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

NO. 34377-1-II Conolto 35947-2-II

Personal Restaint Petition of Patrick Boyd Drum

FILED
COURT OF APPEALS
DIVISION II
06 OCT -5 AM 11:58
STATE OF WASHINGTON
BY _____
DEPUTY

[PETITIONER'S REPLY TO:
States Supplemental Response]

Patrick Drum # 784289
Pro se Petitioner

Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA
98520

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of Petitioner Reply
to Stephanie B. Dalzell
&
10/5/06
Date Signed

LEGAL

A. STATEMENT OF THE CASE

I, Patrick Drum, Pro Se Petitioner, have received the States Supplemental Response on October 2nd of 2006. This is my response to that supplemental Response.

B. ARGUMENT

1) INSUFFICIENCY OF EVIDENCE: The State shows that the police had probable cause to charge me with Residential Burgulary. See: Supplemental Brief at 2. I apologize for causing fear in the community. The State goes on to claim that I had a "I only intended to ask to use the phone" defense. See: Supp. Brief at 3. This Court will find in the transcripts (Attachment 3 of PRP) that I said I didn't know what I was doing and "I think" I was asking to use the phone. The reason for this uncertainty was my intoxication. The judge stated: "you can-and I will infer the intent to commit a crime when you entered there because there's no other reason for you to be in there." Supp. Brief at 3. There was no logical reason for me to be in there, intoxication is not always logical. While RCW 9A.52.040 allows an inference of intent the court incorrectly overlooked the fact that intoxication can negate intent. The assertion of such intoxication should be taken as fact as the burden of proof is on the prosecution to disprove it. See: In Re Winship, 397 U.S. 358, 364 (1970); See Also: Fiore

V. White, 531 U.S. 225, 227-229 (2001)(due process violated when defendant was convicted for operating without a permit despite the fact that prosecution failed to show that defendant did not possess a hazardous waste permit). In the case at Bar the prosecution failed to "show" that I was not intoxicated. The Winship reasonable doubt standard is so that, as the Court put it:

"[t]he moral force of criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." id. at 364.

In his concurring opinion, Justice Harlan noted that the standard is:"

"bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than let a guilty man go free." Id. at 372 (Harlan, J., concurring).

The Winship requirement applies to elements that distinguish a more serious crime (Burgolary) from a less serious one (criminal trespass).

Intoxication is a valid defense to a mental state. In this case the mental state being "intent" to commit a crime. This defense was asserted after the trial judge "invited argument." This defense was rejected by the trial judge (with no rebuttal or argument from the state) on the ground that the Police Report only stated that I smelled of what appeared to be spray

LEGAL

paint. Being that I asserted the intoxication was by way of inhaling Toulene (chemical solvent) and the police report (admitted evidence) clearly states that I smelled of spray paint, the fact that I smelled of spray paint is clearly evidence in support of my claim of inhaling Toulene. CF: If I had claimed intoxication by way of drinking whiskey, and the Police Report stated that I smelled of what appeared to be alchohol, would there not be evidence of the asserted defense of intoxication from drinking whiskey?

The Trial Judge clearly erred in finding that there was no evidence to supported my asserted intoxication. The Trial Judge clearly misplaced the burden of proof on the defendant. These two facts clearly prejudiced Defendants valid defense.

The justification and reasons for this inadvertence is directly linked to Clause 19 of the Drug Court Contract. Clause 19 is, in effect, a guilty plea. It is the effect, not the form, which is dispositive. Apprendi v. New Jersey, 530 U.S. 466, 484 (2000). More specifically, Clause 19 is what is known as an Alford plea. An Alford plea, according to Black's Law Dictionary; Seventh Edition, is "A guilty plea entered into by a defendant in connection with a plea bargain, without actually admitting guilt." (emphasis added). See: North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). An Alford plea must be entered into pursuant to all the provisions of CrR 4.2. In the case at Bar it was not.

LEGAL

Clause 19 prejudiced my defense. I was entered into Clause 19 outside of the provisions of CrR 4.2, therefore, the Drug Court Contract is invalid. If the Drug Court Contract is invalid then the Stipulated Bench Trial is invalid (along with prejudiced defense). If the Stipulated Bench trial is invalid, then the conviction obtained through said Bench trial is invalid. If the conviction is invalid, it requires reversal and the case at Bar requires remand for new trial with the Drug Court contract stricken.

There is no presumption in favor of waiver of a constitutional right. State v. Kells, 134 Wn. 2d 309, 314 (1998).

2) INEFFECTIVE ASSISTANCE OF COUNSEL: In the Personal Restraint Petition I alleged ineffective assistance of counsel by way of a few different avenues. The State only chose to focus on one of these avenues: "Loss of Right to Appeal." See: Supp. Brief at 4. The ground as a whole, however, has been covered by the State.

I would like to emphasize a fact that supports this ground. The fact that defense counsel stated at Bench Trial: "the most [I] could be charged with is criminal trespass." This showed counsel was unknowledgable of the essential terms of the contract. If that be the case then defense

LEGAL

Counsel could not have properly relayed the essential terms to myself, the defendant. "Constructive Fraud" does not necessarily require intentional conduct. It simply requires obtaining an unfair advantage by not relaying all the essential terms of an agreement, intentional or not.

If Counsel felt that the most I could be found guilty of is criminal Trespass then certainly he should not have entered me into a contract in which I stipulated that there was sufficient evidence to find me guilty of Burgolary.

See: Murray v. Carrier, 477 U.S. 478, 496 (1986)

"([T]he right to effective assistance of counsel... may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial.)"

. The Drug Court Contract should be stricken as it is obtained through constructive Fraud. The Drug Court Contract prejudiced my valid defense and caused me to waive certain constitutional rights, therefore, a new trial should be granted.

3) DENIAL ON BASIS THAT OTHER FORMS OF RELIEF ARE NOW AVAILABLE: The State Concluded that ..."Petition should be denied on the merits or on the basis that other

LEGAL

Forms of relief are now available...", see: Supp. Brief at 6 (emphasis added). I think this to be erroneous. When I initiated this Petition there were no other forms of relief available. In fact, there are none at present. If this Court finds merit for a new trial then I should be granted a new trial.

This case is 2 years past, an appeal will be another year or more; it will make post conviction relief futile, as no time will be served. It will also be more work for this court. I say why postpone a decision that can be solved now?

C. CONCLUSION

The Petition should be granted in its entirety. This Court must evaluate the question of whether or not Drug Court Contracts that stipulate "sufficiency of guilt" require entry inside of guilty plea provisions.

I believe this to be a new question of law and therefore request a published opinion.

Respectfully, Patrick D

Patrick Drum #781287
Pro Se Petitioner

LEGAL