

supposed alibi witnesses contradicts Parks testimony at trial. ... [where] Parks stated that 'T, his girlfriend, Jeremiah and ... another guy named Chris' remained at T's house when he left the night of the rape."??? Id. This response is irrational and nonsensical to say the least, there's nothing about the "existence" of these witnesses that contradicts Petitioner's trial testimony. Mr. Bay and Mr. Hettrick are the witnesses that left T's house with Petitioner, not the ones that stayed behind, so Petitioner is hard pressed for the State to explain, where's the "contradiction"??!

The State also suggests that Petitioner's trial counsel did "not know about" these witnesses, or that their testimony would be "false" and therefore could not have put them on, and that the "circumstances surrounding this claim suggest it is ... fabricated". State's Resp. at 9.

Again, not only is this response hysterical and nonsensical, it also amounts to unsupported conclusory allegations which are unprofessional and unworthy of the State. Id. The State has not presented any evidence from Petitioner's trial counsel that she did not know and/or was not informed by Petitioner about these witnesses, and there was no way for Petitioner's trial counsel to make a determination that testimonies offered in their declarations were "false" without ever having interviewed any of these witnesses, and just because the State says it is a "fabricated claim", does not mean that is so. Id.

In fact, the State's response to these witnesses and their offered testimonies is insulting and demeaning to these witnesses personally, and Petitioner asserts that no witness is going to personally risk themselves being charged with perjury in order to make up a claim on Petitioner's behalf

and be willing to come to court and testify under oath about it, and/or sign notarized declarations on behalf of Petitioner in their own original signatures with the threat of actual jail time for themselves for not telling the truth. The State's response in this regard is shameful and immature. Id. (Note: Moreover, it also appears that the State is confusing itself with 2 guys with similar names that were at T's house the night of the alleged rape, whereas Kris left with Petitioner and the other Chris stayed behind, and in any event, again, there is nothing "contradictory" about Petitioner's testimony when comparing it to the notarized statements.) Id.

The State also ridiculously claims that Petitioner "failed to support his claim with any credible evidence on appeal", "fail[ed] to testify at trial that he had been with other people during the time period the rape took place", and "fail[ed] to present these affidavits on direct appeal". State's Resp. at 9.

First of all, the State knows very well that Petitioner could not present evidence outside the record on direct appeal, especially affidavits, and, that Petitioner could not simply blurt out at trial that he was with others the night of the alleged rape, whereas his counsel and/or the State counsel would have had to pose that question to Petitioner while he was on the stand, which Petitioner now additionally asserts that his counsel studiously avoided doing so, inter alia. Id.

The State also goes on to assert that Petitioner "failed to obtain an affidavit from his defense counsel that supports his allegation" and because his "attorney is an officer of the court" she "would admit if she did not investigate possible know alibi witnesses". State's Resp. at 10.

Again, the State knows that if Petitioner could have gotten an affidavit from his defense counsel to fess-up to her own ineffectiveness, there would be no need for Petitioner to have requested an evidentiary and/or reference hearing from this court which is for that very purpose. In re Rice, 118 Wn.2d 876, 828 P.2d 1086 (1992).

Furthermore, immediately after Petitioner's trial, Petitioner filed a complaint with his counsel's supervisor about her conduct which also came to no avail, so, it is unrealistic for the State to assert that Petitioner could have compelled his counsel to give him an affidavit of any kind, or offer any kind of cooperation with Petitioner for that matter. Additionally, the State also knows that there are many trial counsels that are "officers of the court" that never admit their own failings at trial, but still have been found ineffective by many courts, and Petitioner asserts that his trial counsel is one of those such counsels.

And finally, the State's additional assertions that "any decision" by Petitioner's trial counsel "to put forth these alibi witnesses would have created a problem with [Petitioner's] contradictory testimony, and [c]ould have likely caused the jury to believe he was fabricating a defense because he was in fact guilty" and would have been "a reasonable tactical decision" by Petitioner's counsel "not to put forth testimony that was not credible or reliable", borders on complete absurdity because, inter alia, not only had Petitioner's counsel failed to interview these witnesses in order to attempt to constitutionally justify making such a "decision", but also Petitioner's methodical, rational, reasonable, and concise arguments, recitation of the facts, and relevant authorities surrounding this claim are far more deserving

of this court's serious consideration when objectively compared to this State's irrational response. Avila v. Galaza, 297 F.3d 911, 918-20 (9th Cir. 2002)("[T]he fact that a witness might not appear credible at trial is not a reasonable basis for failing 'to identify or attempt to interview' him.").

Consequently, the State's claim that Petitioner was not denied the effective assistance of counsel as it pertains to this instant claim is itself without any merit.

With respect to Petitioner's claim that his counsel was also ineffective for failing to, inter alia, question recanting alleged molestation victim Tim Delisle about whether Christopher Allan Thomas participated in the burglary of Petitioner's home and specifically pointing out to Petitioner's jury that Mr. Delisle had recanted his allegation against Petitioner, the State essentially responds that these failures were excused by Petitioner's counsel's decision to pursue a different strategy and/or tactic at trial and/or because to do so as Petitioner asserts "was not a winning argument" because Petitioner allegedly never named Mr. Thomas as one of the burglars of his home, Mr. Thomas's mother was the one that actually reported the alleged sexual assault against her son by Petitioner, and/or her report to police occurred approximately 8 months after the burglary took place. State's Resp. at 10-11.

Additionally, the State asserts that there was "very little likelihood that [Mr. Delisle] would have waived his 5th Amendment Right against self-incrimination and testified as to his own involvement in the burglary, let alone his ability to have direct knowledge of C.T.'s possible involvement." State's Resp. 11-12.

As a preliminary matter it should be noted that the State has apparently

conceded to Petitioner's assertion that his counsel was ineffective for failing to point out to Petitioner's jury that Mr. Delisle had in fact recanted his allegation against Petitioner by the State's muted response to that specific assertion. Id.

And as to the State's other assertions, the State apparently ignores the fact that Petitioner in his petition and/or his sworn declaration insisted that he did, a day or two after the burglary of his home, report Mr. Thomas as one the burglars of his home, but, the State and Petitioner's counsel conveniently and deftly colluded to keep the one witness off the stand that could have conclusively corroborated and/or refuted that particular assertion by Petitioner, Officer Deanna Watkins. Id. Again, that is what evidentiary and/or reference hearings are for, to call a witness such as Officer Watkins to find out what she was really ready to reveal and/or testify to. Rice, supra.

Secondly, the fact that Mr. Thomas's mother was the one to report the alleged sexual assault some 8 months after the burglary of Petitioner's home avails the State's arguments nothing, because, it is clear that had Mr. Thomas himself actually reported the allegation personally against Petitioner at any time, given his history with crimes and drugs long before he met Petitioner, he would not have been taken as seriously and/or sympathetically like his mother. To the contrary, it was quite manipulative of Mr. Thomas to employ his brother's girlfriend, Mariah Flannery, the mother of his niece or nephew, whom eagerly wanted to stay in good graces with his brother and/or the family as a whole, to either conspire with Mr. Thomas to get his mother riled up enough to make the allegation for him at the time as pretext to try to secure

his release from confinement in a conveniently and timely way to attempt to take advantage of Petitioner reporting him as one of the burglars of his home (in other words, it took almost 8 months for Mr. Thomas to find himself in a predicament where he could not get out of confinement unless he orchestrated this timely allegation as a last resort or attempt), and/or assuming that his mother wasn't also involved in the conspiracy because of the family's knowledge of Clark County's Law Enforcement Community overall animus toward African American men in general.

And with respect to the State's assertion that Mr. Delisle would have invoked the 5th had he been questioned about Mr. Thomas's participation in the burglary of Petitioner's home, in addition to reminding the State that Petitioner has already asserted that had Petitioner's trial counsel informed Mr. Delisle of the fact that Mr. Thomas had reported to police and testified that Mr. Delisle was one of the burglars of Petitioner's home, that knowledge may have prompted Mr. Delisle to tell the truth about whether Mr. Thomas had actually done the same, and, Mr. Delisle could have testified to Mr. Thomas's participation in the burglary without ever having to waive his 5th Amendment Right against incriminating himself. Furthermore, if Petitioner's trial counsel was so concerned with safeguarding Mr. Delisle's 5th Amendment Right to the detriment of Petitioner, she could have requested on the record that the State grant immunity to Mr. Delisle for the burglary of Petitioner's home in the search for the truth and the interest of justice. Id.

Consequently, the prejudice is obvious, and the State's assertions also as to this claim are completely without merit.

As to Petitioner's claim that his counsel was ineffective for stipulating

to Officer Watkins testimony rather than having her personally appear and testify about the facts and circumstances surrounding her investigation of the burglary of Petitioner's home, the State asserts, inter alia, that her stipulated testimony was "helpful" to Petitioner because it allowed Petitioner to proceed to trial in a "timely fashion", that Petitioner "did not testify" at trial to having informed Officer Watkins about Mr. Thomas's burglary of Petitioner's home, and that because Petitioner allegedly testified at trial that he never had any further contact with law enforcement about the burglary after his initial report, Petitioner's "current statement" about Mr. Thomas's participation in the burglary "contradicts" that testimony and therefore must be "fabricated". State's Resp. at 12-13.

In reply, Petitioner asserts that the stipulation of Officer Watkins testimony did way more harm to Petitioner than acknowledged by the State because, inter alia, she should have been available to corroborate and/or refute Petitioner's claim that he informed her about Mr. Thomas's participation in the burglary of his home, the "central dispute" between Petitioner and Mr. Thomas that only Officer Watkins at that time could have answered, and, the facts and/or circumstances surrounding her investigation of the burglary of Petitioner's home, again, the "central dispute" between Petitioner and Mr. Thomas that at that time only could have been resolved by Officer Watkins actual testimony, whereas Petitioner's counsel's apparent and complete reliance on the State's file regarding Officer Watkins anticipated testimony was completely inappropriate because of the manifest conflicts of interest. Richter v. Hickman, 576 F.3d 944 (9th Cir. 2009)(ineffective assistance of counsel where counsel failed to secure witness testimony

surrounding the "central dispute" between the alleged victim and defendant); Thomas v. Lockhart, 738 F.2d 304, 308 (9th Cir. 1984)(counsel ineffective for relying exclusively on the prosecution's file for witness testimony to support defense).

And again, as far as Petitioner failing to testify at trial of having informed Officer Watkins about Mr. Thomas's burglary of Petitioner's home, Petitioner cannot simply blurt out that information at trial, and/or compel his counsel to ask him questions designed to elicit that response, in fact, Petitioner's counsel was very clever in actually avoiding doing anything that would actually benefit Petitioner and/or his defense, while pretending to give effective assistance of counsel.

Moreover, the State's assertion that Petitioner's "current statement" about informing Officer Watkins of Mr. Thomas's participation in the burglary of Petitioner's home "contradicts" Petitioner's testimony regarding Petitioner not having any more contact with law enforcement after his "initial report" about the burglary, is misleading and confusing, again, because Petitioner could not compel his counsel to ask questions to elicit more detailed responses from Petitioner, and the State fails to mention that Petitioner also did not testify to Mr. Delisle and/or Mr. Thomas's brother burglarizing his home either resulting in no actual "contradiction", so the State's argument is a "red herring". VRP 109.

Consequently again, the State's arguments as to this claim are also without merit.

As to Petitioner's claim that his counsel was also ineffective for failing to, inter alia, object to Officer Sandra Aldridge's testimony that Mr.

be without merit, however, Petitioner would like to take this opportunity to let this court know, that Petitioner sympathizes with Mr. Thomas's mother and family for having to deal with Mr. Thomas, however again, it should be apparent to this court that the State and/or Mr. Thomas's family are in extreme "denial" about the manifest "incurability" of Mr. Thomas's nature, which the State continues to try to blame Petitioner for, despite the fact that Mr. Thomas, with full knowledge of his mother and family, has been this way long before he met Petitioner. See VRP 158-159 (After Petitioner's conviction the State informs the trial court that Mr. Thomas had again, ran away from a drug treatment facility and had been found stabbed, bleeding, and super high with no memory.); See also VRP 61, 68, 88-89 (Part of Mr. Thomas's history with being in and out of treatment programs long before he ever met Petitioner.).

And finally, with respect to Petitioner's cumulative ineffective assistance of counsel claim, the State asserts that Petitioner's counsel was "effective" because she, inter alia, "obtained the dismissal of two felony counts prior to opening statements". State's Resp. at 16-17.

However, what the State fails to mention is that these two felony counts against Petitioner would have been dismissed against Petitioner anyway without his counsel's assistance because the complaining witness, Mr. Delisle, had recanted his allegation, and therefore the State would have been compelled to drop those charges or counts on their own. Id.

More importantly though, this court should take explicit notice of a most disturbing pattern that has emerged in Petitioner's instant case, which is, the State using one ridiculously lame pretext and/or excuse after the other,

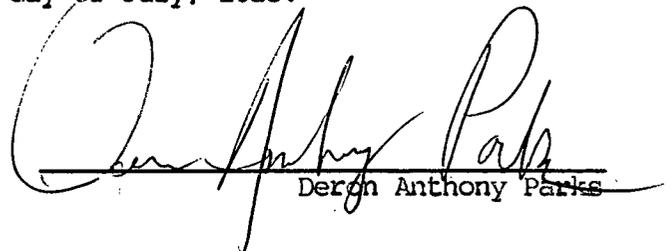
under the guises of trial strategy or tactics, to attempt to justify why Petitioner's trial counsel repeatedly failed to utilize "any other" available, favorable and/or material testimony and/or evidence from either Mr. Delisle, Officer Watkins, James Lee Hettrick, Kristofer James Bay, and/or Richard Rolph on behalf of Petitioner's defense, instead of, choosing to rely "exclusively" on Petitioner's "sole" testimony??? And, to compound those errors, she also fails to make a proper objection to impermissible opinion testimony coming in against Petitioner!

It is under the above circumstances that this court should evaluate whether Petitioner's counsel's "cumulative" actions in this regard were truly "reasonable"?!?. Jones .v Wood, 114 F.3d 1002, 1011 (9th Cir. 1997)(trial tactics and/or strategy has to be "reasonable" in order to excuse ineffective assistance of counsel); Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1435-37 (9th Cir. 1995)(cumulative errors of counsel caused Mr. Harris to receive ineffective assistance of counsel).

Essentially, what the State has been arguing is that Petitioner was not entitled to "any other" evidence and/or testimony to support his defense, other than his "sole" testimony!?!.

For all the foregoing reasons, and those articulated in Petitioner's instant petition, this court should find that Petitioner received ineffective assistance of counsel on "all" the grounds in his instant petition.

Respectfully submitted this 2 day of July, 2013.

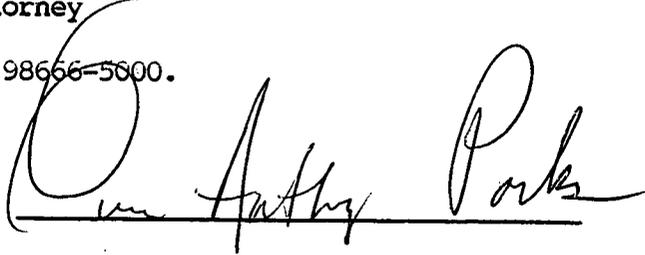

Deron Anthony Parks

Declaration of Service

The undersigned declares under penalty of perjury and the laws of State of Washington that on this day he did deliver in the internal mail system for U.S. Mail at CRCC a true and correct copy of "Petitioner's Reply To The State's Response" to Respondent with this Declaration attached, addressed to:

Anthony F. Golick
Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666-5000.

July 2, 2013.



Anthony F. Golick