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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

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

State of Washington, Respondent,	Superior Court Cause No. 07-1-00157-3
V.	Court of Appeals No. 43493-8-II
Marx W. Coonrod Appellant.	Statement of Additional Grounds RAP 10.10 (e)

I, Marx W. Coonrod, Petitioner in this action, declare on oath and say under penalty of perjury that the following facts are true and correct:

I am over the age of 18 and I am competent to testify. I am a U.S. citizen and a resident of Washington State.

The facts contained in my Statement of Additional Grounds are true and correct.

I have first hand knowledge of the following facts that are relevant to my Statement of Additional Grounds.

R.E: Case Name and No. State v. Marx W. Coonrod 43493-8-II

#1) Mr. Coonrod is being denied access to the courts by not giving him the time to be moved where he would be afforded the right to a law library.

Mr. Coonrod is currently housed at Washington State Penitentiary's MSU outside camp, where he does not have access to any law library or law books even. There is no legal assistance program in place to help inmates at all. Mr. Coonrod can not be sent any legal work from the law library in the West Complex of WSP at all to MSU outside camp where he is.

Mr Coonrod asked his counsellor about getting access to a law library, and was told he would have to be moved to another facility, and that it would take weeks to do after requesting access to a law library. By that time his Statement of Additional Grounds (RAP 10.10(e)) would be over due.

Granting Mr. Coonrod 10 extra days did not even come close to the time needed to be moved to afford him access to a law library, and should have been granted the full 30 days "after" he was moved and had access to

a law library.

So please show Mr. Coonrod grace if this is not backed up by case law, and may not be in legal vernacular.

Mr. Coonrod will do his best just to draw from what he has gleaned from the time he has had in the law library from the past working on his case at Stafford Creek's law library.

#2) Mr. Coonrod has been sent incomplete sets of his verbatim reports of proceedings on this case, No. 07-1-00157, on the first Direct Appeal No. 43466-1-II, and this the second Direct Appeal No. 43493-8-II. This is "Fraudulent Conseal ment" of evidence.

On the first Direct Appeal, No. 43466-1-II he was not given any of the court appearances where Suzan Clark was his lawyer, and was threatend several times with life in prison or 40 or more years, and caused him to be under "Extreme Duress".

There were excerps and or portions of the 3.5 and 3.6 hearings missing or changed of witnesses testimony such as Detective Hemstock lying on the witness stand about dates that the DNA testing were done, and was not on Mr. Coonrod's set of transcripts. Also Jay Alley's full testimony with the VPD, and Mr. Coonrod's where he proved that

Jay Alley was lying by the pictures that were introduced as evidence by the State. Things were even changed that were said in court on the transcripts Mr. Coonrod was given then.

The veracity of Clark County's Superior Court is in question with this type of behavior, and should be considered coercive by causing the Defendant "Duress".

Then on this the second Direct Appeal, No. 43493-8-II the prosecutor, John Fairgrieve referres to the review hearing where J.J. Sowder and Gary Rice (Mr Coonrod's ex-lawyer and P.I.) testified as to witness that were never interviewed and a subpoena for records filed under the wrong spelling of the name. This hearing and many others needs to be reviewed by the Court of Appeals for their veracity.

Before this hearing and others Mr. Coonrod's lawyer Jeff Riback came to court unprepared without meeting with him so they could go over the case "together" to have some sort of "courtroom Strategy" in place, or at least some questions ready "before court" to be asked. He also used none of the evidence Mr. Coonrod had to prepare for court and show Sowder's ineffective assistance.

The fact that Mr. Coonrod was not given portions of the court transcripts that would show Mr. Sowder's ineffective assistance, and coercion caused by threats of life in prison that had placed Mr. Coonrod under Duress.

This can not be considerd "minor errores". This in fact is done purposefully and is "Fraudulant Consealment" of exculplatory evidence for this appeal, and as such should be misconduct and "Criminal Culpability," and withholding of evidence. This also is ineffective assistance of counsel by J. Riback for not using the evidence I had given him, or records he had access to that should have been used to show Mr. Sowders ineffective assistance of counsel.

#3) Mr. Coonrod was denied his right to a fair trial by withholding of "Exculplatory Evidence" in this case in the form of Discovery. The fact that Mr. Coonrod was not being given his Discovery evidence he had requested and Judge Lewis had ordered to be given him. Then by Mr. Sowder not using this evidence to defend him played a big part in the coercion of a plea based on the "Duress" it had caused by ineffective representation. Not using this evidence that would prove factual innocence is ineffective assistance of counsel by both J.J. Sowder and now Jeff Riback also.

#4) Mr. Coonrod has been given ineffective assistance of counsel by each and every lawyer that was appointed to him by Clark County on this case.

Judge Melnick, by denying Mr. Coonrod the evidence asked for that would have shown and proven J. Sowder's ineffective assistance has also played a part in this travisty of justice. By withholding the evidence so it could not be used in court to show Mr. Sowder's ineffectiveness is Judicial Misconduct. This would have shown the evidence needed in suport of Mr. Coonrod's Motion to Withdraw the Plea. Judge Melnick also would not allow Mr. Coonrod access to his own case file to go over together with his lawyer J. Riback and use it in court against Mr. Sowder.

This file contained experts records, witnesses testimony, 911 phone calls, police reports, and witnesses from the banks identification by photo montage that would have shown J.J. Sowder's ineffectiveness by not being used in Mr. Coonrod's defence. Through this lack of investigation or out right incompetence by not using this evidence he did have available to him at the time of the trial but was not being used to defend Mr. Coonrod. This same evidence that is being withheld also proves J.J. Sowder's Ineffective Assistance of Counsel in this Case!

By not using or showing this evidence now by Jeff Riback makes him also guilty of the same ineffective assistance of counsel, and is also a part of this Fraudulent Consealment of Clark County's Superior Court. And as such, is Criminal Culpability also in this cause NO. 43493-8-II.

Judge Lewis in court had orderd or told both the Prosecutor John Fairgrieve and Mr. Coonrod's lawyer at the time J.J. Sowder to give Mr. Coonrod "All" the Discovery he was asking for in the form of a "4.7 Motion for Discovery" Mr. Coonrod had wrote. Then later J.J. Sowder told Mr. Coonrod he submitted that same hand writen motion to the courts after it was not being addressed by Judge Harris because it was done Pro Se. He was still denied any and all of this evidence.

Mr. Coonrod had aske for the FBI finger print file in court, and John Fairgrieve (Prosecutor) said, "We lost the finger print file and it was smugged anyway". The 911 phone call from the Washington Mutual Bank on 1-23-07, the day of Mr. Coonrod's arrest, was a "suspicious person phone call," not an attempted bank robbery as the police had said for probable cause for the arrest. As such, the VPD made an illegal arrest in this case, not having

any "Elements to a Crime" or "Probable Cause" for an arrest. The pictures Mr. Coonrod was and is asking for from this bank would have proven VPD had lied when they said, "Mr. Coonrod went into the bank, was confronted, and was chased out of the bank". The person that reviews the DVD from the 16 surveillance cameras said after reviewing the pictures "I can see his foot by the front door of the bank, but he never opens the door or comes into the bank". Mr. Sowder had never given this witnesses statement to Mr. Coonrod till after the plea was taken, nor was he using it to defend Mr. Coonrod. Mr. Sowder was also not using witnesses from the banks that should have been used to defend Mr. Coonrod such as two witnesses from the LaCamas Credit Union that were shown a photo montage line up and picked out the Mexican, not Mr. Coonrod. They were not being called as witnesses for Mr. Coonrod? At that same Credit Union a witness that saw the person run a long ways, then climb a 10 foot retaining wall and jump over a 4 foot fence first, then a 6 foot fence all in about 10 seconds he said. She also said in her statement that the Detective working the case, Hemstock, had went back to her several times

wanting her to change her writen statement (testimony) for him. She then said, "she could not do that because it would not be fair to the person they had arrested." There were also witnesses that were at another bank that were an ex-NYPD, and the other an FBI agent (Husband and Wife), that were in the bank, that would be considerd "experts in identification", but were not being used as witnesses for Mr. Coonrod on his behalf? They said the person was 5'3" tall, and was a Mexican, that "Sprinted" out of the bank. Mr. Sowder was not using the two Docter's (Surgeons) records, that have been withheld from Mr. Coonrod also, that said he had a totally collapsed hip joint making it "Impossible" for Mr. Coonrod to have ever ran or sprinted when these banks were robbed, and was in all Mr. Coonrod's medical records at the time but was not being used by J.J. Sowder. "Now the surgeon that did the actual hip replacement surgery has also given a sworn Affidavit statement saying the same fact. So this is not "New Evidence," but collaborating evidence of Mr. Sowder's ineffective assistance and Mr. Ribacks also for not using the evidence to show Sowder's ineffective assistance of counsel.

There were also pictures from the banks that showed the person "sprinting out", but after Mr. Coonrod pointed this out to his attorney, Suzan Clark at the time, he was never shown any of the pictures again or given any of the pictures from the banks to be used in court. Once again "Fraudulent Consealment". One witness for Mr. Coonrod's "Alibi Defence" that was not being used, his next door neighbor (Jason), an ex-Washougal police officer, that would have given Mr. Coonrod an alibi for two of the bank robberies was never even questioned or interviewed at all? Then J.J. Sowder used the wrong spelling on a account name that would have given Mr. Coonrod another alibi, but Sowder used Jose to subpoena records when his actual name was Ernie Josi, and would have given Mr. Coonrod another alibi for another bank robbery. Mr. Sowder was told several times in court how it was spelled and even had met with the man, but never fixed it or got it right on the subpoena? Sowder even admitted on the witness stand to this, but was not on Mr. Coonrod's court transcripts either. Both about not interviewing Jason and the wrong spelling of the name to subpoena the records.

Then Mr. Coonrod was at ABF trucking's warehouse on NE 35th in Portland Oregon where his Son Brandon worked at the same time a bank in Hazel Dell Washington was being robbed many miles away and in another State even. Mr. Coonrod's Son and at least one other employee were witnesses, and Mr. Sowder had even said he was going to subpoena them both to testify, but never did.

Mr. Coonrod had asked for the "Actual Witness List" that was subpoenaed for trial, but that was and has been withheld also from him. And also was not being used as evidence in the review hearing in suport of Sowder's ineffective assistance of counsel claimes by Mr. Coonrod's Motion to Withdraw the Plea.

None of this was being used by Jeff Riback even though he had access to all the case files and court transcripts, and had been give over 2 inches of transcripts alone that Mr. Coonrod went over with him but was playing with his I pad or phone and not listenning to Mr. Coonrod at all.

Jeff Riback refused to do what the Court of Appeals had remanded Mr. Coonrod back to Clark County Superior Court for him to do! That was to

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2 review "Mr. Coonrod's Motion" based on Ineffective
3 Assistance of Counsel and Coercion. Not write a
4 "New Motion" for Mr. Coonrod based on "New Evidence".
5 Again the total collapse of Mr. Coonrod's hip was not
6 New Evidence at all, but collaborating evidence of Sowder's
7 ineffective assistance being it was all in both Doctor's
8 records at that time, that are still being withheld from
9 Mr. Coonrod. This should have been used for Mr.
10 Coonrod's defence then and now being remanded back
11 to Clark County on an appeal he won with an
12 unpublished opinion and ordered to do specific things,
13 but were not done.
14 If there would have been a "reasonable investigation"
15 done in a "timely manor" by Jeff Riback and then
16 used this information as evidence of Mr. Sowder's
17 ineffectiveness, Mr. Coonrod would have been allowed
18 to withdraw his plea base on his Motion and been
19 given his trial. When asked in court about the
20 time he needed for his investigation, he not only
21 cut himself short but then did a half hearted
22 effort to uncover the truth. And then did nothing
23 for Mr. Coonrod to present the evidence in court
24 he did have. He even said twice in court that
25 to present all the evidence Mr. Coonrod had and
26 wanted to present would have taken a whole week,

and that would have been to much time and just wasn't prudent for him to do. (Please review DVD for the exact words he used). Not to use "All" evidence available to him from the case file and evidence in court transcripts given to him by Mr. Coonrod also makes J. Riback not only ineffective assistance of counse also but a part of the Fraudulent Conseatment of evidence in this case and Criminal Culpability.

Mr. Sowder and Mr. Riback made listes, "on paper only," as if they were helping with Mr Coonrod's defence, but if they are not using any of the evidence to defend their client it makes it all "frivolous" and their performance deficient and well below the "Objectional Standard" required by law for Mr. Coonrod to be give a "fair trial."

#5) Voluntaryness of the plea must be in question when reviewing the original DVD of the sentencing hearing, where Judge Harris had to tell Mr. Coonrod 3 times, "not to say anything else but yes or no to his question". Then the fact that Mr. Coonrod was being given 4000 MG of Vicodin, and 75 MG of nortripoline everyday to inhance the narcotic. This was brought up in court several times and is in the original transcripts, should have made Mr. Coonrod under a "dominished Capacity", and as such unable to make a plea "Voluntary". The Prosecutor even refers

to the Voluntaryness of Mr. Coonrod's plea base on when he used the fact that Mr. Coonrod was able to sign his own name. The law states that Mr. Coonrod should have been taken aside and questioned by Judge Harris at the point when Mr. Coonrod had hesitated and wanted to say something but was stopped. Judge Harris did not stop and question Coonrod, but told him to "only say yes or no"! The transcripts do not reflect all that was said in court and should be reviewed.

All of this should have been shown by J. Riback and used in suport of Mr. Coonrod's motion to withdraw the plea that was done before sentencing and should have been allowed to do at that time.

#6) The fact that Mr. Coonrod had filed not one but two WSBA "Grievance Against A Lawyer" and had asked for new counsel to be appointed before going to trial, base on a conflict of intrest, and a breakdown in communication, that made for irreconcilable differences. Any one of whitch are grounds for new counsel to be appointed. But Judge Harris was forcing Mr. Coonrod to go to court and trial with that same lawyer that had a vedetta to pay back against Mr. Coonrod.

Mr. Coonrod by law is afforded counsel free from a conflict of intrest, but Judge Harris ignore the law.

This also could and should be considered Judicial Misconduct and violates Mr. Coonrod's right to a fair trial.

#7) Judicial Misconduct must also be looked at when Mr. Coonrod tried to get the Court through Judge Melnick to put J. Riback back on track by reading in court twice what the remand said by the Court of Appeals for Clark County Superior Court to do, that were numbered. Judge Melnick did not and would not put J. Riback back on track! Then used that same fact that Riback did not do what the Appellate Court had "Ordered on Remand" for him to do as a way to deny Mr. Coonrod to withdraw his plea, and be given his trial. Also not allowing Mr. Coonrod to object or say anything on record in court violates his rights to be heard. As well as denying Mr. Coonrod to see or have any of his own Discovery and Exculpatory Evidence to be used in his own defence and on remand to show J.J. Sowder's ineffective assistance. Again this should be Judicial Misconduct and ineffective assistance of counsel by J. Riback, and seen as "criminal culpability". This makes these whole proceedings "A SHAM" and keeping Mr. Coonrod from being afforded justice, and not only his day in court, but a fair trial.

#8) The fact that Clark County was using the wrong points on "past criminal history", and Mr. Coonrod was told by JJ Sowder that his points from Oregon would be fixed, but then in court Sowder said, "Mr. Coonrod thought his points had washed", and that was an outright lie on his part. Mr. Coonrod even tried to say something at that time but was not allowed to do so.

Mr. Coonrod addressed this issue with Jeff Riback and was told again it would be fixed but still was not even though they admitted they had used the wrong points for sentencing. The court did admit there were only 3 points from Oregon, not 4 as were used for the plea but still used the same 7 points when it should have only been 6 points for sentencing if they were only going to resentence Mr. Coonrod. I believe that is a manifest injustice that should have been corrected in court at that time and would be a 7.8 issue that was not addressed or righted and should have been!

<u>In Conclusion</u> writing a list of things they say they did on paper, but then not using any and all of the evidence that was available to both lawyers, Sowder and Riback, <u>does</u> <u>not</u>

make them effective representation! Infact they fall well below the "Objectional Standard" required by law, and even criminal culpability in their acts of "NOT Defending" Mr. Coonrod.

All of the afore mentioned evidence that should have been shown in suport of Mr. Coonrod's Motion to Withdraw The Plea but was not by J. Riback and would have proven Ineffective Assistance by Sowder. Mr. Coonrod understands they have to work side by side every day with each other and this man (Riback) did not want to be put in this position to have to expose his colleagues wrong doings to Mr. Coonrod.

If the Court of Appeals looks at all the things done wrong, and things not done at all in this case, makes not only J.J. Sowder's performance Ineffective Assistance of Counsel, but Jeff Riback's performance also the same. By Sowder's ineffective assistance of not using witnesses that should have been used and threats of over sentencing and Mr. Coonrod being forced to go to trial with a lawyer working under a conflict of intrest that was not defending him at all Coerced Mr. Coonrod into a plea he never could or should have been

allowed to take, or be made Voluntaraly under the heavy doses of narcotics Mr. Coonrod was being given at the time for his hip that was totally collapsed and surgery being withheld until he took a plea bargain. This caused "Extream Duress" coupled with the threats of life in prison and forced to go to trial with a lawyer with a vindeta against his client Mr. Coonrod could see no other option but to take a plea of no contest, a Newton's plea, that he knew he could appeal, and win, if he was given all the evidence he had asked for to be used in court. These can not be considerd "Minor Errors" in this case and would have most definitely would have prejudiced a jury if he would have been given a trial with no defence by his counsel as Mr. Sowder was doing to Mr. Coonrod.

Then coupled with Judicial Misconduct of both Judges on this case, Harris and Melnick, by withholding Exculplatory Evidence from Mr. Coonrod that he had and has asked for many times in the form of 4.7 Motion(s) for Discovery and violates his right to a fair trial but also his Due Prosses and is Fraudulant Consealment by the State.

Mr. Coonrod had asked for specific records that the state had and has in its possesion that would have shown Mr. Sowder's ineffective assistance, and Jeff Riback's back on remand, and proven factual innocence of Mr. Coonrod. J. Riback was not using any of the evidence Mr. Coonrod had provided for him that should have been presented in court to suport Mr. Coonrod's Motion to Withdraw his plea and was "totally avoided" by Mr. Riback!

The fact that an incomplete set of court transcripts were sent to Mr. Coonrod on his first Direct Appeal, and now on his second Direct Appeal the same has been done to keep Mr. Coonrod from showing what is being done, is a clear indication of the tacktics being used by Clark County Superior Court and their "Veracity" has to be questioned! This is also Fraudulent Consealment of evidence! Then to deny Mr. Coonrod the extention of time so he could be moved to where he would have access to a law library violates his right to access the Courts and fight his case on appeal.

The fact that J.J. Sawder never wrote a "Motion to Show Cause" for Mr. Coonrod when he knew there were "no Pictures" of him in the bank the day of arrest 1-23-07 for there to have even been "probable cause" for an arrest to be made "legally", because of a lack of "Elements to a Crime" on the day of arrest.

Not using, or even investigating, or botching the investigation that was done of Mr. Coonrod's "Alibi Defence", or not writing the Motion to notify of an Alibi Defence is ineffective representation, at best! Not using expert witnesses records or testimony; Not using witnesses from the banks that saw the person to defend Mr Coonrod and would have proven it could NOT have been him is not only ineffective assistance but "Criminal Culpability".

Because of all that has went on and been done to Mr. Coonrod in this case the Court of Appeals should take this opportunity to right this injustice that has been done here and "Vacate" all charges and conviction by Newton's plea in the intrest of justice. Mr. Coonrod's right to due process being violated after this long and his right afforded him to a fair trial violated by withholding evidence. If not a total vacation of conviction and charges

at least remand this case back to Clark County Superior Court with an Order for All the evidence Mr. Coonrod has asked for to be given him and a new lawyer that must use said evidence for Mr. Coonrod's defence and forcing them to adhere to the order, and defend him in trial!!

I declare under penalty of perjury of the laws of the State of Washington that all of the above is true and correct to the best of my knowledge.

Done this 24th day of January, 2013 at Washington State Penitentiary's MSU outside

Mary W. Coonrod

Marx Wayne Coonrod, DOC#839750
Washington State Penitentiary
[redacted] 1313 N. 13th Ave.
Walla Walla, Wa. 99362

ATTACHMENT

ATTACHMENT-APPENDIX

P.#1, A) Discovery and Access to Evidence

I. Government's Constitutional Disclosure Duties

P.#2, II. Government's Statutory Disclosure Duties.

III. Rule 16: Discovery and Inspection

P.#3, B) Ineffective Assistance of Counsel.

P.#4

P.#5, C) Conflict of Intrest.

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I. Right of Access to Courts

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P#10, I. Under Rule 11(b)(1)

P#11, Rule 11(b)(1) - Voluntaryness of a plea

P#12, G) Withdrawal of Pleas.

P#13, H) Probable Cause

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P#15, I) Warrantless Arrests.

A) Discovery and Access to Evidence

1. Government's Constitutional Disclosure Duties. The Fifth and Fourteenth Amendments require the government to disclose specific types of evidence to defendants. For example, in Brady v. Maryland, the Supreme Court held that due process requires the prosecution to disclose upon request evidence favorable to an accused when such evidence is material to guilt or punishment. A Brady violation occurs when: (1) evidence is favorable to accused because it is exculpatory or impeaching; (2) evidence was suppressed by the State, either willfully or inadvertently; and (3) prejudice ensued. In United States v. Bagley, the Court held that the government's duty under Brady arises regardles of whether the defendant specifically requests material or favorable evidence. Favorable evidence is "material" if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding. A "reasonable probability" under Bagley is a probability sufficient to undermine confidence in the outcome. When assessing evidence's materiality, the court must take into account the cumulative effect of the suppressed evidence in light of other evidence, not merely the probative value of the suppressed evidence standing alone. (4) Evidence

of which the prosecutor could not reasonably be thought to have imputed knowledge or control. Nevertheless, the prosecutor has an affirmative duty to learn of and disclose any exculpatory or impeachment evidence known to other government agents, including any agents or officers involved in the investigation.

The government's constitutional duty to disclose continues throughout the proceedings. However, tardy disclosure of Brady material does not itself constitute a reasonable probability that the delay changed the outcome of the case.

II. Government's Statutory Disclosure Duties. In addition to its constitutional duty to disclose information favorable to the accused, the federal government is required by Rule 12.1, 16, and 26.2 of the Federal Rules of Criminal Procedures to disclose other information upon the defendant's request.

III. Rule 16: Discovery and Inspection. Rule 16 allows the defendant to conduct pretrial discovery for five types of information: (1) the defendant's own oral, written, and recorded statements; (2) the defendant's prior criminal record; (3) certain documents and objects; (4) certain examination and test reports; and (5) the content and bases of expert testimony upon which the government intends to rely.

The defendant's request for discovery must be both timely and specific. Once the defendant's discovery request is granted, the government has a continuing duty to disclose any newly discovered information that satisfies the request. Upon motion by the

government, the district court may deny, restrict, or defer a particular discovery request. If it is unclear whether a particular document is discoverable the trial court should conduct an in camera review. A trial court's decision to grant or deny a discovery request is not reversable on appeal absent a clear showing that the court abused its discretion.

The district court has broad discretion to sanction the government for failure to comply with discovery requests, but the court should impose the least severe sanction that will accomplish prompt and full compliance with its discovery order. In determining an appropriate sanction, the court should consider: (1) the reason for the government's failure to disclose, including any bad faith on the part of the government; (2) the extent to which the defendant is prejudiced by the failure to disclose; and (3) the feasibility of curing any prejudice by granting a continuance.

B). Ineffective Assistance of Counsel. The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. To obtain reversal of a conviction, the defendant must prove that (1) counsel's performance "fell below an objective standard of reasonableness," and (2) counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. A defendant's failure to satisfy one prong of the test negates a court's need to consider the other. In

deciding whether counsel's performance was ineffective, a court must consider the totality of the circumstances.

Under the performance prong, there is a "strong presumption" that counsel's strategy and tactics fall "within the wide range of reasonable professional assistance." Courts typically refuse to characterize counsel's performance as ineffective assistance when counsel acted according to the defendant's restrictions on strategy, the defendant failed to provide counsel with complete and accurate information, or counsel refused to "assist the client in presenting false evidence or otherwise violating the law."

In interpreting the prejudice prong, the Supreme Court has identified a narrow category of cases in which prejudice is presumed: when there has been an "[a]ctual or constructive denial of the assistance of counsel altogether"; when counsel is burdened by an actual conflict of intrest; or when there are "various kinds of state interferance with counsel's assistance." In these situations, prejudice is so likely to occur that a case-by-case inquiry is unnecessary.

If prejudice is not presumed, the defendant must show that counsel's errors were prejudicial and deprived the defendant of a "fair trial, a trial whose result is reliable." This burden generally is met by showing a reasonable probability that the outcome of the proceedings would have been different but for counsel's errors. However, due to concerns about fundamental

fairness, the court also may examine whether counsel's ineffective assistance "deprived[d] the defendant of a substantive or procedural right to which the law entitles him. In the context of a guilty plea, a defendant can satisfy the prejudice prong by demonstrating that, but for counsel's deficient performance, a reasonable probability exists that the defendant would not have pleaded guilty and instead insisted on a trial. If an ineffective assistance of counsel claim is based on counsel's failure to advise the defendant to plead guilty, the defendant must show harm from having gone to trial in order to satisfy the prejudice prong.

C) Conflict of Intrest. Ineffective assistance of counsel may result from an attorney's conflict of intrest. In Cuyler V. Sullivan, the Supreme Court ruled that a defendant can demonstrate a Sixth Amendment violation by showing that (1) counsel was actively representing conflicting intrests and (2) the conflict had an adverse effect on specific aspects of counsel's performance. When the defendant alleges that a guilty plea resulted from counsel's conflict of intrest, the defendant must show that, but for the effect of the conflict on counsel's advise, a reasonable probability existed that he or she would have insisted on a trial.

A trial court has a limited duty to avoid potential conflicts of intrest. The court must initiate an inquiry if it knows or reasonably should know that a potential conflict exists. However,

in the absence of a timely objection by defense counsel, a trial court's failure to inquire into a potential conflict that it knew or reasonably should have known existed does not merit an automatic reversal of a defendant's conviction; the defendant must still satisfy the two-prong Cuyler test. Likewise, when the trial court has no notice of a potential conflict of intrest, and the claim is raised for the first time on appeal or in a habeas corpus proceeding, the defendant still must satisfy the Cuyler test.

D.) Substantive Rights Retained By Prisoners

I. Right of Access to Courts. The Constitution guarantees prisoners the right of meaningful access to the courts. This right of access imposes an affirmative duty on prison officials to help inmates prepare and file legal papers either by establishing an adequate law library or by providing adequate assistance from persons trained in the law, but prison officials are not required to provide both as long as access to either is "meaningful". In the absence of a legitimate administrative concern however, a prisoner may not be hindered in seeking access to the judicial process. Prisoners must demonstrate actual injury resulting from a denial of access to the courts to support a claim alleging a constitutional violation. The right of access to courts provides no independent right for an inmate to assist fellow inmates with legal matters.

II. Preservation of Right for Review. For all but a few issues,

an appellate court will review an issue only if the appellant preserved the claim by making a specific, timely objection at or before trial or sentencing (the "contemporaneous objection" rule). The exceptions to the contemporaneous objection rule are: "plain error" by the trial court; lack of subject matter jurisdiction; and objections that could not have been made at trial because the law was changed during the appeals process. The circuit courts are split on whether the issue of unconstitutional vagueness of the law can be raised for the first time on appeal. The contemporaneous objection rule applies to claims of improper admission or exclusion of evidence, prosecutorial misconduct, judicial misconduct, sentencing errors, erroneous jury instructions, and juror bias; certain circuit courts have addressed claims of other trial errors. Claims of ineffective assistance of counsel must be preserved by an objection at trial unless special circumstances exist. In a trial with multiple defendants, the circuits are split as to whether an objection is only effective for the defendant on whose behalf it is raised. The contemporaneous objection requirement applies to both the government and the defendant. Failure to comply with a state's contemporaneous objection rule may preclude federal habeas review.

Certain objections and defenses are not timely unless made by pretrial motion. These include objections and defenses based on defects in the institution of the prosecution, defects

in the indictment, outrageous government conduct, motions to suppress evidence, requests for discovery, and requests for severance. A party must also make a timely, though not necessarily contemporaneous objection to the selection of a magistrate or to the contents of the magistrate's report. Although many guilty pleas include express waivers of some or all of the defendant's right to appeal, Rule 11(a)(2) of the Federal Rules of Criminal Procedure permits a defendant to enter a conditional guilty plea, reserving in writing the right to appeal specified pretrial motions, and withdraw the plea if the appeal is successful.

In addition to raising specific objections at the proper time, a defendant generally must continue to assert the objections throughout the trial. A motion in limine generally does not preserve a claim for appellate review. A court may, however, permit review when an objection at trial would have been futile or baseless under then-existing law, or when the defendant was ignorant of the fact supporting the claim raised on appeal.

E) Plain Error. A reviewing court may grant relief for "plain error" even if the error was not raised and preserved at trial or sentencing. Plain error is error that is "clear" or "obvious" and affects the defendant's "substantial rights." To determine if a ruling affects the substantial rights of a defendant, a court must analyze the alleged error in the

context of the entire record. The defendant bears the burden of persuasion for most issues under plain error review. Even if the reviewing court finds a plain error that affects the defendant's substantial rights, a court may exercise its discretion to grant the defendant relief only if the error "seriously affects the fairness, integrity or public reputation of judicial proceedings."

Courts are more likely to find plain error where the error affected the defendant's constitutional rights. Courts frequently find plain error accurred through incorrect jury instructions, improper admission of evidence, errors in sentencing, or prosecutorial misconduct; some circuits have allowed plain error claims on other bases as well.

F.) Guilty Pleas. If a defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the prosecutor has the discretion to agree that (1) the government will "not bring, or will move to dismiss, other charges"; (2) "a specific sentence or sentencing range is the appropriate disposition of the case"; or (3) the government will "recommend, or agree not to oppose the defendant's request that a particular sentence or sentencing range is appropriate." The terms of a plea agreement must be disclosed to the judge in open court when the plea is offered unless the court - upon a showing of good cause - "allows the parties to disclose the plea agreement in camera." The court is prohibited from participating

in plea agreement discussions. If under the agreement the prosecutor promises not to bring or to dismiss certain charges, or agrees that a specific sentence is the appropriate disposition of the case, the court has discretion to accept or reject the agreement or to defer its decision until it has reviewed the presentence report. Regarding agreements in which the government promises to recommend that a particular sentence or sentencing range is appropriate, "The court must advise the defendant that [he or she] has no right to withdraw the plea if the court does not follow the recommendation."

If the court rejects a plea agreement, it must: (1) "inform the parties that the court rejects the plea agreement"; (2) "advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea"; and (3) "advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case [in a manner that is less favorable to] the defendant than the plea agreement contemplated."

I. Under Rule 11(b)(1), before accepting a plea of guilty or nolo contendere, a judge must address the defendant personally in open court to inform the defendant of, and determine that the defendant understands, the following: (1) "the right to plead not guilty"; (2) "The right to a jury trial"; (3) "The right to be represented by counsel"; (4) "the nature of the charge to which the defendant is pleading"; (5) "any mandatory minimum penalty"; (6) "any maximum

possible penalty"; (7) "the defendant's waiver of [certain trial or appeal] rights if the court accepts [the defendant's plea]; and (8) "The government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that [he or she] gives under oath."

The court must advise the defendant of the likely consequences of pleading guilty, but it is not required to inform him or her of all possible collateral consequences. Before accepting the defendant's plea, the court must ensure that the plea is "voluntary and did not result from force, threats, or promises (other than [those included in the] plea agreement)." Finally, before accepting the defendant's plea, "the court must determine that there is a factual basis for the plea." For the plea to be valid, an adequate factual basis needs to be established only for the elements of the substantive criminal offense. If the defendant enters a guilty plea while continuing to assert his or her innocence, then the plea is only constitutionally acceptable if there is strong evidence of guilt. If there is a plea of guilty or nolo contendere, the court reporter must keep a verbatim record of the plea proceedings that take place in court, including the court's advice to the defendant, the voluntariness inquiry, the factual basis inquiry, and the details of the plea agreement. Technical violations of Rule 11 that do not affect substantial rights constitute harmless error and will not provide a basis for relief.

The Constitution requires that a defendant's plea be

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2 made Knowingly and intelligently, as well as Voluntarily. A
3 defendant must be cometent in order to enter a guilty
4 plea. A guilty plea may be set aside as involuntary if
5 the defendant can establish prejudice resulting from
6 prosecutorial misconduct. Ineffective assistance of
7 counsel may also prevent a defendant from entering a
8 Knowing and valuntary plea. To demonstrate ineffective
9 assistance of counsel, a defendant must show that: (1)
10 counsel's assistance was not "within the range of competence
11 demanded of attorneys in criminal cases"; and a reasonable
12 probability exists that he or she would not have
13 pleaded guilty had counsel been competent.
14 G) Withdrawal of Pleas. A defendant may withdraw a plea
15 of guilty or nolo contendere "for any reason or no reason"
16 before the court accepts the plea. A defendant may withdraw
17 a plea of guilty or nolo contendere after the court accepts
18 the plea but before the court imposes a sentence only if: (1)
19 the court rejects a plea agreement under Rule 11(c)(5); or
20 (2) the defendant provides "a fair and just reason" for
21 requesting the withdrawal. In determining whether "a fair and
22 just reason" exists, courts consider several factors, including:
23 (1) whether there has been an assertion of legal innocence;
24 (2) the amount of time between the plea and the motion to
25 withdraw; and (3) whether the government would be prejudiced
26 by withdrawing of the plea. If the motion to withdraw is granted,

the defendant must live with the consequences of the request. The denial of a motion to withdraw a plea, whether presentence or post-sentence, is reviewed under an abuse of discretion standard. Rule 11 states that "[a]fter the court imposes a sentence, the defendant may not withdraw a plea of guilty or nolo Contendere, and the plea may be set aside on direct appeal or collateral attack." Courts will set aside a plea of guilty on collateral attack only if doing so is necessary to correct a miscarriage of justice.

H) Probable Cause. Probable cause is required to justify most governmental intrusions upon interests protected by the Fourth Amendment. The Supreme Court defines probable cause to search as "a fair probability that contraband or evidence of a crime will be found in a particular place." Probable cause to obtain an arrest warrant or to conduct a warrantless arrest exists when police have, at the moment of arrest, knowledge of facts and circumstances grounded in reasonably trustworthy information and sufficient in itself to warrant a belief by a prudent person that an offense has been or is being committed by the suspect. The Supreme Court has called probable cause "a practical, nontechnical conception" based on "common-sense conclusions about human behavior." It "is a fluid concept-turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat set of legal rules," and its existence must

be determined by an analysis of the totality of the circumstances surrounding the intrusion.

The probable cause determination is twofold, and each step warrants a different level of appellate review. First, judges must determine the "historical facts," the events that occurred leading up to the stop or search. Second, judges must decide "whether these historical facts, viewed from the standpoint of an objectively reasonable police officer," amount to probable cause. Appellate courts must review findings of historical fact only for clear error and must "give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." By contrast, the ultimate determination of whether probable cause for a warrantless search or seizure existed should be reviewed de novo on appeal.

Facts supporting probable cause may come from several sources. First, the personal observations of officers may establish probable cause. Police may use their experience, special training, and expertise to draw limited inferences of criminal activity from behavior that is not factually criminal. Second, probable cause may be based upon information from reliable, known informants or information from an independent source that can be independently corroborated. Third, weapons or other evidence seized during stops based upon reasonable suspicion may provide probable cause, as may evidence discovered in plain view

or during consensual searches and interviews.

I) Warrantless Arrests. In certain circumstances, a law enforcement officer may lawfully arrest a person without an arrest warrant. An officer may conduct a warrantless arrest if (1) the arrestee has committed an offense in the officer's presence, (2) the officer has probable cause to believe the arrestee has committed a felony and the arrest occurs in a public place, or (3) the officer has probable cause for an arrest and the circumstances are "exigent." After making a warrantless arrest, an officer must promptly secure a judicial determination of probable cause. The probable cause required to make a lawful warrantless arrest is identical to the probable cause required to secure an arrest warrant.

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

FILED
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DIVISION II
2013 JAN 31 PM 1:27
STATE OF WASHINGTON
BY _____
DEPUTY

State of Washington, Respondent,	Superior Court Cause No. [illegible]
V.	Court of Appeals No. [illegible]
Marx W. Coonrad Appelant.	Declaration of Service of Mailing

I Marx W. Coonrad, the defendant, in the above entiteled cause, do hereby declare that I have served the following documents: Statement of Additional Grounds (RAP 10.10(e))

Party Served: Clerk of the Court of Appeals Division II
950 Broadway, Ste. 300
Tacoma, Wa. 98402-4454

That I deposited in with the Unit Officer's Station, by processing as legal mail, with First Class Postage at:
Washington State Penitentiary, MSU outside
1313 N. 13th Ave.
Walla Walla, Wa. 99362

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

Marx W. Coonrad Dated 1-24-13.