harmless error because assistance is a statutory right and'harmless error is also inapplicable if failure to appoint counsel violates a statutory right' U.S. v Iasiello 166 F3d 212,214. The 6th Amendment which is made applicable to the states through the 14 amendment provides that in all criminal proecutions the accused shall enjoy the right to have assistance of counsel for his defense. The amendment serves to safe--gaurd the adversarial proceedings and process by ensuring that once the right to counsel attaches, the accused need not stand alone against the State at any stage of the aggreagte proceedings against him, the purpose of the 6th amendment to protect the unaided layman who finds himself faced with the prosecutorial forces of an organized society and immersed in the intracacies of substantive and proceedural criminal law. Bey v Morton 124 F3d 524,528

The Betts court declared the right to 'aid' of counsel, is of a fundamental character. Powell v Alabama 53 S. Ct. 55 A judges failure to make an effective appointment results in denial of effective and substantial 'aid'. Powell(supra)See Also Grosjean v American Press Co. 247 U.S. 233, 243-44(holding the 14 amend. provides fundamental right of accused to 'aid') Failure to provide assistance results in automatic reversal. Gideon v Wainwright 64 S. Ct. 1028

Consider the last; The Supreme Court in overturning defendants conviction for Murder, Robbing, and Kidnapping, and a Death Sentence, adopted the per se rule of reversal to govern situations in which a trial judge fails to consider to execise its discretion to appont 'advisory counsel for defendant who wishes to represent himself"People v Bigelow 37 Cal 3d 994 [691 P2d 994] (Likewise CDPJ Judge #2 Failed to even consider it at the second request.)

DISMISSAL is Warranted and requested

B

The court also erred in yet another way, when making the ruling the judge stated that appellant could have no attorney come on board, at all, for the duration, that action took the error to one more level.by making it to where appellant could have NO 'AID','STANDBY', nor 'ASSISTANCE', and when drafting the order made that clear to appellant, thus appellant could not even retain aid had it become possible.

Counsel may be retained to 'aid' prose defendant in preparing for trial. State v Jessup 31 Wn App 304,311. The court overturned conviction as to criminal because he was denied an opportunity to retain counsel. Chandler v Frietag 348 U.S. 45,68 This was just one more, violation of the 6th amendment. And looking backwards so far, as well as forward, 6th amendment violation(s)pervade these entire proceedings. If the 6th Amendment violation pervades the entire proceedings, harmless error analysis is inapplicable and the violation is enough to overturn the conviction regardless of the severity of the results. Satterwhite v Texas 108 S. Ct. 1792

In This ground DISMISSAL is warranted and requested

GROUND 12
NO COURTROOM AVAILABLE

In a contiuous string, another error on the thread occurs, the court continued the appellant on January 3 2005 to Jan 19 2005, at which time there were no courtrooms available appellant is not addressing that date in specific as other reasons were given, appellant has agrued it is nonetheless another date relevant to this ground. Appellant does not agree with the length either, which was also objected to as being (i)past 14 days 'cure' (ii)the state made the implied remark at the 01/03/05 hearing that there was none availble then as well.

However, addressing the court orders that note the only, ONLY, reason, for their contiuances as "NO COURTROOMS AVAILABLE.

01/03/06-01/19/06 No Courtooms available
01/19/06-01/20/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/20/06-01/23/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/23/06-01/24/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/24/06-01/25/06 'Morming to Noon' and 'Noon to Evening' (2Hrgs)
(01/21/06 and 01/22/06 were weekend days Sat/Sun)

For the purposes of this review, appellant has requested the hearing of 01/24/06 that was not part of the VRP's provided to appellant, on the 24th appellant moved for DISMISSAL for lack of courtroom space, OBJECTED at every hearing to lack of courtroom space, ((And for the purpose of this review and the other orders involved, the record should reflect that the appellant never signed any of these orders in "aquiese", the orders should not reflect signatures from the first hearing after arraignment clear through sentencing, appellant did sign a restitution order entered by the judge, after appellant had been sent to prison and was brought beack for restitution hearing.)))

For the purposes of this review appellant will work off of the last NO COURTROOMS AVAILABLE Date that a record of VRP was provided for.

St: Good afternoon your honor... I am handing foward to the court Two continuance orders setting trial over to tommorrow as there are no courtrooms available. 6RP4

Ct: Good Afternoon Mr. Thomas. 6RP4

Ap: Good afternoon, Again I would object to not being sent out to trial. And I do have a Motion that I'd like to make with a couple objections as well, for the purposes of the record. 6RP4

Ct: Whats your motion 6RP4

Ap: The first one, I object to the denial of my motion to dismiss, on my right to be pro se ...My second one is overruling the objection to being sent out to trial. And this was scheduled ordered at 1-9 at 8:30 [Stenographic error should be 1-19] and continued for no space being available, and I objected then and I'll say it now "For trial Congestion" I object 6RP5

Ap: Number Three, allowing the prosecution to argue extra-judicial--well, My Juvenile points yesterday, in cause no 05-1-02436[34328-2]and applying to the- - that was scheduled for trial[- - = should be 'case'] and was not docketed, and the State prosecution argued this in my mind, at apprximately 2:30 PM until approximately 4:00PM because there was no trial space available. And at 4:00PM they stated because of the late hour they requested the court to 'recess' until monday morning, which was granted This was Thursday 1/19/06 6RP5

Ap: Fourth issue [Stenograhpical error as well] [but I objected to being assigned to Felnagle at 4:10PM "Which was after the close of court business].
I had preserved the issus by prevoiusly filing a motion by change of judge because of this judges actions and others. 6RP5 And have specifically raised the issue with Felnagle previously. In the interest of justice, this appointment should not have been made, and was still untimely. 6RP5,6 [What I was arguning to the court then was That the appointemnt was made after the close of business so it was erroneous and untimely at any rate]

Ap: [5th] In addressing the States brief regarding sentencing I told the court their response was telling in the States knowledge of no courtrooms available because; "Was filed on 1-19 at(1:30)and in the lower left-hand corner states the language 'Motion to stay proceedings' And I believe this was his whole intent for arguing my juevenlie points yesterday." 6RP6

Ap: Petitioners order continuing trial states 'no courtrooms available' and the petitioner asserts that the State extrajudicially argued these points at the time of trial commencement for the purpose that the motion was titled [in Corner] 'to stay proceed -ings' and to hold off my proceedings. 6RP6 [somehow make it seem legit]

Ap: [Petitioner was asked if I wished to sign the order of the court?]
"For the reason stated on this 'no courtrooms available' I do not want to sign the orders. I object to no trial space being available." 6RP9

[the 24th should contain language similar and a DISMISSAL motion to follow]

ARGUMENT

As if all the aforementioned reasons, and errors were not yet enough, for the State and they weren't, The Court then continued to violate speedy trial provisions for no other reason than --NO COURTROOMS AVAILABLE-- Appellant objected. VRP CP38-42, CP43-44, CP67. And moved for DISMISSAL all which as the court continued to say "SO NOTED" and "DENIED".

The Court has held that in order to allow meaningful appellate court review of such delays. The trial court must establish a record of why each Superior Court Department is unavailable, and whether a Judge Pro Tempore could reasonably be used. State v Finn 154 Wn 2d 193(citing State v Warren 96 Wn App 306,310.)

The record in this matter is silent as to this requirement. the only explanation given to appellant, by other officers of the court, were "The Holidays". While in the court forum, there are some things that are acceptable, have become the practice, or have become the 'norm' it is in no way right, (should this have been the true reason) But we dont know because effective and complete records were not made.

Notwithstanding all of the errors already committed, Just like the court personell involved, Appellant wished to be home as well with his family for the holidays, and plenty of others that have come and went, and continue to come and go, due to this inerrant conviction. The State may counter "He committed a crime" appeallant counters "And the State in trying to retain this alleged crime, has broken every proceedural and substantive rule and law, not to mention constitutional violations in an effort to keep this conviction."

ADDRESSING THE RECORD:

Early and repeated assertions of speedy trial right, weight in favor of defendant. U.S. v Schlei 122 F3d 944,987 Where the trial court failed to indicate number of courtrooms actually in use at the time of continuance, and availability of visiting Judges to hear criminal matter cases in unoccupied courtrooms, defendants speedy trial was violated due to congestion of dockets. State v Palmer 38 Wn App 160. State v Kokot 42 Wn App 733. It is the Governements responsibility for conditions such as overcrowding of dockets, and overcrowded dockets is not just cause for delay. U.S. v Santiago-Bercerril 130 F3d 11,12.

See also; State ex. Rel. James v Superior Court of King County 32 Wn 2d 451(Holding that prosecutors could not set up condition of court calendar as good cause for failure to bring the accused to trial within the required sixty days) State v Smith 104 Wn App 244(holding that court or docket congestion is not good cause warranting a continuance, and is not good cause for delaying criminal case beyond speedy trial periods, limits, and provisions.) State v Warren 96 Wn App 306 and State v Mack 89 Wn 2d 288,794(both holding setting trial beyond 60 day period is not justifiable by court congestion) U.S.v Engstrom 7 F3d 1423(forbidding continuance due to general congestion of court calendars)

At the timing of these continuances in appellants case, Appellant did not have alot to work with but cited to the court Arreola v Muni. Ct. 139 Cal App 3d 108. both in writing and orally, (holding that any continuance based on court calendar congestion DISMISSAL is warranted)

For this reason if not alone in contrast with all the other errors DISMISSAL is warranted.

Appellant is done with pre trial errors

GROUND 13
EX PARTE COMMUNICATIONS
OVER OBJECTION
ORAL AND WRITTEN MOTION

Appellant Objected to ex parte communications between the State and my Judge not even a whole day past when the State and my Judge had ex parte Communication, the exchange involving me , goes as follows:

Ap: My 2nd objection today would be, its a affidavit in support of mistrial. 7RP4

After telling the court my objection I read the brief Motion into the record;

Ap: Comes now, the defendant and moves this court to grant a mistrial based on the following: The defendant filed a notice to answer and a change of venue to all Pierce County Judges, objecting to any ex parte contact, and demanding a full record thereof if ex parte contact occurred, I am pro se and I object to not being present in the instance of ex parte contact between the prosecutor and the Judge. 7RP4,5

Ct: Which Judge?

Ap: He's told me he has had ex parte contact with this court

JS: I did not say that.

Ap: I asked him if he's had ex parte contact with this court.

Ct: He doesn't have contact with me. PERIOD

Ap: Was there an ex parte order that he **asked you** to sign?

Ct: Material Witness warrant?

Ap: Yes?

Ct: Yes!

Ap: I was wondering, as far as the ex parte contact
Or was there any ex parte contact? I asked that the parties make a record of whatever was said. Nonetheless, I am pro se, representing myself, and I should have been present at my proceeding. [right to be present 34335-5]

And then after clearly denying it the Judge asked me this;

Ct: I'll ask you how does that prejudice you?

Ap: I dont know what the ex parte communications were.

Ct: It was a witness warrant!

Ap: I dont know what representations were made to you or to this court at all. None the less, I should have been present, as a pro se defendant, I'm my own attorney. 7RP4,5

This is when I knew my hearing before this trial judge were going to not have good outcomes and they didn't, when I asked the Court about him he denied it, he said he doesn't have contact with me period. I dislike that the 'record' does not reflect visually and verbally as far as intonation, But it should be clear, I ask the Court to walk a ¼ of a mile in my shoes, and tell me would this be an impartial arbiter for you?

Argument next page.

ARGUMENT(S)

If in the plainest terms ex parte communications are widely disfavored, in this case the judge denied it, and then turns it around as ask's me how does that prejudice me? Whereas the State kind of threw his hands up, as if to say well he knows, then and only then did the judge respond to me, I would have never known had another attorney not called me that night in the jail and told me, I wasn't there to even know to ask the State, Thats what I meant by ½ like me and ½ dont. luckily one of the ½ that does was there and took the liberty to call me and tell me, It was obviously enough for him to let me know and to this day I still dont know exactly what was said...

Ex Parte contacts are a 'dangerous proceedure' when the defendants principal advesary has private access to the ear of the court. Haller v Robbins 409 F2d 857. This is because unchecked, a prosecutor can relate sorid, uncorraberated, and inadmissable information about the defendant that defense counsel[or pro se litigant] has no opportunity to controvert. [parenthesis mine] United States v Alverson 666 F3d 341(9th Cir) Also the fact that the prosecutor 'got in his first pitch' can seriously prejudice a defendants rights. Haller(supra)

Regardless of actual prejudice, ex parte communications ' Shadow the appearance of impartiality of any judicial proceeding. Guleco v Meachum 533 F2d 713.

In this case it not only "shadowed" the appearance of fairness, at first thought, when I first learned of the communication, it affirmed my fear and enforced my thought (that I did not want to acknowledge) when the judge insolently, forthrightly, and outright denied it. And the State directly lookin at me and knowing my uphill battle to get this far, looked as if it behooved him to make some kind of record.

Justice must satisfy the appearance of justice. Offutt v United States 75 S. Ct.11. It is Ethically, Statutorily, and in some cases Constitutionally impermissable for prosecutors to engage in unauthorized ex parte discussions with , or submission of materials, to a judge relating to a particular case which is to come before him. ABA Standards For Criminal Justice §3-2-8(c), ABA Model Code of Judicial Conduct Canon 3(a)(4)m 5th 6th and 14th Amendments--Due Process, Prosecutor Misconduct 13.15 at 533(2005 ed.)

Not only is it a gross breach of the appearance of Justice when the defendants principal advesary is given private access to the ear of the Court. Coupled with the fact that is is a dangerous, unfair, inethical and prejudicial in and of itself,.

However impartial a prosecutor may mean to be, he is an advocate accustomed to stating one side of the case. United States v Wolfson 634 F3d 1217.(9th Cir).

And none of us know what the true contents of that communication were nor the results appellant is still suffering form them.

And to take this one step further, the warrant was issued and the Court without me present, [argued in 34335-4] had a hearing with the witness that was relevant to this witness warrant, and questioned and admonished the witness withtout appellant present.

DISMISSAL is well warranted.
And DISMISSAL is requested in light of this whole record.

GROUND 14 A/B
A. DEPOSITION WITHOUT APPELLANT PRESENT

AND

B. RIGHT TO BE PRESENT (all hearings.)

The State and defense counsel conducted depositions which were "recorded", of both state witnesses, Danielle Fletcher, and Lavisha Bonds, Appellant was not a part of these confrontation clause violations nor was appellant informed of the depositions or the right to be present during the depositions. Appellant made it clear when I was pro se that I in no way waived any of my rights, this includes the right to be present at all parts of my trial, including these depositions. These depositios were used at trial, the recordings had been transcribed surely a deposition is a crtical stage that is relevant to conviction, and further a deposition is a truth and fact findind stage in which the appellant has the right to attend under the confrontation clause of our 5th amendment of the United States Constitution.

Further there was a hearing that the Judge conducted in this matter in which the court itself questioned and admonished the witness of the state, Appellant has raised the ground of ex parte communications, after the ex parte communications took place and the court issued a material witness warrant, the following occured at a hearing

ST: Good morning your honor, back on the record on State v Cory Lamont Thomas 05-1-04377-8 **THE DEFENDANT IS NOT PRESENT**, [neither was my counsel] Present is material witness LaVisha Bonds. the Court signed a material witness warrant yesterday afternoon, Ms. Bonds was arrested last night. I spoke with her last night before she was booked into jail, I've spoken with her this mornig, as the court is aware,(what we)[I take it the court and the State, had prearranged plans discussed in thier ex parte??] were hoping to do is have Ms. Bonds testify and be released. Given what happened this morning,this case being recessed until monday, I've spoken with Ms. Bonds and Mr. Schoenberger has spoken with her briefly, we have set up an interview for tomorrow[which becomes deposition] mroning with Mr. Schoenberger at 9:30 in the prosecutors office. Ms Bonds has also assured me she will show up for trial Monday Morning on the 30th given that we have selected a jury I dont see any reason we wont be able to put her on first thing monday morning. As a result of her promising to appear, the State does not have an objection at this point to PR'ing Ms. Bonds, so long as she complies with the conditions as set forth in the conditions of release.

CT: I'll ask you, why did you not appear on the first day of trial?

LB: First day of trial, was that a tuesday or something?

CT: Monday? Whenever you were subpoenaed to be here, why didn't you show up then?

LB: I got subpeonaed that day

CT: Do you recall if it was a monday or tuesday?

LB: It was on the 19th when I got subpoenaed, on the papers it said the 19th at 9:30. I was already at work. I got the papers at 10:00

CT: I'm going to go along with the recommendation...You need to comply with the court order. Just like any body else. you get subpoenaed, you're told to be here, you need to be here, okay?...

(adjourned)

FIRSTLY; RIGHT TO BE PRESENT ARGUMENT.

This argument also applies the right to be present at the ex parte communication that was pre-objected to.

A defendant has a right to be present at all stages of the proceedings, and error of not being present is constitutional. In Pers. rest of Lord 123 Wn 2d 296,306. State v Rice 110 Wn 2d 577,613, State v Russell 25 Wn App 937, 937-948. The right to be present at all stages of the proceedings is gauranteed by the 5th amendment as well as the 14 amendment to the United States Constitution Christian v Rhode 41 F3d 461,467 (9th Cir). U.S. v Canady 126 F3d 352,360-61. See also U.S. v Tolliver 330 F3d 131, 62 Fed. Evid. Serv. 1562(2003)(holding the defendants right to be present at every stage is gauranteed in the 5th and 6th amend. U.S.C. and Fed. Evid. Rules.)

See also State v Berrysmith 87 Wn App 268,273(Citing U.S. V Gagnon 105 S. Ct. 1482 1484 holding criminal defendant has a right to be present at all stages of the proceeding: under the confrontation clause of the 6th amend.) And also State v Atherton 106 Wn.App 783, and Whippa v Smith 33 Wn 2d 615 (both holding 'due process' requires presence of defendant in all proceedings leading up to conviction and sentence.)

In a last thought on the matter of not only being present, at the various stages but also the thought that the judge questioned and admonished the witness without the appellant nor his counsel present is disturbing in thought LORD GOODARD said;

"A Witness in a criminal case had been interrogated by the court, in the absence of the defendant...Quashing the conviction, LORD GOODARD held that is a matter which cannot possibly be justifed...time and time again this court has said that justice must not only be done, mut must maifestly be seen to be done."Rev v Bodmin JJ McGrath 71 S. Ct. 649.

Appellant asserts that likewise this court dhould QUASH the conviction, and that is what appellant seeks in relation to this gorund alone as well as all others combined.

DEPOSITION ARGUMENT

As if the violation of ex parte, and the hearing without appellant was not enough the State and Counsel without appellant, that next day conducted depositions with two of the states witnesses appellant was not a part of this confrontation clause viol...

Deposition including 'recording', of any contemplated absent witness in a criminal prosecution SHALL be taken in the presence of defendant and his counsel and is mandatory State v sheffield 21 Wn 2d 48. The confrontation clause was violated because defendant excluded from deposition intended for trial use. Don v Nix 886 F2d 203,206.

As held in another case, The confrontation clause was violated when defendant was not present during deposition (video) because defendant never recieved notice, nor was informed of right to attend. Carter v Sowder 5 F3d 975, 980-981.

Because any deposition is a fact finding stage and a confrontation like setting where both the prosecutor and defense can ask questions in 'cross examining' our courts statewide have held that defendant must be present, to allow effective cross examination, a defendant must be able to communicate with his or her attorney instantly during deposition. U.S. v Miguel 111 F3d 666(9th Cir). The core of a criminal defendants right to be present, is right to be present when evidence is being presented. In Matter of Lord 868 P2d 835 and evidence may not be taken in his absence. RCWA Const. Art I § 22. State v Waller 13 Wn App 545.

Likewise in this ground DISMISSAL is warranted in light of all other errors and DISMISSAL is requested.

GROUND 15

INEFFECTIVE ASSISTANCE OF COUNSEL

At the outse of trial appellant raises the following objections with my trial judge 1. I dont have access to case law, 2. I Objected to arreset without a warrant, 3. Juvenile points use. 4. change of venue, 5. not being allowed in courtroom 6. pre trial courts refusal to rule on motions, 7.states failure to respond to motions 8.not being allowed to file motions 9.not allowed to make records 10. dicovery not provided while pro se 11. due process violations 12. substantial difference of opinion in regards to conflcit counsel, 13. RPC violations by conflict counsel, 14. Court making new appointment of counsel only when speedy trial expiry came up 15. pro se denial16 unrepresented at hearing 17. speedy trial violation 18. reappointment of conflict counsel 19 nunc pro tunc order 20. multiple cure periods 21. discretionary feview notice denial 22. state v campbell over pro se denial. 23. states refusal to communicate with defendant while pro se 24. Notice to answer not being answered 25. denial of "aid' [standby] 26. compulsory process violation. 27. ineffective assistance from 1st counsel 28. objection to untimely appointment of aid. 7RP2-13

When appellant got to trial, appellant was restarined by an officer in the presence of the jury, appellant had an ex parte communication occur, over objction. The court denied its occurence and when the court knew that appellant knew the court then downplayed it. the court refused to address probable cause, refused to answer the notice to answer,, refused change of venue motion, Appellant had raised some 29 pre trial errors and after trial finally began notwithstanding the 20-plus errors already subjected to, appellants clothes were lost by the jail, appellant had to go to trial in clothes that were not presentable or proper court attire. 7RP37-38 and after the court denied the motion for mistrial based on the current three errors of clothes, restraint by officer, and ex parte, appellant had concluded there was no way possible for me to get anywhere as far as representing myself appellant, had not been able to serve subpeona's due to the compulsory process errors, appellant had no way of obtaining case law, appellant couldnt even properly file pleadings in the court, due to the overwhelming errors occuring up to that point, the court had by its limitations and errors effectively denied the appellant the right to an effective pro se representation.

Appellant told the court that I had to reluctantly forego pro se, as it was basically impossible to proceed pro se in light of the errors aforementioned.

The court allows pro se termination and the following took place;

CN: I think State v Silva is the leading case one this one--one of the duties of standby counsel is to be prepared in case they need to step up and take over, however, having been appointed stand-by counsel on the day of trial, it was not possible for me to be prepared to do that. Had I been standby counsel for a period of time, I would have been prepared, would have been shadowing, if you will, in my preperation with the defendant. However that has not happened I am not prepared and not capable of stepping in and making opening argument and taking over this case at this point. And I would cite State v Campbell for the proposition. 7RP63-64

CT: How soon would you be able sir, to be ready? 7RP64

CN: I would need at least two or three full unemcumbered days to prepare a trial notebook review, evidence, and arrange witness interviews through counsel, I would need at least two or three days. the problem is I have other cases, other motions, other things pending on my calendar, Which makes it very difficult to get that. 7RP64

CT: Looking at the whole situation that we have here, where the defendant went before another judge and he made his demand for pro se representation, Judge worswick, making the decision, at least what I observed in the last day or so with regards to Mr. Thomas's own representation and his change of mind this morning that he wants counsel reappointed I think it makes sense for this matter to proceed orderly, effeciently and move this case along as soon as we can, I'm reappointing Mr. Schoenberger. I appreciate the fact that he was standby. He has some knowledge on the case and we'll start again monday. I will excuse the jury for the day and tell them to come back monday morning at 8:45 so we can get started by nine o'clock. 7RP66-67

(Court recesses for one week)

(Monday session)

CN: Your honor, I have a preliminary matter,the defense would like to move for a mistrial at this time. Your honor I don't do this lightly, It's a Class A felony, Mr. Thomas was pro se and then I became, with no preperation or notice, Standby counsel and then was appointed to represent him for trial. I've had two business days to prepare a Class A case for trial, beginning with this morning. I have to tell the court, Pursuant to State v Campbell I am not prepared to go foward. 7RP76

Now Judge I've tried alot of cases in 24 years and I dont think I've ever had a case where I can say "I am fully prepared". That doesn't happen, But I think the preparation on this matter falls far short of what it needs to be for so serious an offense, with the penalty he's looking at. We have a jury that I didn't voir dire, that the defendant has picked, I have identified, including a Tacoma Police department Lieutenant, who I need to interview and subpeona. I have not sent subpeona's out. I have one witness I need to talk to, who we dont have a current address on. Theres just alot to do yet before I'm ready to try this case. Rather than hold this jury,who are now in their second week, ad infinitum, until I can get some of these items accomplished, it is my request that it's in the best interest of all parties involved and make the best use of the courts judicial time to declare a mistrial and reconvene this trial perhaps as early as next monday? 7RP70-71

ST: I have yet to hear as to what counsel is not prepared to do, What I hear is the defendant abusing the system. The defendant is the reason we're here in this posture...Theres no reason, counsel hasn't explained any reason that he is not prepared to go ahead an cross-examine the States witnesses to the best of his ability with adequate preperations having been made. --Until we have a reason to believe that counsel can't go foward then this court should deny the motion and we should proceed with opening statements 7RP78

CT: Anything else?

CN: Well judge Mr. Sheeran is partly correct. we have interviewed some witnesses last week. That has opened up new things to look into to...I have not had a chance to research and brief some issues...I had this case on the backburner in my office while I was trying other cases, Class A Felony, serious consequences, and it's unfair to the State, it's unfair to the court. and it's unfair to Mr. Thomas to proceed without adequate preperation. 7RP79
Your honor Mr. Thomas desires to address the Court7RP80

ST: There's no reason for that. he has an attorney, I would implore this court not to start opening this door as to letting him talk whenever he wants to. We went down that road for months. Thats how we got here...He is not at liberty to speak whenever he so chooses

AP: Well

CT: You heard him, I'll sustain the objection. 7RP80 (no objection before him)

You know we are primarily here because of the defendant right? Last week he came to trial and he wants to have a trial without an attorney. At my instance, we're going to have a standby attorney to help him out. And we proceed, we start, slow, it's okay,we select the jury, after selecting the jury, he changes his mind: Now I want an attorney. okay. So I say it makes sense, lets move this case along, lets bring the attorney back on board. So I reappoint you. Mr. Schoenberger, at the time that you get back on board, you say "I'm not ready. Get me two, three days to get ready. get me a weekend." It think it was wedenesday we stopped trial. I said, "Go ahead. Interview witnesses, do whatever you have to do."
So we come to trial today. the jury is back here, they have been waiting for five days. I'm not coming down on you, counsel. I'm not coming down on you either sir. But I'm saying the case has to be moved along. We can't sit on it. 7RP81-82

Now the idea that we have to--I dont like the word you used,"painstakingly slow." No, thats not going to happen, counsel. you will have time to interview witnesses that you have not interviewed, but we still move this case along.
I will deny the motion for mistrial, we will go on with the trial and thats that.7RP81-82

AP: Your honor I have a--
CT: No you cannot speak, your attorney is

AP: He's writing issues--

CT: Nevermind, I dont want to hear you, talk to your attorney. 7RP81

AP: I did talk to my attorney and he raised issues of me being pro se and I believe I have a right to make a record as to the allegation he [prosecutor] made against me.I requested effective assistance a long time ago and it was denied to me. We wouldn't be here had I been given my effective assistance like I requested. I objected to that and I feel like I had a right to make a record. He's coming as my attorney today, but I was pro se up until the last day that we recessed, and I have the right to make a record, at least, as far as the objection I'm raising for what [when] I was pro se 7RP81-82

CT: Are we ready for the jury?

CN: No your honor I have different motions...

AP: I would object on the record--

CT: I dont want to hear you, you have an attorney.

AP: I was just pro se--

CT: I dont want to hear you, sir.

AP: I object to not being able to make a record about the allegations he's made about me being pro se.

(then the court and counsel converse, appellant will add that at this point I was upset, the State made it appear as though it were my fault, when in actuality I had previously asked for a compulsory process, aid to assist me with things I could'nt do from the jail, I asked for a timely appointment of counsel, and objected to not being provided timely 'aid' until the day of trial. appellant contends had the state provided ½ of the processes or necessities that appellant was and does have the right to. appellant understands there is no right to 'standby' and made it clear to the court long before that I did not want hybrid representation but wanted to have 'aid' to assist in an compulsory process, etc. etc. the court could have in fact been killing to birds with one stone by making an appointment of aid because appellants aid or standby could have been prepared, after the judge denied the ex parte contact, allowed appellant to proceed foward knowing that a officer restrained me in front of the jury, that the court would not assist in my clothing, and appearance before the jury , appellant aside from that just mentioned and in light of the 25 plus errors already reviewed, appellant submits I never had a chance to effectively proceed pro se and for that reason had to forgoe, appellant even told the court I understood it would mean I could never proceed or assert that right for the duration of the trial, and also that because of that I knew at this point I could neither have objected to State v Campbell, but we are looking at letter, approximately "N" in the alphabet without looking from from "A" to see how we got here.)

AP: I have a question for the court, is the court at this time denying me my rights as a defendant or a party to this case to file motions?

ST: Your honor, the court does have the authority, if the defendant refuses to comply with the courts orders, to have this trial held in the defendants absence.

AP: Well I object to that as well, I'm asking if the court is limiting my freedom to act as a party?

CT: You have an attorney, I suggest strongly you be quiet and go through your attorney

(Counsel agrees to bring the jury in, appellant makes the last statement)

AP: The Pierce County Court system is corrupt, I request you recuse yourself?7RP84

Appellant is forced to trial with ineffective assistance not because of appellant but because of A-M to get us to N.

ARGUMENTS

Though the State did not appoint "aid' or 'standby' at the appellants motioning as well as objection, The State may even over objection by the accused appoint standby counsel to 'AID' the accused if and when the accused request help, and be available to represent the accused in the event that termination is necessary. United States v Doughtery 473 F2d 1113, 1124-1126. A defendants standby counsel must be able to fully represent the accused on a moments notice, in the event of defendants self representation is necessary. State v McDonald 143 Wn 2d 506.

Appellant was grateful to have this appointment made, but nonetheless made an objection to the trial court that the appointment was untimely, as counsel agreed as well, Tardy appointment of counsel is denial of counsel, sometimes the denial of effective assistance of counsel does not result from neglect, ignorance, or any other fact of defense counsel, for example a trial court may deprive an accused of effective assistance of counsel by making a tardy appointment. Fields v Peyton 375 F2d 624.

Actual or constructive denial of assistance of counsel is altogether presumed to result in prejudice. Strickland v Washington 466 US 668,692. and No criminal conviction can stand, no matter how overwhelming the evidence if the accused is denied effective assistance of counsel. State v Cory 62 Wn 2d 371,382.

A defendant may not be forced to trial with incompetent counsel, or unprepared counsel. U.S. v Kneeland 148 F3d 6,12. If the requirement of adequate representation has any content whatsoever, it surely must accompany the attorney's familiarity with all aspects of the case. 487 F2d 434,436, U.S. v Verderame 51 F3d 249, State v Cunningham 18 Wn App 517.

The constitutional right to have assistance of counsel, Art I §22 carries with it a reasonable time for consultation and preperation... It is the duty of appointed counsel to make a full and complete investigation of both the facts and law in order to advise his client and prepare adequately and effectively to present a defense, he might have to the charge against him. State v Burri 87 Wn 2d 175,180 (citing State v Hartwig 36 Wn 2d 598).

The attorney not only has the right, but it is his plain duty towards his client to fully investigate his case and interview as many as possible of the eye witnesses to the assault in question,together with any other person aho might be able to assist him in ascertaining truth concerning the event in controversy. Burri(supra) @178,181

Should the appellate court not grant relief on this ground for whatever reason yet still, in light of all the other errors both pre trial, trial, and post trial appellant moves this court to DISMISS this case.

GROUND 16 A/B/C
CONFRONTATION CLAUSE VIOLATIONS(X3)

1st Instance

After the State conducted (4 pages of VRP's) re-direct, and elicited new testimony from the States witness, Counsel made an objection to a question asked by the prosecutor which ended the re-direct shortly therafter, the Court sustained the objection, and after the State completed re-direct, the following exchange takes place;

CT: There's been an objection, I've sustained, you dont need to answer &RP135

ST: Nothing else

CT: Thank you, you may step down. (The jury is present)

CN: Your honor I have more--

CT: No, please, we keep going back and forth, back and forth counsel, I've got enough Thank You.

Appellant first believes that could have been a comment on the evidence, for the court in the presence of the jury to say the he [court] has enough

CT: Next witness?

CN: May we have a sidebar?

CT: Yes (sidebar held)

ST State calls Danielle Fletcher.

2nd Instance

The State at the beginning before Ms. Fletcher even testifies, objects to the use of several of Danielle's crimes of dishonesty, counsel tells the court;

Danielle had some Juvenile crimes of dishonesty, counsel intended to use them as bias and credibility related issues, counsel states that under Evidence Rule 609(d), which allows such examination which would attack the credibility, Counsel tells the court that Danielle has Forgery in 96, PSP 98, 99 thefts 2nd and PSP 2, and that the witness has four more as an adult in 2000

CT: Why the overkill?

CN: I dont think it's overkill, I think it's just a pattern that this is not a person who's honest .

CT: I'll Sustain the objection. 7RP131

(And the court did not allow the defense to use these crimes of dishonety)

3rd Instance

After the court again, randomly excused another witness without allowing counsel to recross, to clarify testimony given by the States witness. The Following;

ST: The State concludes, nothing else your honor.

CT: Thank you. to the jury, we're going to take out lunch recess, please be back no later than 1:20 so we can get started. Thank you leave your notes.

(Jury exits)

ST: Your honor, there is one thing I'd like to cover right now, we had a sidebar at the end of Lavisha's testimony, counsel indicated he had another question he wanted to follow up on, where there were other assaults and where they have occured, and/or circumstances around the other assaults.
State would have objected, your honor indicated that you would have sustained that objection, so I dont think there was anything else.

CN: I wanted to make a record that, effectively, I was not allowed to re-cross the witness on that issue (and) other issues that I would have liked to ask her about.
Your honor realized [realizes] that he has just now denied me the ability to re-cross Ms. Fletcher by excusing her at the conclusion of Mr. Sheerans re-direct, 7RP166

ST: you didn't have any questions, He looked at you and you didn't have any

CN: I was making notes

CT: I dont recall you saying anything. With regard to the previous witness there was direct you had cross, there was re-direct, there was re-cross on your recall, you brought up the issue of other fights, other assaults by the defendant on the victim...you opened the door. She said none, on re-direct she said yes. Now you want to re-cross to find out why she got beat up.
I think you're way off okay. 7RP166

The State then asserts that the defense should have to call the States witnesses back on defense case in order to cure the confrontation clause violation.

ST: So the record is clear, both of these witnesses are available in defenses case in chief if defense counsel wishes to recall them. 7RP167

(lunch recess)

ARGUMENT

The defense should have never had to call(State) witnesses back to the stand to conduct further inquiry that the state elicits from it's witnesses, as the other assaults, as the judge stated was not the only testimony elicited .

With regards to State witness Fletcher's criminal history, The confrontation clause was violated because trial court refused to allow bias inquiry regarding government witnesses prior convictions. U.S. v Williams 892 F2d 307.

As far as both witnesses, Because the appellant had been denied the right to effective crosss examination which would be a constitutional error of the 1st magnitude no amount of government showing of want of prejudice would cure it. U.S. v Cronic 104 S. Ct. 2039,2047(citing Smith v Illinois 88 S. Ct. 748,749). The confrontation clause was violated because judge 'restricted' cross examination of witness of government thus preventing defense counsel from clarifying earlier testimony. U.S. v Stewart 93 F3d 189, 193. The trial court erred when it limited re-cross on a new matter, or different testimony on a new matter because if a prosecutor introduces a new matter on re-direct the defendant has a 6th amendment right to re-cross examination. O'Brien v DuBois 145 F3d 16, 26-27.

The violation caused by denying defendant opportunity to re-cross examine witnesses was not harmless error because of damaging testimony elicited during re-direct. Geo. Law. The right to cross examination is protected by the confrontation clause, thus it is essential in a functional right, designed to promote reliability in the truth finding functions of a criminal trial. Kentucky v Stinger 482 US 730,737 Because, The accused has a right to be confronted by his accuser and cross examine him. City of Seattle v Stone 67 Wn 2d 886. denial of a criminal defendant the right to adequately cross examine an essential State witness as to relevant matters tending to establish bias or motive will violate right to confrontation. State v. Roberts 25 Wn App 830.

In this case a constutional violation of the right to effectively cross examine two State witnesses has occured, The ccnfrontation clause's central concern is that evidence be submitted to rigorous testing before the trier of fact. Walters v McCormick 122 F3d 1172(9th Cir). The confrontation clause secures criminal defendants adequate opportunity to cross examine advers witnesses effectively. U.S. v Owens 108 S. Ct. 838

Appellant in this case did not recieve that secured right to effective cross examination and therefore REVERSAL is warranted but DISMISSAL is requested based on cumalative errors

GROUND 17
DENIED DEFENSE

Appellant does not want to mislead this court, so from this grounds outset I will let this court know that when I raise self defense, I do not intend to insinuate that I was being beat to a bloody pulp, or just being pummled on, Notwithstanding, appellant was hit first, appellants face was being clawed, and as the record reflects appellant did attempt at various stages to have counsel and the State accept appellants defense, not because it was'a defense', but because it was the facts of that morning.

Lavisha testified that she told appellant to come and pick my belongings up the next morning, Lavisha testifed that our only "Tussel" was in the bedroom, the only other 'alleged' witness was Ms. Fletcher, who testified that she could not see what was going on in the room, Ms. Fletcher testifies at different, times that she actually seen something somewhere else in the house, contrary to Lavisha's testimony that "we" tusseled" in the room, and that she while in the bathroom asked appellant "to just leave" which she testifies appellant did.

Ms. Fletcher testified that appellant left, came back in and hit lavisha again, contrary again to lavisha testimony that appellant grabbed his bag, after she asked him to leave, and did not return into the home.

As for Ms. Fletcher her testimony is summed up in something along the lines of I dont remember, I might have seen him hit her, I dont know (which is discussed in detail infra)

Appellant asserts that as the facts were, Lavisha was drunk, and beligerant and clawed appellants face, upset because appellant was taking his clothes to another womans house, and she felt appellant owed her for the time he was there.

After prliminary statements, Lavisha and danielle both testified that they went out that morniing and "had a couple of drinks" but "dont remember how many", "maybe two, three?", Danielle doesn't even remember how many drinks she drank and she testified she was the driver that evening??

LB: First thing I recall, I opened my eyes, cory had his bags in his hand, he said a couple of words that I dont remember, Then(we) 'started tussling','Started fighting' 7RP91

LB: He swung and I had to block that was about it, you know, (we) was tussling, so I grabbed his bags and ran out. 7RP91 [the 'I' should be 'He' stenographical error]
I opened my eyes, he was standing in my door with his bags in his hand, because he had clothes at my house and he came and got them. 7RP92

The state then ask's lavisha if I had hit her in her room, and is that the whole extent of what happened?

LB: Well, we tussled and all of that, you know, we went into the hallway 7RP93

ST: And you went into the living room and he beat you there?

LB: NO. The hallway is right there, right by my bathroom, so I'm walking into the hall and we're still tussling and stuff.

Lavisha is asked by the state if what she had just testified to was the whole extent and was it the full pictre, lavisha answers NO, and the State says lets talk about the full picture and asks what happened;

LB: He had his bags and we started tussling.

a moment later she states;

LB: We started swings 7RP95

and another moment later;

LB: Because we were tussling so I fell from the bed to the floor. 7RP96

The state then ask's her if she remembers the punch that broke her nose?

LB: I dont recall. (and a moment later)
I dont recall too much, I just know that we were tussling and he was swinging,Thats about it. 7RP96

Pages later the State ask's Lavisha if she wrote a note? She says yes. 7RP99 - and if it was the statement she typed up and had notarized. she also answers yes.

When the State ask's lavisha several more qustions, she tells him in response to one that of the statement delcared under penalty of perjury that "Some of it wasn't. some of it is true." 7RP100

Counsel for appellant then in cross examining Lavisha asks her if anyone asked her to do it she answers , no. Counsel then ask's her if anybody suggested she do it, she answer no.

Counsel ask's her to read it to the jury..;

LB: Cory lamont Thomas entered my home 'attempting' to pick up his clothes he had--

The State, with it's witness then objects, which the court sustains;

Counsel Then has it admitted, and ask's her again to read it to the jury; (picking up where she left off)

LB: Asked for the previous night. I told cory he had to wait until the morining, because I was going out that night. When cory entered my house, I was in bed sleep (sic) I woke up when I heard him going through the closet. So I got up and try [tried] to stop him, even though I said earlier he could get them. The he (sic) [should be I] snatched the bag from him, which caused me to fall to the ground, and that woke up my friend, she told cory she was calling the police and cory told her to mind her own business, I'm just here to get my clothes. Then he left after grabbing a couple of his bags, leaving the others there. Then my friend called the police saying cory had hit me, even though I told her that we were just arguing and I fell trying to stop him from leaving. then the police comes saying your friend said he hit you, and he's nothing but trouble, and they can really put him away. Then they asked if we were under the influence and I -- we had just gotten in two hours ago, from a girls night out. and that we were still a little tipsy from the after hours place. He said he asked cause he could smell alcohol on our breath. then they said he'd be charged with burglary and assault and intimidating a witness. And suggested I go to the hospital. I did go but corv had me.....
((this is another reason I objected to the VRP's, the statement itself says;" [but cory never hit me] And how come they charge him with Burglary wnen thats how he always comes through my bathroom window when I'm not home. And I only heard him tell my friend, who never liked him, to mind here business. The officers wanted me to write a statement But I could not [statement says would not] because cory did not do anything wrong. But I guess they charged him anyway. I dont want to file charges or testify because this did not happen the way the officers said 7RP104-105

Counsel then ask's her if she also said and put in the declaration that "this was blown way out of proportion? Lavisha answers yes at 7RP105

CN: Now this isn't true is it?

LB: Not all of it

CN: But you declared under the laws of perjury in Washington that this is your honest and accurate statement of the facts

LB: Yeah, I declared that in this letter right here, yes 7RP106

CN: Right, now, so you took an oath when you signed this
LB: Cause I didn't think that this was going to trial, no. 7RP166

Counsel then went over the declaration in detail, and LaVisha's response to a question was;

LB: I was trying to say I snatched the bags from him 7RP107

And a moment later

LB: He left after WE got through scuffling 7RP108

Counsel asked her later if she still believed it was blown way out of proportion?

LB: Yes, I do. 7RP110

It is ironic that lavisha testifed earlier that "Cory had his bags in his hand, Then we Started tussling" @91 Counsel later asks when did he drop the bags? 7RP 110-111

LB: Obviously he had to drop the bags if we start tussling. 7RP110-111

Counsel then asks Lavisha if she spoke to prosecutor Sheeran anytime before? Lavisha answers No. Does not line up with Sheeran testifying at the hearing without appellant present that Had talked to her before being booked into jail and the next mornig. @70-71

CN: Asks' later "What happened in the bathroom?"

LB: We was still tussling and then I asked him to leave...and he grabbed his bags and walked out. 7RP116

CN: did he come back in after leaving? (answer:no.7RP116)

CN: You dont want to be here testifying today do you?

LB: No. I really dont. 7RP118-119

Appellant asserts that lavisha changed and varied in her testimony because Mr. Sheeran had threatend to charge her with the purjury that she declared under, if she did not testify to the police departments version, The state even in a subtle way put that threat out there before he began asking questions in a leading manner that he wanted answered consistent with his leading questions. The state ask's / says;

ST: And thats why your here today, fear of going back to jail 7RP119

LB: Yes 7RP119

The State then asked her if what she told the doctor was true? and she answers yes. 7RP119

The State in trying to bolster the credibilty of the States witness, tells the jury in in closing arguments, that "she told the doctor the truth" as if to imply that what the States version was, was somehow pure gold.
But the States witness, the doctor, testified that "Lavisha told the doctor that she does not drink alcohol" and wrote in his report "patient does not drink" 7RP201

In response to another states question lavisha testified that;

LB: I'm not scared of cory. 7RP121

Counsels asks if in 12 years we had alot of arguments she answer YES, he asks had we had alot of tussels? she answers YES. he asked, you weren't afraid of him? answer NO. She was asked has he ever hurt you? answer NO....I've never been scared of him.
Counsel then asks, has he ever hit you before? answer: He has never hit me but we got into a couple tussle's before. BY ME HITTING HIM. thats about it. 7RP129

(outside the presence of the jury on an offer of proof, the state tries to purport that appellant has assaulted her before [appellant has no D.V. convictions] but the following exchange occurs;

ST: He' beat you before?

LB: WE have fought before

ST: Has he punched you before?

LB: WE have fought before.

The Court: I think she's denying everything, it comes back to muddled water...7RP129

The State then conducts, with the jury back 4 pages of VRP's of re-direct, which is what the judge did not allow re-cross on any of those four pages.

Danielle Fletcher is called to the Stand with the re-cross denial;

As far as any testimony about the room Danielle testifies

DD: I dont know how she got out of the room but she came out the room walking.7RP141

and about the bathroom (which is what lavisha testified to was the only two places,)

DD: I dont think I really saw what happened in the bathroom. 7RP141

Then Danielle states;

DD: <u>They</u> were fighting, in the bathroom 7RP143

Danielle further testifies to a war story like happening in other places than what LaVisha, who is the alleged victim, testified to, as the only person who truly did see anything, other than appellant.

The State then ask's its witness if her tape recorded statement [deposition appellant not present for] "was that accurate?" 7RP140

DD: Maybe not accurate. 7RP140

Appellant asserts Danielle's statements can be summed up in the following exchange.

DD: I probably seen him [hit her] I dont know. 7RP161

Danielle the says; I dont know what you want me to say?? 7RP161

Counsel then asks Danielle if her statement about the incident was true?

DD: Was it true? Maybe not because I dont actually remember seeing him hit her. 7RP162

Counsel then summs up Danielle's testimony with; at one point you claim to have seen her kicked and yet at another point you say she wasn't, which is it?

DD: I remember now, he did 7RP163

CN: But you didn;t remember that [last] thursday? [deposition]

DD: No. 7RP163

Appellant feels no futher compulsion to address their testimony, nonetheless the State's witness has supported the appellant defense, by testifying of her own volition that she has hit appellant first before as well, that she got out of bed and tried to stop appellant, She never vairied from "WE tussled" and "WE were scuffling" and the other testimony mentioned.

Appellant testifies in relevant portions:

CN: What did you do when you first came in? 7RP254

AP: I went into her bedroom, theres a sliding closet, I slid the closet back and as I slid the closet back she asked me what I was doing. I started taking my clothes that were on a hanger and place them over my arm. She got out of bed and said "I told you you're not taking all of your stuff unless you pay me for staying here, helping me accumalate these bills." and she grabbed like two shirts, maybe a pair of pants off of my arm, that I kind of folded in [on] my arm, holding the rest of my stuff, and she had a hold on it. And she said "well, I thought you didn't have nowhere to take it to?" and then I said "I do have somewhere to take it to. I'M going to take it to Danielle's house [a different Danielle, than Fletcher here, counsel clarifies that about two minuted later which appellant points to the other Danielle who was in the court room for the trial] and I want all my stuff, I'll give you some money, if thats what you want, Theres no problem." and she said "You bastard, you used me." and she clawed me in my face on my other side where my hand wasn't. 7RP 253-254
And in between her clawing me on my face, I tried to push her hand off my and as I was dropping my clothes, she pulled more of my clothes and threw them behind her, then she started to--7RP254-255 (appellants cut off)

CN: And she clawed you in the face?

AP: Yes... She's drunk and I'm saying "You're drunk leave me alone. Quit hitting me"..Thats what I kept saying to her. 7RP256
She was going back and forth and I ended up pushing her away from me.. And she kind of did this fall, like, I don't know how to explain it, She fell and was getting up @256

CN: And what happened next?

AP: I said "all right forget it" my clothes were already on the ground, she had some by her When she started getting back up I thought she started coming back towards me,so I walked out.. I took my bags and I was leaving [the ones she had waiting for me] As I was leaving Danielle said "what did you do to her?" I said "I didn't do anything to her. Look what she did to me"[my face] I said " I just came to pick up my clothes." 7RP257

the State then crossed examined me.

ST: Did you ever hit LaVisha?

AP: Not intentionally. 7RP271

ST: Not intentionally?

AP: No, LaVisha was swinging at me. She scratched me in my face, or grabbing me in my face. And like I said I pushed her to get her off of me. 7RP271

The State asks later;

ST: So somehow,after you left, before the police got there, her nose got broke ?7Rp275

AP: I didn't say that. I said I didn't know when her nose got broke 7RP275

The State then asked when it could have happened?

AP: It could have happened when she fell, it could have happened when I was blocking myself from being hit. 7RP275

Appellant then explains "she tries to say it was a tussle, but she was swinging at me"7RP276

And further explains: "She must have got her nose fractured when she fell or when I was blocking her from hitting me. I'm not sure when she got her nose fractured.7RP277

To the conclusion of this whole matter, appellant believes the most telling of all, that happened, I in no way feel as though my judge was not predisposed to find against me. but at one point in the proceedings at the begining of sentencing the judge says:

CT: But my concern here is the assault on Bonds. 7RP382

But at the conclusion of the sentencing the prosecutor asked for restraining orders on both LaVisha and Danielles behalf, the court grants one for danielle but makes it clear to LaVisha and the restraining order the state sought for her.

CT: I wont sign the No Contact Order [with repsect to Lavisha]. 7RP388

And it wasn't a mistake the court knew the parties, and actually even commented that he felt There was still a relationship there, even though there was no testimony to support such a statement and the court was aware that Danielle [appellants Fiance'] was in the courtroom.

Judicially standing, appellant believes there was more to the picture that the judge obviously felt happened that day, and did not enter a No Contact Order or a No Hostile Contact order for that matter. yet appellant was convicted of assault second degree given an exceptional sentence based on misdemeanors, but out of all of this the appellants alleged victim is supposed to be the States core concern, I submit there were other factors involved.

Notwithstanding, appellant asserted self defense many months in advance with the State and asked counsel to assert the defense of my behalf, my lawyer failed to and refused to, I submit further That there was nothing tactical or strategical about that as argued below. When the lawyer told appellant that he was not seeking an instruction, appellant asked counsel to at least preserve the record for this appeal, the following occurs;[when discussing instructions]

CN: Mr. Thomas, asked me to make a record that while he was pro se. He suggested to Mr. Sheeran, that self defense was an issue in this case. He wants me to preserve that issue. I have not prepared instructions based on self defense, I dont believe that they are appropriate at this time, But he just wants the record to reflect that he raised that defense with Mr. Sheeran, Do you remember Mr. Sheeran? 7RP295

Counsel totally takes it off of himself as in I did not ask him to as well. (specifically.)

ST: Dont remember it, wasn't part of an Omnibus Hearing order. [compulsory process viol..] I'm not saying he didn't mention it... we did have an hour and a half long conversation in the jail. He MAY have said, "what if it went this way?""what if it happened this way?" But I dont recall him saying "I'm going with self defense and therefore be ready for that' From the testimony, it sound like COUNSEL has already made his record as to whether or no he thinks its appropriate at this point to give the instruction. I'm not sure there's anything more I need to say on that. 7RP295

CN: I'm not at this time requesting self defense instruction. But Mr. thomas wanted the record to reflect he had--That he doesn't waive that 7RP295-296

CT: Well based on the evidence I heard. I dont see any self defense. He denies doing it period. 7RP296

Lavisha speaks at sentencing and States: That morning when we got into our Scuffle I had hit him and he had hit me back" 8RP10

The evidence the appellants record reflects supporting a self defense was
(a) Lavisha's Trial testimony
(b) Lavisha's deposition
(c) Lavisha's Statement under oath 'written'
(d) Lavisha's statement at sentencing
(e) appellants trial testimony
(f) Lavisha'a statement provided at sentencing before spaeking 'also under oath'

Lavisha's second handwritten statement that was entered into the record at sentencing says;

LB: (statement) (1st statement was declared on 11-24-2005) (2nd was on 05-04-06) ...I am the person involved in his case, I came to ask his sentencing judge to release him, he's been there for 8 months. And I think it's been long enough. I didn't call the police or ask for charges to be pursued and because of that I was locked up and threatened that if I did not testify against him I would be locked up again...The day the police came to my house we were both wrong, He shouldn't have put his hands on me, But I must admit it could have been avoided if I wouldn't have hit him first.and just let him take his bags & leave. I ask the court to accept my involvement in the situation and ask the court to release him...I declare under Washington State law that this statement is true. (signed and notarized LaVisha Bonds)

Appellant has plenty of evidence supporting the true facts of this case. and a self defense instruction should have been sought and granted.

ARGUMENT

Though the testimony varied, that was a issue for the jury indeed, notwithstanding appellant believes the State was relieved of its burden of proving self defense and the appellant was effectively denied a vaild and legally supported defense.

A defendant is entitled to an instruction concerning his or her theory of the case, if it is legally sound, and supported by the evidence, failure to allow it is reversible error, further defendant is entitled to an instruction...even if the evidence is weak, insufficient, inconsistent or of a doubtful credibilty. U.S. v Washington 819 F2d 221, 225 (9th Cir) (citing U.S. v Doubleday 804 F2d 1098(9th Cir)). See also U.S. v Wolny 133 F3d 758; State v Stevens 127 Wn App 269; State v Barrett 152 Wn 2d 266-267; U.S v Yazzie 188 F3d 1185, and U.S. v Brown 287 F3d 965.

Here there was plenty of evidence to support such instruction, clearly (6)different and independant sources of evidence, throughout the trial. To be entitled to a self defense instruction, the defendant must produce some evidence demonstrating self defense and once the defendant produces some evidence, the burden shifts to the prosecution to prove the absence of self defense beyond a reasonable doubt, State v Walden 131 Wn 2d 469,473. Further evidence of self defense is evaluated from the standpoint of a reasonably prudent person, knowing all the defendant knows, and seeing all the defendant see's. Walden(supra @474)

In conducting this review we must give full credence to the defendants testimony, The defendant is entitled to the instruction even if the evidence supporting it is weak and disparse on an inference of a State of facts that is ascertained by believing the defendant as to aprt of his testimony and prosecution witnesses on the other points in dispute. U.S. v Brown(supra)(citing Humphrey 208 F3d 1207,1208. The instruction must be given if there is any evidence supporting it. Brown(Supra), State v Corn 95 En App 41, State v Graves 97 Wn App 55, U.S. v Ebert 294 F3d 896,899

Should this court for any reason believe it was somehow strategic or tactical?

Appellant submits, Plea of self defense does not reduce degree of assault but constitutes a complete justification. State v Rodriguez 21 Wn 2d 667.

Turning to our 9th Cirquit on the question of counsel utilizing 'strategy' or 'tactic'. Our 9th Cir. Has held Counsels failure to request a jury instruction regarding self defense was ineffective assistance because self defense was the only defense available to defendant. U.S. v Span 75 F3d 1383,1390 Where failure to raise an important obvious defense without any imaginable strategic or tactical reason for the ommision, his performance falls below the standard of proficient representation that the constitution demands. Prou v U.S. 189 F3d 37,48.

Counsel here did not just fail to remember or address the issue but rather the lawyer made a record for appellant, and told the court that it was at "Mr. Thomas's request". And the courts comment was neither supported by any sound judgment in this case. The court cannot bar a defense that is relevant and competent under the evidence rules, and is directed at a crucial element or fact of offense. Hughes v Matthews 576 F2d 1250.

And for the States comment that "I'm not going to say he didn't say it" is overly ficticious and bogus, the State knew that he would have to prove the absence of the valid defense, and wiggled out of that burden, by placing it on counsel, in stating that counsel had already made a record, so theres no more to be said on the matter.

The State must disprove self defense in order to prove that defendant acted unlawfully. State v Redwine 72 Wn App 625, The State is required to prove the absence of self defense when the issue is properly raised in assault two prosecution. State v Acosta 101 Wn 2d 612, Because the crime of assault is not proved if evidence shows the act committed was justifiable or leaves the question in doubt. Peasly v Puget Sound Tug and barge Co 13 Wn 2d 485. A person acting in self defense cannot be acting intentionally within the perview of statute defining criminal intent RCWA 9A.08.010(1)(a)...self defense is explicitly made lawful act, under state law it negates element of unlawfulness contained within statutory definition of criminal intent. State v McCullum 98 Wn 2d 484.

Bottom line, in this case appellant has shown not only some, but much evidence in support of this instruction, and For defendant in assault prosecution to be entitled to instruction allocating burden of proving absence of self defense, to State, defendant bears the burden of providing some credible evidence tending to show the assault was in self defense. State v Walker 700 P2d 1168

Under the Federal and State Constitution, Due Process in criminal prosecution requires fundamental fairness and meaningful opportunity to present a complete defense. State v Burden 104 Wn App 507

Again in another case our 9th cirquit has held that The defendant is entitled to jury instruction that presents the crux of his defense. Deloach v Hamlet 74 Fed Appx 696

THIS ground warrants REVERSAL, however DISMISSAL is requested in light of this error alone and in conjunction with all other errors.

GROUND 18 A/B
SENTENCING ERRORS X2
A. MISCALCULATED OFFENDER SCORE AND
B. SAME CRIMINAL CONDUCT FOR DIFFERENT OFFENDER SCORE POINT

Appellant asserts the court erred in determing the offender score by adding one point from a juvenile offense that was age 14 in 1992.

Appellant asserts that it is well understood that the issue of an offense age 14 has been addressed on many fronts, appellant argues this ground in the sense of "underlying legal effect" and "ex post facto".

Appellant has a Theft 2nd degree from 1992(14 years old) for ½ point.

Coming into this appellant should probably let the court know that appellant at trial did object by way of "sentencing memorandum by defendant" further counsel onjected as well:

CN: We object to the offender score. 8RP6

I would only like ask your honor to take notice of the juvenile offenses, which were at at the age of 14. 7RP369

It is the assertion that this ½ point cannot be counted without violating ex post facto.

(i) RCW 9.94A.525 and RCW 9.94A.030 as amended by laws of 2002 Ch. 107 DO NOT ALTER THE UNDERLYING LEGAL CONSEQUENCES of a defendants 'prior convictions when calculating defendant offender score' for crimes committed on or after June 13, 2002. defendants do not have a vested right in "washout". State v Varga 151 Wn 2d 179

Appellant wishes to elucidate the fact that I am not addressing a "Washout" issue. And I concede that offenders do not have a vested right in "washout" .

However Appellant does contend that 9.94A.030 and 9.94A.525 do; ALTER the underlying LEGAL EFFECT. of the 14 year old offenses. Appellant may be wrong in my argument, and should I be wrong appellant is confident this court will show me how.

In 1992 when appellant committed the 14 year old offense, The offense was not to be considered 'criminal history' 9.94A.030(1992). Which meant after the adjudication hearing, technically and legally the offense had no further Legal effect. It was not considered criminal history, therefore in law it had no further legal effect.

In 1997 the legislature amended 9.94A.030 to "prospectively" allow offenses age 14 and above to be considered criminal history. The 1997 amendments ~~ending-the-juvenile-washout-provision~~ and allowing offenses age 14 as part of criminal history were not retroactive. State v Smith 144 Wn 2d 1. Prior to 1997 SRA amendments, Juvenile offenses committed before the age of 15 were not included as prior criminal history in claculating an offender score (O/S) for current offenses under former 9.94A.030(12)(b)(ii)(1996).

Another Smith decision provides; Adjudication should not have counted towrds offender score when defendant 1996 juvenile adjudication washed out under former 9.94A.030(12)(b)(ii) because he was 14 years old when he committed them and turned 15 before the effective date of the 1997 Amendment. State v Smith 118 Wn App 288(2003).

Clearly the age 14 offense had no legal effect, for the legislatures amendments in 1997 to affect any pre-1997 offense age 14, or 9.94A.030, would result in an ex post facto legislation, because it's retroactive application and intent undisputably "alters" the "legal effect". The 1997 Legislative amendment now give the age 14 offenses a "Legal effect" that they lacked pre-1997, or tne enactments amendment date.

The Smith cases were 2001-2003 cases, but our Supreme Court stated it best in Lachappelle when the court held "However, Technically the offenses never existed in the first place, so nothing existed to be 'washed out'" State v Lachapelle 153 Wn 2d 1.

Thus "washout" of the offense does not exist, as nothing existed to be "washed".

Compare the following case under former 9.94A.030(4) defendants prior adjudications committed before his 15th birthday, that were not sex offenses, ~~did-wash-out~~ and he was entitled to resentencing on his conviction for second degree murder. State v Tiscorino 127 Wn App 190(2004)

Another published in 2006; Prior juvenile adjudication does not count if (4) the defendant committed the underlying juvenile offense while age 15 years or older State v Wade 133 Wn App 855,854 (citing in Re Pers. Rest of Jones.121 Wn App 859,871)

Appellant committed the underlying juvenile offense while age 14 and did turn 15 before the 1997 legislation.

New law can only be applied to conduct occuring after it's enactment. U.S. v Tapia 981 F3d 1194

Ex post facto law is one that makes more burdemsome the punishment for a crime after it's commission...and must disadvantage the person affected by it. State v Wilson 117 Wn App 1.

It does not make more burdemsome the punishment [as in the sentenced imposed then] But it certainly is suspect to more than one interpretation, i.e. (it was not included in the punishment then, to be included in an offender score, 10,20,or 30 years later)(but to now allow it to be included in the Offender Score, is to allow the 1997 amendments to reach back, and retroactively affect a conducts sanction that was imposed then)

Indeed the 1997 amedments clearly state they are "prospective" for offenders who are 'juveniles' who commit, juvenile offense at the age of 14 after 1997, but nowhere in the statute is there an explicit legislative intent to "retroactively" alter the legal effect of pre-1997 offenses.

And the 1997 amendment, allowed to reach back and now allow it to be counted as a point in the offender score does now give it legal effect, it is a burden of it being a crime considered in criminal history now for any purposes, and it clearly does disadvantage offenders who were 14 years of and turned 15 before 1997, as it quite naturally and logically, increase the current sentence, in any mater.

Looked at differently, in Washington State to qualify as a first time offender is to say the "first time" offender does not have any criminal history in this State or elsewise.

Take that offender, sentence him in 1996 as an adult with only one offense that is a 14 year old offense, he qualifies as a first time offender, take it a couple steps further, that offender for whatever reason has his conviction vacated, but comes back in say 2005 and still has no criminal history, minus the 14 year old offense, and the vacated crime, so would it be fair to agree that in denying him the "first time offender" waiver the state argues that 'hey the 1997 amendments made that a crime that happened in 1992, therefore your denied"?

to do so would clearly be an retroactive application of the 1997 amendments absent the required legislative intent. and it would also violate ex post facto by disadvantage him based on the new law, and further would now give that offense "legal effect" that it never had pre-1997.

With that said because it does not make the "sentence" more burdemdsome, it nonetheless makes the underlying ottense more burdemsome.

A statute violates the prohibition against ex post facto laws Const. Art I §10 Cl 1, if it imposes punishment for an act which was not punishable when committed. State v Ward 123 Wn 2d 448;State v Watkins 76 Wn App 726,732. The punishment is again, it now makes it criminal history.

This legislation make punishable, acts that were not punishable at the time of the commission, or rather, that were not punishable after punishment was imposed and completed. i.e.adjudication. Ward(supra) Watkins(supra).

Legislation is retroactive when it attaches new legal consequences to event occuring before its enactment. Eastern Enterprises v Charter 110 F3d 150.

This 1997 legislation does attach new legal consequences to events (1992) that occured before its enactment (1997).

The principal that the LEGAL EFFECT of conduct should ordinarily be assesed under the law that existed when the conduct took place, has timeless and universal human appeal. I.N.S v Cyr 121 S. Ct. 2271,2288 (citing Kaiser 110 S. Ct. 1570.

The 1997 amendments are not retroactive Smith 144 Wn 2d 695(2001)
Even if they were, a retroactive amendment is not effective as to law in effect at the time a person was sentenced, if sentenced prior to the passage of the retroactive amendment. State Smith(118) Wn App 288(2003)

Appellant does not anticipate even having to address this issue as, all the gross errors in this case clearly warrant dismissal, nonetheless, appellant understands the necessity and mandatory requirement to have raised all of your issues in your direct appeal or pretty much forever lose that right, if not lose it have many high hurdles to overcome, and for that reason appellant has to raise this issues that may become moot in light of the other errors.

SAME CRIMINAL CONDUCT

The Court erred in calculating Juvenile Offenses as seperate sriminal conduct. at setencing the only thing that the State relied on in asserting seperate criminal conduct was the "Determination for Probable Cause" that the State prepared at the outset of these Juvenile Offenses the Then Judge, found the conduct to constitute Same criminal conduct and for the State to now have them scored seperately based on their "determination for P.C." coupled with the mere assertions of a prosecutor who was not a party thereto, was err, when the subsequent result was the offfenses being treated differently based on speculation, and not the record.

ST: The State contends the two assault 2's are not the Same Criminal Conduct 7RP5
The two Assaults were not committed at the same time, and that is relatively clear in exhibit 1. The declaration for Probable Cause 7RP6

CN: We object to the offender score. 7RP6

Because the Stat "ALLEGED" a set of facts relied on by an initial police report does not have any bearing on what determinations the court made, or what the evidence produced at trial reflect. And for this new sentencing judge to find that the cffenses were seperate criminal conduct contrary to the trial judge's rulings was also in error.

ARGUMENT

Same Criminal Conduct if wrongly decided constitutes a miscalculated offender score and therefore can be added to appeal, this is an issue of law reviewed de novo. State v Rowland 97 Wn 2d 569. A sentence that is based upon a incorrect offender score is a fundamental defect, that inherently results in a miscarriage of justice. State v Johnson 131 Wn 2d 569.

Appellant has attempted to retrieve a "deposition" that was given by the alleged victims in this same criminal conduct issue, however appellant was told by counsel that I could not get those depositions in this trial either as they were unrelated to my active direct appeal.

Appellant was sentenced to the authority vested within RCW 13.40 "Juvenile Justice Act" and The Juvenile Justice act 13.40.020(4)(a) provides seperate convictions treated as one if they arise out of the same course of conduct. State v Adock 36 Wn App 699,706.

Once juvenile convictions were treated as one for offender score purposes, they cannot be treated as seperate convictions now. State v Perry 110 Wn App 554, 560-561(2002).

For the Juvenile assault second degree's with the accompanying VUSCA Appellant should have recieved only one point, and REVERSAL is warranted on this issues.

The State bears the burden of proving that the incidents at question were not the same criminal conduct based on more than an original "Determination for Probable Cause" and mere assertions, i.e. Judgment and Sentence, a record, some type of findings. etc.etc..

To the extent that the state's only reliance in it's assertion that the Juvenile offenses at question were not the same criminal conduct, was it's sole reliance and assertion that the court should rely on the "Affidavit for Determination of Probable Cause".

An information is a pleading, but an affidavit for Probable Cause is not. Mark v. King Broadcasting Co. 27 Wn App 344.

Even if the State's reliance on an "information" was presented, appellant contends the state must affirmatively show that the offenses at question were not the smae offenses and that showing could only be factual by a showing of the evidence and or factual findings of the court at the conclusion of the Juvenile offense proceedings.

GROUND 19
ABANDOINMENT OF LOYALTY / CLIENTS INTERST (DISREGARD)

Additionally Counsel at my sentencing told my Judge, who was already against me, that I was a troubled young man, and that I didn't get the help I needed while I was at JRA [juvenile rehabilitation Adminisration], appellant was seeking to not go to prison based on all the mitigating factors, college, GPA 3.9, No adult Feloines, No Domestic Violence Convictions, In spite of, Counsel tells the judge that I need some time in"DOC" Counsel basically told the judge I had not been amenable to the treatment while there which was totally untrue an contradicted appellant is 29 years old and has had no felonies since Juvenile matters age 14 and 15 from 1992 and 1994.

In a case involving a death row inmate it was held "Counsels Public Statement that death row inmate was not amenable to treatment, was ineffective assistance of counsel because comment indicated abandonment of loyalty, and disregard for clients interest. Osborne v Shillinger 861 F2d 612, 628 Counsel did not ask for a low end, counsel had no strategic purpose beind this, in fact counsel should have raised the mitigating factors known to him. "Counsels failure to raise obvious and significant issue[mitigating] was ineffective assistance because it was without legitimate or strategic purpose." Mason v Hanks 97 F3d 887,894

The right to counsel gauranteed by the constitution contemplates the services of an attorney devoted solely to the interest of his client. 322 US 708,725 Counsel failed to object to jury instructions, I could go on and on about counsel, and appellant hopes it will not be used against me later for not doing so, But there are a few other Errors.

Counsels Deficient performance requires DISMISSAL and I hereby request such.

Appellant will only raise three more issues.

GROUND 20
JUDGEMENT AND SENTENCE VALIDITY

Appellant was sentenced in this cause to 75 months,

Appellant did go to Jury Trial, No portion of the Trial was Bench, other than sentencing, as well as pre-trial proceedingins, the jury in appellants made no special findings to support any sentence outside of the standard range.

Appellant concern at this time is that appellant Believes a Blakely issue exist. In That the appellant was sentenced to 75 months and was given an additional 18-36 months of Community Custody, through reading the cases involving this issue, appellant believes in the unlikely event of a Community Custody Violation [should these judgments not be reversed] If for instance appellant is for some reason "revoked" Comm. Cust. Revocation, in that event the appellant would have to serve a sentence of 18-36 more months on top of my Maximum Standard range, already served in essence resulting in appellant serving 93-111 months when it would all be said and done and appellant believes such event would reult in a Blakely violation, because in essence appellant would be serving more than the Maximum Standard Range, and though this court has held the Community Custody is an 'Enhancement' appellant would respecfully submit whether 'enhancement' or 'exceptional' its end result would be an exceptional sentence served because it is in excess of the Maximum Standard range.

ARGUMENT

Other than the fact of a prior Conviction, any fact that increases the penalty of a crime beyond the prescribed statutory maximum, must submitted to the jury and proved beyond a reasonable doubt. Apprendi v New Jersey 530 US 466, 490. Our Courts HAVE defined the exact meaning of the term Maximum as is some cases the State may argue it is say 10 years for a Class B or 5 years for a Class C, and in other holdings the courts have held the Standard Range to be the maximum, [or anything in excess thereof is an exceptional] So appellant will go the easiest way known to appellant at this time and ask this Court apply the Rule of Lenity, as far as the term "Maximum" "The phrase at or near the 'maximum' term authorized is ambigious." U.S. v LaBonte 520 US 751, 758-762. 117 S. Ct. 1673, 1677-1679

A Judge cannot find any fact used to increase a defendants sentence beyond the Standard range Sentence, as this has to be submitted to a jury and proved beyond a reasonable doubt. Or admitted by the defendant. State v Ose 156 Wn 2d. 140,148(2005)(citing Blakely 542 US 301).

The effective maximum for Class [B][offenses] is the TOP END OF THE STANDARD RANGE. State v Knotek 136 Wn App 412,425(2006). Appellant went to jury trial, and like the exceptional sentence that is on appeal, the jury did not make any findings to support imposition of any sentence in excess of the Standard Range. Thus the Comm..Cust.. was imposed erroneously.

Since the Statutory Maximum is the Standard Range, "Except as otherwise provided, a court may not impose a sentence for a term of confinement or Community Spervision, Which exceed the Statutory Maximum for the crime. State v Zavala-Reynoso. 127 Wn App 119,124(2005). State v Vanoli 86 wn app 643,645

Imprisonment plus Community Custody may not exceed the Statutory Maximum. State v Hopkins 109 Wn App 558,569. See also Easterlin 126 Wn App 170.

Should this court hold that the Community Custody does not exceed the "Statutory Maximum" Appellant nonetheless asserts that any such violation be addressed in specific terms, as held in Sloan below. As of right now appellants Judgment and sentence does not conform with the specific requirements held by Sloan.

When A defendant is sentenced to the Statutory Maximum, and also sentenced to Community Custody, The Judgment and Sentence should set forth the Statutory Maximum and clarify that the term of confiment may not exceed that Maximum. State v Sloan 121 Wn App220,221(2004).

GROUND 21

INJUDICIOUS CONDUCT AND CHANGE OF VENUE DENIAL

In this Ground, Appellant understands that it is about the most rare of all claims that is granted in just about any appeal, nonetheless appellant feels as though my judge was, and is biased against myself.

Appellant had previously filed a notice to answer, to all judges whom dealt with my case, this request is included in the exhibits The notice to answer was filed based partly on the same reason appellant had mentioned in my Change of Venue request which is also here as an exhibit In the Change of venue and notice to answer, I was seeking to have venue change on the fact that, I had sued and prevailed with Compensatpry and Punitive damages awarded by A Jury in Federal Court at Tacoma, In the litigation, I sued, The City of Tacoma Tacoma Police department, The Mayor, The City Manager and The Chief of Police. along with some 22 individual officers, during the course of that litigation Several Judges who were members of the Pierce County Judicial Commision, repeadtly recused themselves from cases involving myself, about over 95% of which were traffic related Misdemeanor cased Instituted by Tacoma Police Officer. One Pierce County Judge "Judy Jasprica" had actually been served with a subpeona, at her home, because the City of Tacoma said for me to be prosecuted by the City in Municipal Court was a conflict, so the case went to the District Court Judge Jasprica, she did some things that caused the attorney to serve her with the subpeona as a witness and a party thereto, Immunity I believe kept her from becoming a defendant. [illegible] attorney's within Pierce County were for one reason or another, were actually disqualified from representing myself.

That case became so exstensive and widely known,many of you may know who I am, unbeliev -ably to myself and Honorable Judge Emery, The City at point actually themselves filed affidavits of prejudice(s) against him so that he could not hear my cases, And I must add I personally highly respect Mr. Emery and he is the fairest judge in Pierce County who I have ever been before. Needless to say I was well known by the majority of the Pierce County Legal Professionals. And becuase as it seems like the majority of attorney's like myself, The majority of Prosecutors have a strong dislike for myself, as for judges, I would have to say a percentage likes me, a percentage dislikes me, and I must say I think the other percentage would rather not just be involved with me either way and I cant say would have an opinion either way.

There was one trial actually in misdemeanor court that the prosecutor stopped the trial and had us go up to the honorable Judge Marywave VanDerans court room, because the City of Tacoma filed a writ of extraordinary proceedings, asserting that the Honorable Emery was not having fair proceedings,[in the City Eyes]. I am not sure if she is there anymore but I was told in the course of the trial that is on appeal, that she was in Division Two and not to worry, as she would Dismiss the cases when I got there, I am not sure if she is there or not?

With all that said I say that based on the things and the fact I gave Tesimony to the Washington State Senate, along with other things I cant remember right now, like Media coverage. ect. I did not want to brave the risk of ending before a judge who was on the dislike me side, Apparently I did, This judge gave me an exceptional sentence based on misdemeanors only [34335-5] that were a part of this litigation above.

So rather than brave those hazards I put in for a change of venue, and a notice to answer from any judge who had ex parte contact about me, to attempt to insure a fair nuetral and detached arbiter of the facts. My trial Judge refused to answer it and how true it is I dont know, But I have since been told he was in the City of Tacoma and was assigned to the Pierce County Superior Bench by way of governor due to lack of minorities on the bench at the time, at the least I ended up before him, and he throughout, showed his prejuidce and Dislike(s)

When I started my trials before him I made a record objecting to any ex parte contacts only to have hours later, another attorney tell me that My Judge and prosecutor had been in ex parte communications about my case, which is a ground in 34335-5, When I asked the judge he flat out denied it, then the prosecutor immediately thereafter said that a record needed to be made because obviously i knew, at which point he acted as if it was nothing and asked me well "How does that prejudice you?" VRP_____[I have that portion in the VRP's provided to me but didn't intend to raise it in this ground, soI didn't write it on my work product for this case I will go back and add it] .

The matters are properly before this court as they became part of the record. About the notice to answer, I dont know how to resaerch that, as for the change of venue I believe there was sufficient reasons to have me tried outside or Pierce County in these matters, The was a motion filed, in this appeal that is a exhibit and titled "motion for Change of Venue Cr.R.5.2(b)(2) and Change of Judge under Cr.R 8.9 and RCW 4.12.050" CP_____ Appellant first believes that the court erred in failing to grant a venue change.

ARGUMENT TO CHANGE OF VENUE

Motion for Change of venue should be granted when necessary to provide defendant his due process gaurantee of a fair and impartial trial. defendant need only show a probablity of unfairness or prejudice. State v Rupe 108 Wn 2d 734. Due process of law requires that motion for change of venue be granted where there is a showing of either actual prejudice or probable prejudice. State v Haugland 454 P2d 1237. Actual prejudice is not required in making change of venue motion. State v Banner 587 P2d 580, State v Jackson 46 P3d 257.

Widespread bias in community can make change of venue constitutionally required. McCleskey v Kemp 107 S. Ct. 1756. Defendant must establish either presumed prejudice or actual prejudice to warrant change in venue. U.S. v Rewald 889 F2d 836 (9th Cir)

Appellant is not challenging the issue of the jury being prejudiced and at first sight it may appear to be a moot issue but appellant asserts this ground, for the exact reasons that occured, i.e. a biased judges, subsequent adverse rulings, record preservation, sentence impositions, Motion address, timeliness of rulings, effect of rulings, personal feelings, opinions, prejudices, and biases on the bench. Ect.

Now appellant does not necessarily expect to prevail on this error but again appellant is before this court on Cumalative errors.

B APPEARANCE OF FAIRNESS ADDITIONAL

Second Instance of Judicial Vindictiveness, and Injudicious Conduct.

Appellant truly believes some of the instances involving the trial Judge were in fact Vindictive, but appellant coins this ground as Injudicious Conduct, because it is a slippery slope, to be raised against a judge, at the very least it is how I percived the action to be.

Notwithstanding denial of the the ex parte, denial of mistrial motion without an inquiry first, denial of every other motion and objection, refusal to answer the notice to answer, the fact that the judge called me "arrogant" and commented that I "had a habit of swimming upstream" Had hearing without my presence[raised in 34335-5] over objction and motion, gave me an exceptional sentence as a first time adult felony conviction of record, refused to address any of my Cr.R 7.8 motions, refused to grant an appeal bond in light of clear errors, restricted cross examination, I could go on and on, but the very last thing this judge did is something to always be remembered, and he made that abundantly clear;

This ground was and is the hardest to type and or reaserch, to even read on the VRP's again to brief it, in this ground I will attempt to take a detached position and raise it with as little as my own emotions as possible;

At My sentencing hearing appellant had an attorney who volunteered to come from Seattle Washington, drop his schedule for the day and speak on my behalf, appellant believes his remarks are worth raising in the ground as it is part of the record.

Appelllant believes as for Washington State Bar Association Members, Mr. Lembhard Howell WSBA #133, is well known in the judicial arena, and the opinions and observations he made are very much appreciated, And I will always be thankful for his honest assesment even parts I did not agree with.

Appellant trial attorney states;

Cn: We also have a second matter to discuss after, perhaps after sentencing. Mr. Thomas's Grandmother has died, and we will be asking the court to allow him to attend her funeral tomorrow. 7RP457

Mr. Thomas, his parents have both passed, he was essentially raised by his grand--mother. 7RP462

Appellant believes at another point the court was made aware that my Grandfather had passed as well, and this was the very last parental figure in my life.

After the State went through the charges and time request, a few other people speak on my behalf, and then the court, after stating he had already recieved a letter from the attorney who was there from seattle, made the impression that there was no need to hear him in person, Appellants trial counsel made the request for him to speak anyway since he was there, the court allows him to.

LH: Your honor, I think this court may be aware of the circumstances of family circumsta--nces concerning cory, when he was a youngster [19], his mom died and was in an alleyway and wasn't found until six weeks afterwards. 7RP469

The reason I know him is because for 3 years we were dealing with that case and he had to make numerous appearances in my office.[The Case was Thomas v Tacoma]

There's no question he's a productive citizen. I alos know him not always to tell the truth, I also Know that I [Howell] can be obstinate and hard headed and refusing to listen, But I also know that he is a kind person. How can I tell you he's a kind person? I can tell you that because in that case there were other plaintiffs with him suing the Tacoma police department and a number of officers. there must have been some 77 Claims only one prevailed and in that claim Cory prevailed with compensatory damages of $15.000 but $20.000 in punitive against the officer. So he had a $35.000 judgment,

Because his uncle was in danger of losing his house if there was a second phase of the trial dealing with counterclaim . Cory reduced his judgment to $10.000 and Vacated the judgment against the officer... Now knowing that he had this ongoing animosity with members of the department, that was quite something for him to give up. But he did.

Your Honor I find him to be extremely bright and intellegent. I've told him several times to leave this community... I have no doubt that in the right environment he would become an outstanding lawyer. And I say that without reservation... I see an awful lot of good in him. I wish there was Cruel and Unusual punishment. Contrary to the 8th Amendmen; So he could be whipped for his misdeeds. But Your Honor, I think I know people, after practicing law for close to 40 years. And I will represent to the court, as an officer of the court, Cory is not a criminal, he's not a criminal. Thank you for allowing me to say this. 7RP471

St: Your Honor, the state's view is actually rather different obviously. 7RP471

The Court ask's later if there was anything else? 7RP474

Cn: Your honor I'd like to address the issue of his grandmothers Funeral you honor. 7RP474

Ct: We Dont do that counsel, once they are sentenced to prison or jail, you dont let Themo out. 7RP474

Counsel then tells the Judge about a proceedure that the Pierce County Jail has for the purposes of funerals, with detainees in their Jail.

Cn: The Funeral is tomorrow Judge. 7RP474

Ct: Who's gonna pay for this?7RP472

Cn: There are two ways he can go to this funeral...(Counsel explains the fees that the jail charge 'if he has $300.00')
The other way he can attend this funeral, which would cost no money, is if he were to be given a temporary release by your honor to the custody of Mr. Howell. Who has agreed to take him and be responsible for him and take him to the funeral and return him to the jail. The Funeral is tomorrow. This is Betty Erwin who was his grandmother. this is the woman who raised him. It is very important to Mr. Thomas to be at her funeral. We Would ask your honor allow him a temporary release in the custody of Mr. Howell, for that purpose with whatever restrictions and limitations you might impose timewise. The Funeral is at 1:00 it's four blocks from here. It's not very far. In the alternative, that he be allowed to be transported by the jailers our concern is that they need two officers. they come from volunteers. Sergeant James has just informed me that they have one volunteer. So it's not enough. Even if your honor were to order that, we can't be sure that he would be--that they would have a second volunteer by 12:30 tomorrow to transport him. 7RP475

St Your Honor, the State is of course, is adamantly apposed to the court releasing the defendant to the custody of somebody other than a Law Enforcement Officer. But in no circumstances should a man who just got 75 Months [exceptional sentence 34335-5] in DOC be let go with a promise to appear to a man--to counsel, who frankly was very honest with the court when he told the court, cory will lie to you and to put into cory's hands the ability to come back or not, if he so chooses would be a huge mistake. 7RP476

Ct: I'll only do it with the escort. 7RP476

Cn: I will prepare an order for your honor to sign. Thank You, your Honor. 7RP476
(Recess)

After the judge had signed the order and left the bench, appellant due to The prosecutor John Sheeran stating, "you should have dropped your appeal" [this ground , was told to the judge that J. Sheeran, was making me either drop my appeal issues, or recieve an exceptional sentence, 34335-5, The judge was long ago aware that this was the reason that appellants sentencing ended up being set out for approx. 4 months because the State had not briefed the exceptional sentence issue, and at every subsequent sentencing hearing told the appellant to waive the right to appeal or recieve an exceptional, This vindictive claim will be before this court in addressing 34335-5] based on his statement appellant was upset, based on the fact of how I was erroneously convicted and had also got an exceptional sentence for not waiving the right to appeal these errors. So appellant will admit I refused to sign the judgment and sentence, If this court will recall I had not signed, one single order since after arraignment though.
So the Judge comes back out on the record;

JS: Back on the record with respect to the two Cory Thomas files.
The defendant is refusing to sign any of the Judgment and Sentences. The only real concern that for the State is the defendant is also refusing to put his fingers--on the finger page. And IF he refuses to do so, now that we're on the record, I'm going to ask that the deputies take his finger and dip them in the ink and put them on the fingerprint page. 7RP476

Cn: Nothing to add your Honor. 7RP476

Ct: Officers can you do it? 7RP476

Corrections Officer: Yes Sir. 7RP476

Ct: Do it.

Appellant then said [and why its not in the record is unclear] they dont have to do it I dont want to get in trouble I'll do it. and I did it on my own, for fear of getting in trouble at

Appellant then said[why its not in the record is unclear] I'll do it, they dont have to, and appellant dipped and inked alone. (The reason I did was because I did not want to be in trouble in the jail, The State can verify I did it alone)

Now where appellant believes the judge became vindictive, is he saw me while I did my own fingers, and said [the stenographer has it as a run on sentence but it was not like that]

Ct: I think I want to cancel the release order, where is it? 7RP476

St: I believe it's with your honor. 7Rp476

Cn: Judge I would ask that you not do that. This is obviously a very angry young man at this point. 7RP476 (while saying this I showed the judge my prints that I did)

Ct: It's done, Sir.
Anything else? 7RP476

St: With that your honor I think I will be able to hand up the J&S. 7RP476
(adjourned)

Appellant does not rely solely on this incident in support if my ground of injudicious conduct but rather relies on all of the comments, including the names, that appellant took offense to. And ask that this ground be viewed in light of all the other errors aforementioned,

ARGUMENT

The Standard for reversal on the basis of Judicial Misconduct during the trial is whether the trial was unfair. Handigards Inc. v Ethicon Inc. 743 F3d 1282,1289 To demonstrate that the trial judge was biased [Hansens] must show that the judges conduct reflected a disposition, based on extra Judicial sources. to treat him unfairly. Sealy Inc. v Easy Living Inc. 743 F3d 1378. Appellant in this case made an appeal but the judge refused to acknowledge it. the Notice to Answer was specifically based on Extra judicial sources. in regards to myself and Thomas v City of Tacoma 410 F3d 644(2005).

denial of an impartial judge can never be harmless. Chianelli v Environmental Protection Agency 8 Fed Appx 971. At the end of the trial although disapointed in the outcome he should leave the Court House feeling that he has been treated fairly, and that his case has been decided by a nuetral and impartial arbiter. Anderson v Shepard 856 F2d 741.

I left the Courthouse knowing that my judge had lied to me about an ex parte contact, had limited and restricted crucial cross examination, I left with Double Jeopardy Convictions in 34335-5, knowing that my Judge had called me names, expressing his opinion about me, recieving an exceptional sentence without a jury, based on misdemeanors litigated in the Federal Lawsuit, in spite of the fact I was not off the scale in points, My only criminal history considered was Juvenile from aproximatley 11 years ago at that time. knowing that he cancelled my funeral, becuase he was upset about me not signing when I had not in the months previous, with him knowing that I dipped my own fingers, took no effect what an attorney who came from seattle had to say about me, didn't even want to let him talk [judge]. He knew the officer of the court of 40 years agreed to take me, again from Seattle not this same day but the next day and that day being a Saturday. I dont think it is necessary to raise all the errors and ground aforementioned,

I left the Courthouse having no sense for what Justice is in America, I've had one subsequent hearing with a Administrative Law Judge, trying to address Child Support debts while incarcerated, Based on Her actions, Judge Emery, and Judge Tollefson I recognize that there is still some Justice out there, but it doesn't tip the balance when dealing with injustice. The basic requirement is one of impartiallity in demeanor as well as in actions. U.S. v Frazier 584 F2d 790,794 . The Supreme Court has held, they recognize the requirement of nuetrality in adjudicative proceedings 'as it' preserves both the appearance and reality of fairness, generating a feeling that justice has been done, by ensuring that no person will be deprived of his interest in the absence of fair proceedings in which he may present his case with he assurance that the arbiter is not predisposed to find against him. Anderson v Shepard 856 F2d 741,746

GROUND 22
PROSECUTORIAL VINDICTIVENESS
IN THE PLAINEST SENSE

Appellant thank god for the tranquility to make it through the pre trial and trial errors and then comes a post-trial error, that appellant did not know then to be a error of such great magnitude, nonetheless appellant is thankful that the first thing out of appellants mouth at sentencing was a complaint about this error.

In a very sinister way the State in attempting to retain the 'conviction' told appellant both pre trial completion, but more importantly post trial / pre-sentencing that if appellant 'waives his right to appeal' the convictions and errors, that the State would not seek an exceptional sentence, against appellant, looking back on it now and having a year to research all of these issues, appellant believes though he may have been trying to help, appellant believes counsel was ineffective for even trying to assist the appellant, in making such agreement with the state.

Appellant never thoughtI would recieve an exceptional sentence, I was a first time adult offender, which raised some equal application / protections violations concerns for appellant, but appellant had to overcome too many obstacles to show that in Pierce County 1st time adult felony offenders, do not recieve exceptional sentences, and it was a whole different issue appellant did not focus on arguing.

Nonetheless, Appellant had lost every other general right fathomable, at every proceeding that appellant was present for, and not present for, appellant had 1 more right that the State could not outrightly take, yet nonetheless tried, and appellant figured if I got no other right afforded, then at least I had one to look foward to which was the right in this State to have this court review appellants inerrant record. and appellant was not willing to surrender that one last and perhaps the most important of all rights afforded to criminal defendants.

Come to find out the exceptional I was threatened with was yet also in violation of my right to a jury trial determination, that the sentence was 'clearly too lenient' yet I knew none of this then, as my counsel never did file a response brief in regards to the exceptional imposed, and even more disturbing he never even agued 1 single case proposition in opposition to the imposition of an exceptional sentence.

To the record, at sentencing appellant opens with;

AP: I dont think 120 months is fair, I think it's to punish me.
Throughout...I was told if I waived my appeal issues, the State wouldn't seek 120 months 8RP371
After my last hearing he had, [sentencing set over] They said if I waive my appeal issues they wouldn't seek 120 months. 8RP371
If I pleaded guilty to the four counts that I was just found not guilty on, on a seperate cause, the State wouldn't have sought an exceptional sentence 8RP371
It's only because I went to trial...That the State is actually seeking an exceptional sentence on me. I dont think that's fair. 8RP371
I believe if it was for what the purposes that he's stating it's for, he wouldn't have asked me to waive my appeal issue and not seek an exceptional sentence. 8RP371
And I believe he wouldn't have tried to make me plead guilty to the cases that I was found not guilty on 8RP371

Appellant has raised in another ground why I feel the judge acted vindictively also. and to second that ground I just read in the VRP's Where he also called me "obstinate" and "argumentative" 8RP382

Notwithstanding, apppellant first in this ground assigns error to the fact that looking back on the record the judge never made inquiry into these facts, before imposing this exceptional sentence, it re-affirms that appellant was pre-disposed against by this judge, he did't care, obviously, he didn't care to ask.The record will also reflect that the jUdge continued my sentencing for several months, because Primarily, the State had not briefed the issue of an exceptional without the jury.

With that said, appellant did not even recognize that I had in fact told the court this, but looking back, I dont understand why I would not have?

At the least, the State is permitted, form my understanding of the case law involved but to pursue this course of action post-trial is in the most basic sense, vindictive, On one hand I can understand they didn't want the conviction overturned, so this was their ploy, but on the other hand it became vidictive not only to seek it but to have it imposed, he followed through on his promise.

And then I look at both hands, and like the bible says they have been weighed and found wanting, it is unfair, unequal and a vindictive prosecution.

Due process clause prohibits a defendant from being retaliated against through imposition of a harsher sentence simply for exercising right to appeal. Paradise v CCI Warden 136 F3d 331. The defendant need not prove that he was an actual victim of retaliation under the rule, but only that he has a realistic apprehension that the pros--cutor has retaliated for exercise of his right. Blackledge v Perry 94 S. Ct. 2098, North Carolina v Pearce 89 S. Ct. 2072, State v Johnson 537 F2d 1170.

Since the Pearce- Blackledge prophylactic rule is designed not only to protect defendant from retaliation for the exercise of his right, but to prevent the chilling exercise of his rights by other defendants, who may be faced with similar choices in the future, it appears that dismissal of their indictments is the only effective method of curing the taint of vindictiveness in this case. Zant v Stephens 103 S.Ct. 2733, U.S. v Lippi 435 F. Supp. 808,816.

The vindictive prosecution doctrine reaches all prosecutions that pose a realistic likelihood of vindictiveness.Perry(supra) 94 S. Ct. 2102. Whether or not the prosecutor acted out of vindictiveness, in fact, the evil, to which Pearce is directed is the apprehension on the defendants part of recieving a vindictively-imposed penalty for the assertion. U.S. v Jamison 505 F2d 407,415.

The mere appearance of vindictiveness is enough to place the burden on the prosecution to show a legitimate motive. U.S. v Ruesga Martinez 534 F2d 1367,1369(9th Cir.)The Justices have held; lay not in the danger that a defendant might be deterred from exercise of a legal right, but rather the danger that the State might be retaliating against the accused for lawfully attacking his conviction. 98 S. Ct. 663.

The court reasoned that fear of vindictiveness for exercising a statutory right to appeal was forceful as actual vindictiveness in chilling defendants free and unfettered choice in deciding to appeal. U.S. v DeMarco 55 F2d 1224,1227.(Citing Pearce(supra)) .

Many a nights for over 3 months awaiting sentencing appellant went to sleep with this one my mind, many days the appellant lived with this fear and anxiety, Many more days than both, the appellant has lived thereafter with that exceptional sentence, and appellant can only continue to have faith, that my faith then in holding on to that appeal right, may come out to be to my good, at this stage, not only for this ground alone but appellant has tried to condense some 30 plus errors(supported by the record) into abourt 20 grounds. In taking that faith ecclesiastes holds; If you see the oppresion of the poor and the violent perversion of justice in a province do not marvel at the matter, for high officials watch over high officials, and higher officials are over them. Due process violated if defendant is vindictively prosecuted for exercising constitutional rights. U.S v Perry 355 F3d 316, 323-324.

Successful assertion of vindictive prosecution are most common where a defendant advances some proceedural or constitutional right and the is punished for doing so. U.S. v Lanoue 137 f3d 656,664 [not to forget appellant tried to get an extraordinary writ early on] Prosecutorial vindictiveness can be shown if a defendant demonstrates a like--lihood of vindictiveness sufficient to justify the presumption. Bragan v Poindexter 249 F3d 476,481;U.S. v Johnson 221 F3d 83,94; U.S. v Stokes 124 F3d 39,45.

The in light of all the mitigating factors, the State still chose the course of punishment for exercise of constitutional rights, and though it was not their obligation appellant to this day feels as if I was deserving of an exceptional low.

A prosecutors decision not to move for a downward departure may not be based on unconstitutional motive. such as retaliation for exercise of protected rights. U.S v Davis 247 F3d 322, 325-326.

In conclusion;
To punish a person because he has done what the law plainly allows him to do, is a due process violation of the most basic sort, and for an agent of the State to pursue a course of action, whose objective is to penalize a persons reliance on his leagl right is patently unconstitutional. Bordenkircher v Hayes 98 S. Ct. 663, 434 US 357,368.

A person convicted of an offense is entitled to pursue his statutory right to trial de novo, without apprehension that the State will rataliate by substituting more serious charg [sentence] for the original one thus subjecting him to a significantly increased potential period of incarceration. State v Taylor 22 Wn App 308.

THE DAY OUR CONSTITUTION PERMITS PROSECUTORS TO DETER DEFENDANTS FROM EXERCISING ANY AND ALL OF THIER GAURANTEED RIGHTS BY THREATENING THEM WITH A NEW CHARGE [or enhanced sentece] FORTUNATELY HAS NOT YET ARRIVED. [parenthesis mine] 498 F. Supp 1255,1256

IF PROSECUTORS ARE ALLOWED TO CONVICT GUILTY DEFENDANTS BY IMPROPER MEANS, THEN WE ARE BUT A MOMENT AWAY FROM THE TIME WHEN PROSECUTORS WILL CONVICT INNOCENT DEFENDANTS BY UNFAIR MEANS. State v Rivers 96 Wn App 672.

This whole case warrant DISMISSAL, and based on this gorund and the cumalative efferct of the 30 plus other errors, DISMISSAL is sought and hereby requested.

Now at the top of this mountain,Appellant asserts, in the very unlikely event that this Court does not dismiss, these appeals, Appellant has hereby raised 22 grounds that are all supported by the record, of those 22, there were many collateral errors that had attached to each one, that appellant feels were too numerous and clear enough that their recesitation is not necessary, NOTWITHSTANDING, Two or more individually harmless errors has the potential to prejudice defendant to the same exent as a single reversible error. U.S. v Rivera 900 F2d 1464,1469(en banc) If many of these are considered non reversible errors The cumalative error doctrine mandates reversal when the cumalative effect of non reversible errors materially affects the outcome of the trial. State v Newbern 95 Wn. App 277,297, Appellant is well beyond that threshold, because the total effect of a series of incidents [have created] a trial atmosphere which [has threatened and deprived] the accused of the fundamentals of due process. State v Swenson 62 Wn. 2d 259[parenthesis changes mine]. Cumalative error doctrine applies when several trial errors which standing alone may not be sufficient to justify reversal, but when combined may deny defendant of a fair trial. State v Greiff 141 Wn 2d 900. The Court and County have obtained convictions through continued violations of due process, When a Government action deprives a person of life, liberty, or property without fair proceedings it violates due process. U.S. v Deters 143 F3d 577. our United States Supreme Court has held that a conviction come by illegally is fruit of the poisonous tree, and no State has a right to exploit that illegality. Wong Sun v U.S. 371 US 471. Although each error looked at seperately may not rise to the level of reversible error, their cumalative effect may nevertheless be so prejudicial to appellant that reversal is warranted. U.S v Wallace 848 F2d 1464,1475(9th Cir.)

A Travesty of Justice has occured here in the States venture to punish an individual. The interest of the United States in a criminal prosecution is not that it shall win the case but that Justice will be done. Jencks v U.S. 353 US 657, 77 S. Ct. 1007 . It is just as well that lady Justice is blind, she might not like the things done in this case in her name, if she could see.There is no more cruel tyranny than that which is exercised under cover of law, and the colors of Justice. U.S. v Jannottie 673 F2d 578, 614.

See now I have prepared my case, I know I shall be Vindicated. Job 13.28 NKJV.

REMEDY SOUGHT

DISMISSAL

Respectfully Submitted, On this 1 Day of Apr. 2007

x _____
CORY LAMONT THOMAS

FURTHER AFFIANT SAYETH NAUGHT.

This Matter comes before this Court on Appeal, at the request of the Appellant, seeking the relief Identified at the conclusion. The following is a Brief with errors occuring at Pre-Trial, Trial, and Post-Trial Proceedings in Said Superior Court. Appellant asserts that I have been subjected to a multiltude of Violations of my Federally and State protected Constitutional Rights. Appellant moves this court to conduct its review under the vested authority of this Court inrelation to the cumalative error doctrine. RAP 2.5(a)(3) for violations of:

United States constitutional Rights
Washington State Constitutional Rights
Washington state Statutes
Washington state Court Rules, and
Commonlaw Holdings.

The Content herein, which are supported the record also violate:

Substantive; Rights, Rules and Laws
Proceedural; Rights, Rules and Laws, and
Constructive; Rights, Rules and laws

All of the aforemention in violation of the relevant Constitutional Rights as well.

Appellant maintains, the grounds in this brief, and all the collaterally related errors are contrary to various Laws.

TRUTH IS MORE LIKELY TO EMERGE FROM THE INVESTIGATION AND PRESENTATION OF EVIDENCE AND OPINIONS BY TWO OPPOSING PARTY'S, THUS APPELLANT INVITES THE STATE TO RESPOND, SHOULD THE STATE NOT BE MADE TO RESPOND OR RATHER OPT'S NOT TO APPELLANT BELIEVES:

THE RECORD AND BRIEF: SPEAKS FOR ITSELF. "RES ISPA LOQUITUR"

Exact violations include but are not limited to;
WASHINGTON STATE CONSTITUTION ARTICLE I §3, §9, §10, §14, §22,§29, §30, §32,§2,
WASHINGTON STATE CONSTITUTION ARTICLE IV §28, §31,
UNITED STATES CONSTITUTION AMENDMENTS §5, §6, §8, §14
ARTICLE III §1, ARTICLE VI
WASHINGTON STATE COURT RULES= VARIOUS
RULES OF PROFESSIONAL CONDUCT = VARIOUS
ABA STANDARDS OF FOR CRIMINAL JUSTICE
ABA MODEL CODES OF JUDICIAL CONDUCT
RULES OF PROFESSIONAL CONDUCT
CODES OF JUDICIAL CONDUCT

ERRORS RECAP

PHASE ONE: DOUBLE JEOPARDY

PHASE TWO: ANTI MERGER STATUTE

PHASE THREE: ERRONEOUSLY INSTRUCTED JURY

PROBABLE CAUSE / WARRANTLESS ARREST

CONFLICTS OF INTEREST NOT ADDRESSED

SECOND INSTANCE OF CONFLICTS NOT ADDRESSED

UNREPRESENTED AT HEARING

PRO SE DENIALS AND OTHER ERRORS

DENIAL OF DISCRETIONRY REVIEW FORM / STATE UNTIMELY PRO SE ADDRESS

COMPULSORY PROCESS VIOLATION / SPEEDY TRIAL VIOLATION(S) / DENIAL OF AID

DISMISSAL DENIAL / COMPULSORY PROCESS DENIAL / DENIAL OF AID

NO COURTROOMS AVAILABLE

EX PARTE COMMUNICATION

DEPOSITION WITHOUT APPELLANT PRESENT / RIGHT TO BE PRESENT

INEFFECTIVE ASSISTANCE OF COUNSEL

CONFRONTATION CLAUSE VIOLATIONS X3

DENIED DEFENSE

MISCALCULATED OFFENDER SCORE / SAME CRIMINAL CONDUCT

ABANDONMENT OF LOYALTY / DISREGARD FOR CLIENTS INTEREST

COMMUNITY CUSTODY ON TOP OF EXCEPTIONAL SENTENCE

INJUDICIOUS CONDUCT / CHANGE OF VENUE DENIAL

PROSECUTORIAL VINDICTIVENESS

BASED ON MANY OF THE ERRORS REVERSAL ON THEIR OWN MERIT IS WARRANTED, NOTWITHSTANDING, DISMISSAL IS REQUESTED.

APPELLANT DOES NOT WISH TO APPEAL THE ASSAULT FOURTH DEGREE CONVICTION HOWEVER SHOULD THE COURT NOT VACATE THE SEPERATE ASSAULT TWO, BASED ON PHASES 1, 2, and 3. THEN APPELLANT CONSEQUENTLY HAS TO CHALLENGE THE CONVICTION BASED ON THE CUMALATIVE ERRORS AFOREMENTIONED.

FOR 34328-2 AND 34335-5
(CASES "TRACKED" AND VARIOUS PLEADING HAVE BOTH CAUSE NO'S ON PLEADING)

EXHIBITS= These exhibits are been filed for the express purpose of reference should the court wish to view the specific motion / objection. Appellant does not know which are which on the clerks papers as they are all listed as "Letter from Defendant" Th[illegible] provided in sequence.

1. CHANGE OF VENUE / JUDGE
2. OBJECTION TO CONFLICTS AND RPC VIOLATIONS
3. 1ST MOTION TO BRING CUMALATIVE ERRORS TO COURTS ATTENTION / DUE PROCESS
4. 2ND MOTION TO BRING CUMALATIVE ERRORS TO COURTS ATTENTION / OBJECTIONS
5. MOTION FOR EXTRAORDINARY WRIT / DISMISSAL / DISCRETIONARY REVIEW
5b. PRP FILED ON ERRORS 1-5 AND THE CONTENTS OF THE MOTIONS THEMSELVES
6. OBJECTION TO TRIAL CONTINUANCE / DISMISSAL / DISCHARGE MOTION
7. OBJECTION TO DENIAL OF PRO SE & MOTION FOR DISMISSAL
8. OBJECTION TO COMPULSORY PROCESS VIOLATION
9. DISCRETIONARY REVIEW TO COURT OF APPEALS OR WA. SUPREME COURT
10. ORDER OF INDIGENCY
11. (NONE ATTACHED TO 34335-5 RAP 10.10)
12. OBJECTION TO DENIAL OF STAND BY "AID" FOR COMPULSORY PROCESS
13. DISCRETIONARY REVIEW TO COURT OF APPEALS OR WA. SUPREME COURT
14. OBJECTION TO JUVENILE POINTS
16. MOTION TO DISMISS PURSUANT 8.3 AND PRE-TRIAL OBJECTIONS
15. OBJECTIONS TO JANUARY 19 2006 RULINGS
17. OBJECTION TO TRIAL JUDGE DECISION AND NOTICE OF DISCRETIONARY REVIEW
18. MOTION IN SUPPORT OF PRO SE TERMINATION
19. MOTION TO DISMISS PROSECUTION "DUE PROCESS" RIGHT TO EFFECTIVE ASSISTANCE.
20. MOTION FOR MISTRIAL (SLEEPING)
21. (NONE ATTACHED TO 34335-5 RAP 10.10)
22. (NONE ATTACHED TO 34335-5 RAP 10.10)
23. 1ST MOTION FOR APPEAL BOND
24. COUNSELS MOTION TO WITHDRAW DUE TO CONFLICTS
25. (34335-5 ATTACHMENT)
26. (34335-3 ATTACHMENT)
27. DEFENDANTS SENTENCING MEMORANDUM
28. NOTICE OF APPEAL
29. SENTENCING ATTACHMENT PROVIDED TO SENTENCING JUDGE

RECEIVED
MAY 25 2007
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

is Initial

In the Superior Court of Washington, County of Pierce

EXHIBIT

COURT OF APPEALS
DIVISION II
FILED
07 MAY 25 PM 12:59
STATE OF WASHINGTON
BY
DEPUTY

State of Washington
vs.
Cory Lamont Thomas

05-1-04377-8
05-1-04407-3
05-1-02436-6

Motion for change of venue under CrR 5.2 (B)2 and change of Judge under CrR 8.9 & RCW 4.12.050

Motion and Affidavit in support of request.

Comes now: The defendant cory Lamont Thomas and request that Pierce county superior court Grant a change of venue based on the following:

Tacoma washington is a municipal entity in the county of Pierce and the Tacoma Police Department is also a government entity in the county of Pierce I have sued and prevailed 2x's. The city of Tacoma, The Tacoma Police Department, The Tacoma City Manager, The Mayor of the city of Tacoma, The chief of police in and for the city of tacoma, The Tacoma city Attorneys office, and 22 individual police officers. Throughout the course of litigation several Pierce county Judges from the Judicial commissions have repeatedly recused themselves from my cases because of litigation, one Pierce county Judge was served with a subpeona and almost named as a defendant due to her actions while on the bench, several attorneys within the Pierce county or association have been disqualified to represent me in one form or another, have filed numerous affidavits of prejudice and Bar complaints against Pierce county Judicial commission Judges, have had Judgements entered against the entity and recieved both punitive and compensatory damages against above mentioned entity, my civil case was filed in United states District court for many reasons above, Pierce County's government has served me "Tort Minded" among other things and without laboring on i feel that because i am not now, and have not in the past, recieving a fair trial I in no way can have a fair trial in the county my action is pending in. I Declare the foregoing is

2nd Motion

EXHIBIT

In the Superior Court of Washington, County of Pierce

05-1-04377-8 (2) 05-1-04407-3 (3) 05-1-02434-6

State of Washington

vs

Cory Lamont Thomas

Objections to Washington State Rules of Professional Conduct Violations RPC

Comes now the defendant in the above entitled causes and objects to the following:

(1) I have made several request for my attorney to suppoena all audios which disappear after 30 days telephonic Records, Tacoma Municipal transcripts relating to 4 currently charged offenses. My lawyer said he was going to "Head off in hopes of a global deal" I asked that they still be requested as trial time was and is bearing down on as of current he's denied me

(1A) contrary to RPC 1.4(A) (1B) RPC 3.2, (1C) 6th amendment

(2) I have made numerous request to go over my Rcw's elements and been denied as current

(2A) contrary to RPC 1.4(B) (2B) 6th amendment

(3) I have raised several issues relating to conflicts of interest in that I have sued Tacoma Washington and the city attorneys office and prevailed and Former Tacoma city attorneys are now employed by DAC, my ~~his~~ alleged victim has been represented by DAC, a co defendant was represented by DAC, a alleged co-defendant is now represented by DAC,

(3A) Contrary to RPC 1.7 A(2), (3B) RPC 1.7 B, (3C) RPC 1.8.3(G), (3D) RPC 1.9 A

(4) Because certain DAC attorneys have been disqualified to represent me my current DAC's representation is e

(4A) contrary to RPC 1.10(A), (B) 2 & 3; (D) 1, and (2) E. and (4B) RPC 1.11(A) & (4C) RPC 1.12(A)(C)

(5) Based on reasons mentioned above my / DAC should not represent me

(5A) Contrary to RPC 1.15(A) 1, (B) 6, & (D)

(6) Because i Have not granted permission and neither Alleged co-defendant this representation ~~is necessary~~

(6A) contrary to RPC 2.2 (A) 1 & 2, (B)

(7) Because i Have not consented and do not agree to the supervisory Authority Language

(7A) contrary to RPC 2.3 (B) & (7B) 2.3 (A) 2

(8) when i proceeded pro-SE 9.27.05 all discovery was ordered to me, my attorney would not provide me with previous scheduling orders i stated that they were evidentiary as they go to trial issues i was told they were correspondence and denied them

In the Superior Court of Washington, County of Pierce

05-1-04317-8, 05-1-04407-3, 05-1-02136 objections to RPC violations continued

State of Washington

vs.

Cory Lamont Thomas

EXHIBIT

(9) In my 2 NO contact order violations and 2 intimidating a witness charges DPA attorney Albert Bermudez is likely to be called as a witness my current lawyers representation (9A) is contrary to RPC 3.7

(10) Because my current attorneys supervisor refuses to acknowledge any conflicts this is (10A) contrary to RPC 5.1(C) 1, 2,

(11) Several weeks prior to my trial i told my lawyer i did not intend on continuing my trial and if he was not prepared to have the states informed that I would proceed pro-se and to have witnesses available the lawyer told me he would and (a) court on the record, requested a continuance and said that he told the State he would but omitted the facts that I had told him I would go pro-se and that they should be prepared. they were not im still in Jail on the matters and my case was continued past my speedy trial deadline this is (11.A) contrary to RPC 7.1 (A) (11B) CrR 3.3 (11C) 6th amendment

I firmly believe by the evidence on the 9.27.05 2x's and 10.4.05 records that these arguements rise to the level of misconduct on behalf of my objected to Lawyer

contrary to RPC 8.4 (A)(C)(D) and Further based on 2 arguments, and the fact that my Lawyer was throwing and tossing my papers and discovery at me we have had a total break down in communication and trust, as well as irreconcilable conflict with him.

I also believe that the above mentioned / articulated violations demonstrates that my counsel performance falls below and objective standard of reasonableness and that i am 3 days away from 1 trial and 2 weeks away from 2 more and that i have been substantially prejudiced by my counsels errors, time, discovery and evidence is either to late to obtain or untimely in reference to discovery rules and my proceeding would be different. The above is true and correct to the best of my knowledge under

3rd motion

EXHIBIT

In the Superior Court of Washington, County of Pierce

05-1-02436-6

State of Washington

vs.

Cory Lamont Thomas

Motion to bring Accumulative/Accumulation errors to courts attention / Due Process violation / objections (1 of 2)

On Sept. 27, 2005 the defendant raised several issues of conflict consistent w/ Washington state court rules and made a motion to proceed pro-se for the purpose "of trial commencement" The court stated "it is not a matter before this court" "maybe the other cases" and refused to make ruling on conflict but instead granted the motion to proceed pro-se. At which time the state said they were unprepared and motioned for a continuance. I requested the court to calculate speedy trial on the record, the court refused and over objections to both issues continued trial for a period of 2 weeks past speedy trial deadline. CrR 3.3 record concluded. St. v. Niblack 74 Wn 2d 300 443 P2d 808 / 85 Wash 2nd 24; 530 P2d 325; Wash Ct 3546 State failed to bring proper motion Δ did same was in error / when exercise discretion formal record should be made

On Sept 27, 2005 @ request of defendant the court brought me back on the record The defendant motioned for Dismissal under speedy trial violation and made motion for court to rule on conflict issue as it was previously before the court and motioned to have outside counsel represent matters at hand. The court denied motion for Dismissal, Denied substitution of counsel stating there was no conflict or reason to remove DAC or appoint new counsel. with no alternative and prepared for trial i proceeded pro-se and motioned for Discovery, And motioned for specific court order allowing pens, Highlighter, Law Library access and space and time for preperation. as of current Due Process violation has occured in that the court erred by not properly ordering materials requested to space, time, or law library access / materials requested were granted. Discovery incomplete On Oct 4. 2005 subsequent Hearing / different Judge, substituted counsel came to me and manipulated me by stating he had made a error on my previous order IE. "cause Number" and stated it was "void" and that he had to represent me currently for the purpose of "correcting order" I refused to sign original order but signed second one because of cause number

In the Superior Court of Washington, County of Pierce
State v. Cory Thomas 05-1-02436-6 Motion to bring Accurrulative Errors
Due Process violation / Objections - continued (2 of 2)

- while on the record substituted counsel undertook it to re-represent me and facts to the court at which time he raised conflict concerns that courts Judge attempted to set a date of 10.10.05 before her to address all raised concerns and substituted counsel declined stating in "court efficiency" it should be set on current re-set trial date before same Judge who have previously ruled on issue. The court recognizing conflicts set matter before other court. I requested that the current court appoint new counsel and at which time I was given the option of previously appointed and substituted counsel, with prior orders not fulfilled Due Process violation occurring no practical way of providing a defense I accepted the only option to me then "substituted counsel" counsel told me what i did was best because opposing counsel would not talk to me because of Pro-SE status. when i recieved My order I signed language had been modified and speedy dates sets further out than when signed "Nunc Pro Tunc"

Based on foregoing I object in writing to the following violations also see RPC violations

① 9.27.05 - court not finding conflict when several exist and another courts recognition
② 9.27.05 - court not ruling on conflict before ordering Pro-SE representation
③ 9.27.05 - courts refusal to calculate speedy trial on record CrR 3.3
④ 9.27.05 - court over objection continuance past speedy trial deadline CrR 3.3
⑤ 9.27.05 - court allowing Pro-SE for trial commencement then at states unpreparedness continues
⑥ 9.27.05 - courts denial of waystead motion for Dismissal CrR 3.3
⑦ 9.27.05 - Due Process violation for All discovery not provided, Law Lib, pens, space, order sealing 6th amendment
⑧ 10.04.05 - one sup. ct recognition of conflict setting before previous Judge who denied conflict
⑨ 10.04.05 - substituted counsel re-representing and further modifying order after signed.
⑩ 10.04.05 Nunc Pro Tunc order and further speedy dates added 6th amendment
⑪ 10.04.05 only option to assist in defense being substituted counsel 6th amendment

The foregoing is true and correct to the best of my knowledge

Cory Thomas Δ

(4th motion) [illegible] Superior Court of Washington, County of Pierce

State of Washington

vs.

Cory Lamont Thomas

05-1-04377-8

05-1-04407-3

05-1-02436-6

2nd

Motion to bring manifesting errors to courts attention / objections

EXHIBIT

Comes Now: The "Defendant" and states: I have attempted to take a humble position in dealing with the above mentioned court, but through continual and persisting manifesting errors I am left with no alternative but to object "lawfully" to constitutional violations as well as due process violations. This is my second "motion" and "affidavit in support thereof" I attempted to accept several actions in which I viewed as improper but "fundamental ethical principals" are being violated, and though I did not want to take this stance, it has become clearly apparent that the superior court of pierce county has become more concerned with a conviction than dispensing justice and has shown a pattern of improper activity and the effects of such activity has and is having a very prejudicial effect on me. The Judge "especially" presiding, is supposed to be a fair & independant arbiter of facts and apply the laws that govern us In this case it clearly is not happening: and I object:

① my motion for change of venue, change of Judge has not been addressed — CR 5.2(B)2 / CR 8.9 / RCW 4.12.050

② my complaint and "RPC" violations objections were not fully addressed — Canon 3(C)2 / Canon 3(D)(1)(A)

③ "motion to bring accumulative errors Due Process violations" improperly address and denied

④ The court refused to answer "notice to answer" properly filed

⑤ The court did not have my lawyer "substituted" respond at all or within 20 Days notice to answer

⑥ After lodging a complaint against last attorney "DAC" Did not approve my investigator hours for several weeks Hindering Due Process

⑦ I have attempted to go into court my last two hearings to file notice of intent to appeal / seek discretionary review and been denied

⑧ I was ordered to not speak at last court appearance I was present at, this muzzeling prevented me from fully making a record, and as a legally interested party has hindered my right to be heard fully according to law and make full records

In the Superior Court of Washington, County of Pierce

State of Washington 05-1-04377-8 05-1-04407-3

vs. 05-1-02436-0

Cary Clement Thomas [illegible] motion to bring manifesting errors to [illegible] attention

EXHIBIT

(9) The court allowed me to represent myself and when I filed motions the court ruled that I could no longer represent myself which is my right

(10) at omnibus hearings the court has refused to ascertain if there are any procedural or constitutional issues to be addressed

(11) I requested copies of all discovery and was denied by the superior court, this is adverse to my right to effectively assist counsel, prepare defenses in event the court allowed me to proceed without counsel, and violates General Rule "GR" GR 31 (A)(B) 3 (C) 4,

(12) The presiding judge has refused to fairly resolve disputes that I filed in my previous motion contrary to GR 29 E

(13) The presiding has refused to address the conduct of my former lawyer but rather substituted counsel for counsel who had not filed any notice of appearance at the request of former attorney only, former attorney also agreed with several issues raised this is contrary to GR 29 H

(14) Since the court has refused to hear me or allow me to speak I am hereby state my intent to appeal and or seek discretionary review. ties to #7

(15) I also hereby state that I in no way waive any rights or appearances

(16) I sued and prevailed against the "City attorneys office" Tacoma prosecutors office and Pierce county prosecutors should not be prosecuting me. ties to #1 change of venue

Based on above mentioned and previous motions filed

(A) The superior court is not operating in the high standards required in canon 1 of code of judicial conduct (B) the court is not promoting impartiality from the benon as required in canon 2A (C) the court is showing no patience with me or my concerns whether procedural or constitutional contrary to canon 3(A)3 (D) the superior court has committed several clear errors and the superior courts discretionary rulings has substantially altered the status quo and substantially limits the freedom of a party to act.

5th motion

EXHIBIT

Supreme Court of Washington or Court of Appeals Division 2 of the State of Washington

State of Washington vs. Cory Lamont Thomas

Cause #'s 05-1-04377-8 / 05-1-04467-3 / 05-1-02436-6

(prosecutor) John Sheeran, Respondent

(prosecutor) Marcus Miller, Respondent

(presiding) Judge Orlando, Respondent

V.

Cory Lamont Thomas (Defendant) Herein after "Petitioner"

Motion For Discretionary Review/Extraordinary writ of Proceedings/Dismissal

James A. Schoenberger WSBA # 33603

253-627-5818 818 South Yakima, ste 100 Tacoma, WA 98405

Attorney for Petitioner " not Petitioning

Cory Lamont Thomas (Petitioner) ask this court to accept review of decisions below and order an extraordinary writ.

The decisions below are the issues presented for review as well

Assignment of Errors

NO. 1 Motion to change venue / change of Judge (not) ruled upon or reserved

NO. 2 Attorney Client conflicts (11) "eleven" not ruled upon or reserved

NO. 3 Court not substituting counsel until speedy trial time ran out

NO. 4 Due Process Violation - complete Discovery not provided - Pro SE order not Drafte

NO. 5 Ordered pro se for trial commencement "state not prepared case Continued over objection

NO. 6 Speedy trial deadlines continued over objections 2x - after new commencement Date

NO. 7 Pro SE representation taken away after filing dismissal motions

NO. 8 Courts refusing to calculate speedy trial Deadlines on record after Δ request

NO. 9 Substantial Difference of opinions - Presiding Judge / Superior Court Judge

NO. 10 Substituted counsel re-representing me after substitution / Nunc Pro Tunc Order obj.

NO. 11 New counsel requested only option was substituted counsel

NO. 12 While Pro-SE opposing counsel refusing to communicate with me

NO. 13 Court not allowing me to file subsequent motions to bring errors to courts attention

NO. 14 No RPC violations inquired into

NO. 15 Notice to Answer "told didn't know what it was and still not answered"

NO. 16 After "DAC" "RPC" complaint "DAC" Did not approve investigators Hours

NO. 17 At Pre-trial & omnibus Hearings - refused access to Judge to address procedural / issue constituti

NO. 18 As legally interested party - ordered by Judge not to speak / preventing full record

NO. 19 Discovery request made under Freedom of info Act and Δ right to assist counsel Denie

NO. 20 Presiding Judge Refusal to fairly resolve disputes

NO. 21 No rights waived

NO. 22 Judge's blatant refusal to address / rule on motions made

NO. 23 Notice of Intent to Appeal / Seek discretionary review denied - lied to about.

I will attempt in short form to explain issues relating to Assignment of errors but that is why I request that a writ be issued and the complete Audio record transcription be requesti

Re. [illegible]

Issues Pertaining to assignment of Errors

1 pierce county Judge was named

(No. 1) I have sued the Tacoma's prosecutors office, the city of Tacoma, The Tacoma City manager, the Mayor of city of Tacoma, The chief of Police and 25 institutional officers several P.C. Judges have recused themselves because of the litigation and I feel I should not be prosecuted in pierce county. See Published 9th Circuit Court of Appeals Decision opinion "Thomas v. City of Tacoma" the court erred in its continual refused to address motion properly filed with the court

(No. 2) I raised 11 conflict issues with former attorney w/ RPC violations all contained in 1st motion recieved by court in the file

(No. 3) The court conviently substituted counsel only when speedy trial time had run I believe in an attempt to restart deadline and the court only did it at the lawyers request after he stated he did agree with over half of the issues raised, none which were new

(No. 4) When the court ordered me pro-SE they did not draft a order "pro SE" for the jail & I was not given all discovery, not allowed Law Library materials or access and when I raised Due Process issues the court stripped me of my opportunity to proceed pro-SE

(No. 5) I was ordered to proceed pro-SE for the purpose of trial commencement and when the state was not prepared, over objection the court continued trial commencement out past speedy trial deadlines

(No. 6) After new commencement date the court continued speedy trial out past deadlines a second time over objection. The court applied St. v. Campbell at which time I told the courts I would proceed pro-SE and was refused

(No. 7) After I filed Due Process violations and other motions to dismiss the state court refused to allow me to proceed pro-SE any further and ordered I do not speak when on the record

(No. 8) at instances of continuing speedy trial I requested the courts to calculate speedy trial on the record and the courts refused to

(No. 9) Presiding Judge weeks before actually substituting counsel had said there was no conflict issues and when I raised the issue with the 1 only other Judge I had seen at next hearing she agreed there is a question of issue

No. 9 cont and attempted to hear the motions but the council whom the conflict was with, stated in court effrenty it should be heard with former Judge "presiding" at a subsequent hearing rather than set it over before her

No. 10 at the subsequent hearing before Judge Nelson "pre-trial" previously substituted counsel came in on record stating he had to change the order "scheduling" previously entered because of a error in cause numbers, I refused to sign original scheduling order because it continued my trial, but signed the 2nd order because it had already been done previously and when I waited outside the court room for my copy it had been modified to continue trial further and added "nunc pro tunc" language, see court order

No. 11 when I raised issues at pretrial about Due process and not being able to represent myself I was given the only option of substituted counsel and chose it because substituted counsel was better than no counsel or no possible way to defend

No. 12 while pro-SE opposing counsel refused to address elements of charging documents with me because of "who I was"

No. 13 at my last hearing the court again refused to hear me and denied my right to file motions and a letter with the court to keep errors out of my file

No. 14 The court refuses to this day to inquire into the RPC violations committed and refuses to take appropriate action, see 1st motion RPC violations

No. 15 I attempted to file a notice to Answer and the court told me "he had never heard of such a motion" I asked the court to place it in the court file after telling him what it was and still have recieved no response

No. 16 After I lodged a complaint with 1st attorney and DAC actions/inactions DAC refused to Authorize my (DAC Authorized) investigators hours slowing my case up several weeks

P. 1 of 7

(No. 17) At my pre trial and omnibus hearings the court has refused to address any issue of procedure or constitutionality and I've been denied to go before the courts. I haven't even seen copies of court orders

(No. 18) As a legally interested party I have not been afforded my full right to be heard according to law and this recording is being done so that complete records cannot be made in the event of an appeal

(No. 19) I attempted to request my discovery for the purpose of adequately assisting my defense counsel and in the event the court did allow me to go pro SE again I would be prepared and so no more continuances would be granted I was denied

(No. 20) If you will please listen to the court record it will (clearly) (clearly) show that the court is taking a very biased approach and several canons / RPC / Constitutional / Ethics and the like are being violated not only erroneously but purposely

(No. 21) I have never waived any rights nor have I waived any appearances at any time

(No. 22) The Judge has stated just blatantly "I will not rule" or "I will not make a Judicial determination" without reservations either

(No. 23) This was kind of the straw that broke the camels back - I asked the Judge for a "notice to ~~seek~~ discretionary review" he told me "I do not know what that is" I asked your going to tell me on the record that you don't know what it is and as his clerk dropped her head he said well we the court don't provide these and refused me the form so I cannot even file a timely notice to seek review under RAP 5.2(b) and 5.3(j)

—

(Pg 5 of 7)

I beg that you request the record because these are short versions but if it doesn't disappear I don't believe any Circuit Court would believe ½ of what they were listening to and done here in pierce County it is accepted tolerated and neutral - these hearing were before the "presiding Judge"

Statement of case

We are only at my pretrial hearing(s), we have not even started trial and the errors are gross and fraudulent and In my mind, by clear actions are a attempt to injure me and I feel a extraordinary writ is the only thing that is going to cure this injustice if not a writ then at least a circuit court reviewing of the complete transcription

Summary of argument

I am being clearly retaliated against for 1 either 2 lawsuits filed in federal court or 1 lawsuit and prevailed upon and 2nd claim filed and settled out of court again see 9th circuit opinion "published" or because this is the only way pierce county has became accustomed to treating defendants in criminal matters. Justice is being abridged at every stage and I request your Authoritive intervention

Argument / Facts

The presiding has violated his oath of office, and it is clear the court is more concerned with a conviction rather than Justice I should have been taken to trial and "legally"!. The Judge "especially presiding" is to be impartial fair and independant Arbiter of the facts and by intentional mismanagement, misrepresentation, deceit, lies blatant refusal and inaction it has proved a pattern of improper activity the court rules clearly State:

Justice is based on the rule of law, grounded in respect for the dignity of the individual and the capacity through reason for enlightened

cont-1

Self Government law so Grounded makes justice possible for only through such law does the dignity of the individual attain respect and protection, without if individual rights become subject to unrestrained power, respect for law is destroyed and rational Self Government is impossible.

"and as Judges I understand you know the 'Code of Judicial Conduct preamble" I could understand if this was one incident maybe 2 or even more allegations but the record will reflect a barage of errors

The record will reflect

Several RPC violations

Several code of Judicial Conduct violations

Several ethics violations

and Several USC "constitutional violations" as well as criminal rule violations

Based on the totality of manifest prejudice and manifest injustices I respectfully submit this motion and further request the prosecutions be dismissed or any such remedies the appellate court deems necessary in the alternative.

11.21.05

respectfully submitted.

Cory Lamont Thomas

Cory Lamont Thomas
910 Tacoma Ave South
Tacoma, WA 98402

(Petitioner)

God Bless

Table of Authorities

While I am not an appellate lawyer and do not know all the provision, rules, and all the laws that apply to these "assignment of errors" I believe the following apply "Washington Court Rules"

GR = General Rule, CJC = canons of judicial conduct, RAP = rules of Appellate Procedure, CR = civil rule

CrR = Criminal Rule, Amend USC = united states constitution and amendments or Amend

NO. 1	GR29(E), CrR(3), / CrR(5.2), / CrR(8.9)
NO. 2	GR29(E) F1), (H) CJC(1), / CJC3(B1), CJC(C2)
NO. 3	CR4(A)(3)
NO. 4	GR22(B)(1)(4), GR22(F)(2)(A), GR31(A)(C1,4)(D1), CrR3, USC Art.4 Sect 1, USC Amend 5
NO. 5	CJC(2)(B), / CrR3.3, / Amend 6
NO. 6	CrR(3), / CrR(3.3), / Amend 5, 6,
NO. 7	CJC(2)(A), / Amend(1)
NO. 8	GR29E / CJC(2)(A), / CJC(3)(D)(1)(A), / CrR3 / CrR3.3, Amend 5, 6
NO. 9	CJC(3)(A)(5)
NO. 10	CR(4)(A)(3)
NO. 13	GR(29)(E), (F8), (F9), / CJC(2A), / CJC3A(3)(4)(5) / CR3(B)1, / CrR3, / Amend 1
NO. 14	GR29(E), (F5), (F5B), H, / CJC(1), / CJC2(A)(B), / CJC3(A5), 3C(2), / CrR3
NO. 15	CJC(1)
NO. 16	GR(29)(F)(1)
NO. 17	GR(29)(F)(5), / CrR3, / CrR3.4, / CrR4.5(C)(2)(4), / Amend 1, 5
NO. 18	CJC2(A), / CJC3(A)(3)(4)(5), / CR3B(1), / CrR3, / Amend 1, 5
NO. 19	GR22(B)(1)(4), (F)(2)(A), / GR31(A)(C),(1),(4),(D1), / CJC2A CJC3(A)(5), / CrR3 / USC Art. 4 Sect 1
NO. 20	GR29(F)(1)(5), (H) / CJC1 / CJC2(A) / CJC3(A)(3),(4), / CrR3, / Amend 1, 5
NO. 21	CrR3, / Amend 1, 5, 6
NO. 22	GR29(E)(F1)(H), / CJC1 / CJC2 / CJC3(A3),(4),(5), / CR3B1, / CrR3 / Amend 1, 5
NO. 23	GR29(E)(F1),(D9) / CJC2A, / CJC3(A5) / RAP 2.3(A)(B) 1, 2, 3.4, / RAP 5.2(J) CrR3, / Amend 1 / Amend 5

PRR 5B
1 of 4

PERSONAL RESTRAINT PETITION FOR PERSON CONFINED BY LOCAL GOVERNMENT

[RULE 16.7]

Rule 16.4 (A)(3)(c)(1)(2)(c)(7)

Sup ct. 05-1-04467-3 05-1-02436-
NO. 05-1-04377-8

EXHIBIT

IN THE SECOND DIVISION COURT OF APPEALS OR SUPREME COURT OF WASHINGTON

OF THE STATE OF WASHINGTON

CORY LAMONT THOMAS,)
Petitioner)

PERSONAL RESTRAINT PETITION

A. STATUS OF PETIONER: Petitioner is confined at Pierce County Jail

I Cory Lamont Thomas, apply for relief from confinement

I am now in custody because of a order that DENIED me my 6th amendment right to proceed Pro-SE and my 6th amendment right to a speedy trial. The court did allow me to go pro-SE and then DENIED me right to waive counsel as my master of my trial and continued my trial past speedy ~~set~~ Deadlines on the day of trial for "cure periods" 4 times thereby losing authority over petitioner

1. The court that entered the order is: Pierce County Superior Court
2. I have not been convicted of a crime
3. I have not been sentenced pursuant to conviction
4. My Lawyer at trial was 1) Mark Quigley 2) James Schoenberger
5) I attempted to appeal the decision of the court but was DENIED the right to file a timely notice of Discretionary review
6. I have no Lawyer for appellate purposes and request that one be appointed The court has told me I cannot have assistance

2 of 4

5. The decision of the appellate court has not been published

6. Since my order I have asked the court for relief from order from the new presiding judge the motion is pending for the day of trial 1-19-06

6. Relief has not been granted with new judge "presiding" but lost presiding who relief is being sought because of DENIED relief on Oct. 24 2005 and Nov. 21 2005 & Sept 25, 2005 Jan 3 2006 All continued trials

7. The lawyer in my court appearances were 1. Mark Quigley and 2. James Schoenberger when relief was requested

8. Please see all motions attached Hereto

B. I claim that I have 23 reasons contained" in "Discretionary review writ of proceedings motion for Dismissal" sent to court of appeals that is in the miscellaneous file there.

1. I should be granted relief because several constitutional, procedural and state laws / Rules have been broken I have properly filed all objections with the court the judge refused to address the motions and the state never responded to any of the motions with the exception to motioning for me to proceed pro-SE after I attempted to initiate appellate review all of the legal rights are in motions to the best of my ability in light of resources available

2. all of these facts and objections are contained in the various records and will not differ from the motions I have made or objections I have filed the attorneys of record were present at these instances and today "Schoenberger" suggested" I file this PRP

3. The following cases with statues are contained in motions Furette v. California and plenty to follow all in motions

4. All the statutes and provisions mentioned in objection and motions should be considered by this court

5. This petition is the best way I knew to get relief because no other way has worked or will work in my belief in pierce county Superior. The records upon review by appellate court would ~~SEAL~~ shock the conscious of the reviewing court and has shocked several Lawyer witnesses

C. I do ask the court to file this without making me pay the filing fee because I am so poor I cannot pay

2. I have a lein on my inmate account

3. I do ask the court to appoint a Lawyer for me I have been determined indigent

4. I am not employed and (5) have recived no income in the last 12 months

6. I have no account assests interest. etc.

7. I have no cash, Stocks bonds or notes

8. I have no property or real estate

9. I am not married

10. All the persons who require my support are

Quran Thomas Son 6

NaQuan Mapp Son 4

JaQuala Prendergast Daughter 10

Lezion Bends Son 5

11. I owe numerous creditors

D. Request for Relief

1. I want this court to review all motions, transcriptions and if possible listen to live or recorded Audios of hearings and dismiss the causes of action based on the record and motions

E. Oath of Petitioner

The State of Washington)
) ss.
County of Pierce)

After being first duly sworn on oath I depose and hereby say: That I am the petitioner that I have read and written this petition know of its contents and believe the petition and all subsequent motions are true.

Cory Thomas

I am incarcerated in pierce county Jail have no notary capabilities and will have this dropped off at the Division two after Jail officials release it to authorized person to pick up.
I thank you and have a nice day.

All motions though not stamped were filed in open court at court appearances motions that are stamped were filed Directly to Clerk by the Jails Legal advisor the records will reflect though not stamped when I was given copies by the Clerk they were filed and provided to the court clerk and the state prosecution and records made thereof on the record.

Defendant was scheduled for trial Sept 25 2005 October 24, 2005, Nov 21 2005, Jan 3 2005 all which Defendant requested no-ST and trial commencement but was continued over objections

6th motion

EXHIBIT

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON	05-1-04377-8 | 05-1-04467-3 AND
V	05-1-02436-6 OBJECTION TO TRIAL CONT
CORY LAMONT THOMAS	AND DISMISSAL/DISCHARGE MOTION

COMES NOW; The Defendant and objects to trial continuance, AND MOVES THE COURT; TO DISMISS Prosecution For untimely trial commencement.

Defendants trial has been continued in the past numerous times over objection Defendant Hereby "Announces He is ready for trial" "request that trial commence on January 3rd as scheduled" AND "objects to it being postponed" This trial Date is already set outside of 2nd commencement dates speedy trial deadline and was objected to at the time of setting. Defendant is and has actively sought to secure speedy trial rights by filing various motions. The Defendant is guaranteed a speedy trial under State rule CrR 3.3 and The United States Constitution 6th Amendment. the Defendant is being subjected to "oppressive pre-trial incarceration" "Impaired Defense" and "prejudice" These continuances give the State more time to prep Defendant has also been told that this continuance is due to "congested trial Dockets" Due to "christmas accomodations" And Defendant objects to that also: "Congestion in court caused by unprecedented demand for Jury trial do not amount to exceptional circumstance constituting good cause excusing delay in bringing defendants to trial within time specified by statute" Arreola v. municipal court 139 cal App 3d 108, 188 cal rptr. 529 2d Dist (1983) Defendant Does not have current access to washington case Law but is attempting to raise the issue and preserves argument.

Respectfully submitted.

Cory Lamont Thomas

IN PARTY

7th motion

(1 of 4)

EXHIBIT (1)

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON v. CORY LAMONT THOMAS	05-1-04377-8 / 05-1-04467-3 AND 05-1-02436-6 OBJECTION TO DENIAL OF SELF REPRESENTATION AND MOTION FOR DISMISSAL

CASE SUMMARY

PRO-SE

On September 25, 2005 DEFENDANT requested to go pro-se and requested trial commence on this day as scheduled the court questioned Defendant as to qualifications and allowed defendant to go pro-se, State was not ready and improperly moved for a continuance which was granted over objection thereby invoking a violation of speedy trial on cause # 05-1-02436-6 which had no more time for trial. a order allowing materials was requested by Defendant to be sent to jail the court agreed but did not. on October 4, 2005 defendant was in another court and raised Due Process violation as the materials requested "order" was never drafted and defendant could not continue preparation when superior court would not correct due process defendant could not represent self effectively and requested the only remedy provided to be afforded new counsel or Standby the court then gave the only option of previously substituted counsel that defendant had raised over 11 complaints and conflicts of interest with this counsel instead of addressing the conflict issues that this superior court Judge attempted to counsel requested that it be set back before presiding Judge who originally substituted and refused to rule on conflict, it was. On octeber 11th 2005 complained about counsel with no changes in circumstances told defendant it would be "malpractice" to continue to represent him and said he had found a substitute counsel based on conflicts properly raised and was moving the court to substitute and disqualify him. The court did substitute counsel and set case out for new counsel to "file notice of appearance" defendant raised issue of counsel being disqualified and new counsel not being in court w/ Defendant or having filed a notice of appearance Defendant was set over anyway and felt un-represented for this period. at this hearing Defendant put State on notice he wanted to proceed to trial on octeber 24th 2005 as scheduled and twice improperly Continued at octeber 24th 2005 hearing New counsel

05-1-04377-8/05-1-04407-3 and 05-1-02436-6 Self representation Dismissal

(2 of 4)

Appeared and requested another continuance the defendant objected was ready for trial announced it and requested trial to commence and requested again to go pro-SE The Judge w/out making any special findings DENIED defendant right to waive counsel as provided by 6th amendment and continued again over defendants objection. on NOV. 21st 2005 defendants attorney again requested a continuance and defendant again objected and invoked his right to waive counsel and self represen again the court DENIED defendant his right to proceed pro-SE. The defendant requested that the court provide a notice to seek discretionary review on this issue as well as some 20 others and was DENIED The right to file the form the court 1st told defendant it did not know what the form was and secondly that it just outright refused to provide it The defendant mailed a "Discretionary review/writ of proceedings/Dismissal" motion to the 2nd division of our court of appeals and provided the state with a copy it was approx 2 weeks later and the state had motioned for defendant to go pro-SE but in this case it was several hearings/several request too late as several prejudices had occured and it was only after appellate review motion was mailed out.

(II) LAW

AUTHORITIES

(1) IF a defendant chooses to go pro-SE this is a right that is protected to him under the Judiciary act of 1789 The Judiciary act of 1789 1 Stat. 73, 92 (1789) Current version at 28 USCA §1654 (1970) provides that in all courts of the united states the parties may plead and manage their own cases personally or by the assistance of counsel it agre

(2) Faretta v. California 422 US, (806) (1975) = establishes that a defendant in a state criminal trial has a constitutional right to proceed pro-SE.

(III) MR. JUSTICE STEWART Delivered the Following opinions =

(A) At the arraignment the Judge assigned appointed public defender to represent Faretta (B), Faretta requested well before trial to represent himself, (C) Questioning by the Judge Revealed That Faretta had represented himself in the past, (D) That he had a high school education, and that h did not want to be represented by a public defender because he believed that the office

05-1-01377-8/05-1-04407-3 and 05-1-02136-6 Self representation (continued)

(3044)

was loaded down with cases "heavy load", nevertheless after establishing his waiver to represent himself and did not want a lawyer the judge in a "preliminary hearing," accepted Faretta's waiver and allowed self representation (D) Several weeks thereafter, but still prior to trial the Judge held a hearing to inquire into Faretta's ability to conduct his own defense and revoked his waiver and re-appointed DAC to represent Faretta (E) However Faretta's subsequent request for leave to act as co-counsel was rejected, as well as his efforts to make certain motions on his behalf (F) Throughout the subsequent trial the Judge required that Faretta's defense be conducted only through the appointed lawyer from the public Defenders office. (G) The Jury found Faretta Guilty and the Judge sentenced him to prison (H) The appellate court affirmed the conviction.

(IV) Supreme Ct = The courts past recognition of self representation = The Federal court holding the right to be of constitutional dimensions and the state constitutional dimension, pointing to the rights fundamentally of nature form a consensus not easily ignored "(T)~~he~~ mere past that a path is a beaten one" Mr. Justice Jackson once observed "is a persuasive reason for following it" The court stated "That Forcing a lawyer upon a unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so"

(V) Supreme Ct: = This concensus is soundly premised. The right to self representation finds its support in the 6th amendment as well as in English and colonial jurisprudence from which the Amendments emerged. The 6th amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his ~~defense~~ defense. ~~It~~ It is the accused not counsel" who must be informed of the nature and cause of accusation" who must be "confronted with the witnesses against him" and who must be accorded "compulsory process for obtaining witnesses in his favor" The right to defend is given directly to the accused; For it is he who suffers the consequences if his defense fails. The counsel provision speaks to "assistance", The spirit of the 6th amendment contemplates that counsel like the other defense tools guaranteed by the Amendment - shall be an aid to a willing defendant - not a organ of the state

interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the amendment, in such a case, counsel is not an assistant, but a master. And the right to make a defense is stripped of the personal character upon which the amendment insists. Allocation of a lawyer can only be justified by the defendants consent. unless the accused has acquiesced in such representation. The defense presented is not the defense guaranteed to him by the constitution, for, in a very real sense, it is not his defense.

(VI) Supreme ct. The defendant not his lawyer or the state will bear the personal consequences of a conviction, The right to defend is personal therefore it is the defendant who must be free personally to decide whether in his particular case counsel is to his advantage. And although he must conduct his own defense ultimately to his own detriment his choice must be honored out of "the respect for the individual which is the lifeblood of law"

(VII) Supreme ct = here weeks before trial Faretta clearly and unequivocally declared to the trial Judge that he intented to represent himself. That he was voluntarily exercising his free will. The trial Judge had warned Faretta that he thought it was a mistake not to accept assistance of counsel and that Faretta would be required to follow all of the "Ground Rules" of trial procedure. we need make no assessment of how well or poorly, Faretta mastered the intricacies of hearsay rules and California code provisions that govern challenges to potential Jurors on "voire dire" for his technical and legal knowledge as such, was not relevant to an assesment of his knowing exercise of the right to defend himself In Forcing Faretta, under the circumstances to accept against his ~~wish~~ a State appointed public defender the court deprived him of his constitutional right to conduct his own defense. Accordingly the judgment before us is vacated.

Relief Sought = The Defendant moves the court to Dismiss w/prejudice the above cause numbers.

Cory Lamont Thomas

11th motion

EXHIBIT 9

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

FILED
IN COUNTY CLERK'S OFFICE
A.M. JAN - 9 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

STATE OF WASHINGTON
v.
CORY LAMONT THOMAS

05-1-04407-3 / 05-1-04377-8
05-1-02436-6 objections to compulsory process violation

Comes Now: The Defendant Cory Lamont Thomas and makes another DUE process violation for compulsory process Defendant after several Denials was finally allowed to go pro-SE once allowed to proceed pro-SE Defendant moved for assistance of counsel to assist in subpeonas and some complex legal issues Defendants request was denied. Defendant is in the pierce county jail and has no way of

1) serving subpeonas "meaningful access to courts"
2) obtaining witnesses in his favor
3) filing timely motions with the clerk due to indigency "mail"
4) the prosecutor gave Defendant a letter that states "the fact that you are proceeding pro-SE does not alter any of the provisions of the ~~exesting~~ existing ~~order~~ NO contact orders"
5) Defendant has to trade and bargain in jail for paper to file and prepare case "assistance stand by" not provided.

Defendant objects to these Due Process and compulsory process violations and move the court in the furtherance of justice to review all other motions and dismiss cases w/ prejudice

Cory Lamont Thomas.

Bounds v. Smith 430 US 817 (1977) The fundamental right of access to the courts require prison Authorities to assist inmates in the preperation and filing of meaningful documents "legal" by providing inmates w/ adequate law libraries or adequate assistance from

9th motion

EXHIBIT

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

IN COUNTY CLERK'S OFFICE
FILED
A.M. JAN - 9 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

STATE OF WASHINGTON 05·1·04477·8 / 05·1·04407·3 and

v. 05·1·04436·6 NOTICE FOR

CORY LAMONT THOMAS DISCRETIONARY REVIEW TO

COURT OF APPEALS or SUPREME COURT

CORY THOMAS, DEFENDANT, SEEKS REVIEW by the Appellate court of

1) NOTICE OF DISCRETIONARY REVIEW / writ of Proceedings motion in file and court of Appeals

2) REVIEW of COMPLETE TRANSCRIPTION of all pre-trial, arraignment, Bail increase, omnibus Hearings, "all Docketed court DATES prior to trial"

3) December 03, 2005 transcription - 11·28·05, 11·21·05, 10·21·05, 10·19·05, 10·4·05, 9·25·05 and any and all "prior to trial Commencement" Docketed Dates

4) Defendant understands that all Dates requested must have a timely notice of Discretionary review filed within 30 days of the entry of judgment and defendant did attempt to file these but was erroneously DENIED several times and did attempt to make full records thereof to preserve timely issue upon appellate court accepting review.

5) a complete review of transcription is the only way to show continuum as well as all complaints raised with appellate review.

6) all Motions filed by defendant in open court objecting to and requesting courts attention to matters.

CORY LAMONT THOMAS.

Defendant / IN PARTY

10th motion

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON
respondent
Plaintiff

v.

CORY LAMONT THOMAS
Petitioner
Defendant

IN COUNTY CLERK'S OFFICE
FILED
A.M. JAN - 9 2006
P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

No. 04-1-04407-3 / 05-1-04377-8 and 05-1-02936-6 MOTION FOR ORDER OF INDIGENCY (Criminal) (Constitutional issues) (Right of assist) (Transcription Request)

CORY LAMONT THOMAS, DEFENDANT, PETITIONER files ca notice of appeal / Discretionary review in reference to above mentioned CRIMINAL cause numbers involving several constitutional and statutory rights and moves the court for an order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense

Defendants preceeding motions are certificates in support of THIS motion

Cory Lamont Thomas
Petitioner / Defendant

I certify I am the defendant petitioner and I wish to appeal the judgments that were supposed to be entered but ruled upon in the above entitled cause numbers

I own no real property, NO personal property other than my personal effects NO accounts, NO income, disability, SSI, insurance, annuities, stocks, bonds, interest etc. I have undischarged debts in high unknown amounts I am without means to prosecute this appeal and desire public funds for this purpose motions in file are brief of case and issues sought to be review I ask the court to provide public fees for all fees related to this case I Authorize the court to obtain verification of financial status. I will report any changes immediately and Declare under penalty this is true and correct.

12th motion

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON

v.

CORY LAMONT THOMAS

05-1-04467-3/05-1-04377-8

02436-6 OBJECTIONS TO DENIAL of Assistance "Standby"

IN COUNTY CLERK'S OFFICE
A.M. JAN 18 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

Comes Now: The Defendant and objection within to courts refusal to recognize 6th amendment right of "Standby counsel" Defendant has continually raised issue of putting on own defense and representing himself the previous presiding Judge at several occasions DENIED Defendant this fundamental right causing an "domino effect" of other errors (proper motions in file) only when a new presiding Judge came into view did she allow defendant to proceed pro-SE and continued trial past speedy trial deadline because State was not prepared this was labeled a cure period (It should be noted this was the 2nd cure period)) the court stated that she believed Defendant was manipulating the courts. original presiding Judge make a oral record that stated he did not feel Defendant was manipulating or obstructing the administration of justice or asserting right for improper purposes of delaying trial commencement but said he was not going to adopt defendants theory of proceedings and acknowledged he had allowed self-representation previously. Defendant has never intended to manipulate court but rather insure a speedy commencement. at all instances of asserting right fundamentally guaranteed State was not prepared and motioned for continuance. at last court appearance when allowed to go pro-SE the court again continued case outside of speedy trial and cure period. over objection. once case was continued Defendant requested

05-1-04407-3/ 05-1-04377-8 & 05-1-02436-6 stand by motion

assistance and was denied. "stand by counsel" to assist with additional subpoenas, and materials since case will not set out for trial Defendant was willing to go without these things on trial date but since there was more time defendant motioned for "stand by" and was not only denied but ordered to represent self by self for all future appearances. and was told no lawyer would be appointed or could come on board. Defendant raises the following Laws / Case History:

United States v. Dougherty 154 US App DC 76 82-84 473 F2d 1113, 1124-1126 Holds A State may even over objection by the accused appoint "standby Counsel" to aid the accused if and when the accused request help, and to be available to represent the accused if in the event that termination is necessary

Strickland v. washington Holds that and accused is entitled to be assisted by an attorney whether retained or appointed who plays the role to ensure trial is fair

Powell v. Alabama 287 US 45, 68 (1932) Holds that the Betts court Declared the right to the "aid" of counsel is of a fundamental character

Grosjean v. American press. Co 247 US 233, 243-244 (1936) Holds 14th amendment "fundamental right of accused to the "aid" of counsel in criminal prosecution"

05.1.04407.3/ 05.1.04377.8 & 05.1.02436.6 standby motion

6th and 14th amendments to U.S. constitution require that no indigent criminal defendant be sentenced to a term of imprisonment unless the state has afforded him the right to assistance of appointed counsel in his defense.

Bounds v. Smith 430 US 817 (1977) Holds the fundamental constitutional right of access to the court requires prison Authorities to assist inmates in the preperation and filing of meaningful legal papers by providing that inmates w/ adequate law libraries or adequate assistance from persons trained in the law.

Chandler v. Fretag 348 US 3 (1954) overturned Defendants conviction as to a habitual criminal because he was denied an opportunity to retain counsel.

People v. Bigelow 37 cal 3d 731, 209 cal Rptr. 328 691 P.2d 994 (1984) The state supreme court in overturning Defendants conviction for murder robbing and kidnapping and a death sentence, adopted a per se rule of reversal to govern situation in which a trial Judge fails to consider whether to exercise its discretion to appoint advisory counsel for Defendant who wishes to represent himself.

Defendant/petitioner hereby waives a Lawyer as "master of case" and does not waive assistance of "stand by".

Cory Lamont Thomas

respectfully submitted.

(13)

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON

v

CORY LAMONT THOMAS

05-1-04377-8 / 05-1-04407-2 cons

05-1-02436-6 NOTICE FOR DISCRETIONARY REVIEW TO COURT OF APPEALS or SUPREME COURT

CORY THOMAS, DEFENDANT, SEEKS REVIEW by the Appellate Court of

1) NOTICE OF DISCRETIONARY REVIEW | writ of Proceedings motion in file and court of appeal

2) REVIEW of COMPLETE TRANSCRIPTION of all pre-trial, arraignment, Bail increase, omnibus Hearings, "all docketed court DATES prior to trial"

3) December 03, 2005 transcription - 11-28-05, 11-21-05, 10-21-05, 10-19-05, 10-4-05, 9-25-05 and any and all "prior to trial Commencement" Docketed Dates

4) Defendant understands that all Dates requested must have a timely notice of Discretionary review filed within 30 days of the entry of Judgment and defendant did attempt to file these but was erroneously DENIED several times and did attempt to make full records thereof to preserve timely issue upon appellate court accepting review.

5) a complete review of transcription is the only way to show continuum as well as all complaints raised with appellate review.

6) all Motions filed by defendant in open court objecting to and requesting courts attention to matters.

CORY LAMONT THOMAS,

Defendant IN PARTY

(14)

In the Superior Court of Washington, County of Pierce

State of Washington
Respondent

v.

Cory Lamont Thomas
Petitioner

05.1.04377.8 / 05.1.04407.3 / 05.1.02436.6

Memorandum of Authorities in Support of Pre-sentence Objection to use of Juvenile Points / indigency finding

EXHIBIT 5

(1) Comes Now, Defendant / Petitioner, In Party and do hereby submit this motion for the court to make a ruling in writing or on the record In RE to state intent to use barred Juvenile convictions and points in obtaining an offender score for purposes of sentencing in event of conviction of current offenses.

(2) Argument (A) This court should consider Petitioners claim that my offender score is being improperly miscalculated Because the miscalculation will result in a Judgement that is invalid on its face

(B) Because this motion is brought forward "pre sentence" any use to Juvenile points is being objected to and will also result in fraud and a complete miscarriage of justice on behalf of Pierce County

(C) Petitions hereby objects to having to collaterally attacking "In RE Hagler 97 WN. 2.d at 824" collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes cost society the right to punish offenders" Id Citing Engle v. Issac 456, US. 107, 71. L. ED. 2.d. 783 102 S. ct. 1558 (1982)). These cost are significant and require that collateral relief be limited in state and Federal courts In RE Hagler 97 WN. 2d at 824

(D) The Petitioner is entitled to relief of his current offender score miscalculation issue because my Juvenile offenses are being included in the calculation of my offender score contrary to the holding of IN. RE. LACHAPELLE, Cruz, Smith, and Varga,

under the sentencing reform act (SRA) a defendants offender score is calcul from his Criminal History SEE RCW 9.94A.030 (12) (definition of criminal History) and RCW 9.94.360 (offender score) Those provisions of SRA have been amended

1 numerous times, several [illegible] are relevant to this case. Prior to 1990 class B and C sex offenses whether juvenile or adult would wash out under 9.94A.360 (2) the same as any other convictions in 1990, the legislature amended washout provisions to provide that prior sex convictions never wash out, regardless of the age of the person at the time the prior crime was committed. Prior to 1995, a conviction would wash out if the defendant spent a certain amount of time in the community without being convicted of another felony offense, In 1995 the legislature again amended the washout provisions to provide that defendants had to be crime free instead of felony free. In addition the crime free period ends on the date a new crime is committed rather than date of conviction.

2 Prior to 1997 juvenile convictions other than sex offenses would only count in an offender score if the defendant was 15 or older at the time of the juvenile offense and under 23 years old at the time of current offense, in 1997 the legislature amended the definition of criminal history in RCW 9.94.030 (12) removing age restrictions in their entirety.

Each of the three amendments discussed above limited the number of convictions that washed out. In other words, each amendment made it more likely that a prior conviction would be included in a defendants offender score. In 1999 the washington supreme court decided State v. Cruz 139 2d, 186, 985, P.2d 384, (1999) Cruz was convicted of his 1st crime in 1975 (a sex offense, his 2nd crime in 1984 and his 3rd crime in 1994, when Cruz was sentenced in 1989, the court did not count his 1975 conviction because the SRA that was in effect at the time provided that the 1975 conviction washed out when defendant went 10 years felony free. Then in 1994 when Cruz was being sentenced for another crime the court included the 1975 conviction because the 1990 amend, said prior sex offenses could never wa

Pierce County Superior Court Juvenile Points Memorandum

State v. Cory Lamont Thomas 05 1-04377-8 / 05 1-04407-3 / 05 1-02436-6

3 of 5

(#) The Supreme court had that the 1990 amendment to the SRA could not be retroactively applied to revive his previously washed out 1995 conviction Cruz 139 W.N. 2d at 193. That ruling essentially meant that a conviction that washed out under any version of the SRA was forever washed out and could never count again. The impact of the Cruz decision was that a court, in sentencing any defendant, had to consult every prior version of the SRA to make sure that there was never a time when a defendants prior conviction washed out, and there was no retroactive intent.

The legislature quickly reacted to the decision in Cruz in 2000 the legislature enacted RCW 9.94A.345 which provided; any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed, That statue began effective on June 8, 2000 to be expressly clear the legislature also gave a statement of its intent at the time stating;

RCW 9.94A.345 is intended to cure any ambiguity that might have led to the washington supreme court decision in State v. Cruz cause # 67147-8 (Oct. 7, 1990) A decision as to whether a prior conviction shall be included in an individuals offender score shall be determined by the law in effect on the day the current offense was committed RCW 9.94A345 is also intended to clarify the applicability of statues creating new sentencing alternatives or modifying the availabilities of existing alternatives

Laws of 2000 Ch. 26, Sect. 1 Both Houses of legislature make that statement See SB Rep & HB REP (SSB 6182) 56th Wash. Legis. Reg. Sess (2000)

The 1st Supreme court case that discussed the legislative response to Cruz was State v. Smith 144 W.N. 2d, 665, 30, P. 3d 1245 (2001) which addressed the 1997 amendments to the washout provisions that eliminated age restrictions

That case actually involved four seperate defendants: Smith, Lindsey, Lowe and Hendricks, each of whom committed his crime before June 8, 2000. The single issue in Smith was the (retroactivity) of 1997 amendments. Smith 144 Wn. 2d. at 673 The court specifically quoted both 9.94A.345 and the legislative intent behind it to determine if they applied to that issue. Smith 144 Wn 2d. at 672-73, ultimately the court declined to apply the statutes because the statute did not address "the law in effect" and was not "the law in effect", when defendants committed their crimes SEE Smith 144 Wn. 2d. at 673 in other words, The court found that RCW 9.94A.345 did not apply to crimes committed before June 8, 2000, The effective date of the statute.

The impact of the Smith decision is that for crimes committed before June 8, 2000 the court must consider every prior version of the SRA in determining a defendants score, if a prior conviction washed out under any prior version of the SRA, it cannot be used in the offender score calculation for the current offense.

In 2002, the legislature again amended the SRA in response to the supreme court opinion in Smith, The legislature redefined criminal History and explicitly provided that the "fact that prior convictions was not included in an offenders offender score... at previous sentencing shall have no bearing on whether it is included in the... offender score for the current offense", Laws of 2002 Ch. 107 § (18). The 2002 amendment took effect on June 13, 2002, and applied to current offenses committed on or after that date.

Following the 2002 SRA amendment The court in State v. Varga, 151 Wn. 2d 17 86, P.3d 139 (2004) was asked to determine whether, following the amendment, if it was proper for the sentencing judges to include convictions that would have washed out based upon prior statutes and court opinions In. RE PRP LaChapel 153 Wn. 2d 1, 14, 100, P.3d. 805 (2004) (citing St. v. Varga 151 Wn. 2d at 187) The court

Pierce County Superior Court Juvenile Points Memorandum

State v. Cory Lamont Thomas 05-1-04407-3 / 05-1-04377-8 / 05-1-02436-6

5 of 5

held that the legislature "clearly intented that amendments apply prospectively at sentencing for crimes committed on or after June 13, 2002" IN RE LAchapelle 153, ww. 2d at 14. To summarize the court has "applied the sentencing statues prospectively and has declined to apply the definition of criminal History to retroactively revive previously washed out convictions"

Clearly the courts must apply former and recent supreme court decisions and prior Juvenile offenses should not be calculated as part of a defendants or petitioners offend score. The trial court has the authority and duty to correct erroneous sentences when it is discovered. defendant / Petitioner has made a proper showing that Pierce County is miscalculating my offender score and under Moreno v. Gonzalez 116 F 3d. 4 411, (9th circuit 1997) Petitioner must exhaust State remedies before Federal review Johnson v. Lewis 929 F 2d 460, 462-64 (9th circuit 1991) Coleman v. Thompson 501 US, 727, 735 111 Supreme. court 2546, 115 L. Ed. 2d. 640, (1991) Benford v. Rhode 116 F 3d. 396 399 (9th circuit 1997)

For the court to sentence me at a "4" would be involving itself in Fraud and an incorrect application of sentencing guidelines under the appeals court and supreme court holdings foremontioned. The above case Law's entitle Petition Cory Lamont Thomas to relief sought unless there are compelling reasons not to. the burden of showing compelling reasons is on the State Prosecution SEE State v. Miller 110, ww 2d, 528, 535, 756, P. 2 122, 198, Please enter order on motion for relief from Judgment or Ruling on miscalculation any conviction obtained is controlled by Smith, Cruz, Sweeker, Lachapelle,

Juvenile History consist of

offense	Offense Date	Adult or Juvenile
Theft 2°	3-8-1993	Juv
Theft 2°	7-14-1993	Juv
UPCS	5-7-1994	Juv
Assault 2° (2x)/vuscid	9-25-1994	Juv

Cory L. Thomas.

(15)

1 of 2

EXHIBIT

IN THE STATE OF WASHINGTON, COUNTY OF PIERCE

FILED IN OPEN COURT CDPJ JAN 23 2006 Pierce County Clerk By DEPUTY

STATE OF WASHINGTON 05-1-04377-8, 05-1-04467-3/0512436-6

v. OBJECTIONS to Jan 19 2005 trial court

CORY LAMONT THOMAS "Presiding" decisions/determination/Denial

COMES NOW: The defendant Cory Lamont Thomas in writing and objects to the following Presiding Judges decisions

1) Denial of Defendants motion to dismiss "Denial of pro-SE representation" pursuant to USCA 6th amend, USCA 14th amend, and Faretta v. California

2) overruling objection to being sent out to trial as scheduled and ordered 1-19-06 8:30A "no space available" objected to trial congestion

3) allowing prosecution to argue "extrajudicial" juvenile points on cause # 0512436-6 and applying it to others scheduled for trial when in cases scheduled for trial it was not docketed the state prosecution argued this in my mind at approx 2:30pm until approx 4:00pm because there was no trial space available and at 4:00 stated because of late hour request court to recess until monday morning which was granted this was a thursday 1-19-06

4) at 4:10pm when Δ defendant was told judge Felnagle would be available monday morning after he handled the morning presiding judge docket and court could resume at 1:30 pm (A) this assignment was made at the close of the court date at 4:10 pm (B) Defendant requested to affidavit the judge since assignment had just been made and defendant preserved the issue by previously filing a motion for change of judge because of this judge and others actions and had specifically raised the issue with Felnagle previously in the interest of justice this appointment should not have been made and was still untimely and not sent out

05-1-04377-8 05-1-04407-3 05-1-02436-6 objections to 1-19-06 actions

2 of 2

5) (A) It should be noted on the states response filed 1-19-06 at approx 1:30 in the lower left corner the states language clearly states "Motion to stay proceedings" and (B) Defendants order continuing trial states "No courtroom Available" Defendants asserts the state "extrajudicially" argued these points at time of trial commencement for the purpose their motion is titled "to stay proceedings" The state never asserted that witnesses were available or that they were ready to proceed so its clear Defendant filed affidavit of prejudice after trial had not commenced

6) Defendant asserts prosecutorial misconduct for the above mentioned reasons and for intentionally misrepresenting legislative intent on retroactiveness of revival of washed out juvenile points defendant makes this assertion based on a "P.C. states response to juvenile points" in defendants possession

Defendant hereby reserves these issues | objections complaints for appellate review and also hereby submits a "Notice of intent to seek discretionary review of these actions, as well as actions pertaining to PRP of Cory Lamont Thomas and issues relating to Defendants motion for writ of proceedings

I Declare the foregoing to be true and correct under wash. Laws

Cory Thomas.

Defendant again requests a order of indigency from the court for appellate purposes.

(16)

Pg. 1 of 4

FILED
DEPT. 9
IN OPEN COURT
JAN 2 6 2006
Pierce County Clerk
By DEPUTY

EXHIBIT

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON v. CORY LAMONT THOMAS	CAUSE NOs # 05-1-04377-8 / 05-1-04407-8 AND 05-1-02436-6 MOTION TO DISMISS PURSUANT TO CrR 8.3B AND PRE-TRIAL OBJEC

COMES NOW: The defendant CORY LAMONT THOMAS, IN PARTY, In Summary form, Pre-trial, AND Makes The following objections in accordance with the rules of appellate procedure

AND MOVES: The Court / Trial court JUDGE to Fully address the proceedural and constitutional complaints / objections, DISMISS Prosecution and make a Full record thereof of reasons / Justification for Granting / Deny

(A) Defendant objects to any conviction being obtained through Jury / Bench trial Due to Erroneous, Irregular, and Illegal court proceedings

(B) Defendant objects to any rights being waived by current or previous Counsels' actions, Inactions, or Failure to object to objections raised

(C) Defendant has repeatedly stated "previously" that I in no way waive any rights pre-/post trial, And now reserve all state and Federal exhaustive / remedies.

(D) Defendant has raised all ISSUES previously and could have argued them or had courts re-address issues but previous and current Counsel relays that the Court has refused me access to record. Several Court orders reflect "refused" or "in custody" and "Done in open court this --- Day of --" when in fact I was ~~out~~ Court and repeatedly requested access to court / Record

In the Superior Court of Washington County of Pierce 05-1-04377-8 05-1-04407-3 and 05-1-02436-6 Motion to Dismiss 8.3B and pre trial objections

Defendant has made motions objecting to the following previously all motions are in Courts possesion and all Table of Authorities are listed in "motion for discretionary review / extraordinary writ of Proceedings" notice to "washington Supreme Court and or Court of appeals Division 2" Defendant does not have access to relevant washington case law and reserves right to apply case law if necessary or required. This motion though not intended to be repetitive is being filed now because this is my opportunity to file as it is trial setting / commencement time.

1. Defendant objects to Double Jeopardy applying to cause # 05-1-04407-3
2. Defendant objects to arrest "without a warrant" and Police P.C. expired # 05-1-04377-8 Defendant was booked more than 14 days later - "no summons sent either"
3. Defendant objects to Juvenile points being used in determining offender score. motion d
4. Defendant objects to Motion For change of venue not being addressed.
5. Defendant objects to not being allowed in court at omnibus Hearings
6. Defendant objects to court not ruling upon or deciding motions
7. Defendant objects to court not allowing defendant to file motions
8. Defendant objects as legally interested party to court not allowing speaking on record thus preventing and prohibiting full verbal records to be made
9. Defendant objects to court not allowing discovery even when pro-SE
10. Defendant objects to Due Process violation in not entering order or drafting order granting requested material for defense from P.C. Jail
11. Defendant objects to a substantial difference of opion with 2 seperate Judges as to Defendants raised issues of conflict of interest w/ 1st attorney
12. Defendant objects to RPC violations asserted not being inquired into.
13. Defendant objects to court only substituting counsel at speedy trial deadline and when substituted counsel agreed to contacts and motioned himself as well

In the Superior Court of Washington, County of Pierce 05-1-04377-3 05-1-04407-3 and 05-1-02436-6 motion to Dismiss 8.3B and pre-trial objects

(14) Defendant objects to not being allowed to proceed pro-SE when disqualified counsel was substituted and new counsel had not filed a formal notice of appearance

(15) Defendant objects to being unrepresented for the purpose of hearing since substituted counsel had not filed formal notice of appearance and defendant asserted 6th and 14th amendment right to proceed pro-SE and was refused.

(16) Defendant objects to substituted / disqualified counsel being reappointed after Due Process violation and conflict found. was brought to courts attention and defendant could not prepare a defense so requested another counsel

(17) Defendant objects to substituted counsel filing "Nunc Pro Tunc" order after Defendant left court room. original order was modified after defendant ~~the~~ signed the modified order included "Nunc Pro Tunc" and another speedy trial continuance after defendant recieved copy.

(18) Defendant objects to speedy trial not being calculated at defendants request on record and court continuing speedy trial over objection.

(19) Defendant objects to court granting states improper motion at commencement of trial. 4x's

(20) Defendant objects to being allowed pro-SE for "trial commencement" and when State was unprepared case was continued for 2 weeks only and then again continued

(21) Defendant objects to court allowing defendant to proceed pro-SE 1 time but after Due Process raised and dismissal motions made the Court refused to allow defendant to proceed pro SE at any subsequent deadlines for speedy. but offered it only after 1st trial commencement erroneously continued and after 2nd trial commencement was set out past speedy trial, 30 days from

In the Superior court of washington, county of Pierce 05-1-04377-8 05-1-04407-3 and 05-1-02436-4 motion to dismiss 8.3B 3 Pre trial objection

pg. 4 of 4

(21) cont: 2nd ~~[illegible]~~ commencement date - trial date offered the defendant right to proceed pro-SE only after motion was sent to appellate courts raising among others pro-SE right. trial #1 had already been erroneously continued and trial #2 was out past deadline the state conceded it was and offered to set it back giving defendant (if pro-SE option taken) even less time to prepare.

(22) Defendant objects to any St. v. campbell arguments grunted as defendant could have proceeded pro-SE as required by law and requested.

(23) Defendant objects to state refusing to communicate w/ defendant during pro-SE period. at initial pro SE

(24) Defendant objects to notice to answer not being answered and further the court stating he didnt know what it was.

(25) lastly the defendant attempted to preserve all these issues and in open court and on the record requested "a notice of intent to seek discretionary review form" the court told defendant it didnt know what it was after defendant questioned court about it the court then and only then acknowledge what it is but still refused to supply it stating "the court doesnt give that out and wont provide you with it" and went on to say "file it in the court of appeals when you get there" defendant objects.

This is not 1 or 2 or even 3 violations it is and has been a continual pattern and due to the accumulative nature of errors defendant Hereby moves the court to dismiss prosecution in the interest of Justice Defendant has been prejudiced in other ways and will make a showing if the court so desires

Respectfully Submitted Cory Lamont Thomas

Please date stamp.

(17)

1 OF 3

EXHIBIT

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON V. CORY LAMONT THOMAS	05-1-04377-8 objections to trial Judges Decisions/actions NOtice for Discretionary Review

COMES NOW: The Defendant and states in writing objections to trial courts actions. Defendant asserts that because of errors and continued constitutional Deprivation Defendant was in a place of compromise and had to cancel self representation so a officer of the court could ensure ~~that~~ fairness in criminal matter.

1) Defendant brought a motion for mistrial based on ex-parte contact between prosecution and court outside of the presence of defendant who was pro se at the time the Judge on record denied any ex-parte contact and after defendant told Judge that prosecution had just communicated it in presence of defendant Judge then admitted to arguing a order ex-parte and Denied Defendants motion defendant hereby questions this Judges veracity and impartiality and request a recusal.

2) Defendant objected to Jury seeing Defendant in clothing with hip hop insignia on it that Defendant was booked into Jail in and had to wear because the Jail has "lost" defendants appropriate court attire, Defendants replaced attorney drastically changed Defendants attire and the Jury in Defendants mind could only recognize this change with the substitution of pro se representation and substituted counsels representation Defendant request a new empaneling of a Jury

05-1-04377-8 Jury trial Judge Obstechan

2 OF 3

3) Defendant while pro-se conducted voir dire and stand by counsel told Δ (Defendant) he was not contattable w/ jury empaneled since Δ didn't conduct voir dire how he would have or asked relevant questions he would have with this substitution defendant moves the court for a new empaneling of a jury

4) Defendant Objected to officer "making contact" with defendant and asked court to inquire of officer the court did not but questioned Jurors 1 by 1 " Did you witness any interaction between Mr. Thomas and a corrections officer yesterday? any thing at all that would stand out in your mind" after 3rd Juror Defendant based on response asked court to frame the question " is there anything in your mind that would lead you to believe the defendant is or was incarcerated and if so what?" was denied. and to question about a interaction with Defendant and "corrections" officer was prejudicial in and of itself defendant objected and moves for new empaneling

5) Defendant was pro-se and ① when Jury was brought out and questioned they saw defendant in clothing defendant objected to and ② when court reconvened after a 1 week recess opening statements will begin and the Jurors will no longer see Defendant pro-se this follows the question any interaction between Defendant and corrections officer

6) Defendant objects to not being present at Jurors being recessed for 1 week this was done outside of the prescence of Defendant. Defendant should have been present

7) Defendant asserted right to be present at witness interview

and proceeded pro-se for this reason to question witnesses this interview was not in presence of Defendant and State v. Sheffield (1944) 21 wash 2d, 48, 149, P.2d, 936 Holds that deposition (memory recording) of any contemplated absent witness in a criminal prosecution shall be taken in presence of defendant and his counsel and is mandatory

8) Based on the change of venue motion which was denied the notice to answer which has not been answered and the continued Deprivation of constitutional and procedural Holdings Defendants maintains I cannot have a fair trial before a disinterested Judge and request your Honor to recuse himself, submits a notice for Discretionary review, objects to any conviction being obtained by illegal / erroneous proceedings and moves for Dismissal

9) Defendant also ask the court to make a Judicial Determination as to why the State has not responded to 1 motion filed by defendant as required. in writing; and requested of by defendant and various courts previously.

Respectfully submitted.

Cory Thomas

in PARTY

Defendant reserves these and all issues previously and properly raised for appropriate appellate Review.

(8)

EXHIBIT

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON
v.
CORY LAMONT THOMAS

05-1-04377-8 Motion and AFFIDAVIT in Support of Pro-SE termination

COMES NOW: Defendant Cory Lamont Thomas and Moves the court to terminate Pro-SE representation: I the defendant due to the overwhelming stress of pre-trial violations asserted, Legal complexities, procedural limitations, voluminous case laws involved, Limited legal knowledge bring to the courts attention that I am operating delirously and have not been able to sleep properly in over 5 days and due to Stress I am unable at this time to properly effectively and competently represent myself I was given assistance at the last hour over objection and I cannot proceed under these strenuous conditions imposed on me. I respectfully submit this, waive my right to self representation and request counsel to be appointed to represent me. I sincerely apologize as this is not intentional. I have represented myself in the past for all portions of the trial and had results both positive and negative. But at this time due to all of the issues raised I have become mentally overloaded and my thought process has shut down

Cory Thomas

FILED
DEPT. 9
IN OPEN COURT
JAN 30 2006
Pierce County Clerk
By DEPUTY

(19)

EXHIBIT

STATE OF WASHINGTON COUNTY OF PIERCE, SUPERIOR COURT

STATE OF WASHINGTON
v.
CORY LAMONT THOMAS

05-1-04407-3
05-1-04377-8 motion to Dismiss
Prosecution "Due Process - right to effective assistance of counsel"

COMES NOW: The Defendant Cory Lamont Thomas and Moves this court for an order dismissing prosecution for ineffective assistance of counsel. Defendant asserted Faretta v California on 3 occasions to proceed pro SE and was erroneously denied, contrary to the united states constitution when a subsequent presiding judge allowed pro SE defendant moved for stand by counsel as afforded by the US constitution and was denied at trial commencement defendant renewed stand by motion and, the trial court granted motion Defendant objected under Fields v. Peyton to untimely appointment constituting a denial of effective assistance, Today 1-29-06 in an effort to prepare defenses stand by counsel and attorney Jim "James" Schoenberger represented to defendant that he could not proceed as it would constitute ineffective if ordered to go forward. Defendant is in trial and properly raised these issues well before trial commencement and at this point in proceedings defendant maintains as asserted that ineffective assistance has occured based on erroneous rulings "objected to and notice of Discretionary review filed" in the interest of Justice Defendant respectfully renews motion to Dismiss

Respectfully Submitted

Cory Thomas

(20)

EXHIBIT

STATE OF WASHINGTON, SUPERIOR COURT, County OF PIE

State OF WASHINGTON

. V.

CORY LAMONT THOMAS

05·1·0243·6·6

Motion For Mistrial

COMES NOW; The Defendant Cory LAMONT THOMAS and moves this court for an order Granting mistrial For the Fact that Defendants attorney has been (Sleeping) during trial and Defendant believes that counsels assistance as this point has become ineffective. and several minutes of testimony at different times has occured and Defendant is not aware of relevant objections that should have been made or I would have, and at this point Defendant is unaware of what damage has occured because counsel has been sleeping off and on several times.

FILED
DEPUTY
IN OPEN COURT
FEB - 8 2006
Pierce County Clerk
By DEPUTY

Cory Thomas.
02·07·06

When questioned by the court on this matter the attorney responded "it it will help Mr. Thomas and I was snoring loud enough to keep the jury awake" (but at no time ~~[illegible]~~ denied my objections

(23)

1 of 2

EXHIBIT

FILED
DEPT. 9
IN OPEN COURT
FEB 08
Pierce County Clerk
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON
v.
CORY LAMONT THOMAS

cs: 1-04407-3, cs: 1-04377-8 and
cs: 1-02436-6 Motion to Grant Appeal Bond "Supersedeas" / Modify Pre-trial release.

COMES NOW. The defendant CORY LAMONT THOMAS pursuant to RAP 8, and CrR 3.2, Because a PRP "Personal restraint Petition" has been filed, a notice of Appeal, and because "no courtrooms Available" to try defendant on criminal allegations, Defendant objects to being held on $450.000 dollars bail and moves the court to grant pre-trial release in the the form of "Bail" "electronic home monitering" "Day reporting" or any other conditions the court deems necessary. Defendant asserts that several Due Process violations as well as constitutional violations have occured and is being reviewed by "Division 2 court of Appeals" if original conditions are not modified defendant / petitioner is entitled to appeal bond pending review. 1/2 a million dollar bail is excessive where

1) Defendant made a court appearance on cs 1243660 and was taken into custody and charged with cause #s 4407-3 and 4377-8
2) Defendant has no adult Felony History whatsoever
3) Defendant has no conviction of a D.V. case/nature of record
4) Defendant was enrolled as a full time college student
5) Defendant has responded to all summons in the past
6) The Defendant is a lifelong Pierce County resident
7) Defendant family ties are in Tacoma/Pierce County
8) Defendant has community leaders willing to vouch for accused reliability and willing to assist in conditions imposed

05-1-04377-8, 05-1-04407-3, 05-1-02436-6 Appeal Bond pre-trial release

2 of 2

i) on cause in 0377-8 alleged victim has provided statement under oath / notarized disputing allegation by pierce count Auth.

ii) in cause 4407-3 Defendant is charged w/ felony DCC's violations and intimidating witnesses to not coming to court, one of these elements can form a legal conviction defendant has no other DCC violations to enhance to Felony Level and the witnesses accused of intimidating were present, though late causing dismissal w/ prejudice but pierce county refiled.

11) cause 2436-6 Defendant has posted $30.000 bail it was at this ~~arraignment~~ omnibus Hearing other charges were filed.

12) Defendant has very limited legal resources and is going to trial at a grave disadvantage

The defendant(I) am willing to submit to any conditions imposed and request a reasonable bail amount when bail was originally imposed pierce county prosecutors told Judge Felnagle about 16 cases that had been dismissed and were improperly considered. all misdemeanors, I am willing to submit to day reporting and or electronic monitoring

I Declare under penalty of perjury the foregoing is true and correct.

Cory Lamont Thomas.
IN PARTY

(24)

FILED
IN COUNTY CLERK'S OFFICE
FEB 13 2006
Pierce County Clerk
By DEPUTY

SUPERIOR COURT OF PIERCE COUNTY WASHINGTON

STATE OF WASHINGTON, Plaintiff, *vs* CORY LAMONT THOMAS, Defendant.	NO. 05-1-04407-3 MOTION TO WITHDRAW TRIAL DATE: 2/28/06

NOW COMES James A. Schoenberger, stand-by attorney for Defendant CORY LAMONT THOMAS, and moves this Court to allow him to withdraw as stand-by counsel in this cause.

STATEMENT OF FACTS

On 10/19/05, Schoenberger was appointed to represent Mr. Thomas on this cause number, and on 05-1-02436-6 and 05-1-04377-8, substituting for conflicted attorney Mark Quigley

On 1/3/06 Defendants' motions to proceed *pro se* on this case and cause number 05-1-04377-8 were granted.

On 1/24/06, trial commenced on cause number 05-1-04377-8 and Schoenberger was asked to be stand-by counsel for Mr. Thomas. On 1/25/06 the Court appointed me to represent Mr. Thomas and take the matter to trial.

LAW OFFICE OF
JAMES A SCHOENBERGER
818 S. Yakima, Suite 100
Tacoma, Washington 98405
253.627.5878

On 2/2/06, cause number 05-1-02436-6 was called for trial and during the course of that proceeding, Schoenberger was asked by the Court to be stand-by counsel for Mr. Thomas in the instant case.

Filings made by Defendant CORY LAMONT THOMAS in cause number 05-1-02436-6 have created a conflict of interest between the defendant and his attorney.

In the course of representing Mr. Thomas through two jury trials, communications with Mr. Thomas have become increasingly strained and are now irretrievably and irreconcilably broken down.

I declare the foregoing to be true and correct to the best of my knowledge under penalty of perjury under the laws of the State of Washington.

Signed at Tacoma, WA this
14th day of February, 2006

/S/ JAMES A SCHOENBERGER
James A. Schoenberger, WSBA# 33603

ARGUMENT

Withdrawal of counsel is indicated where there has been a showing of good cause to warrant substitution of new counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. *State v. Varga*, 151 Wn.2d 179; 86 P.3d 139; 2004 Wash. LEXIS 204.

Mr. Thomas has created, by his handwritten filings, a conflict of interest with his appointed attorney. This attorney's ability to effectively communicate with Mr. Thomas has diminished to the point that the breakdown is irretrievable and irreconcilable.

Good cause exists to warrant substitution of new counsel and the undersigned must be allowed to withdraw in this matter.

DATED this 14th day of February, 2006

/S/ JAMES A SCHOENBERGER
James A. Schoenberger, WSBA# 33603
Stand-by Counsel for Defendant

LAW OFFICE OF
JAMES A SCHOENBERGER
818 S. Yakima, Suite 100
Tacoma, Washington 98405
253.627.5878

(27) 1 of 5)

EXHIBIT

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON v. CORY LAMONT THOMAS	05.1.02436.6, 05.104377.8 DEFENDANTS SENTENCING MEMORANDUM OBJECTING TO JUVENILE OFFENSES

COMES NOW: The Defendant, CORY LAMONT THOMAS, AND PETITIONS this court to correct offender score Pre-SENTENCE, PURSUANT TO relevant Authorities, Constitutional Holdings, and case Laws cited Herein.

1st Argument= Inclusion of Juvenile "offense" Adjudicated before age 15 for the purpose of Adult offender score calculation is non-inclusive pursuant to Former 9.94A.360(12) and 9.94A.030(12)(B) because the offense was committed prior to 1997 and until 1997, the offenses if committed at age 14 or below, it was not and is not considered criminal History for any purposes and the 1997 amendments are not and were not retroactive, STATE V. SMITH 144 WN. 2d 665, 670-71 (2001), STATE V. Tiscorino WA. App. 98 P3d 529 (2004)

2nd Argument= Juvenile offenses under cause # 284619-R170 Assault 2° (2x) were determined to encompass the same criminal conduct and if included should yield (1) point because Juvenile offenses cannot be treated as seperate offenses, STATE V. PERRY 110 WN. App. 554, 560-61 and under Juvenile Justice Act RCW 13.40 "which is the Jurisdiction in Juvenile Adjudication" hold seperate convictions are treated as (1) if out of the same course of conduct RCW 13.40.020(4)(A) "Former", STATE V. Adock 36 WN. App 699, 706, 676, P.2d, 1040, AND STATE V. BOLAR 129 WN 2d 361, 917, P2d, 125

3rd Argument= on sentencing calculation chart for assault 2° the term 'Disposition"

is included as "enter number of "Felony Juvenile violent Dispositior And enter number of 'Adult Felony" convictions". I have (1) "Juvenile violent Disposition order" as termed in the Judgment and Sentence and to count the Juvenile Assault 2° (ex) as two dispositions would be incorrect because it is (1) violent Disposition order that the state may be able to produce.

4th Argument= AS held by the Supreme court if a Juvenile offense washed under any previous version of the SRA, it was forever washed and cannot be used in calculating the offender score, STATE V. CRUZ 139 WN. 2d at 193, STATE V. SMITH 144 WN. 2d. 665 30 P3d 1245, The state in one brief defendant has provided to the courts concede this argument, but the state in briefing my criminal history washou cites varga and Lachapelle as cases that allow the retroactive revival of previously washed out offenses, though Lachapelle holds that some washed out offenses are inclusive, In quoting varga in Lachapell the court stated "in 2002, STATE V. VARGA 151 WN. 2d 179, 86, P3d 139 (2004) was asked to determine if after amendments it was proper for Judges to include convictions that washed based upon prior statues and opinions and in RE Lachapelle 153 WN. 2d. 14, 100 P.3d 805 (2004) (citing varga 151 WN. 2d. at 187) the court held the the legislature clearly intended that amendments apply prospectively for crime committed after June 13, 2002, In RE Lachapelle 153 WN. 2d at 14 to Summarize the court has "applied the sentencing statues prospectively and has declined to apply the definition of criminal history to revive previously washed out convictions" Lachapelle 153 WN. 2d at 15 (citing State v. Smith 144 WN. 2d at 674-75) and others,

(3 of 5) Sentencing memorandum

5th Argument = I believe the state concedes my offenses would have washed based on the statutory requirements of 9.94A.360 (1994) which was in effect until June of 1995 therefore governing my January 1995 adjudication for 1992-1994 offenses. 9.94A.360 holds that class B and class C Juvenile offenses shall not be included in a an subsequent offender scoring if the Juvenile went from the date of entry of Judgment and Sentence "Felony Free" for two years class C and 5 years class B "See Superior Courts order on expungement" further if I was required to maintain 10 years felony free from adjudication I in fact went from 1994 to 2006 with no felony convictions of record. I clearly met the statutory requirements for "washout" however if this court chooses to not accept the "once washed always washed" theory I none the less met the statutory requirements for expungement and triggered expungement by filing for expungement "see attached motion for Accelerated review" the superior court in denying motion for expungement explicitly and solely cited 1997 amendments I Submit this is in error because "the 1997 amendments of RCW 9.94.030 which ended the Juvenile felony washout provisions now allowing consideration of all Juvenile convictions as part of offender Criminal history was not retroactive" STATE V. SMITH 144 WN.2d 665, 30, P.3d, 1245, (2001)

The Superior court also stated "he has never had a 5 year crime free period for class B and has not managed 2 years crime free period" as previously stated the June of 1995 amendments do not apply to my January 1995 adjudication and the amendments are not retroactive either, STATE V. HERN 111 W. App 649, 45, P3d 1116 (2002).

And under the clear language of the 1990 version of former

9.94A.360(2) which precedes the 1995 and 1997 amendments need "Felony Free" the language is explicit in stating the "washout" or "Expungment" periods was interrupted only by a "Felony" conviction IN re PERS. restraint of Nichols 120 Wn. 2d 9.94.525 (2004) and STATE V. WEBER 127 Wn App 879, 112 P3d 1287 (2005).

Also pg 2 of stipulation to offender score states " the defendant stipulates that none of the offenses calculated have washed out under 9.94.525 or 9.94.360 to sign this would render it facially invalid.

Conclusion=

Conclusion

Of the 5 Arguments raised Herein I assert and maintain that my correct offender score should be a ∅ "zero" notwithstand current adult conviction obtained January 06 Petitioner petitions this court in the interest of justice to require the state to address the issue of (1) offense before Age 15, if not included this would minus current score of 6, ½ of a point and bring it to 5 (2) offense of assault 2° (2x) as 1 offense as same conduct yeilding -1- point for assaults if included (3) calculation score worksheet term Juvenile violent Disposition which else would bring assault 2° (2x) to a -1- point if not same criminal conduct because I have only 1 disposition order that is Juvenile violent. (4) the complete washout of Juvenile offenses, while I understand this has been raised before Judge worswick and ruled permissable "washout" I assert this is in error and raise the objection with current Sentencing Court as a objection to miscalculation of offender score (5) the right to expungement as a vested right since the statutory

provisions and requirements were met and subsequent amendments cannot divest an offender of a vested right to expungement nor can they alter prior statutory constructions, STATE V. D.S. 128 Wn. App 569; 115 P.3d 1047 HN 13 - 15 (2005)

If I am sentenced at 6 points this will result in a miscarriage of Justice and Damage accured PRP Johnson 131 W.N. 2d 558, 568, (848) P2d 1019.

Any June of 1995 amendment forward will if applied affect a vested right and retroactively resurrect and revive previously washed out convictions. in vocation of U.S. constitution and DUE PROCESS OF LAW

Defendant as respectfully as possible asserts that my correct Criminal history has not been established within 40 days as required by "Speedy sentencing constitution" and RCW 9.94.500 and the remedy in this case at this point is to grant defendants motion for a offender score calculation of ø "zero"

FURTHER AFFIANT SAYETH NAUGHT

Respectfully submitted

Cory L. Thomas.

Defendant

(28)

EXHIBIT

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON
plaintiff

v.

CORY LAMONT THOMAS
Defendant

05-1-04377-8 NOTICE OF APPEAL to court of Appeals or Supreme Court

Cory Lamont Thomas, Defendant, seeks review by the Designated Appellate court of the pre-trial motions Denied and objected to entered on 01-30-06 specifically

1) Defense attorneys motion for mistrial based on state v. campbell Denied and order to trial over Attorneys representation of inneffective Assistance

2) Objection - overruled to confrontation clause right of defense counsel to cross-examine witnesses after states direct examination.

3) all pre-trial motions objected to by defendant and either not ruled on or Denied i.e. Due process, confrontation clause, compulsory process, right to self-represent, Denial of assistance as stand by, speedy trial, "notice for discretionary review previously filed"

4) all other relevant motions filed in court and with state with no response.

X.

Cory Lamont Thomas
Defendant
IN PARTY

Sentencing attachment

EXHIBIT

PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON

STATE OF WASHINGTON
v.
CORY LAMONT THOMAS

05.1.04377.8, 05.1.02436.6 Defendants statement on offender score calculation to be attached to Judgment and sentence

I hereby recieve my Judgment and sentence as invalid on its face due to miscalculation of offender scoring and erroneous inclusion of Juvenile offenses pursuant to; 9.94A.360 Laws of 1994 and Former 13.50.050(11) Laws of 1992 a petition for expungement was made to pierce county superior court and the motion was Denied to expunge citing 1997 Laws and amendments raised by pierce county prosecutors for this argument of 1997 Laws I cite state v. smith 144 Wn. 2d. 665, 30, P.3d 1245, (2001), state v. Swecker NO 21748-5-II (2004) wash app lex. 609 at HN4, state v. D.S NO 32215-3-II, 128 Wn. App 569; 115 P3d 1047 wash app. lex 1638 HN5 and HN14-17

on form "stipulation to offender score" pg 2 last paragraph states that the offender further stipulates that none of the offenses have washed out under 9.94A.525 or 9.94A.360 My Juvenile offenses have "washed out" and are being revived for the purpose of offender scoring and I have met the statutory requirements according to the Laws of 1992-1994 when my Judgement and sentence was entered. the Denial to expunge was in error. pursuant to relevant case law above.

Lastly aside from expungement the state argues that varga allows the retroactive revival for offender scoring but Lachapelle 153 Wn. 2d at 14-15 Citing varga was asked if it was proper to retroactively revive previously washed out offenses and the court declined citing state v. smith 144 Wn. 2d at 674-75 and state v. Cruz 139 Wn. 2d at 193

I respectfully submit my Judgment and sentence is invalid on its face and move under CrR 7.8 & RCW 10.73.100 for correction.

Cory Thomas.

EXHIBIT

05-04-06

TO: Pierce County Superior Court
Judge Armijo
John Sheeran

case 05-1-04377-8

I am writing on behalf of Cory Thomas. I am the person involved in his case, I came to his sentencing to ask the judge to release him, he's been there for 8 mths. And I think it's been long enough. I didn't call the police or ask for charges to be pursued and because of that I was locked up and threatened that if I did not testify against him I would be locked up again, leaving my son without either of his parents. The day the police came to my house we were both wrong. He shouldn't have put his hands on me, but I must admit it could have been avoided if I wouldn't have hit him first, and just let him take his bags & leave. I ask the court to accept my involvement in the situation and ask the court to release him for the sake of our son. I assure the court I have realized through this time that we will just be parents to our son and not partners for each other. Niether one of us had our fathers please don't let our mistakes place my son in the same situation, I thank you for your consideration

I declare under Washington state law that this statement is true.

Lavisha Bonds

MICHAEL T. CRAIN
NOTARY
PUBLIC
State of
Washington
Commission Expires June 27, 2006

Lavisha Bonds

EXHIBIT

State of Washington

County of Pierce

I certify that I know or have satisfactory evidence that LAVISHA M. BONDS is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: MAY 5 2006

(Signature)

(Seal or stamp)

MICHAEL T. CRAIN
NOTARY PUBLIC
State of Washington
Commission Expires June 27, 2006

NOTARY

Title

My appointment expires

JUNE 27 2006

Attn Pierce County prsecuting attorney
Pierce County Superior Court

11-14--2005

On 08-27-2005 @ 8a.m. Cory Lamont Thomas entered my home attempting to pick-up his clothes he had asked for the previous night. I told cory he'd have to wait until the morning because I was going that night. When Cory entered my house I was in bed sleep, I woke up when I heard him going threw the closet, so I got up to try and stop him even though I said earlier he could come and get them. Then he snatched the bag from him which caused me to fall on the ground and that woke up my friend. She told Cory she was calling the police and Cory told her to mind her biusness I'm just here to get my clothes . Then he left after grabbing a couple of his bags ,leaving the others there. Then my friend called the police saying cory had hit me even though I told her we were just arguing and I fell trying to stop him from leaving. Then the police came saying that "your friend said he hit you " &"he's nothing but trouble &they can really put him away. Then they asked if we were under the influence and I we had just gotten in 2 hours ago from a girls night out. And that we were still a little tipsy from the after hrs. place. He said he asked cause he could smell alcohol on are breath. Then they said he'd be charged w/ brglary , assault & intmidating a witness and suggested I go to the hospital . I did go but Cory never hit me , and how can they charge him w/ burgary when that's how he always comes threw my bathroom window when I'm not home. And I only heard him tell my friend who's never liked him to "mind her biusness . The officers waned me to write a statement but I would not because cory didn't do anything wrong. But I guess they still charged him anyway. I don't wish to file charges or testify because this was blown way uot of praportion and did not happen the way the officers said.

I declare under the laws of perjury in Washington that this is my honest and accurate statement of the facts 8-27-05 in my home.

EXHIBIT

MICHAEL T. CRAIN
NOTARY PUBLIC
State of Washington
Commission Expires June 27, 2006

State of Washington

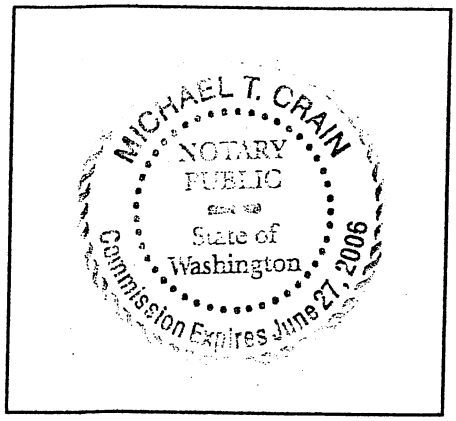
County of Pierce

I certify that I know or have satisfactory evidence that LAVISHA M. BONDS is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument. WA DL# BONDSLM193QL

Dated: December 13, 2005

(Signature)

(Seal or stamp)



NOTARY

Title

My appointment expires

JUNE 27 2006

EXHIBIT

EXHIBIT

Pierce County
Office of the Prosecuting Attorney

REPLY TO:
CRIMINAL FELONY DIVISION
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Criminal Felony Records: 798-6513
Victim-Witness Assistance: 798-7400
FAX: (253) 798-6636

GERALD A. HORNE
Prosecuting Attorney

Main Office: (253) 798-7400
(WA Only) 1-800-992-2456

January 6, 2006

Re: State of Washington vs. Corey Thomas
Pierce County Superior Court Cause No. 05-1-04407-3 and 05-1-04377-8

Dear Mr. Thomas

You are receiving a copy of the discovery in the two above cases.

The fact that you are proceeding pro se does not alter any of the provisions of the existing no contact orders.

Very truly yours,

John M. Sheeran
Deputy Prosecuting Attorney

jms

(25)

FILED
DEPT. 9
IN OPEN COURT
FEB 15 2006
Pierce County Clerk
By _____ DEPUTY

SUPERIOR COURT OF PIERCE COUNTY WASHINGTON

STATE OF WASHINGTON, Plaintiff, *vs* CORY LAMONT THOMAS, Defendant.	NO. 05-1-04407-3 ORDER GRANTING MOTION TO WITHDRAW TRIAL DATE: 2/28/06

This matter having come before the Court on the motion of James A. Schoenberger, stand-by attorney for Defendant CORY LAMONT THOMAS, to withdraw as stand-by counsel in this cause, and the Court being fully advised on the premises,

IT IS THEREFORE ORDERED that attorney Schoenberger be and is allowed to withdraw, instanter, as Mr. Thomas' Stand-by counsel

ENTERED this 15 day of February, 2006

SERGIO ARMIJO

_____
Sergio Armijo, Judge

Presented by:
/S/ JAMES A SCHOENBERGER
_____
James A. Schoenberger, WSBA# 33603
Attorney for Defendant

Approved as to form:

_____
John Sheeran, WSBA# 26050
Deputy Prosecuting Attorney

LAW OFFICE OF
JAMES A SCHOENBERGER
818 S. Yakima, Suite 100
Tacoma, Washington 98405
253.627.5878

(81)

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

EXHIBIT

STATE OF WASHINGTON

v.

CORY LAMONT THOMAS

05-1-04407-3 / 05-1-04377-8

& 05-1-02436-6 objections to compulsory process violation

Comes Now: The Defendant Cory Lamont Thomas and makes another DUE process violation for compulsory process Defendant after several Denials was finally allowed to go pro-SE once allowed to proceed pro-SE Defendant moved for assistance of counsel to assist in subpeonas and some complex legal issues Defendants request was denied. Defendant is in the pierce county Jail and has no way of

1) serving subpeonas "meaningful access to courts"
2) obtaining witnesses in his favor
3) filing timely motions with the clerk due to negligency "mail"
4) the prosecutor gave Defendant a letter that states "the fact that you are proceeding pro-SE does not alter any of the provisions of the ~~existing order~~ NO contact orders"
5) Defendant has to trade and bargain in jail for paper to file and prepare case "assistance stand by" not provided.

Defendant objects to these Due Process and compulsory process violations and moves the court in the furtherance of Justice to review all other motions and Dismiss cases w/ prejudice

Cory Lamont Thomas

Bound v. Smith 430 US 817 (1977) The fundamental right of access to the courts require prison authorities to assist inmates in the preparation and filing of meaningful documents "legal" by providing inmates w/ adequate law libraries or adequate assistance from persons trained in the law.

(21)

EXHIBIT

STATE OF WASHINGTON COUNTY OF PIERCE SUPERIOR COURT

STATE OF WASHINGTON
V.
CORY LAMONT THOMAS

05-1-04377-8 Motion And Affidavit In Support of "Mistrial"

COMES NOW: The defendant and MOVES: this court to grant a mistrial based on the following: Defendant filed a "notice to answer" to all pierce county Judges objecting to any "ex parte" contact and demanding a full record thereof if "ex parte" contact occured, Defendant is pro-se and objects to not being present at instance of "ex-parte" communication between current prosecuting attorney and Judge any issue whether legal or procedural should be addressed in presence of Defendant and has not.

Defendant also moves the court to grant a mistrial based on the fact (1) Pierce County corrections officers restricted defendants movement limiting it to table and said defendant need to sit during voir Dire and any subsequent testimony. State moved freely and Defendant was confined (2) Defendant is nearly 30 feet away from exit point and Pierce county corrections officer sat Approx 1 foot behind defendant and when defendant moved to opposite side of table for voir Dire officer moved with me and again sat approx 1 foot behind me directly (3) at the close of voir Dire Defendant attempted to move back around table and in Jurys presence corrections officer grabbed defendants arm and ordered me to not move until the excused Jurors left court room and selected panel entered box (4) there is two officers "corrections" in court room and Defendant Jury was been prejudiced / tainted.

Cory Thomas.

(22)

EXHIBIT

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

CORY LAMONT THOMAS DEFENDANT, [illegible] of the designated Court of Appeals. DEFENDANT wants reviewed

1) Trial Judges Denial of more preparation time under State v. Campbell and ordering trial under ineffective assistance

2) Trial Judge not allow re-redirect of states witness at the time of trial "re-cross examination"

3) all pretrial issues, motions, and objections raised by the Defendant prior to trial i.e. speedy trial, Pro se right, Due Process, Legal material access, compulsory process, confrontation process, Denial of assistance as "stand by" counsel

[illegible] transcription [illegible]

Cory Thomas

Cory L Thomas, petitioner
910 Thoma Ave South
Tacoma, WA 98402

James A Schoenberger, Attorney
818 South [illegible] Ste 100
Tacoma, Washington 98402

(27)

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

STATE OF WASHINGTON

85.1.04407.3 Motion of Intent to Seek Discretionary review have issues / matters added to current Discretionary review at Div. 2

FILED
IN COUNTY CLERK'S OFFICE
A.M. FEB 28 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

CORY LAMAR THOMAS

EXHIBIT

COMES NOW THE DEFENDANT and SUBMITS A NOTICE OF INTENT TO SEEK DISCRETIONARY REVIEW. AND TO have the issues Raised IN Previous MOTIONS UP TO and INCLUDING Motion On 02.28.06. The motions up to 2-28-06 Have been made on the record "transcription" and seek review from the appellate court or supreme court of all records "transcriptions" and orders entered up to todays date

Defendant request those Discretionary reviews be consolidated under Division 2 court of appeals numbers 34328-2-II and 34386-0-II already pending in the court of appeals awaiting determination(s) from "chief Judge"

Respectfully Submitted
Defendant

Cory Lamar Thomas.

(24)

STATE OF WASHINGTON SUPERIOR COURT, COUNTY OF PIERCE

FILED
IN COUNTY CLERK'S OFFICE
FEB 28 2006 P.M.
A.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

STATE OF WASHINGTON

05-1-04407-3 Defendants objection to Presiding Judge Ruings 2-28-06

CORY LAMONT THOMAS

COMES NOW THE DEFENDANT CORY LAMONT THOMAS AND OBJECTS TO THE FOLLOWING IN WRITTEN/MOTION FORM.

1. Order continuing trial due to lack of courtrooms available as reflected in several continuance orders as well as 2-28-06 order Defendant cites Arreola v. muni court as Authority.
2. STAND By Counsels (A) untimely appointment over objection (B) stated by Counsel not being prepared due to untimely appointment. stated by stated he would not be available tomorrow (3-1-06) however trial could have still been called out and possibly recessed but wasn't because of no space Defendant cites Fields v. Peyton as Authority
3. Trial being set past 3-2-06 because the state claims to be in trial on the 2nd my trial had been previously scheduled and should have commenced Defendant believes this is intentional preaccusatorial Delay Counsel stated for state that he is in a "civil" proceeding nonetheless "Criminal" proceedings take prescedence over "civil" proceedings. it should be noted no state witnesses were available to start trial.
4. the state continues to add "TFT" time for trial Days over objection and when Defendant requested that trial time be calculated pursuant to CrR 3.3 the court refused and set matter out. of proceedings such as these the court is not allowing full records to be made for effective appellate review. and silencing defendants efforts "PRO-SE"

The Foregoing is true and correct to the best of my knowledge under wash. laws.