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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent

V.

David P. Vandament,

Appellant

No. 37586-9-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
RAP 10.10

I, David P. Vandament, have received and reviewed the opening brief prepared by my attorney. Summarized below and through-out the following pages are additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1: Involuntary Plea.

Additional Ground 2: Denial of Effective Assistance of Counsel.

Additional Ground 3: Time for Trial.

ORIGINAL

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Assignments of Error

- 1) The trial Court Erred by denying my motion to withdraw my guilty plea on the ground that my guilty plea was involuntarily, unknowingly and un-intelligently made.
- 2) I should be allowed to withdraw my guilty plea due to ineffective assistance of counsel.
- 3) All charges should be dismissed with prejudice as I was denied a speedy trial and the open administration of justice, without unnecessary delay

Issues Pertaining to Assignments of Error

- 1) Did the trial court err by denying my motion to withdraw my guilty plea on the ground that my guilty plea was involuntary when: (1) I was threatened by the State with life in prison if I took this matter to trial; (2) I was in fear of being re-arrested, multiple times, without any regard for the rights of the accused and then assessed excessive bail, again; (3) Any chance for a fair trial was eliminated due to slanderous publicity by the State; (4) I was deceived about evidence the State said they "now had"; then, later said "no evidence was located"; (5) I was promised false hope of a lesser sentence through a "SSOSA", by defense counsel; (6) I was persuaded with verbal intimidation by defense counsel to sign the plea agreement and the STTDFG; (7) I was not knowledgeable about the elements of the charges due to failure of State, the Court and defense counsel to provide me with a copy or explain the nature of the charges; (8) I did not understand the consequences of my plea due to erroneous advise by defense counsel in the STTDFG and misrepresented consequences by the State in the Plea Agreement; (9) the information was amended a third time, just minutes prior to my change of plea, without showing me the changes or explaining the nature of the charges and; (10) I was asked to plea to charges not in the information?

Issues Pertaining to Assignments of Error (continued)

2) Should I be allowed to withdraw my guilty plea on the ground that I was denied effective assistance of counsel when: (1) The trial court failed to appoint counsel at a critical stage in these proceedings; (2) the State mis-led the trial court about an arraignment and plea which did not occur and as a result, improperly influenced the Court to assume that counsel had been appointed; (3) a "not appointed" lawyer mis-led the trial court to believe that his Law Firm had been appointed; (4) another lawyer violated rules of professional conduct to become attorney of record; (5) defense counsel joined the effort of the State to attain a conviction; (6) defense counsel erroneously advised me of the consequences of my plea; (7) defense counsel had various conflicts of interest; (8) defense counsel promised me false hope of a SSOSA; (9) defense counsel misrepresented to me, alterations in the charging documents and the plea agreement and; (10) defense counsel failed to investigate?

3) Should all charges be dismissed with prejudice as I was denied the right to a speedy trial when: (1) The State willfully failed to comply with a reasonable and necessary order of the trial Court on behalf of the State, by abandoning the Court ordered arraignment hearing, thus, unnecessarily and unjustifiably delaying arraignment to the State's tactical advantage; (2) the State mis-led the trial Court about an arraignment and plea which did not occur, thus, improperly influencing the trial Court to fail to carry-out the responsibility of the Court under CrR 3.3(a) and my speedy trial rights; (3) the State failed to lawfully arraign me; (4) the trial Court abused judicial discretion by falsely accusing me of failing to appear; then, unjustifiably and unnecessarily delayed trial again, by resetting the trial dates and; (5) the State failed to bring me to sign a speedy trial waiver and failed to bring me to a change of plea prior to expiration of the time for trial rules?

FACTS

I was arrested without a warrant at my home at approx. 6:30 PM on Friday, 06/02/2006, by Port Orchard Police Detective E. Jerry Martin, #708. I was detained over the weekend in the Kitsap County Jail. At approx. 10:00 AM, Monday, 06/05/2006, I was brought out for "bail study" to determine if I qualified as indigent for the appointment of counsel.*¹

At approx. 3:00 PM, Monday, 06/05/2006, I was brought before the Honorable Russell M. Hartman for a preliminary appearance hearing. My not-yet retained Counsel, Kevin Boyle, WSBA #11296, was present. Judge Hartman Stated: "The State has not filed a charging document"; "I found probable cause" and; "the arraignment is the next scheduled appearance and that will be at 3 PM on Wednesday, June the 7th". Judge Hartman signed an order setting 06/07/2006 as the date for formal charging. After the hearing, I posted \$50,000 bond.*²

On Wednesday, 06/07/2006, at approx. 3:00 PM, I appeared with Attorney Boyle at the Kitsap County Court House. My name did not appear on any of the Court schedules that were posted in the Superior Court lobby. Attorney Boyle went into the Superior Court Office and, upon returning to the lobby, told me that they had no information scheduling a hearing for me. Attorney Boyle then went into the Kitsap County Prosecutor's Office and, upon returning to the hallway, stated: "no-one there knows anything about the case." Attorney Boyle said "one clerk said to wait for a summons in the mail." Attorney Boyle checked with the Clerk's Office and found that nothing new had been filed in my case (06-1-00867-5).*³

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- *¹ Ex # 2 - Arrest and Booking Information, dated 06/02/2006.
 - Ex # 3 - Notice of Arrest/Order Setting Bail, filed 06/05/2006.
 - Ex # 1 - Kitsap County Superior Court Docket, bail study.
 - *² Ex #53 - RP 06/05/2006, page 3, lines 10-20, page 7, lines 20-22.
 - Ex # 6 - Order Setting Trial Date, filed 06/05/2006.
 - Ex # 7 - Appearance Bond, filed 06/06/2006.
 - *³ Ex #52 - Affidavit of Attorney Boyle, dated 01/08/2008.
 - Affidavit of David P. Vandarent, filed 02/05/2008, paragraph [30].
 - Supplemental Pleading, filed 02/25/2008, pages 1-2.

Notice of Charges Not Filed had not been filed with the Court, the case had not been dismissed and no Court was available to exonerate my Bail/bond or amend conditions of release imposed subsequent to the State's warrantless arrest and the Court's judicial determination of probable cause.*1

11:34 AM, 08/22/2006, now 81 days after the State's warrantless arrest, Deputy Prosecutor Robert L. Naon, WSBA #10262, filed an information with the Kitsap County Clerk's Office.*2

1:45 PM, 08/22/2006, Mr. Naon, Ex Parte, appeared before the Honorable M. Karilynn Haberly in Kitsap Superior Court, where he submitted a motion for an arrest warrant demanding bail to be set at \$150,000, using another copy of Detective Martin's same unfiled Statement of Probable Cause which Mr. Naon had earlier submitted to Judge Hartman for a determination of probable cause which was used in that Court to set the \$50,000 bail which I had posted and which still remained valid and active due to Mr. Naon's abandonment of the Court ordered arraignment (previous hearing). Judge Haberly later stated that Mr. Naon swore, under oath: "that there was DNA evidence now that confirms what was in the statement of probable cause". Seven months later, the State, in their PSI report, wrote: "No DNA evidence from Vandament was located". The State, reference this deliberate DNA misrepresentation, wrote in their response to my CrR 7.8 Motion to Vacate: "...rather it appears that the evidence is impeachment evidence, immaterial, that could have been previously discovered."*3

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- *1 Ex # 1 - Kitsap County Superior Court Appearance Docket.
 - Ex # 5 - Order for Pretrial Release, filed 06/05/2006.
 - Ex #55 - RP 09/01/2006, page 3, lines 22-25 & page 4, line 1.
 - *2 Ex # 9 - Information, filed 08/22/06.
 - *3 Ex #10 - Motion for Warrant of Arrest, filed 08/22/2006.
 - Ex #53 - RP 06/05/2006, page 7, lines 20-22.
 - Ex # 6 - order Setting Trial Date, Filed 06/05/2006.
 - Ex #53 - RP 06/05/2006, page 6, lines 18-20.
 - Ex #26 - Agreed Order Exonerating Bond, filed 10/04/2006.
 - Ex #54 - RP 08/23/2006, page 4, lines 22-25.
 - Ex #38 - Pre-sentence Investigation Report, page 4, 3rd paragraph.
 - State's Response to CrR 7.8 Motion, 02/29/2006, page 8, lines 4-6.

4:00 PM, 08/22/2006, at my home, I was presented with a warrant of arrest by Detective Martin. When I told Martin that I was still out on a valid \$50,000 bond, he said: "The bail is now \$150,000."*1

08/23/2006, now 82 days since the first warrantless arrest, I was brought before the Honorable M. Karlynn Haberly where I was told that I was charged with a felony, yet, I was not asked to enter a plea. Judge Haberly did not appoint counsel, and stated: "I'm not making a determination of indigency at this time." and, in fact, crossed-out "Order Assigning Lawyer" and scribbled-out the previously checked box next to the "Ness" firm on the Order Assigning Lawyer/Setting Trial Date form (OAPAT). Neither my "not-appointed" counsel, Mr. Murphy, standing next to me, nor I, was provided with a copy of the information.*2

The Court, the State and the "not-appointed" defense counsel were all aware that I had been arrested in early June, made an initial appearance on June 5th, 2006 and had posted bail. Yet, no motions, determinations or comments about speedy trial and/or the State's deliberate abandoning of the previous hearing were made. In fact, the Ness Law Firm's "not-appointed" defense counsel, Mr. Murphy asked: "But when, exactly was the noted failure to appear?" Judge Haberly, herself, questioned the purpose of the warrant which was rubber-stamped with her name, on the previous day. The State circumvented and failed to adequately answer these questions. I knew nothing about law but I knew that I had not failed to appear at any of the hearings.*3

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- *1 Ex #12 - Arrest and Booking Information, dated 08/22/2006.
Ex #11 - Warrant of Arrest, filed 08/22/2006.
Affidavit of David P. Vandament, filed 02/05/2008, paragraph [37].
- *2 Ex #54 - RP 08/23/2006, page 2, lines 19-22.
Ex #54 - RP 08/23/2006, page 2, lines 13-15.
Ex #13 - Order Assigning Lawyer/Setting Trial Date.
Ex #54 - RP 08/23/2006, page 4, lines 14-16.
- *3 Ex #54 - RP 08/23/2006, page 2, lines 4-5 & page 3, lines 20-21.
Ex #54 - RP 08/23/2006, page 31, lines 13-15.
Ex #54 - RP 08/23/2006, page 3, line 18.
Ex #54 - RP 08/23/2006, page 3, lines 3-6 & page 4, lines 22-23.
Ex #61 - Letter from Kitsap County Clerk, dated 07/17/2008.
Ex # 1 - Kitsap County Superior Court Appearance Docket.

Someone, unknown, had posted a "noted failure to appear" to the case management system created or prepared by the Court related to these judicial proceedings, available to be viewed by the Judge and counsel, to cover-up the State's deliberate abandoning of the previous Court ordered arraignment hearing, to make me appear as a flight risk, damage my integrity as my own witness, provide the State with an opportunity to justify a higher bail and to improperly influence the Court to fail to carry-out the responsibilities of the Court under procedural and constitutional rights to a speedy and fair trial.*¹

This was not an arraignment. The Court failed to ask for a plea, failed to appoint counsel, failed to read me my rights, failed to determine a 60/90 day speedy trial expiration date and failed to set fourth the proper date of my arraignment. Yet, the Court set October 10, 2006 as the trial date, which was 130 days beyond the State's warrantless arrest on 06/02/2006. I failed to object to this trial date because I knew nothing about law, legal proceedings, speedy trial procedures and I had no official counsel to represent me. I had told Mr. Murphy, earlier, while shackled to other prisoners, waiting to be processed by the Court, that I had been arrested and posted bail on June 2nd and 5th, 2006. I now realize that it should not have taken a lot of sense to determine that there was then, less than 10 days left until 90 days from the State's warrantless arrest would pass. Yet, neither Mr. Murphy nor the Court made comments or inquiry about speedy trial rights or procedures.*²

Judge Haberly stated: "I'm going to leave bail at \$150,000 but I'm going to add a condition to the order on pretrial release." and; "I'm setting status for attorney next Friday ... September 1 at 9 AM; Omnibus, September 13 at 9 AM; trial, October 10, 2006..."*³

*¹ Ex #56 - RP 09/12/2006, page 2.
Affidavit of David P. Vandament, filed 02/05/2008, paragraph [38].
Supplemental Pleading, filed 02/25/2006 page 3, lines 18-26.

*² Ex #13 - Order Setting Trial Date, filed 08/23/2006.
Ex #54 - RP 08/23/2006, page 3, lines 20-21.

*³ Ex #54 - RP 08/23/2006, page 5, line 25, page 6, lines 1-5.
Ex #54 - RP 08/23/2006, page 6, lines 8-18.

08/30/2006, I posted \$150,000 bail. I immediately phoned my attorney, Kevin Boyle, my Mortgage Broker and my employer. Attorney Boyle agreed to meet with me on Friday, 09/01/2006.*¹

08/31/2006, my Mortgage Broker, over the phone, gave me verbal approval for a \$55,000 2nd mortgage for a retainer. My employer told me I had been "fired" but I continued to negotiate with him. I gathered-up bank statements and pay-stubs, then climbed in my car to drive to Office Depot to make copies for my Mortgage Broker, when I saw Detective Martin and several other Port Orchard Police Officers sneaking along the side of the lane towards my house. I stopped, got out and walked up to Detective Martin as he approached me. Detective Martin, without a warrant said: "You're under arrest". I exclaimed: "I just posted \$150,000 bail yesterday afternoon!" Detective Martin said: "Well, now the bail is \$1,000,000 and if you make that bail, we'll make it \$5,000,000."*²

Detective Martin's sergeant demanded that I give him the access code to my front door or they were going to "kick it in". Without a warrant, Port Orchard Police searched my house and seized an access card to the marina where I moored my sailboat. Port Orchard Police transported me, again, to the Kitsap County Jail. There, I was booked and locked-up in solitary confinement where they kept me for the next two weeks. All communications with the outside became almost impossible. Because I was falsely imprisoned, I could not complete the transaction with my Broker to obtain the funds needed to retain my preferred counsel, Kevin Boyle. This warrantless arrest was not posted on the Kitsap County Superior Court Appearance Docket. A judicial determination for probable cause for this warrantless arrest, search and seizure was never made.*³

*¹ Ex #15 - Appearance Bond, filed 08/30/2006.

Ex #55 - RP 09/01/2006, page 6, lines 3-14.

*² Affidavit of David P. Vandament, filed 02/05/2008, paragraph [44].

*³ Affidavit of David P. Vandament, filed 02/05/2006, paragraph [45].

Ex #16 - Arrest and booking Information dated 08/31/2006.

Affidavit of David P. Vandament, filed 02/05/2006, paragraph [46].

Ex # 1 - Kitsap County Superior Court Appearance Docket.

Ex #55 - RP 09/01/2006 , no judicial determination probable cause.

09/01/2006, now 91 days since the first warrantless arrest. I was brought out from solitary confinement, still without counsel, to appear, before the Judge Hartman, for an attorney status hearing, ordered by Judge Haberly during the previous (08/23/2006) hearing. Deputy Prosecutor Robert L. Naon stated: "...the recent history began in early June... Your Honor had set \$50,000 bail, Mr. Vandament quickly bailed out and rather than charge him, the State continued its' investigation..." Judge Hartman asked: "Well, just a moment, Mr. Naon. As I look at the file here -- correct me if I'm wrong -- it appears that the State did not proceed with arraignment on June the 7th; is that correct?" Mr. Naon replied: "That's correct." Mr. Naon failed to advise the Court that he deliberately and willfully disregarded Judge Hartman's order while violating my constitutional rights to due process and a speedy and public trial when he abandoned, without notice, the 06/07/2006 arraignment hearing ordered on behalf of Mr. Naon by Judge Hartman on 06/05/2006.*¹

Judge Hartman asked: "Then on August 22nd submitted an arrest application, an application for an arrest warrant to Judge Haberly, which she signed setting bail at \$150,000?" Mr. Naon replied: "That's correct..." Mr. Naon deliberately failed to advise the Court that I was still out on a valid \$50,000 bond due to Mr. Naon's abandonment of the 06/07/2006 Court ordered arraignment hearing.*²

Judge Hartman asked: "Okay. Then -- just a moment as I look at this -- on August the 23rd it appears that he made an appearance, and was a plea entered on that date?" Mr. Naon replied: "On the 23rd? Yes, Your Honor. Judge Hartman asked: "That was to the first information; is that correct?" Mr. Naon replied: "Yes." Deputy Prosecutor Robert L. Naon deliberately misled Judge Hartman as no plea was asked nor entered on 08/23/2006 in front of Judge Haberly.*³

*¹ Ex #55 - RP 09/01/2006, page 2, lines 9-15.
Ex #53 - RP 06/05/2006, page 3, lines 16-21 & page 7, lines 20-22.
Ex #55 - RP 09/01/2006, page 3, lines 22-25 & page 4, line 1.
*² Ex #55 - RP 09/01/2006, page 4, lines 2-6.
*³ Ex #55 - RP 09/01/2006, page 4, lines 8-14.
Ex #54 - RP 08/23/2006, no plea was asked nor entered.
Supplemental Pleading, filed 02/25/2008, pages 4-5.

Judge Hartman asked: "Now, who is Mr. Vandament's counsel of record?" Mr. Purves replied: "Your Honor, The law offices of Ness and Associates has been appointed on this matter..." The Ness Law Firm was not appointed as defense counsel. In fact, Judge Haberly at the previous 08/23/2006 hearing, scratched-out "Order Assigning Lawyer" and scribbled-out the box next to "Ness" on the Order Setting Trial Date form. Attorney Boyle, when asked, said: "Your Honor, the Status is that Mr Vandament was working on getting me retained when he was re-arrested... So what I'd ask is that you set over the attorney status for another week..." Judge Hartman responded: "...Mr Naon as to that request?" Mr. Naon replied: "...no objection to that; as long as Mr. Vandament has representation from the Ness Firm this morning or somebody..." Judge Hartman asked Mr. Naon about the first amended information. Mr. Naon replied: "We would prefer to file it today and have Mr. Vandament arraigned on it."*1

Judge Hartman said: "Okay, Mr. Purves, you're counsel of record at this point." Mr. Purves responded: "No objection, Your Honor, Mr. Vandament will waive formal reading of this complaint and enter a plea of not guilty." Judge Hartman said: "All right, we'll filed the first amended information, continue attorney status until next Friday." Before adjourning, the Court changed the attorney status hearing date to Thursday, 09/07/2006. I was shackled and returned to solitary confinement.*2

A copy of the first amended information was never provided to me.*3

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- *1 Ex #55 - RP 09/01/2006, page 5, lines 9-25.
Ex #55 - RP 09/01/2006, page 6.
Ex #13 - Order Setting Trial Date, filed 08/23/2006.
- *2 Ex #55 - RP 09/01/2006, page 7, lines 1-8.
Ex #55 - RP 09/01/2006, page 8.
Ex #19 - Order Setting Trial Date, filed 09/01,2006
- *3 Response to State's Response, filed 03/11/2008, pages 10-11

The \$1,000,000 bail attracted the attention of all the news media in Western Washington and like a wild lynch mob on a witch hunt, the cameras and reporters swarmed over the Court house and my neighborhood, harassing my family, friends and neighbors. Port Orchard Police Chief Mark Duncan was quoted as saying "it is clearly a violent [offense] of a child" and "suspect got to victim's mothers". One publication wrote: "The arrest marks the fourth time Vandament has been arrested on [offenses] since June 2nd, according to county jail records" - yet, it took me almost three months to obtain county jail records. One publication reproduced a shocking statement, allegedly by a child victim from a police interview which is protected by statute that could only have been disseminated directly from the prosecutor's office or police.*'

Those who previously disliked me or what they read and heard in the news, were quick to offer critical analysis to justify their own dislike for the "monster" I was described to be. No additional "victims" were found or "came forward" and no collaborating evidence manifested itself.

Most of my family, friends, neighbors and acquaintances were horrified and distanced themselves so as not to be implicated by the press or the prosecutor. My daughter-in-law was quoted in the State's PSI report as saying that "the family now believes he likely had a separate life unbeknownst to the family and all have adamantly denied they were abused or molested in any way". My family all know that the press did not describe the father they've all known and loved for all of their lives.*2

Every-one believes what they hear on TV/radio and read in the newspaper.

Any chance of a fair trial was now eliminated by these intentional, slanderous, press releases and deliberate, mass publication of false, unproven and misleading, extra judicial comments by the State.

*' Motion to Withdraw Guilty Plea (CrR 7.8), 02/05/2008, pages 36-38.
Affidavit of David P. Vandament, 02/05/2008, paragraphs [47] & [48].
Ex #20 - Publications: Slanderous press releases, 09/01/2006.

*2 Ex #38 - PSI report, page 12, 4th paragraph, last sentence.

On 09/07/2006 at approx. 9:00 AM, I was brought out from solitary confinement to stand before the Honorable Anna M. Laurie. The Ness Firm failed to represent me. No defense attorney stood beside me. I was without legal counsel. Judge Laurie signed an order amending order for pretrial release. I was not asked to sign it. Attorney Status was continued to 09/08/2006. An order for determination of indigency was signed. I was shackled and returned to solitary confinement. Shortly, I was called out to an interrogation room where I met Attorney Yelish for the first time. I had no idea he was coming. I didn't solicit him. I didn't know where he worked. Attorney Yelish said "I see you're without counsel". I told him that I had no money and couldn't get any from jail. Attorney Yelish told me he would consider a contract for retainer secured by a deed of trust to my property.*¹

On 09/08/2006, at approx. 10:00 AM, the Court Bail Study Staff called me out to an interrogation room where they interviewed me (again). At approx. 3:00 PM, I was brought out from solitary confinement to stand before Judge Laruie, again. Again, the Ness Firm failed to appear to represent me. I had no defense attorney standing next to me or claiming to represent me. Attorney status was continued to 09/12/2006. I was again shackled and returned to solitary confinement.*²

09/11/2006, Monday, Attorney Yelish stopped by Solitary confinement at the Kitsap County Jail ("the hole") and told me that he would need to see title reports on the houses. That evening, I contacted Elizabeth, my financee, at home, when they allowed me to use the phone in the evening. She said she'd try to get title policies for this attorney. It was the only hope we had.*³

*¹ Affidavit of David P. Vandament, 02/05/2008, paragraphs [51] & [52].
Ex #21 - Order Amending Order for Pretrial Release, 09/07/2006.
Ex #22 - Order Setting Trial Date, filed 09/07/2006, indigency.
*² Ex #23 - Order Setting Trial Date, filed 09/08/2006.
Ex # 1 - Kitsap County Superior Court Appearance Docket.
*³ Affidavit of David P. Vandament, 02/05/2008, paragraph [54].

On 09/12/2006, now 102 days past the State's first warrantless arrest, I was brought out from solitary confinement, still without defense counsel. The Ness Firm's Mr. Murphy, missing from the last two hearings, reappeared and stood with me before the Honorable Theodore F. Spearman. where the Judge stated:

"This matter has already gone through formal arraignment. There was a **failure to appear**. For some reason there was not an appointment. The first amended information has been filed. We had bail posted, but then there was a **failure to appear**. Then one attorney came and said he was hoping to be hired. That never happened. At the last hearing the court requested that you be screened and set over to September the 8th. Apparently, that's when you **failed to appear**."¹

I attempted to speak to the Court to tell Judge Spearman that his information about the **failure to appear**, the "there was not an appointment" (because the State abandoned the Court ordered arraignment hearing on 06/07/2006) and the arraignment was incorrect: "Your Honor" but I was cut-off by Judge Spearman as he continued:

"I don't know anything about this one million bail prepare. That was something in an order. I note that when the case was filed, there was a bond filed, an appearance bond for \$50,000. But, nevertheless, **there was a no-show**, and it looks like at the last order besides the bench warrant..."²

Did Judge Spearman know that 102 days had passed since I was first arrested and posted \$50,000 bail? Where did this "**failure to appear**" language come from? I had never **failed to appear**. There was never a bench warrant and, in fact, I recently inquired with the Kitsap County Superior Court Clerk to try to obtain a copy of the case management system documents that had "**failure to appear**" posted to it, that was available to be viewed by the Judge and counsel. The Clerk responded in writing that I was present at all hearings up to and including the 09/12/2006 hearing and there was no bench warrant.³

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- *¹ Ex #56 - RP 09/12/2006, page 2, lines 7-16.
Affidavit of David P. Vandament, 02/05/2008, paragraphs [57] & [58].
- *² Affidavit of David P. Vandament, filed 02/05/2008, paragraph [59].
Ex #56 - RP 09/12/2006, page 2, lines 17-25...
- *³ Ex #52 - Affidavit of Attorney Boyle, Dated 01/08/2008.
Ex #61 - Letter from Superior Court Clerk, dated 07/17/2008.

Judge Spearman continued: "I know at this time, I have a determination, however, that's now indigent and able to contribute. So you never hired a lawyer the last time?" I told Judge Spearman that I was still working on trying to retain a local attorney. I didn't tell Judge Spearman how impossible it had been to communicate with the "outside" from solitary confinement or that Attorney Yelish found me, I didn't find him.*1

Although The Ness Firm's Mr. Murphy stood next to me, Judge Spearman appointed the Hunko Firm as appointed counsel to represent me. Judge Spearman stated: "And we'll need to set new dates. The speedy trial will be November the 13th..." Yet, Judge Spearman failed to state for the record why new dates were being set. Judge Spearman later stated: "Right now I don't believe we have any counsel" and; "...we still don't have an attorney of record." and; "...on September the 8th... The Ness Firm returns discovery and I don't understand the rest..." and; "Counsel do you have any recommendations?" Mr. Murphy, who was standing next to me stated "Your honor, I have no information on Mr. Vandament." Deputy Prosecutor Salas said: "I'm sorry, your Honor, in regards to?" Judge Spearman said:*2

"I'm going ahead and leaving the Hunko Firm as the appointed counsel in this case, and I'm also -- although it appears from the very beginning of this at the arraignment there was -- but then we had a warrant go out for arrest. Mr. Murphy had appeared to represent him, which suggests that there was an appointment of his firm, and maybe I'm to continue to appoint that firm."

In response, Deputy Prosecutor Salas said:

"...I do see the Court note -- Court note from August 23rd with regards to counsel status. Your Honor, this matter has actually been tracking a number of times. We've been before the Court now I believe four or five times with regard to the attorney status. I don't know if we've ever actually clarified, but with the appointment today I believe Hunko would then be the attorney of record."

Judge Spearman said "We're going to put Hunko..." I never heard from the Hunko firm.*3

*1 Ex #25 - Determination of Indigency Report, Filed 09/12/2006.

*2 Ex #24 - Order Assigning Lawyer/Setting Trial, Filed 09/12/2006.

*3 Ex #56 - RP 09/12/2006

Affidavit of David P. Vandament, filed 02/05/2008, paragraph [61].

10/02/2006, I signed a \$20,000 contract for retainer for Defense Attorney Mark L. Yelish, #9517, secured by a deed of trust to my house, although I asked, no copy was provided for me. An Order Authorizing Substitution of Counsel was entered on 10/04/2006.*¹

10/06/2006, Attorney Yelish, with a changed attitude, sounded hostile as he was flipping through a stack of papers. I asked what were the specific dates when these offenses were alleged to have occurred. He said they don't have to specify a specific date, just a range. Attorney Yelish did not allow me to hold or take any paper work back to the jail cell to examine. I had no access to a law library or any other legal assistance. Mr. Yelish's entire focus was for me to plead guilty. He said "we're all friends around here; you'll go to prison while I'll go out and have a beer with Claire Bradley" (deputy prosecutor). A few days later, Mr. Yelish told me the prosecutor is threatening 25 years to life in prison if I take this to trial. I was horrified! I said: "Life? For what?" Mr. Yelish said "that's the way it is with murder and sex offenses". Mr. Yelish advised me to plead guilty. Then, Mr. Yelish would seek a sentencing alternative with a reduced prison time, called a "SSOSA". Mr. Yelish coached me by explaining how to appear "remorseful" and told me about a previous client who was unsuccessful due to lack of remorse to the Judge and other interviewers. Mr. Yelish told me that I appeared as a "poster-boy" for the new predatory enhancement law. Mr. Yelish said "the boys make pretty good witnesses for the prosecution" and; "if one refused to testify, they'll confine him in jail until he does". I told Yelish: "But, I'm not guilty!" He responded "don't start with me or I'll withdraw". Mr. Yelish told me I could fire him but I wouldn't be able to hire another attorney until he's paid. Attorney Yelish made no effort to investigate or interview the alleged victims or any witnesses.*²

*¹ Affidavit of David P. Vandament, 02/05/2008, paragraph [65].
Ex # 1 - Kitsap Superior Court Appearance Docket.
Ex #42 - Letter to Attorney Yelish from Vandament, 09/24/2008.
Ex #43 - Letter from Attorney Yelish to Vandament, 09/28/2007.
Ex #45 - Attorney Yelish Fee Agreement, dated 10/03/2006

*² Affidavit of David P. Vandament, paragraphs [67] - [79].
Ex # 34 - E-mail from Attorney Yelish, 12/12/2006.
Response to State's Response, filed 03/11/2008, pages 15-18.

11/14/2006, At the change of plea hearing, I was brought out from jail wearing green jail attire to appear before the Honorable Russell W. Hartman. Deputy Prosecutor Claire Bradley explained to Judge Hartman how defense Attorney Yelish had alerted her to a "scrivener's" error in the date range to Count II in the First Amended Information. Judge Hartman asked Ms Bradley if there was a First Amended Information; implying that he did not have one. Ms Bradley replied: "There isn't, your Honor." Judge Hartman asked: "So at present he's pleading guilty to the Original Information?" Ms Bradley replied: "The First Amended Information." Judge Hartman then asked: "Is there a First Amended Information in the file?" Attorney Yelish replied: "It was filed September 1st, 2006." Judge Hartman stated: "Well, with the agreement of the parties, why don't we just interlineate the Original Information here and have counsel initial it and date it, the change?" Attorney Yelish replied: "There is no objection to that, Your Honor..." Ms Bradley said: "Thank-you, Your Honor."*1

The Original Information, filed on 08/22/2006, does not have a count II in it and was never "interlineated, dated and initialed" as agreed between the parties in open Court and remains unaltered as it was when it was originally filed.*2

The First Amended Information remains unaltered now, with the date range in Count II "on or between January 1, 1999 and January 1, 2004"; as it was when it was first filed on 09/01/2006.*3

*1 Ex #57 - RP 11/14/2006, page 2, lines 5-25 & page 3, lines 1-14. Affidavit of David P. Vandament, paragraphs [84], [85] & [86].

*2 Ex # 9 - Information, filed 08/22/2006.

*3 Ex #17 - First Amended Information, filed 09/01/2006.

On 11/14/2006, at the change of plea hearing, Judge Hartman raised the Plea Agreement and said: "I'm going to show you the back page of the Plea Agreement. Is this your signature?" and "did you have a chance to go over this with Mr. Yelish?" and "do you have any questions?" These questions were asked when I had no knowledge that after I had signed, the previous day, alterations had been made to the Plea Agreement without my knowledge or consent. A few minutes after these questions, Deputy Prosecutor Claire Bradley was waived to the bench by Judge Hartman then, made more alterations to the Plea Agreement at his direction. I was not shown the alterations and Attorney Yelish failed to object or ask to see what changes were being made.*¹

Some alterations have unknown initials, other alterations have no initials. None of the initials next to the alterations are mine:*²

Page 1 - Date lined-out with "9/1/00" written below, no initials.
Page 2 - Scribbles, some initials - none by me.
Page 3 - Scribbles, no initials.

Attorney Yelish stood there and watched Deputy Prosecutor Claire Bradley approach the bench and alter the plea agreement. Then, failed to object and later misrepresented to me that she altered the First Amended Informations. One year later, I wrote to Attorney Yelish asking if he would send me a copy of his copy of the First Amended Information. He did and it has the alterations which he misrepresented to me that he said Claire Bradley made at the bench. The actual First Amended Information filed in the Kitsap County Clerk's Office has no alterations on it.*³

*¹ Ex #57 - RP 11/14/2006, page 3, lines 22-25, page 4, lines 1-6.
Affidavit of David P. Vandament, filed 02/05/2008, paragraph [87].

*² Ex #30 - Plea Agreement, filed 11/14/2006.
Affidavit of David P. Vandament, filed 02/05/2008, paragraph [92].

*³ Ex #17 - First Amended Information, filed 09/01/2006.
Ex #43 - Letter From Attorney Yelish, dated 09/28/2007.
Ex #44 - Yelish Copy of Altered 1st Amended Information, 10/03/2007
Affidavit of David P. Vandament, 02/05/08, paragraphs [93] & [100].

Judge Hartman next stated: "Now, Mr. Vandament, the next document I want to talk to you about is a Statement of Defendant on Plea of Guilty..." and; "Did you get a chance to go over that with Mr. Yelish?" and; "Do you have any questions about it?" and; "Are you sure that you understand it?" I answered "Yes". The day prior, Attorney Yelish laid-out paper work with striken paragraphs through-out, lines for my initials and an "X" showing me where to sign. Attorney Yelish made no explanation of the paper work, was arrogant, intimidating and adamant about me signing.*¹

Paragraph (a) improperly advises me of community custody range of 36 - 48 months (hand written by Attorney Yelish).*²

Paragraph (f), Attorney Yelish incompetently advised me to initial all three paragraphs leaving me unknowing about which ones apply.*²

Paragraph [p] erroneously advises me that I was not pleading guilty to most serious offenses.*²

Paragraph [q], 2nd paragraph, is now, after the discussed scrivener's error changes, outside of the date range of either of the charges.*²

Paragraph [v] erroneously advises me that "I am being sentenced for two or more serious violent offenses... and the sentences imposed on Count I and II will run consecutively..."*²

Item 7, "I plead guilty to:" incorporates the "1st Amended Information"; yet was not "interlineated" to incorporate the "Original Information" as agreed by the parties just minutes prior, in open Court.*²

The STTDFG was not "signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge" as stated just above Judge Hartman's signature.*²

*¹ Ex #57 - RP 11/14/2006, page 9, lines 12-23.

Affidavit of David P. Vandament, 02/05/2008, paragraph [81] & [83].

*² Ex #31 - STTDFG, filed 11/14/2006.

Judge Hartman asked: "How do you plead to one Count of Rape of a Child in the First Degree?" Terrified, I responded with "Guilty, Your Honor."*1

Judge Hartman then asked: "And one Count of Rape of a Child in the Second Degree?" Horrified and confused, I responded with: "Guilty, your Honor."*1

The First Amended Information has in it, the charges of: Rape of a Child in the First Degree and; Child Molestation in the First Degree.*1

The Original Information has in it, the Charge: Child Molestation in the First Degree.*1

Judge Hartman asked: "Other than the negotiations for the plea agreement, were there any promises or threats that were used to get you to plead guilty?" I paused and almost told Judge Hartman that I was surrounded by the very people who were coercing me into a guilty plea, then, out of fear, I said: "no, your Honor."*2

Judge Hartman said: "Let me look at the probable cause statements. I'll find that there is a factual basis for both charges. I think that Mr. Vandament understands the nature and the consequences of his plea, that it's knowing, intelligently and voluntarily made and I'll find him guilty of the two counts."*3

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- *1 Ex #57 - RP 11/14/2006, page 10, lines 9-25.
Response to State's Response, filed 03/11/2008, page 10, lines 1-5.
Affidavit of David P. Vandament, 02/05/2008, paragraph [91].
Motion to Withdraw, filed 02/05/2008, page 9, lines 21-26.
Ex #17 - First Amended Information, filed 09/01/2006.
Ex # 9 - Original Information, filed 08/22/2006.
- *2 Ex #57 - RP 11/14/2006, page 12, lines 12-18.
Response to State's Response, filed 03/11/2008, page 3, lines 8-23.
Affidavit of David P. Vandament, 02/05/2008, paragraph [94].
- *3 Ex #57 - RP 11/14/2006, page 11, lines 4-7.
Affidavit of David P. Vandament, 02/05/2008, paragraph [95].
Ex # 9 - Original Information, filed 08/22/2006, last page.
Ex #17 - First Amended Information, filed 09/01/2006, last 2 pages.

ARGUMENT

Additional Ground 1: Involuntary Plea

A) Was I Coerced into a Guilty Plea?

My guilty plea on 11/12/2006, before the Honorable Russell M. Hartman, was not knowingly, intelligently and voluntarily made as a result of threats, fear, persuasion, promise and deception when, during these proceedings: The State arrested me, at my home, without a warrant; then, abandoned the Court ordered arraignment hearing, without notice; then, the State "shopped" for a different Judge; deceived that Judge, under oath, about DNA evidence the State said they "now had" (later, after the change of plea, conceded: "No DNA evidence from Vandament was located"); then, re-arrested me while I was still out on bail set earlier; then, after I posted bail again, the State re-arrested me for the third time, again without a warrant, at my home and threatened even higher bail if I posted bail again; then, searched my home, again without a warrant; then, placed me in solitary confinement, denying me access to counsel; then changed the charging document and did not provide me with a copy; then, deliberately mis-led a Superior Court Judge about an arraignment and plea which did not occur; then, deceived me about the time span dates of an alleged offense to the prejudice of an alibi; then, disseminated false, libelous press releases effectively convicting me in the eyes of the public, witnesses and potential jurors, without a trial; then, falsely accused me in open Court, of failing to appear; then, an unknown attorney showed up in solitary confinement when I had no money and promised me the hope of a "SSOSA"; persuaded me to appear "remorseful"; then, threatened me with life in prison if I took this matter to trial; then, threatened me with verbal intimidation that I sign the plea agreement and the Statement of Defendant on a Plea of Guilty, which, this attorney had prepared after I told him: "But I'm not guilty!"

I ask the Court of Appeals to find that my Guilty Plea was involuntary.

B) Was My Guilty Plea Knowing, Intelligent and Voluntary?

At the Change of Plea hearing, because the First Amended Information was not available to the Court, Judge Hartman said: "Well, with the agreement of the parties, why don't we just interlineate the Original Information here and have counsel initial it and date it, the change." This was agreed to by the Court, the State and the defense counsel only. (Ex #57 - RP 11/14/2006, page 2, lines 13-25 & page 3, lines 1-15).

"A second filing against an individual which is labeled 'Amended Information' constitutes an abandonment of the first information and charges in the first information which are not included in the amended version cannot be subject of a trial." State v. Kinard, 21 Wn.App. 587, 585 P.2d 836 (1978). "A mid trial amendment of an information is 'reversible error per se even without a defense show of prejudice.'" State v. Pelkey, 109 Wn.2d 484, 745 P.2d 854 (1987). "Article 1 § 22 of the State Constitution prohibits an amendment to an existing count where the amendment is essentially a different crime." State v. Markle, 118 Wn.2d 424, 437, 823 P.2d 1101 (1992).

Assuming the proposed change to the Original Information; if one were to "interlineate" the altered dates in Count II into the Original Information as agreed, the following changes would occur: Count I: "Molest of a Child in the First Degree - RN" and; Count II: "Molest of a Child in the First Degree - BJG."

Judge Hartman asked me: "How do you plead to one count of rape of a child in the first degree?" "and one count of rape of a child in the second degree?" (Ex #57 - RP 11/14/2006, page 10, lines 20-25).

It is clear from this that my plea of guilty was not knowing, intelligent or voluntary.

I ask the Court of Appeals to find that my guilty plea was involuntary.

C) Did I Fail to Understand Sentencing Consequences?

On 11/13/2006, in one of the interrogation rooms at the Kitsap County jail, Attorney Yelish laid-out the STTDFG with striken paragraphs through-out, lines beside paragraphs for my initials and an "X" showing me where to sign on the last page. Attorney Yelish made no explanation of the paperwork, was arrogant, intimidating and adamant about me signing. Although I asked, Attorney Yelish failed to leave me with any copies. One year later (12/06/2007), I purchases a certified copy of the STTDFG from the Kitsap County Superior Court Clerk.

I discovered errors and erroneous advise by Attorney Yelish which I described on page 17 of this Statement of Additional Grounds that were found in paragraphs (a), (f), [p], [q], [v], item 7 and the signature page of the STTDFG. In addition, I found that eight of the "following paragraphs" and one paragraph on a previous page were striken by Attorney Yelish, yet, not initialed by me and; three of the following paragraphs, as well as three previous paragraphs on two previous pages have my initials as directed by Attorney Yelish, yet, are not striken. None of the striken paragraphs are initialed by Judge Hartman - all contrary to the instructions on page 5 of the STTDFG (CrR 4.2(g) form, item #(6) following "(C)" (2006)).

Do the paragraphs in the STTDFG which were striken, yet not initialed by Judge Hartman or I still apply as sentencing consequences even though the Judge failed to authorize these striken paragraphs with his initials?

It doesn't make any sense! I could not have possibly understood the errors, the erroneous advice, the inconsistent striken and initial; nor the lack of initials; nor the lack of Judge's initials. Which paragraphs are valid? Which paragraphs apply to me? As such, I could not possibly have understood the consequences of my plea. Thus, my guilty plea was not knowingly, intelligently and voluntarily made.

I ask the Court of Appeals to find that my guilty plea was involuntary.

Additional Ground 2: Denial of Effective Assistance of Counsel

A) Did the Court Err in the Appointment of Counsel?

08/23/2006, the Honorable M. Karlynn Haberly Stated: "The Court earlier was told that Kevin Boyle had been retained." Mr. Murphy responded with: "He had confirmed that with me..." Judge Haberly replied: "Okay, that's fine, because my concern is the income and asset form is not filed out. So, I am not making any finding of indigency." (Ex #54 - RP 08/23/2006, page 2, lines 9-15).

At the last hearing (06/05/2006), before the Honorable Russell M. Hartman, the very opening words from Attorney Boyle were: I represent Mr. Vandament for the purposes of this preliminary appearance and probably through arraignment if any charges are filed" and; "And limited appearance..." Attorney Boyle's final words at this hearing were: "I will have a formal limited notice at the arraignment." Judge Hartman ordered the arraignment hearing for 06/07/2006, 2 days later. However, the State deliberately abandoned that hearing without notice to the defense and apparently without notice to the Court (Ex #52 & #53 - RP 06/05/2006, page 2, lines 3-17 and page 8, lines 14-17).

Mr. Murphy assumed that Attorney Boyle had been retained in this matter. I told Mr. Murphy, while I was shackled to other prisoners, waiting to be processed by the Court, that I had posted \$50,000 bail on 06/05/2006 and when Attorney Boyle and I appeared for the 3:00 PM arraignment hearing on 06/07/2006, my name wasn't on any of the Court schedules and no-one knew anything. Three months later, I was re-arrested and here I am. I told Mr. Murphy that Attorney Boyle had been called but I didn't see him in the Court room. No discussion of retainer ever occurred (Ex #52 & Ex #54 - RP 08/23/2006, page 3, lines 20-25).

Judge Haberly did not appoint counsel at this hearing. The Ness Law Firm's Mr. Murphy was not appointed counsel. I was denied counsel.

09/01/2006, at the attorney status hearing ordered by Judge Haberly, Judge Hartman, Mr. Naon, the Ness Firm's Mr. Purves and Mr. Boyle were all present. None of these individuals were present at the previous hearing before Judge Haberly. Deputy Prosecutor Robert Naon misled the Court into believing that an arraignment had occurred at the previous hearing and that a plea had been entered to a count in the first information. Did this misrepresentation improperly influence the Court to believe that defense counsel had been appointed? When, infact, Judge Haberly deliberately did not appoint defense counsel because "the income and asset form is not filled out" (Ex #54 - RP 08/23/2006 & Ex #55 - RP 09/01/2006).

Judge Hartman asked: "Who is Mr. Vandament's counsel of record?" The Ness Firm's Mr. Purves responded: "The Law Offices of Ness and Associates has been appointed on this matter." Was Mr. Purves wrong? Judge Haberly did not appoint counsel on 08/23/2006. Mr. Purves was not appointed counsel and I knew nothing about law.

The Ness Firm's Mr. Purves, after being told by Judge Hartman that he was "counsel of record at this point," said: "Mr. Vandament will waive formal reading of this complaint and enter a plea of not guilty."

"The right to counsel guaranteed by the Constitution, however, means more than just the opportunity to be physically accompanied by a person privileged to practice law." Frazer v. U.S., 18 F.3d 778, 782 (9th Cir. 1994). "That a person who happens to be a lawyer is present at the trial alongside the accused, however, is not enough to satisfy the Constitutional command." Strickland v. Washington, 466 U.S. 668, 685, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674 (1984). "Indigent defendants provided with unprepared and pro forma lawyers were not accorded the right to counsel in any substantial sense." Powell v. Alabama, 287 U.S. 45, 58, 53 S.Ct. 55, 77 L.Ed 158 (1932). "A per se presumption of prejudice arises when the error involves actual or constructive denial of counsel during a critical stage of the proceedings." United States v. Cronin, 104 S.Ct. 2039, 2047, 466 U.S. 648, 659, 80 L.Ed.2d 657 (1984).

09/07/2006 and 09/08/2006, Neither Mr. Murphy, Mr. Purves nor Attorney Boyle were present to represent me at either of these hearings. I was without counsel.

09/12/2006, the Ness Firm's Mr. Murphy stood beside me as Judge Spearman said: "I know at this time I have a determination, however, that's now indigent and able to contribute..." and; "I'm going to appoint the Hunko Firm to represent this gentleman." and; "...Right now I don't believe we have any counsel." and; "we still don't have an attorney of record." and; "Counsel, do you have any recommendation?" Mr. Murphy responded: "I have no information on Mr. Vandament." Judge Spearman continued: "Mr Murphy had appeared to represent him, which suggests that there was an appointment of his firm..." Judge Spearman finished with: "We're going to put Hunko..." I was still without legal counsel (Ex 56 - RP 09/12/2006).

CrR RULE 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER (2006)

(b) A lawyer shall be provided at every stage of the proceedings... A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings...

(d) The ability to pay part of the cost of a lawyer shall not preclude assignment...

I argue that the Court erred when Judge Haberly failed to appoint counsel at the 08/23/2006 hearing. Thus, denying me legal counsel.

I argue that the State denied me due process when the State improperly influenced the Court into believing that a plea had been entered at the 08/23/2006 hearing. Thus, implying that counsel had been appointed and denying me counsel as a result.

I argue that the Ness Firm's Mr. Purves improperly influenced the Court by stating: "the law office of Ness and Associates has been appointed on this matter...", when the Ness Firm had not been appointed as counsel.

I argue that the Court erred when Judge Hartman told the Ness Firm's Mr. Purves: "You're counsel of record at this point." Thus, authorizing a not appointed "lawyer who is so unprepared that his appearance is merely Pro Forma." Powell v. Alabama, 287 U.S. 45, 58, 53 S.Ct 55, 60, 77 L.Ed. 158 (1932).

B) Did Appointed Counsel Provide Effective Assistance?

I was not appointed counsel until 09/12/2006, when the Honorable Theodore F. Spearman appointed the Hunko Law Firm to represent me. The Hunko Firm failed to respond to my calls and failed to come to the Kitsap County Jail at any time to see me. I never saw anyone from the Hunko Firm.

The not appointed Ness Firm's Mr. Murphy failed to interview me until I was sitting in Court, shackled to other prisoners, waiting to be processed by the Court; failed to investigate; failed to motion for a dismissal after the State abandoned the Court ordered arraignment hearing on 06/07/2006; failed to object to violations of due process after I was re-arrested with a warrant using the same statement of probable cause that was used to set the bail that I was out on when I was re-arrested; failed to object to time for trial and stated: "I know very little about Mr. Vandament" (Ex #54 - RP 08/23/2006, page 3, lines 23-24).

The not appointed Ness Firm's Mr. Purves failed to interview me at all; failed to investigate; failed to object to excessive bail or time for trial and; failed to obtain a copy of the First Amended Information or motion for a day so I could examine the charges or explain the nature of the charges prior to entering a plea on my behalf. Thus, denying me rights guaranteed under Article 1 §§ 3 and 22 of the Constitution of the State of Washington and the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States (Ex #55 - RP 09/01/2006).

No attorney represented me during the 09/07/2006 and 09/08/2006 motion/status hearings. The Ness Firm's Mr. Murphy re-appeared at the 09/12/2006 hearing and stated: "Your Honor, I have no information on Mr. Vandament." (Affidavit of David P. Vandament, filed 02/05/2008, paragraphs [51], [53], [56] & [60] and Ex #1, #21, #22, #23 and Ex #56 - RP 09/12/2006, page 4, lines 22-23).

Appointed Counsel failed to provide any assistance at all and "not appointed" counsel was not obligated to and then failed to provide effective assistance of counsel.

C) Did Contracted Counsel Fail to Provide Assistance?

What would motivate Attorney Yelish to violate Rules of Professional Conduct and initiate direct contact with an accused who was incarcerated in 23 hour lock-down at the Kitsap County Jail? Then, suggest a retainer secured by the prospective client's real property and again, violate Rules of Professional Conduct? (RPC 7.3 & 1.8(a)(1)&(2), affidavit [52], [54], [63], [64] & [65] and 7.8 Motion to Withdraw Guilty Plea, pages 16-19).

Attorney Yelish told me: "We're all friends around here, you'll go to prison while I'll go out and have a beer with Clair Bradley" (deputy prosecutor). Attorney Yelish told me that he would not withdraw my guilty plea and if I found another attorney and took this matter to trial, Attorney Yelish would testify for the State (Ex #34 & affidavit [73] & [107]). "We have held that an attorney who joins the State in the effort to attain a conviction labors under a conflict of interest. United States v. Swanson, 943 F.2d 1070, 1075 (9th Cir. 1991).

Attorney Yelish arrogantly stated: "The boys make very good witnesses for the prosecution." I responded with "But I'm not guilty!" Attorney Yelish snapped back: "Don't start with me or I'll withdraw." (affidavit [78] & [79]). "[A]n attorney who adopts and acts upon a belief that his client should be convicted 'fail[s] to function in a meaningful sense as the government's adversary.'" Frazer v. U.S., 18 F.3d 778, 782 (9th Cir. 1993), quoting Osborn v. Shillinger, 861 F.2d 612, 625 (10th Cir. 1988).

Attorney Longacre told me that Attorney Yelish was a member of the "Crawford Law Firm" (affidavit [104] & [105]). In Port Orchard Police report #D02-001067, is a journal from alleged victim "JPH". On the inside first page (Ex #62), written at the top of the page is "Crawford Law Offices" and "337-7000" - Attorney Yelish's phone number. This is a conflict of interest! "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief." Holloway v. Arkansas, 435 U.S. 475, 490-491, 98 S.Ct. 1173, 1181-82, 55 L.Ed.2d 426 (1978).

Attorney Yelish failed to provide me with copies of any paper work prior to sentencing, including the Plea Agreement, the STTDFG or the First Amended Information. Thus, violating Rules of Professional Conduct and denying me rights guaranteed under Article 1, § 22 of the Washington State Constitution and the Sixth Amendment to the Constitution of the United States of America. Any prudent attorney would provide his/her client with these items. Failing to do so prejudiced me because I could not possibly understand the nature of the charges against me, sentencing and/or sentencing consequences (Ex #54 - RP 08/23/2006, page 4, lines 14-16, affidavit [65], [69], [75], [83] & [97] and RPC 1.4)

Attorney Yelish misrepresented to me false hope of a SSOSA, the lack of alteration in the time span in count II in the first amended information, the changes that the State and the Court made to the plea agreement on 11/14/2006, the erroneous sentencing consequences in the STTDFG, the ambiguous striken and initial in the STTDFG and issues related to his representation: Who he worked for, costs, dates of contract due dates etc. Any competent attorney would not have misrepresented these issues to his/her client. These misrepresentations prejudiced me as I could not voluntarily, knowingly and/or intelligently make decisions supporting my defense without competent/accurate representation from counsel. (Ex #17, #33, #43, #44, 7.8 motion, page 25-26, item 6, affidavit [49], [67], [68], [76], [86], [100-106] & [117]).

Attorney Yelish made no effort to investigate my case. In my Motion to Withdraw My Guilty Plea and my Affidavit, I referred to many pretrial issues which I had proposed to Attorney Yelish. Yet, his entire focus was for me to plead guilty. Thus, he failed to investigate the alleged victims and witnesses. "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington 104 S.Ct. 2052, 2066, 466 U.S. 690, 691 (1984)(Ex #34, 7.8 motion, pages 30-33, item 9 and affidavit [24], [25], [26] & [98]).

Privately retained, Attorney Yelish, failed to provide me with effective assistance of counsel.

ADDITIONAL GROUND 3: TIME FOR TRIAL

A) Were My Rights to a Speedy Trial Violated?

I was arrested and "held to answer" on 06/02/2006. I was required to post bail and to comply with conditions of release to get out of jail.

The State abandoned the Court ordered arraignment hearing on 06/07/2006 without providing notice to the defense or to the Court. Thus, denying me Constitutional and procedural rights to a speedy trial. 91 days later, on 09/01/2006, a single "not guilty plea" was entered to an amended information containing two counts by a "not appointed" pro forma defense counsel.

The State failed to bring me to trial, failed to bring me to sign a speedy trial waiver and failed to bring me to a change of plea, prior to the last allowable trial date set by the Court (CrR 3.3(d)(4),(2006)).

In State v. Fulps, 141 Wn.2d 663, 9 P.3d 832 (2000), Mr. Fulps was arrested. A District Court Judge signed a Statement of Arresting Officer and Preliminary Finding of Probable Cause that set Mr. Fulps's bail. The District Court Judge failed to set a date for reappearance. Thus, Mr. Fulps was in "legal limbo,"* with no Court to exonerate his bail. The Washington State Supreme Court held that Fulps's speedy trial period began to run on the day of his arrest and expired 90 days thereafter. State v. Fulps, 141 Wn.2d 663 at 670.

In this case, I was arrested, a Superior Court Judge, at the preliminary hearing, found probable cause, set my bail and ordered the arraignment for 2 days later. Then, after I posted bail, the State deliberately and willfully abandoned the Court ordered arraignment hearing, without providing notice, leaving me in "legal limbo",* with no Court to exonerate my bail or amend conditions of release.

*' City of Seattle v. Bonifacio, 127 Wash.2d 482, 900 P.2d 1105 (1995).

"Charges should have been filed within 72 hours or the case should have been dismissed with Mr. Fulps's money returned to him. Since neither of these events occurred, Mr. Fulps was being held to answer for his crime". "If the state (purposely or accidentally) chose not to dismiss the case, then, CrR 3.3 Applies". State v. Fulps, 97 Wn.App. 935, 949, 988 P.2d 1002 (1999).

The Court rules says that a defendant's conditions of release are "deemed exonerated" if no information has been filed by the time set for release or reappearance, CrR 3.2.1(f)(2)(ii),(2006). I argue that the "deem exonerated" language presumes a series of events, including the defendant's reappearance, as ordered by the Court, which did not occur due to the State's deliberate and wilful disregard of a reasonable and necessary Court order by abandoning the arraignment hearing without notice, through no fault of the defense.

I argue that my right to due process and a speedy trial under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article 1 § 3, 10 and 22 of the Constitution of the State of Washington were violated when I was denied the right to appear and defend in person; or by counsel; to demand the nature and cause of the accusation against me; to have a copy thereof; to have justice administered openly without unnecessary delay and; to have a speedy, public trial due to the State deliberately abandoning the arraignment hearing without providing notice to the defense.

"Deliberate governmental delay in the hope of obtaining an advantage over the accused is not unknown. In such a circumstance, the fair administration of criminal justice is imperiled. The Speedy Trial Clause then serves the public interest by penalizing official abuse of the criminal process and discouraging official lawlessness. See, e.g., United States v. Provoo, 17 F.R.D. 183 (D.C.Md.), aff'd per curiam, 350 U.S. 857, 76 S.Ct. 101, 100 L.Ed. 761 (1955)." Concurring opinion of Mr. Justice Brennan and Mr. Justice Marshall in, Dickey v. Florida, 90 S.Ct. 1564, 1571, 398 U.S. 30, 43 (1970)

"It is the duty of the public prosecutor, not only to prosecute those charged with crime, but also to observe the constitutional mandate guaranteeing a speedy trial. If a prosecutor fails to do so, the defendant cannot be held to have waived his constitutional right to a speedy trial." United States v. Dillon, 183 F.Supp. 541, 543 (1960).
[n16]

[n16] The defendant in any event, cannot force the beginning of his trial, even if he takes affirmative steps to that end. The present case provides a striking instance of this fact. The government, on the other hand, can and does set the case for trial. Thus, constitutional right aside, the government might reasonably bear the burden of going forward with the trial since it alone has the ultimate capacity to do so. The burden, moreover, might reasonably fall on the government since the prosecutor is the initiating party in criminal proceedings. Cf. Fed.Rule Civ.Proc. 41(b) (dismissal for failure to prosecute by the plaintiff).

Dickey v. Florida, 90 S.Ct. 1564, 1575 (1970).

Washington Court Rules, CR 41(b) and CR 41(b)(3): "a dismissal under CR 40(d), which is required when a cause is neither tried, continued, or reset operates pursuant to CR 41(b)(3) as an adjudication upon the merits" Wagner v. McDonald, 10 Wn.App. 213, 216, 516 P.2d 1051 (1973). In "Link,"* the Supreme Court held that the failure of plaintiff's counsel to appear at a regularly scheduled pretrial conference was sufficient to justify the trial court in ordering a dismissal with prejudice. Wagner v. McDonald, 10 Wn.App. 213, at 217-218. "Woodhead's willful and deliberate failure to effect service and to comply with the case scheduling order, together with deliberate attempts to mislead the court by false claims, justifies the trial court's conclusion that the actions in the case amounted to an abuse of judicial process." - Dismissed with prejudice. Woodhead v. Discount Waterbeds, Inc., 78 Wn.App. 125, 131, 896 P.2d 66 (1995).

*' Link v. Wabash R.R., 370 U.S. 626, 8 L.Ed.2d 734, 82 S.Ct. 1386 (1962)

"Our court set forth four factors, the presence of any one of which may constitute a denial of constitutional right to a speedy trial: (2) Prejudice to the defense arising from the delay; (3) A purposeful delay designed by the State to oppress the defendant." State v. Christensen, 75 Wash.2d 678, 453 P.2d 644 (1968). "A showing that delay was purposeful or oppressive will support a claim of denial of Constitutional right to speedy trial", Mattoon v. Rhay, 313 F.2d 683 (9th Cir. 1994). "Constitutional provision for speedy trail protects only against unreasonable and unnecessary delay, Const. Art 1 § 22 as Amended, Amendment 10, State v. Alter, 67 Wash.2d 111, 406 P.2d 765 (1965). "Unnecessary delay in bringing defendants to trial is a ground of dismissal." Fed.Rules Crim.proc. Rule 48(b), 18 U.S.C.A. "Where there was a deliberate delay by the prosecuting authorities to serve their own tactical advantage, the court had held it to be an unreasonable delay." United States v. Provo, 17 F.R.D. 183, 197 n.6 (D.C.Md.), Aff'd Sub Nom. 350 U.S. 857, 76 S.Ct. 101, 100 L.Ed. 761 (1955).

09/01/2006, Deputy Prosecutor Robert L. Naon, before Judge Hartman, stated: "Your Honor had set \$50,000 bail. Mr. Vandament quickly bailed out, and rather than charge him, the State continued its investigation." - To serve the State's tactical advantage - (Ex #55 - RP 09/01/2006, page 2, lines 13-22).

"The time limits are triggered by the State's actions and are not an attempt to limit the time for prosecution of a specific crime. The State need neither arrest nor charge; only by beginning an action does it invoke the provisions of CrR 3.3", State v. Edwards, 94 Wn.2d 208, 212, 616 P.2d 620 (1980). "A court may not postpone an arraignment or an appearance, as was done in this case, for a month or 2 or 3 months after arrest and avoid the purpose of the rule which is to discourage prosecutorial delay." Washington v. Cooper, 28 Wash.App. 71, 621 P.2d 795 (Wa.App. 12/30/1980). Later, overruled for other reasons.

My rights to a speedy trial guaranteed under Article 1 §§ 10 and 22, the Sixth Amendment and CrR 3.3 speedy trial rule were violated.

B) When Was I Arraigned?

The 08/23/2006 motion hearing, before the Honorable M. Karlynn Haberly was not noted for arraignment. I was without counsel. I was not provided with a copy of the information. The Court failed to ask for a plea; failed to appoint counsel; failed to read me my rights; failed to determine the 60/90 day speedy trial expiration date and; failed to set fourth the proper date of my arraignment. The Court did set 10/10/2006 as the trial date. I failed to object to this trial date as exceeding the speedy trial time limits because I knew nothing about law and speedy trial. I argue that this was not an arraignment.

The trial date of 10/10/2006 was 130 days past the State's first warrantless arrest date of 06/02/2006. I had no knowledge of CrR 3.3. Thus, I failed to object. Did I lose the right to object? "When a criminal defendant appears in court on the date*' scheduled for trial but the case is not called because of a mistake made by the court, the defendant is not required by CrR 3.3(f)(1)or(2) to object to a violation of the time for trial rule to preserve the right to a timely trial", State v. Ledenko, 87 Wn.App. 39, 940 P.2d 280 (1997).

The 09/01/2006 attorney status hearing before the Honorable Russell W. Hartman was not noted for arraignment. I was without counsel. I was not provided with a copy of the amended information. Neither the Court nor counsel explained the nature of the charges. The Court failed to ask for a plea; failed to appoint counsel; failed to read me my rights; failed to determine a 60/90 day speedy trial expiration date and; failed to set fourth the proper date of my arraignment. The Court did tell the not appointed Ness Firm's Mr. Purves that he was "counsel of record at this point". Mr. Purves, spontaneously, on his own discretion, entered a single plea of "not guilty" to the amended information which, unknowingly, contained two counts. I argue that this was not an arraignment.

*' In this case, the Court ordered arraignment hearing of 06/07/2006.

What did the plea entered by Mr. Purves apply to? Deputy Prosecutor Robert L. Naon mis-led the Court into believing that a plea had been entered on 08/23/2006, "to what is now count I in the amended information" - "Judge Haberly, on the arraignment of that particular count, set bail...", This is a misrepresentation! (Ex #54 - RP 08/23/2006 and Ex #55 - RP 09/01/2006, page 2, lines 16-17 and lines 20-21). I argue that the unlawful "plea" entered by the not appointed Mr. Murphy, may have been intended for count II, due to the State's deliberate misrepresentation to the Court of a plea to count I, which did not occur.

09/01/2006 marks 91 days since the State's first warrantless arrest on 06/02/2006. "A criminal defendant's failure at the time of his arraignment to make a proper objection to his scheduled trial date does not preclude appellate review of the issues if, under the circumstances, it was already too late to set a trial date which would satisfy the requirements of the speedy trial rule (CrR 3.3)", State V. Nelson, 47 Wn.App. 579, 736 P.2d 686 (1987). I argue that the State failed to lawfully arraign me and that the time for trial expired.

The 09/12/2006 hearing was an attorney status hearing, before the Honorable Theodore F. Spearman. I was still without counsel. The Court said this matter has gone through "formal arraignment". Judge Spearman mentioned the "not an appointment"; accused me of "failing to appear" (4 times), then; set a speedy trial date of 11/13/2006; struck the previously set trial date of 10/10/2006, set by Judge Haberly on 08/23/2006 and; set a new trial date of 11/06/2006. The Court failed to state on the record why the Court set new dates. I did not have the advice of counsel and could not assist the Court in following the proper procedures nor intelligently protest to the procedures that were followed.

I did not "failed to appear" at any of the hearings. I argue that Judge Spearman abused judicial discretion by accusing me of "failing to appear" and setting "new dates", which denied me my rights to a speedy trial, due process and justice, administered openly, without unnecessary delay.

CONCLUSION

Is it possible for anyone to receive a fair trial in Kitsap County? What would motivate the State to deliberately abandon a Court ordered arraignment hearing? Then, intentionally mis-lead the Court about a previous arraignment and a plea which did not occur? Why would a Judge failed to appoint defense counsel? Why would another Judge authorize a not appointed lawyer to enter a plea for an accused who is before the Court without counsel? ...and not even explain the nature of the charges? Why would another Judge falsely accuse a defendant of failing to appear? Where did this "defense" attorney come from? Who sent him? His entire focus was to convict his client. Why did the Court, the State and this "defense" attorney all agree to amend the charges, just minutes prior to an involuntary change of plea. Yet, fail to explain the nature of the charges to the accused and then want that the accused plea to charges not even in the information(s)?

On 06/07/2006, my Constitutional rights guaranteed under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United states as well as Article 1 §§ 3, 10 and 22 of the Constitution of the State of Washington were violated when I was deprived of liberty without due process of law; the right to appear and defend in person or by counsel; the right to demand the nature and cause of the accusation against me; to have a copy thereof; to have open administration of justice without unnecessary delay and; to have a speedy public trial, when the State, willfully and deliberately, failed to comply with a reasonable and necessary order of the Court, made on behalf of the State, by unnecessarily abandoning the 06/07/2006 arraignment hearing to serve the State's own tactical advantage. My defense was prejudiced by this action, by the State, as it drained my financial resources to pay counsel and attend a hearing which was not held. I could not collect rental income nor fully conduct the service business of my company outside of Western Washington due to conditions of release. I was subject to public scorn while the State continued its investigation with its campaign to defame my integrity in the community by telling potential witnesses that I had raped and molested (untrue/unproven) children in the community to the prejudice of my defense (Ex #34).

On 08/23/2006, my Constitutional rights, guaranteed under the Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 § 22 of the Constitution of the State of Washington were violated when I was denied the assistance of counsel for my defense due to Judge Haberly failing to appoint defense counsel. In fact, Judge Haberly scratched-out "Order Assigning Lawyer" on the Court form (Ex #13). This prejudiced my defense as many of my Constitutional and procedural rights were at issue at this critical stage of these proceedings and I knew nothing about law.

On 09/01/2006, my Constitutional rights guaranteed under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 §§ 3, 10 and 22 of the Constitution of the State of Washington were violated when I was deprived of liberty without due process of law; the assistance of counsel for my defense; the open administration of justice without unnecessary delay and; the right to a speedy and public trial, when the State mis-led the Court about an arraignment and plea which the State falsely said had occurred at the previous (08/23/2006) hearing. This prejudiced my defense by improperly influencing the Court to fail to carry-out the responsibilities of the Court under CrR 3.3(a) and my Constitutional rights to a speedy trial. It also improperly influenced the Court to believe that counsel had been appointed, when counsel had not been appointed. Thus, denying me assistance of counsel for my defense.

On 09/01/2006, My Constitutional rights as guaranteed under Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 §§ 3 and 22 of the Constitution of the State of Washington were violated, when I was denied liberty without due process and the assistance of counsel for my defense, when Judge Hartman authorized the not appointed Ness Firm's Mr. Purves to be "counsel of the record at this point", when the Ness Law Firm was not appointed counsel. After which, the Ness Law Firm failed to represent me at any subsequent hearings. This prejudiced my defense as the Court failed to provide assistance of counsel.

On 09/12/2006, my Constitutional rights guaranteed under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 §§ 3, 10 and 22 of the Constitution of the State of Washington were violated when I was deprived of counsel for my defense; deprived of liberty without due process of law; deprived of open administration of justice without unnecessary delay and; deprived of a speedy trial when, Judge Spearman, abused judicial discretion by falsely accusing me of failing to appear (4 times) and then re-set the trial date, striking the trial date of 10/10/2006 set on 08/23/2006 by Judge Haberly when I did not have the advice of counsel and could not assist the Court in following the proper procedures nor intelligently object to the procedures which were being followed. Thus, denying me procedural and Constitutional rights to a speedy trial.

On 11/14/2006, my Constitutional rights guaranteed under the Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 § 22 of the Constitution of the State of Washington were violated when I was denied the assistance of counsel when, Attorney Yelish, improperly and contrary to statute, advised me erroneously of the consequences of my plea; failed to explain the nature of the charges; failed to obtain for me a copy thereof; joined the State in an effort to attain a conviction and; misrepresented to me changes in the first amended information and the plea agreement.

On 11/14/2006, my Constitutional rights guaranteed under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States as well as Article 1 §§ 3, 10 and 22 of the Constitution of the State of Washington were violated when I was denied liberty without due process and; the open administration of justice when the Court, the State and my defense counsel all agreed to "interlineate" the "original information" with an altered time span from count II of the first amended information which then amended the charges just minutes prior to my being asked to enter an involuntary plea of guilty without providing me an opportunity to examine the amended charges; to have a copy thereof or; to understand the nature of the amended charges.

RELIEF SOUGHT

I, David P. Vandament, move the Court of Appeals to find my guilty plea entered on 11/14/2006 in Kitsap County Superior Court, before the Honorable Russell M. Hartman to have been involuntary.

I move the Court to find that Defense Attorney Mark L. Yelish (WSBA #9517), the Hunko Law Firm and the not appointed Ness Law Firm to have been ineffective as counsel on my behalf in these proceedings.

I move the Court to vacate Judgement and Sentence No. 07-9-00766-8 (cause No. 06-1-00867-5), to reverse this conviction, together with all conditions and restrictions that were imposed, restore my rights and enter a plea of not guilty on the record.

I move the Court to dismiss, with prejudice, all charges in this matter for violations of due process, unnecessary delay and speedy trial rights guaranteed under Article 1, §§ 3, 10 and 22 of the Constitution of the State of Washington and/or the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

I move the Court to dismiss, with prejudice, all charges in this matter as per the authority granted to the Court under CrR 3.3(h)(2006) and/or the authority granted to the Court under CrR 8.3(b).

I move the Court to dismiss, with prejudice, all charges in this matter as per the authority under CR 40(d) granted to me pursuant to CR 41(b).

I move the Court to order all records related to this conviction expunged and to direct the Department of Corrections and the Kitsap County Sheriff's Department to immediately release me.

10/07/2008

Dated

Submitted pro se by

David P. Vandament



David P. Vandament, 300458
Cedar Hall, A-14
Washington Correction's Center
P.O. Box 900
Shelton, WA 98584



Office of the
KITSAP COUNTY CLERK

David W. Peterson, Clerk

614 Division Street, MS 34 – Port Orchard, WA 98366-4692
360-337-7164 SCAN 262-7164 FAX 360-337-4927
www.kitsapgov.com/clerk

July 17, 2008

David P. Vandament, #300458
Cedar Hall, A-14
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584

Re: Request for records #4

Dear Mr. Vandament:

Thank you for your correspondence. Upon reviewing the court file, five (5) hearings were held before the hearing on September 12, 2006. Those dates are: 06/05/2006, 08/23/2006, 09/01/2006, 09/07/2006, and 09/08/2006. The record indicates that you were present and in custody for each hearing, including the hearing on September 12, 2006. A Warrant of Arrest was filed on August 22, 2006, but there is no record of any Bench Warrants filed in this matter for the period of 06/05/2006 through 09/12/2006.

Sincerely,

Patricia Croston
Deputy Clerk, Appeals Unit

COPY

July 14, 2008

David P. Vandament, 300458
Cedar Hall, A-14
Washington Correction's Center
P.O. Box 900
Shelton, WA 98584

Appeal Case # 37586-9-II
Kitsap County # 06-1-00867-5

Kitsap County Superior Court Clerk
614 Division Street, MS-34
Port Orchard, WA 98366

RE: Request for Copy of Records/Information/Costs for Information #3

To: The Kitsap County Superior Court Clerk:

I will be preparing a Statement of Additional Grounds for Review (RAP 10.10) over the next month or two. While compiling my research, I've encountered some vague details which need clarifying.

I ask that you provide me with copies or costs to copy the following documents or direct me as to where I can obtain these copies requested.

Enclosed, please find a copy of "Verbatim Report of Proceedings", dated August 23, 2006, pages 1 & 3 only. On page 3, lines 14 & 15, Mr. Murphy stated, "When exactly was the noted failure to appear?". Reference this statement, I need:

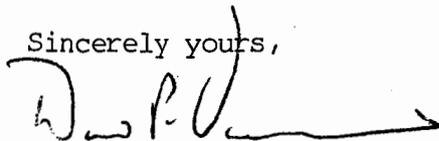
- A) Copy of Noted Failure to Appear.
- B) Copy of: Court calendar, Court docket, Clerk's Papers or any other document where this language: "Failure to Appear" is posted and available to the Court and Defense Counsel Murphy.
- C) Information leading to the identity of person responsible for posting the language "failure to appear" to a document available to be viewed by: Prosecutor, Defense Counsel and/or Judge.

If one or more of these documents or information is unavailable from the Superior Court files, will you please direct me as to where I can obtain copies of these documents/information or provide me with a memo suitable for filing with the Court of Appeals, stating that these documents and/or information are not available and the reason why?

I ask that you promptly comply with disclosure as set out in RCW 42.56.

Thank-you for all of your efforts.

Sincerely yours,



David P. Vandament

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 06-1-00867-5
)	
DAVID VANDAMENT,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS
(Motion hearing)

August 23, 2006

Honorable M. KARLYNN HABERLY
Department No. 7
Kitsap County Superior Court

APPEARANCES

For the Plaintiff:	Kelly Montgomery Deputy Prosecuting Attorney
For the Defendant:	Jacob Murphy Attorney at Law
The Defendant:	David Vandament

LESLIE J. THOMPSON, CCR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
614 DIVISION STREET
PORT ORCHARD, WA 98366
(360) 337-4819

COPY

1 previously found probable cause.

2 What's the State's recommendation on release
3 conditions? I think I issued the warrant of arrest and
4 set bail at \$150,000.

5 MS. MONTGOMERY: Your Honor, we're asking for an
6 increase in that amount to \$250,000. There's additional
7 information that the state has received that is not
8 contained in the statement of probable cause that I can
9 let the Court know, which would indicate to the state
10 that he would be potentially a flight risk and also a
11 danger to the community.

12 THE COURT: Did you wish to respond?

13 MR. MURPHY: Just procedurally, I think he said
14 he appeared at first appearance, but when exactly was the
15 noted failure to appear? Is this a warrant of arrest
16 that's not based on failing to appear in court?

17 MS. MONTGOMERY: Correct.

18 THE COURT: So it is a warrant of arrest.

19 MS. MONTGOMERY: Correct.

20 MR. MURPHY: The situation Mr. Vandament has
21 told me he's already posted a \$50,000 bond on his behalf.
22 I'm not in as good a position as Mr. Boyle to make any
23 arguments. I know very little about Mr. Vandament and
24 his situation. Our request at this time will be that
25 that remain his bond at this time and this hearing be set

July 14, 2006

David P. Vandament, 300458
Cedar Hall, A-14
Washington Correction's Center
P.O. Box 900
Shelton, WA 98584

Appeal Case # 37586-9-II
Kitsap County # 06-1-00867-5

Kitsap County Superior Court Clerk
614 Division Street, MS-34
Port Orchard, WA 98366

RE: Request for Copy of Records/Information/Costs for Information #4

To: The Kitsap County Superior Court Clerk:

I ask that you provide me with copies or costs to copy the following documents or direct me as to where I can obtain these copies requested.

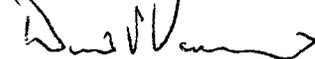
Enclosed, please find a copy of "Verbatim Report of Proceedings", dated September 12, 2006, pages 1 & 2 only. On page 2, line 9, Judge Spearman stated: "There was a failure to appear". On lines 9 & 10, Judge Spearman stated: "for some reason there was not an appointment". On lines 11 & 12, Judge Spearman stated: "we had bail posted, but then there was a failure to appear". On lines 14-16 Judge Spearman stated: "At the last hearing the Court requested that you be screened and set over to September the 8th. Apparently that's when you failed to appear". On line 22, Judge Spearman stated: "But nevertheless, there was a no-show". On line 23, Judge Spearman stated: "besides the bench warrant..."
Reference these statements, I request:

- A) Copy of: Court calendar, Court docket, Clerk's Papers or any other document where this language: "Failure to Appear" is posted and available to the Court.
- B) Information leading to the identity of person responsible for posting the language "failure to appear" to a document available to be viewed by: Prosecutor, Defense Counsel and/or Judge.
- C) Information explaining why "there was not an appointment".
- D) Copy of the "bench warrant".

If one or more of these documents or information is unavailable from the Superior Court files, will you please direct me as to where I can obtain copies of these documents/information or provide me with a memo suitable for filing with the Court of Appeals, stating that these documents and/or information are not available and the reason why?

Thank-you for all of your efforts.

Sincerely yours,



David P. Vandament

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.) No. 06-1-00867-5
)
 DAVID VANDAMENT,)
)
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS
(Motion hearing)

September 12, 2006

Honorable THEODORE F SPEARMAN
Department No. 4
Kitsap County Superior Court

APPEARANCES

For the Plaintiff: Joseph Salas
Deputy Prosecuting Attorney

For the Defendant: Jacob Murphy
Attorney at Law

The Defendant: David Vandament

LESLIE J. THOMPSON, CCR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
614 DIVISION STREET
PORT ORCHARD, WA 98366
(360) 337-4819

COPY

1 THE COURT: The last case on our in-custody
2 calendar is David Vandament. Am I saying that correctly?
3 My tongue, say it again, Vandament.

4 THE DEFENDANT: Vandament.

5 THE COURT: Vandament, thank you. I'm sorry for
6 mispronouncing it.

7 Mr. Vandament's case number is 06-1-00867-5. This
8 matter has already gone through formal arraignment.
9 There was a failure to appear. For some reason there was
10 not an appointment. The first amended information has
11 been filed. We had bail posted, but then there was a
12 failure to appear. Then one attorney came and said he
13 was hoping to be hired. That never happened.

14 At the last hearing the Court requested that you be
15 screened and set over to September the 8th. Apparently
16 that's when you failed to appear.

17 THE DEFENDANT: Your Honor.

18 THE COURT: I don't know anything about this one
19 million bail prepare. That was something in an order. I
20 note that when the case was filed there was bond filed,
21 an appearance bond for 50,000.

22 But nevertheless, there was a no-show, and it looks
23 like at the last order besides the bench warrant there
24 was a determination of indigency. I know at this time I
25 have a determination, however, that's now indigent and

08 OCT 10 PM 12:56

STATE OF WASHINGTON

BY Cm
DEPUTY

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent

v.

David P. Vandament

Appellant

No 37586-9-II

DECLARATION OF SERVICE
BY MAIL

I, David P. Vandament, the Appellant in the above entitled cause, do hereby declare that I have served the following documents:

Statement of Additional Grounds, 41 (4+37) pages
Exhibit 61 - 6 pages
Exhibit 62 - 1 page

UPON:

Thomas E. Weaver, Jr.
Attorney at Law
P.O. Box 1056
Bremerton, WA 98337-0221

I deposited with the Unit Officer's Station by processing as Legal Mail, with first-class postage affixed there to at the Washington Correction's Center, P.O. Box 900, Shelton, WA, 98584, on the 7th day of October, 2008.

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

10/07/2008

Dated



David P. Vandament, 300458
Cedar Hall, A-14
Washington Correction's Center
P.O. Box 900
Shelton, WA 98584