

COA No.36665-7-II
THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
RESPONDENT,

v.

ROBERT L. RAY, III,
APPELLANT, PRO SE,

STATE OF WASHINGTON
BY RLR
DEPUTY

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FILED
COURT OF APPEALS
DIVISION II

STATEMENT OF ADDITIONAL GROUNDS

[REDACTED]
ROBERT L. RAY, III, PRO SE
STATE OF WASHINGTON
COUNTY OF CLALLAM
1830 EAGLE CREST WAY
CLALLAM BAY, WA 98326-9723

A. ASSIGNMENT OF ERRORS

1. Defense counsel was ineffective because he was not ready for trial and coerced Ray into pleading guilty which denied Ray his right to a jury trial and due process.
2. The trial court erred when it denied Ray's motion for new counsel.

Issues Pertaining to Assignment of Errors

1. Was Defense counsel ineffective because he was not ready for trial and coerced Ray into pleading guilty which denied Ray his right to a jury trial?
2. Did the trial court err when it denied Ray's motion to appoint new counsel?

B. STATEMENT OF THE CASE

The statement of this case is set out on pages 2-11 in Brief of Appellant ("BOA"). And the report of proceedings are referenced on page 4 in BOA.

C. ARGUMENT

1. DEFENSE COUNSEL WAS INEFFECTIVE BECAUSE HE WAS NOT READY FOR TRIAL AND COERCED RAY INTO PLEADING GUILTY WHICH DENIED RAY HIS RIGHT TO A JURY TRIAL AND DUE PROCESS.

To establish ineffective assistance of counsel, a defendant must first show that his attorney's performance was deficient, and second show the deficiency prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The 6th Amendment U.S. Const. and Art.1, §22 Wash. State Const. guarantee a defendant the right to assistance of counsel at trial.

It is clear from the record defense counsel was not prepared to go to trial on January 16, 2007 and the reasons for counsel's unpreparedness was directly due to a failure to prepare for trial the previous 17 months. RP I 12-14. Therefore the first prong is met because counsel's performance was not reasonably effective under prevailing professional norms guaranteed by the 6th Amendment. Also see argument on pages 16-22 in BOA.

On January 16, 2007 Ray's attorney met privately with him and his father and told them he was not prepared to go to trial and it was "time to cut his losses" and accept the state's offer and plead to one count of first degree burglary and one count of indecent liberties with forcible compulsion. RP 26-28; CP 90-91, 96-98, 100.

With his father present Ray learned for the first time, that he was pleading to a sex offense and he would have to register as a sex offender for the rest of his life, Ray told his attorney with his father present he did not want to plead guilty and have to register as a sex offender, his attorney advised him it was too late to go to trial because the deal had already been accepted Ray felt forced to accept the states offer and reluctantly Ray entered his plea to counts one and two. RP 31-33,54, 65-96;CP 217-221

The state argues that Ray received a substantial deal by pleading guilty because he was able to cut his time from a possible 216 months to a possible 72 months. RP 91; CP 106. The states argument is flawed and without merit, because when Ray pled to the sex offense, he pled to a [LIFE SENTENCE] as a sex offender and he'll be wearing for the rest of his life, the "SCARLET LETTER" of the stigma and prejudice that society has put on anyone convicted of a sex offense no matter what the circumstance of the crime are or whether the offender is a danger to society or not.

Ray has always maintained his innocence on all the charges. In fact the state had made numerous offers to settle the case and they were always refused. Ray was coerced into entering a guilty plea and giving up his right to a trial guaranteed in by 6th Amendment U.S. Const. Duncan v. Louisiana, 319 U.S. 145,153(1968).

Counsel's repeated communications that he was unprepared forced Ray into a "Hobson's choice" of either giving up his right to a jury trial by pleading guilty and going to prison for less time and being labeled a sex offender for the rest of his life, or giving up his right to effective assistance of counsel by going to trial without his attorney being prepared. Therefore the second prong has been met because the evidence shows that but for counsel's errors the result would have been different because Ray was coerced by his own attorney, the person charged with protecting his rights and insuring he receives due process of the law.

Ray's denial of a jury trial and denial of effective assistance of counsel was not only a violation of state law it denied Ray the due process of the law guaranteed in the 6th and 14th Amendments U.S. Const. Duncan v. Henry, 513 U.S. 364, 366 (1995). Mr. Ray is innocent of all charges and respectfully request in the interests of justice, this Court reverse his convictions and remand for a trial.

2. THE TRIAL COURT ERRED WHEN IT DENIED RAY'S MOTION FOR NEW COUNSEL.

To justify appointment of new counsel a defendant must show good cause to warrant substitution of counsel. State v. Stenson, 132 Wn.2d at 734.

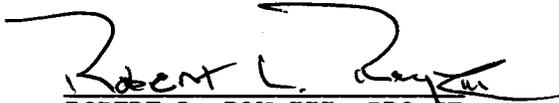
When the trial court denied counsel's request for a continuance because he was not prepared for trial the court should have allowed counsel to withdraw so Ray could get an attorney that would be ready for trial. RP I 12-13.

The trial court's denial of Ray's motion for new counsel was not only a violation of state law it denied Ray the due process of the law guaranteed in the 6th and 14th Amendments U.S. Const. Duncan v. Henry, 513 U.S. 364,366(1995). Mr Ray prays this Court reverse his conviction and remand for a jury trial.

D. CONCLUSION

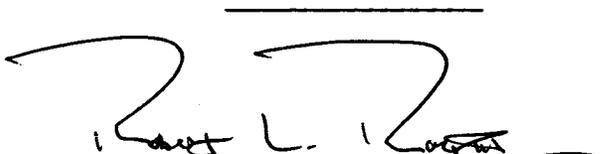
Because Ray was denied effective assistance of counsel that resulted in his denial of a trial he prays this Court reverses his conviction and remand for a jury trial.

RESPECTFULLY SUBMITTED ON MAY 4,2008.


ROBERT L. RAY, III, PRO SE

I ROBERT L. RAY, III declare under the penalty of perjury under the laws of the state of Washington that the facts set out in this Statement of Additional Grounds for Review are true and correct.

SIGNED AT CLALLAM BAY, WASHINGTON ON MAY 4,2008


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