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1st Ground

"Purpose of the presentation clause of the fifth Amendment is two fold, it intitles the defendant to be only in jeopardy only for the offense charged by a group of his fellow citizens, acting independent of either the prosecutor or the Judge:" and it intitles the defendant to be appraised of charges against him so that he know's what he faces at trial "U.S. v. Fogel, 901 F.2d. 23 (4th Cir. 1990); U.S. v. Field, 875 F.2d 130 (7th Cir. 1989.)"

Instead of being held on charges by a group of fellow citizens, and a finding of probable cause by a grand jury as it is the guaranteed right of Kyle Vinsonhaler hereafter the moving party. The moving party was and still is being held on a finding of probable cause by the prosecutor, who according to the rules of professional conduct and the Supreme Court had no standing to present probable cause.

The prosecutor in filing a certificate of probable cause, is and was acting as both advocate and witness in the same proceeding.

"Indeed, Tradition, as well as the ethics of our profession, generally instruct counsel to avoid the risk's associated with participating as both advocate and witness in the same proceeding. Ref., Note 17. to wit SEE eg. Washington Rule of Professional Conduct 3.7 ("a lawyer shall not act as advocate at or before trial in which the Lawyer... is likely to be a necessary witness". "Unless for narrow exception's apply 1 A.B.A. Mode Rules of professional conduct 3.7 (1992); Kalina v. Fletcher, 522 U.S. 118 (1997)."

Hence the judiciary of the State of Washington knowingly and willfully allowed the prosecutor to replace the Grand

Jury, submit a certificate of probable cause knowing that the prosecutor had no standing to do so. Therefore in direct Violation of the moving party's right's guaranteed by the Constitution Laws and treaties of the United States of America at [ARTICLE IN] Amendment V & XIV, to due process of Law and equal protection of Law.

Due to the fact that the Superior Court is the authority authorized in the State of Washington to convene the grand jury. The "information" filed by a prosecutor is inherently statutorily and constitutionally insufficient, even assuming every other requirement for sufficiency was met. Unless or until the Superior Court convenes the grand jury, the charging will be statutorily insufficient and the Superior Court will not Legally obtain subject matter jurisdiction or jurisdiction over the person of the named moving party.

The judiciary cannot by custom or practice avoid it's duty to insure that the charging instrument is statutorily sufficient by convening the grand jury, by allowing the county prosecutor to stand in for the grand jury even if there was a Law at the time the "information" was filed allowing the prosecutor to stand in place of the grand jury as does the Amendment to WSL 1891 c. 28 § 29 in 2000 at WSL 2000 c. 92 § 30 [RCW 10.37.050 (2) 2000 publication of the RCW as amended to wit];

2nd Ground

That it was found by a grand jury or prosecuting attorney of the County in which the court was held.

This Amendment would at first, appear to authorize the prosecuting attorney to replace the function of the grand jury and allow the prosecuting attorney to be excused from the Limitation's imposed by Kalina v. Fletcher, Supra, that

the advocate cannot also participate as a necessary witness in the same proceeding.

If applied in only cases where the punishment if convicted is not death or imprisonment, such as a misdemeanor, than finding of the prosecutor may not work to violate an due process right.

If this Amendment were to be applied to actions filed after the Amendment took effect. Furthermore to allow the county prosecutor to stand in place of the grand jury, the Judiciary would then violate the mandate of ARTICLE VI Clause 2&3 of the constitution of the United States of America.

By allowing a statue to violate the right's of this moving party protected by [ARTICLE IN] Amendment V & IV to be imune from being held to answer an infamous or capital crime, and not being deprived of life liberty, or property, without Due Process of Law.

The Supreme Court held that state statue did not take precedent over Constitutional Law. "James v. Kentucky, 466 U.S. 341, 80 L.ed. 2d. 346, 104 S.ct. 1830 (1984).

"States may not, in the name of local control over Local Laws and practice give state courts the power to violate the Supreme Law of the Land." Kalb v. Feuerstien, 308 U.S. 433, 439, 84 L.Ed 370, 374, 60 S.ct. 343, 41 HM. Banker. Rep. U.S. 501 (Wis. 1940).

"All persons (public officials, state and federal) are presumed to know the law and if they act under an unconstitutional enactment of the Legislature, they do so at their own peril, and must take consequences."
Summer v. Beeler, Supra.

It is therefore the duty of the Superior Court to apply the grand jury process of the State of Washington as provided for by Law to acquire subject matter jurisdiction and, jurisdiction over the accused, as the punishment is infamous.

The judiciary having knowledge that due to the fact that the court lacked subject matter jurisdiction due to the insufficiency of the "information" and that the court lacked jurisdiction over the accused. Due to the violation of the moving party's right's guaranteed by [ARTICLE IN] Amendment V & IV, not to be held to answer an infamous or capital crime without a indictment or presentment (information) by a grand jury, and the right not to be deprived of life, liberty, or property, without due process of law and equal protection of the Law should have dismissed the action on it's own motion.

"Where the subject matter is not within the jurisdiction. The court may dismiss the proceeding on it's own motion," Gourmly v. McIntoch, Supra.

By proceeding without a valid charging instrument, and without a presentment (information) returned by a grand jury. Required by the provisions of ARTICLE VI Clause 2 & 3 Amendment V & XIV to the Constitution of the United States of America as well as the Constitution and Laws of the State of Washington. The judiciary of the State of Washington did knowingly and willfully violate the moving party's right to due process of Law and equal protection of the Law guaranteed by ARTICLE VI Clause 2 & 3 of the Constitution of the United States of America. Knowingly and willfully entered a Judgement and Sentence of conviction and warrant of confinement upon which the plaintiff relies, which the judiciary of the State of Washington know's is null and void for lack of subject and personal jurisdiction and violation of Due Process of Law.

3rd Ground

THE JUDGEMENT AND SENTENCE OF CONVICTION, AND WARRANT OF COMMITMENT FOR CONFINEMENT, UPON WHICH THE PLAINTIFF RELIES IS NULL AND VOID DUE TO THE TRIAL COURT'S LACK OF JURISDICTION.

The state judiciary of the State of Washington, in the person of the presiding judge in willful and knowing violation of the requirement to be bound to the Constitution and Laws for the United States of America. Regardless of the provisions of the constitution and laws for the State of Washington to the contrary, secured by an "oath of office" contract allowed moving party to proceed without effective assistance of counsel who was not limited by a conflict of interest in willful and knowing violation of the moving party's right to the assistance of effective counsel unincumbered by a conflict of interest, the right to associate with counsel of choice; Right to contract; Right to Due Process and equal protection and / or Imunity of the moving party, guaranteed by Article I & X and [ARTICLE IN] Amendment I, V, X, XI and XIV of the constitution for the United States of America. THEREFORE binding on the State Judiciary of the State of Washington, under Article VI Clause 2 & 3, of the constitution of the United State of America.

The constitution of the United States of America guarantees that NO one is to be deprived of life, liberty, or property without Due Process of Law.

[ARTICLE IN] Amendment 5; "No person shall... be deprived of life, liberty, or property, without due process of law..."

[ARTICLE IN] Amendment 14; "No State shall make or enforce any law which shall abridge the privilege or

immunities of citizens of the United States; nor shall any state deprive any person of Life, Liberty, or Property, without due process of Law...

The Constitution of the State of Washington published in volume "0" of the RCW Article 1 & 3:

"NO person shall be deprived of Life, Liberty, or Property, without due process of Law."

One of the main elements of due process guaranteed to the people is the right to the assistance of counsel. This right is enumerated at [Article in] Amendment VI to the Constitution of the United States of America. To wit:

"In criminal prosecution's, the accused shall enjoy the right... To have assistance of counsel for his defense."

"In criminal prosecution's the accused shall have the right to appear in person, or by counsel..."

The right to counsel at a criminal Trial is deemed so fundamental to the interest of justice that denial thereof Automatically violates any conviction obtained (The Automatic Reversal Rule.) This is true even though there is no showing of any prejudice or unfairness in the proceeding's, or even any need for counsel. "Gideon v. Wainright, 372 U.S. 335.

Thus the court in United State v. Padilla-Martinez, 762 F.2d 942 (11th Cir. 1985) held:

The sixth Amendment provides that in all prosecutions, the Accused shall enjoy the right... To have assistance of counsel for his defense. "This guarantee of counsel has been interpreted to include Four rights:

(1.) The right to counsel, Powell v. Alabama, 287 U.S. 45 (1932);

(2.) The right of effective Assistance of counsel, Glasser v. United States, 315 U.S. 60 (1942);

(3.) The right to preparation period sufficient to insure a minimal level of quality of counsel.

(4.) The right to be represented by counsel of ones choice. ID at 70, 62 S.ct. 464.

(A denial of any one of these elements is a denial of counsel, thus a denial of due process).

Where as "A conviction obtained where the accused was denied counsel is treated as void for all purposes, Burgett v. Texas, 387 U.S. 109.

To determine whether or not the moving party's right to the assistance of counsel was Violated, each of the rights regarding counsel identified in United States v. Padilla-Martinez, Supra must be analyzed as they apply to the moving-party.

The safe guard of the [Article in] Amendment VI provides that the accused shall enjoy the right to assistance of counsel, not representation. Representation by an attorney is deemed by the court to make the accused award of the court.

"Clients are also called ward of the court in regard to their relationship with their attorney."

D.C. Spilker v. Hawkin, 188 F.2d 35, 88 U.S. App. D.C. 206.

Looking at Black's Law Dictionary 6th edition pg. 1584, for the meaning of "Ward of the Court."

"Ward of the court;" Infants and person's of an sound mind placed by the court under the care of a guardian Davis

Committer v. Loopay, 290 Ky. 644. 162 S.W.2d 189, 190.

Did the moving party enjoy the right to assistance of counsel as interpreted in United States v. Padilla-Martinez, supra.

(1.) The Right to counsel.

Was there an attorney present with the moving party Kyle Vinsonhaler during every stage of the criminal proceeding's?

The answer is "NO", Why wasn't his appointed counsel present when Detective [STEVE NORTON] questioned moving party as well as his brother.

Without this testimony Acquittal.

The right to counsel exist's not only at the trial thereof, but also at every single stage of the criminal proceedings, where substantial right's of the moving party accused of a criminal act, where as his right's may be affected, "Mempa v. Rhay, 389 U.S. 128.

The record clearly show's that in fact the attorney at Law either in the capacity or stand by counsel was in fact not with the moving party through every stage of the criminal proceeding.

Assistance of counsel mean's more than the mere presence of an attorney in the court room.

(2.) The right of effective assistance of counsel;

The sixth Amendment gives the moving party the right to effective assistance of counsel, State v. White, 80 Wn. App. 410, 907 P.2d 310 (1995), Reserved 129 Wn.2d. 1021 (1996) "effective assistance of counsel includes a duty of loyalty:" [and] a duty to avoid conflict of interest" Strickland v. Washington, 466 U.S. 668, 104 S.ct. 2052, 80 L.ed.2d. 1193 (9th Cir. 1984).

"The right to counsel guaranteed by the sixth and fourteenth Amendment is a right to effective counsel," Herring v. Estall, 5th Cir. 1974, 491 F.2d. 125 McKenna v. Ellis, 5th Cir. 1960. 280 F.2d 592.

Effectiveness, However, is not a matter of professional competence alone. as the court said in Porter v. United States, 5th Cir. 1962, 298 F.2d, 461, 463: The constitution assures a defendant effective representation by counsel... Such representation is lacking, However if counsel, unknown to the accused and without his knowledge able assent, is in duplicatis position where his full talent as a vigorous advocate having the single aim of aquital, by all means fair and honorable are hobbled or fettered by commitment's to other's.

In short, [W]e consider undivided Loyalty of appointed counsel to client as essential to due process, McKenna v. Ellis, 5th Cir. 1960, 280 F.2d. 592, 599.

The Law clearly show's that defense counsel in fact an officer of the State and in this case the plaintiff's who's interest's which were adverse to the moving party.

CONPUS JURIS SECUNDUM 7: ATTORNEY and CLIENT; Pg 801 and 802 provide an answer to wit:

"Thus, an attorney occupies a dual position which imposes a dual obligation's. His first duty is to the court's and the public (State) "NOT" to his client, and whenever the duties to his client conflict with those he owe's as an officer of the court in the administration of justice. The former must yield to the later clearly shown by (1.) Counsel not being present when his mentally disabled client was questioned, and and in later testimony used in court to determin't of his client. (2.) Where as a simple objection would have led to an aquitale.

..."Every defendant has a constitutional right to assistance of an attorney unhindered by a conflict of interest. "Holloway v. Arkansas, 435 U.S. 475, 483 5th L.Ed. 2d. 426 98 S.ct 1173 (1978)." When the effectiveness of counsel is predictated on a conflict of interest prejudice is presumed if the attorney actually pepreseating conflicting interest, "Strickland v. Washington, 466. U.S. 688, 692, 104 S.ct 2052, 2067, 80 L.Ed 1708, 1719, 64 L.Ed 2d. 333 (1980).

Even if the trial court is not notified at trial of the conflict, the movant is still not required to make a full showing of prejudice usually required under strickland (i.e. that it is more likely than not that the out come of the proceeding's would have been different had that the attorney acted properly), but need's only to show that an actual conflict of interest, adversely affected is a lawyer performance. "Strickland v. Washington, United States v. Horton, Walberg v. Israel, 766 F.2d 1071, 1075, (7th Cir. 1985).

Since the judiciary endorses and enforces the bar act, The court is well aware of this conflict of interest. Prejudice against the right to effective assistance of counsel is thus presumed, and judiciary was a willing party of the prejudice. To wit:

The possibility of the conflict of interest was brought home to the court, but instead of jealously guarding the moving party's right's. The court may be fairly said to be responsible in the impairment of those right's "Glasser v. United States, 315, U.S. 60, 71, 62, S.ct 457, 456, 86 L.Ed 680 (1942).

The whole purpose to the assistance of effective counsel is to safeguard the very right's of the moving party Kyle Vinsonhaler. As presented in State v. McDonald, 96 Wn. App.

311, 974 P.2d. 857 (1999). Affirmed at 143 Wn.2d 506 (2001).

"The Sixth Amendment gives a criminal defendant the right to effective assistance of counsel, State v. White, 80 Wn. 2d 406, 410, 907 P.2d 310 (1993) reversed 129 Wn. 2d. 1012 (1996). When a defendant alleges a violation of this right. the court has to conduct a denovo review based on the ENTIRE RECORD. State v. McFarland, 127 Wn. 2d. 332, 335, 899 P.2d 1251 (1995)."

The right to effective assistance of counsel has been denied to the moving party and thus due process was denied.

"A defendant is intitled to reversal of conviction whenever some showing of any possible conflict of interest or "ANY" prejudice however remote was made," Cayler v. Sullivan, 446 U.S. 355, at 341, 64 L.Ed. 2d. 333, 100 S.ct 1708.

3rd Ground

The right to a preparation period sufficent to insure a minimal level of quality of counsel.

Preparation period issue presumes that the accused has effective counsel who does not owe a duty to the adverse party.

The denial of the second element to the right of assistance of counsel "That being" "The right to effective assistance of counsel," work's to violate the third element. For until the moving party ("is") afforded effective assistance of counsel, the moving party could not prepare a meaningful defense, no matter how much time for preparation was allowed by the court. "Thus" the right to a preparation period, with the assistance of effective counsel, sufficient to insure a minimal level of quality of counsel for the

moving party Kyle Vinsonhaler was denied and thus due process is denied.

4th Ground

The fourth element to the right to assistance of counsel as interpreted in United States v. Padilla-Martinez, supra.

(The right to be represented by a counsel of ones choice, Id. at 70, 62 S.ct 464.

In order for the accused to effectively exercise the right to be represented by counsel of choice. The accused is to be fully informed as to the conflict of interest and that the attorney-at-Law, as a member of the bar association has a pre-emptive duty to the interest of the plaintiff "State of Wasington" over the interest of the accused. This is mandated by the rules of professional conduct (R.P.C) 1.7 as applied to this case 1.7 (b).

1.7 (b); A Lawyer shall not represent a client if the representation of that client may be materially limited by the lawyers responsibilities to another client or third person, or by the lawyer's own interest unless; (1.) The Lawyer reasonably believes the representation will not be adversely affected; and (2.) The client consents in writing after consultation and full disclosure of the material fact's (Following authorization from the other client to make such disclosure). When representation of "multiple" clients in a single matter is undertaken, the consultation shall include explanation of the implication's of the common representation and the advantage and risk: involved.

There is no evidence in the record of the trial court that the moving party Kyle Vinsonhaler provided such written consent. Or that moving party a mentally disabled 19 year old boy with a 3rd or 4th grade understanding could have or would have knowingly signed a consent.

The fact of the matter even with disclosure, the provisions of the "Bar Act" of Washington prevents a party from choosing anyone who is not a member of the Washington State Bar.

The court held that "denial of right to counsel of choice is reversible error regardless of whether prejudice is shown." Bland v. California Department of Corrections, 20 F.2d. 1469 (9th Cir. 1994).

After analyzing the four elements of the "Right to assistance of counsel," established by United States v. Padilla-Martinez, supra it is clear that the moving party Kyle Vinsonhaler was denied the right of counsel guaranteed by the Constitution of the United States of America, and thus denied due process of Law.

5th Ground

The testimony by John Stirling;

The doctor by his own word's is a much used "Paid State Witness."

(1st) Order of bussiness he talks about evidence but in truth this is a very clear case of an inferance on inferance Rule where as he say's alot but there is no viable evidence and you cannot make an inferance without some shred of evidence. His testimony should have been impeached as it is impossible to counter presumption on presumption. A simple objection by moving party's attorney would have rendered this testimony null and void, for all time and most likely ended in a verdict of aquittal. This could not be construed as any type of strategy.

So that the ends of justice may be properly served an order to vacate Judgement and Sentence and remand to court to either dismiss with prejudice or recharge with a new trial.

Furthermore a counsel who is aware of moving party's Kyle Vinsonhaler's disability to correctly and properly conduct with Kyle Vinsonhaler's best interest to vigourously defend moving party's right's..

Respectfully Submitted,

Kyle Vinsonhaler 3-20-08

Kyle Vinsonhaler.