

sentenced for the commission of an offense so long as such incapacity continues," RCW 10.77.050. The trial court's failure to observe procedures adequately protecting Mr. Lindholm's right not to be tried while suffering incompetency to stand trial was a denial of due process, State v. Heddrick, 215 P.3d 201 (2009). Mr. Lindholm argues that he was denied due process of law when the trial court failed to execute procedures of the competency statute as defined by RCW 10.77.060. An accused in a criminal case has a fundamental right not to be tried while incompetent to stand trial, Drope v. Missouri, 420 U.S. 162, 171-72, 95 S.Ct. 896, 42 L.Ed. 2d 103 (1975); In re Pers. Restraint of Fleming, 142 Wash. 2d 853, 861, 16 P.3d 610 (2001). "Washington law affords greater protection by providing that '[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues,'" Fleming, 142 Wash. 2d at 862, 16 P.3d 610, (quoting RCW 10.77.050).

"The failure to observe procedures adequate to protect this right is a denial of due process," State v. O'Neal, 23 Wash. App 899, 901, 600 P.2d 570 (1979), (citing Drope, 420 U.S. 375, 86 S.Ct. 896 43 L.Ed. 2d 103; Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 2d 815 (1966)). RCW Title 10.77 provides such a procedure. The "[p]rocedures of the competency statute... are mandatory and not merely directory," Fleming, 142 Wash. 2d at 863, 16 P.3d

610, (citing State v. Wickland, 96 Wash. 2d 798, 805, 638 P.2d 1241 (1982)). Failure to observe the procedures is a violation of due process, (citing O'Neal, 23 Wash. App at 901, 600 P.2d. 570). The trial transcript in the Lindholm case reflects that the procedures outlined by RCW 10.77.060 were not utilized by the trial court. Although there were substantial and sufficient grounds to warrant questioning Mr. Lindholm's competency - both during the commission of the crime, as well as throughout the entire course of his legal proceedings - the trial court neglected to issue an order requiring Mr. Lindholm to undergo a psychological evaluation. It is the trial court's responsibility to obtain an expert assessment of the defendant's emotional and behavioral faculties in order to effectively determine whether competency is a factor at issue. RCW 10.77.060 mandates that when "there is reason to doubt" the defendant's competency to stand trial, the court will appoint two qualified experts to examine and report on the mental condition of the defendant. The clinical bipolar diagnosis of Mr. Lindholm's mental condition, Mr. Lindholm's acknowledgement indicating illegal drug use in conjunction with alcohol use during the commission of the crime, and medical documentation supporting Mr. Lindholm's arguments regarding incompetency, all furnish corroborating evidence clearly validating a necessity for the court to order an expertly conducted psychological evaluation. Establishing

an accurate assessment with regard to the regular, daily functioning status of Mr. Lindholm's cognitive abilities, or lack thereof, is a critical element of this case. It would have been necessary to do so before trial because of the significant influence Mr. Lindholm's deficient reasoning had on all aspects of his legal proceedings in which competency of the defendant is a mandatory condition.

In response to the trial court's failure to inquire, attempt to ascertain, or issue an order requiring the expert psychological evaluation necessary for determining Mr. Lindholm's purported incompetency as set forth by law, this petition is respectfully submitted to the Washington State Court of Appeals, Division Two, begging the courts to order a new trial based on the arguments stated above.

Dated this Fourth day of December, 2010.

A handwritten signature in black ink, appearing to read "Chris Lindholm", written in a cursive style.

Chris Lindholm

Chris Anthony Lindholm
DOC# 268561
Unit 6, Tier B, Cell 5
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, Washington 99362

FILED
COURT OF APPEALS
DIVISION II

10 DEC -8 PM 1:47

STATE OF WASHINGTON
BY [Signature]
DEPUTY

I, Chris Anthony Lindholm, certify that I caused to be deposited in the United States Postal Service mail, at Washington State Penitentiary, a true and correct copy of the following:

- (1) Statement of Additional Grounds
- (2) Notice of Filing Additional Grounds

to the parties listed below.

Washington State Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, Washington 98402-4454

On this 4th day of DECEMBER, 2010 under penalty of perjury defined by Washington State law.

[Signature]

Chris A. Lindholm