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No. 42057-1-II

STATE OF WASHINGTON  
BY \_\_\_\_\_

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

SANTORIO L. BONDS,

Appellant

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

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STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

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Santorio L. Bonds # 715928  
Cedar Creek Corrections Center  
P.O. Box 37  
Littlerock, WA 98556

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1       A.     ASSIGNMENT OF ERROR

2

3               Appellant was denied his constitutional right to effective assistance  
4 of counsel where defense counsel failed to file a witness list and  
5 subpoenas to secure witnesses material to appellant's defense.

6

7               Issues Pertaining to Assignment of Error

8

9               Was defense counsel ineffective in failing to file a witness list and  
10 subpoenas to secure witnesses material to appellant's defense?

11

12       B.     STATEMENT OF THE CASE

13

14               The Appellant (hereafter Bonds) incorporates by reference the  
15 Statement of the Case as set forth in counsel's Brief of Appellant.

16

17       C.     ARGUMENT

18

19               BONDS WAS DENIED HIS CONSTITUTIONAL RIGHT TO  
20 EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE DEFENSE  
21 COUNSEL FAILED TO SECURE WITNESSES MATERIAL TO THE  
22 DEFENSE FOR TRIAL.

23

24               Bonds was denied effective assistance of counsel and reversal is  
25 required because defense counsel's performance was wholly deficient in  
26 failing to file a witness list and subpoenas to secure witnesses material to  
27 Bonds' defense and Bonds was prejudiced by defense counsel's deficient  
28 performance.

1 Both the Sixth Amendment of the United States Constitution and  
2 Article I, Section 22 of the Washington Constitution guarantee the right to  
3 effective assistance of counsel. Strickland v. Washington, 466 U.S. 668,  
4 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109  
5 Wn.2d 222, 229, 743 P.2d 816 (1987). “The purpose of the requirement  
6 of effective assistance of counsel is to ensure a fair and impartial trial.”  
7 Thomas, 109 Wn.2d at 225. To establish ineffective assistance of counsel,  
8 a defendant must show that a counsel’s performance was deficient and the  
9 deficient performance resulted in prejudice. Strickland, 466 U.S. at 687.

10 Counsel’s performance is deficient when it falls below an objective  
11 standard of reasonableness. State v. Stenson, 132 Wn2d 668, 705, 940  
12 P.2d 1239, cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323  
13 (1998). To show prejudice, the defendant must establish that “there is a  
14 reasonable probability that, except for counsel’s unprofessional errors, the  
15 result of the proceeding would have been different.” State v. McFarland,  
16 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

17 It is clear from the following citations from Bonds’ Verbatim  
18 Report of Proceedings that his defense counsel, Mr. Oliver, did not file a  
19 witness list nor subpoena any witnesses prior to trial.

20 Additionally, the following citations from Bonds’ Verbatim Report  
21 of Proceedings also make it clear that Defense Counsel Oliver knew of  
22 witnesses who were material to Bonds’ defense and whose testimony may  
23 have exonerated him.

24 Deputy Prosecuting Attorney Peters, while arguing against a  
25 defense motion to dismiss, stated that in June 2010, Defense Counsel  
26 Oliver had interviewed one of the officers about Cozetta Booth and  
27 whether she could have been the person driving the vehicle on the day of  
28 the arrest. RP 42, 43.

1 Deputy Prosecuting Attorney Peters also stated that “The defense,  
2 at no time, even after knowing of this person’s name [Cozetta Booth], did  
3 a subpoena, did a witness list or any of those things.” RP 50, 51.

4 At one point, Defense Counsel Oliver argues why he needed DOC  
5 Officer Alfaro as a witness. RP 71 – 73. Here, the Deputy Prosecuting  
6 Attorney indicated that defense counsel had not filed a witness list. RP 73  
7 at 24.

8 Even the trial judge indicated on the record that defense counsel  
9 had not filed a witness list. RP 74 at 17.

10 Deputy Prosecuting Attorney Peters again made a statement that  
11 defense counsel had not produced a witness list. RP 195.

12 Repeatedly, Defense Counsel Oliver indicated the importance to  
13 Bonds’ defense of Cozetta Booth’s and Ms. Tucker’s participation in the  
14 trial. He handed up Booth’s and Tucker’s statements to the judge. RP  
15 195. These were statements that could not stand as evidence on their own,  
16 and therefore required Booth’s and Tucker’s presence at trial. Defense  
17 Counsel Oliver stated that the statement by Ms. Tucker was notarized on  
18 August 11, 2009. RP 196.

19 After Defense Counsel Oliver failed in his argument to have  
20 Booth’s and Tucker’s statements brought in as evidence, Deputy  
21 Prosecuting Attorney Peters, speaking of Ms. Tucker, stated that “If she  
22 doesn’t remember, subpoena her, which he [defense counsel] didn’t do;  
23 get a material witness warrant, which he didn’t do, bringing her in here.”  
24 RP 198.

25 Late in the trial, Defense Counsel Oliver discussed a telephone  
26 conversation with Ms. Tucker about her being present as a trial witness.  
27 He stated that he told her by phone that “we had a subpoena for 9:00 a.m.  
28 for her.” RP 206 at 20.

1           Telling a witness, however, that he “had” a subpoena is not the  
2 same as serving a subpoena, therefore defense counsel’s performance was  
3 again clearly deficient here. If Defense Counsel Oliver knew how to  
4 contact the witness, then he surely could have had her properly served.

5           Defense Counsel Oliver later argued why he needed DOC Officer  
6 Alfaro as a witness, even though he had not previously listed him on any  
7 witness list nor had Alfaro been subpoenaed. RP 207-215. Again,  
8 defense counsel’s performance here was clearly deficient.

9           Deputy Prosecuting Attorney Peters stated “I will indicate that  
10 [defense] counsel could have served, subpoenaed, filed a witness list with  
11 the same witness, they did not”. RP 263.

12           It is clear from arguments during trial and numerous statements he  
13 made during trial that Defense Counsel Oliver knew of witnesses who  
14 were material to Bonds’ defense and whose testimony could exonerate  
15 him.

16           It is also clear from the numerous citations to the record here  
17 included that, prior to Bonds’ trial, Defense Counsel Oliver simply did not  
18 file a witness list or subpoena any witnesses for the defense.

19           Defense Counsel Oliver knew of witnesses which were material to  
20 Bonds’ defense but did not follow the accepted professional, legal, and  
21 ethical procedures necessary for their presence at trial.

22           Defense Counsel Oliver had a duty to subpoena these witnesses to  
23 secure their testimony and he failed to do so.

24           There is no legitimate tactical or strategic purpose for Defense  
25 Counsel Oliver not ensuring that these witnesses or their properly deposed  
26 statements were present at Bonds’ trial.

27           Mr. Bonds was prejudiced by Defense Counsel Oliver’s deficient  
28 performance because the witnesses not present at his trial could have

1 testified that on the day of his arrest, Bonds was not riding in a car with a  
2 person with whom he was not to have contact, therefore Bonds is innocent  
3 of the charge against him.

4 Therefore, it is clear that in Bonds' case he did not receive  
5 effective assistance of counsel because defense counsel's performance was  
6 deficient and that not securing known witnesses for trial served no  
7 legitimate tactical or strategic purpose for the defense, and that defense  
8 counsel's deficient performance resulted in prejudice to Bonds.

9

10 D. CONCLUSION

11

12 Based on the facts of this case and the previous argument, Bonds  
13 respectfully requests that this court reverse his conviction and remand for  
14 new trial or dismiss the charge with prejudice.

15

16

17 Dated this 12<sup>th</sup> day of February, 2012.

18

19 Respectfully submitted,

20

21



22

Santorio L. Bonds

23

Appellant

24

25

26

27

28

## ISSUE II.

(a) The defendant was denied his right to due process and his right to a fair trial as he was taking medication at the time of trial which rendered him unable to participate in his trial in a meaningful way.

(b) The trial court erred in not ordering a competency hearing and in not inquiring further into the defendant's claim, supported by doctor's letters, that he was unable to comprehend the significance of the proceedings or meaningfully assist his attorney at trial.

## ARGUMENT

The defendant and defense counsel notified the trial court on numerous occasions that the defendant (Bonds) was on several different medications, which Bonds claimed made him incapable of meaningfully participating in his trial. (*VRP Vol. 2 Pg. 216 line 16-25, Pg. 217 line 1-11, Pg. 219 line 22-25, Pg. 227 line 20-21, Pg. 250,251,252.*) The defendant also submitted letters and a certificate of disability to the trial court, which were admitted into evidence attesting to Bonds' medications and their effects. (*VRP Vol. 2 Pages 251,252*) The trial court apparently dismissed Bonds' claim without a significant inquiry or the ordering of a competency hearing, but noted that the doctor's letters were "part of the court file". (*VRP Vol. 2 Pg. 252 line 13.*)

At one point in the trial, Bonds specifically notified the trial court that, "I'm not competent. Right now I'm not competent to be in here right now..." and that, "I got to take my medication. I'm not prepared for court." (*VRP Vol. 2 Pg. 252 line 4 through 6*) Again, the trial court declined to inquire into the specifics of Bonds' claim or order a hearing as to Bonds' competency.

Upon notification to the trial court by defense counsel, of Bonds' contention that his medications were interfering with his ability to meaningfully assist his defense counsel, the trial court opined that, "there is nothing during this trial that I have seen that would cause me to believe that he is in any way impaired."(*VRP Vol. 2 Pg 217 lines 6-8*) But the court also stated that, "If there were a medical opinion in front of me that he could not testify based on medications he's on that makes

him incompetent..”(VRP Vol. 2 Pg. 217 line 4-6) Intimating that having an opinion in front of the court would influence the court to take some further action or inquiry into Bonds’ assertions of incompetence. However, as noted above, when Bonds did submit these exact type of opinions to the court, the trial court took no action and held no further inquiry. (VRP Vol. 2 Pg. 252) This was a clear abuse of discretion. The trial court should have, at the minimum, held a hearing once it became apparent that the defendant was medicated and that a doctor had attested to the fact that these medications could cause confusion.

In cases where competency is raised during trial, “the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him.”

Dusky v. United States, 362 U.S. 402, S.Ct 788, 4 L.Ed.2d 824 (1960)

In the present case, the error lies in the failure of the trial court to hold this very inquiry. It seems it would have been a simple matter to hold a hearing and consider the doctor’s letters and possibly briefly question the defendant in order to determine his competency or continued competency. The fact that the trial court declined to do so, even after receiving the very doctors opinions it earlier said it needed to see, was an abuse of discretion and denied Bonds the right to a fair trial and due process of law.

### **CONCLUSION**

Because the defendant was not given due process of law and the trial court failed to adequately determine his competence, the defendant respectfully requests that his conviction be reversed and remanded to trial court for a new trial.

Respectfully submitted this 12th day of February, 2012.

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



# GENERAL MEDICAL CLINIC

SPANAWAY  
15005 Pacific Ave.  
Tacoma, WA 98444  
Phone: (253) 537-3724  
FAX: (253) 537-6425

PACIFIC  
7440 Pacific Ave.  
Tacoma, WA 98408  
Phone: (253) 475-0511  
FAX: (253) 475-7440

SOUTH HILL  
10209 136th St. E.  
Puyallup, WA 98374  
Phone: (253) 848-1535  
FAX: (253) 848-6537

## DISABILITY CERTIFICATE

Date 3-25-2011

Santurio Bonds has been examined and treated at our clinic today.

Diagnosis: Contusion & Strain with serous effusion

- He/She may return to work, with no restrictions.
- He/She should be released from work for approximately 2 weeks (14 days)
- He/She may return to work with the following restrictions:

- No lifting, pushing, pulling or carrying more than \_\_\_\_\_ pounds.
- No frequent stooping, bending or trunkal twisting.
- No kneeling, squatting.
- No ladder climbing.
- No prolonged standing/walking.
- No repetitive use of \_\_\_\_\_ arm.
- Must wear  splint  sling  brace  \_\_\_\_\_

He/She is on medication that may cause drowsiness and must use care when operating a car or dangerous machinery.

He/She should be re-examined prior to returning to regular work.

Return to clinic on April 9th 2011

Signature

Louis Enkema

Physician  
 Nurse

LOUIS ENKEMA, M.D.

Employer notified by  fax  phone

Referral made for patient to be examined by \_\_\_\_\_

on \_\_\_\_\_



# General Medical Clinic

SPANAWAY  
15005 Pacific Ave.  
Tacoma, WA 98444  
Phone (253) 537-3724  
Fax (253) 537-6525

PACIFIC  
7440 PACIFIC AVE.  
TACOMA, WA 98408  
PHONE (253) 475-0511  
FAX (253) 848-6537

SOUTH HILL  
10209 136th St. E.  
Puyallup, WA 98374  
Phone (253) 848-1535  
Fax (253) 475-7440

## DISABILITY CERTIFICATE

Date 4/5/11

Bonds, Santorio has been examined and treated at our clinic today.

Diagnosis: contusion + strain of bilat knee + elbow, rt rib strain, rt low back strain

- He/She may return to work with  no restrictions
- following restrictions

He/She should be released from work for approximately until 4-9-11 days.

He/She is on medication that may cause drowsiness and must use care when operating a car or dangerous machinery.

He/She should be seen by his/her doctor prior to returning to work.

- Physician
- Nurse

Signature Glenn Metzger  
GLENN METZGER MD

PREMIER CHIROPRACTIC PLLC #2

04/06/2011

RE: Mr. Santorio Bonds

To whom it may concern,

Mr. Bonds has a chronic ongoing low back condition that he has been receiving treatment for in my office since 02/25/2011. Mr. Bonds has reported that prolonged sitting increases his pain levels since his initial evaluation in my office. He has experienced a recent flare-up in his subjective symptoms and prolonged sitting at this time would cause a worsening of his condition.

If you have any questions or concerns please contact my office.

Respectfully,



Dr. Aric M. Turrubiate

Premier Chiropractic of Tacoma