

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

No. 420121-II
(Direct Appeal No. 38978-9-11)
Clark County Superior Court No. 07-1-00814-2

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re Personal Restraint of

LESTER JUAN GRIFFIN,

Petitioner.

AMENDED PERSONAL RESTRAINT PETITION

INNOCENCE PROJECT NORTHWEST CLINIC

Jacqueline McMurtrie, WSBA #13587

Anna M. Tolin, WSBA #22071

Attorneys for Petitioner

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Eric Mapes

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Law Students

A. STATUS OF PETITIONER

Petitioner Lester Juan Griffin is currently serving a sentence of 285 months imprisonment at Stafford Creek Correctional Center, 191 Constantine Way, Aberdeen, Washington 98520, and has petitioned this Court for relief from his unlawful conviction and sentence. The Court of Appeals, Division II, affirmed his conviction for first degree assault and attempted burglary with firearm enhancements on July 1, 2010. The Washington Supreme Court denied review on December 1, 2010. The mandate issued on December 10, 2010. Mr. Griffin remains in custody pursuant to that sentence.

1. Mr. Griffin was found guilty and convicted at a jury trial on one count of first degree assault, with a firearm sentence enhancement, and attempted first degree burglary, with a deadly weapon and firearm sentence enhancements, all in violation of RCW §§ 9A.08.020(3), 9A.28.020(1)(3)(b), 9A.36.011(1)(a), 9A.52.020(1)(a), 9.94A.533(3), and 9.94A.602.

2. The Judgment was entered on February 18, 2009 in *State v. Griffin*, cause number 07-1-00814-2. Clark County Superior Court Judge Robert A. Lewis imposed the sentence, ordering Mr. Griffin to serve a total prison term of 285 months.

3. Mr. Griffin's counsel for trial in the Superior Court was: Robert Vukanovich, WSBA No. 28847, 211 E. McLoughlin Blvd., Vancouver, WA 98663.

4. Mr. Griffin timely appealed the decision of the trial court to Division II of the Washington Court of Appeals in Case Number 38978-9-II. His attorney on appeal was: John A. Hays, WSBA No. 16654, 1402 Broadway Street, Longview, WA 98632.

5. Mr. Griffin filed a Petition for Review with the Washington Supreme Court Case Number 817944. On December 1, 2010, the Petition for Review was denied.

6. The mandate was filed on December 10, 2010.

7. Mr. Griffin filed his original Personal Restraint Petition on June 14, 2011. He submits this Amended Personal Restraint Petition to incorporate the grounds below pursuant to his Motion for Leave to File Amended Petition and Brief, filed herewith.

8. Mr. Griffin is also preparing to file a motion for post-conviction DNA testing, pursuant to RCW 10.73.170, with the Clark County Superior Court. For the reasons set forth in Mr. Griffin's accompanying Motion to Stay and Abey Personal Restraint Petition, he is also asking this Court to stay his personal restraint petition proceedings pending the resolution of his RCW 10.73.170 motion for post-conviction DNA testing.

B. GROUNDS FOR RELIEF

Mr. Griffin has established six grounds upon which the Court should grant him relief from the conviction and sentence described in Part

FIRST GROUND

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4(c)(2), because the conviction was obtained and the sentence was imposed in violation of his right to effective assistance of counsel at trial and on appeal as guaranteed by the Sixth Amendment to the United States Constitution; and Article 1, section 22 of the Washington State Constitution.

SECOND GROUND

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(3), material facts exist which have not been previously presented and heard, which establish Mr. Griffin's claims of actual innocence and in the interest of justice and to ensure due process require vacation of the conviction pursuant to the Fifth and Fourteenth Amendments to the United States Constitution; and Article 1, section 22 of the Washington State Constitution.

THIRD GROUND

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(2), because the Prosecutor

committed misconduct in failing to disclose evidence of an exculpatory nature and/or necessary to establish bias or impeach the State's witnesses, and because the Prosecutor committed misconduct during closing arguments, all of which violated Mr. Griffin's rights to a fair trial and due process in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

FOURTH GROUND

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(2), because evidence in the form of photographs from a surveillance video (which was not provided to the defense) was misused at trial to support the State's false theory in violation of Mr. Griffin's rights to a fair trial and due process in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

FIFTH GROUND

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4(c)(2), because he was denied the opportunity to effectively confront and cross-examine the State's witnesses, to adequately present a defense at trial, and to ensure the jury was accurately instructed in the law, all in violation his rights to

confrontation and due process required by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

SIXTH GROUND

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4 because the numerous errors in this case violated Petitioner's right to a fair trial under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

C. STATEMENT OF FINANCES

Mr. Griffin remains unable to pay the filing fees or fees of counsel. He has been deemed indigent by the Court (a Statement of Finances was filed on July 6, 2011). Counsel for Mr. Griffin is appearing pro bono. Mr. Griffin respectfully requests this Court to waive any fees levied by the Court as a result of this petition.

D. REQUEST FOR RELIEF

Mr. Griffin requests that this Court:

1. Grant his motion to amend his personal restraint petition and to stay the personal restraint petition proceedings, both filed simultaneously with this petition for personal restraint, until the

completion of Mr. Griffin's RCW 10.73.170 motion for post-conviction DNA proceedings in the Clark County Superior Court; or

2. If the Court does not grant his motion for stay, Mr. Griffin requests that he be allowed to file this amended personal restraint petition, and be given sufficient time to provide the Court with additional briefing and appendices which fully develop the legal and factual basis for his claims that his restraint is unlawful; or

3. That the Court vacate his conviction. In the alternative, he asks that counsel be appointed and that discovery and an evidentiary hearing be ordered to resolve any factual disputes about Mr. Griffin's unlawful restraint.

E. OATH

I, Jacqueline McMurtrie, after being first duly sworn, on oath, depose and say:

That I am Mr. Lester Griffin's attorney. I have read the Amended Petition; know its contents, and I believe the Amended Petition is true.

Dated this 7th day of December, 2011.



JACQUELINE McMURTRIE
WSBA # 13587

Subscribed and sworn to before me this 7th day of December, 2011.

Carrie L. Gaasland

Printed Name: Carrie L. Gaasland



NOTARY PUBLIC in and for the State
Of Washington, residing at:

Seattle, WA

My commission expires: 08-09-12

CERTIFICATE OF SERVICE

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Amended Personal Restraint Petition on the following:

Ms. Anne Cruser, Deputy Prosecuting Attorney
Office of the Clark County Prosecuting Attorney, Appellate
Division
1013 Franklin Center
P.O. Box 5000
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731
H5-B108
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

11 DEC -9 AM 10:00
STATE OF WASHINGTON
BY _____
DEPUTY
COURT OF APPEALS
DIVISION II

Dec. 8, 2011, Seattle, Washington
Date and Place

Cynthia S. Fester
Cynthia S. Fester