

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY [Signature]  
DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 Marvian C. Martin, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

No. 47887-1-II

STATEMENT OF ADDITIONAL  
GROUNDS.

The following are the additional grounds that I would like to have heard with my Direct Appeal. The issues being presented are not the same as what my appellate attorney is presenting.

PURSUANT TO THE HOLDINGS OF MIRANDA V. ARIZONA 384 U.S. 436, 86, S.CT. 1602, 16 L.ED.2D 694, 10 A.L.R.3D 974 (1966), PRIOR TO ANY CUSTODIAL INTERROGATION, THE APPELLANT MUST BE READ HIS RIGHTS SO HE DOES NOT UNKNOWINGLY SELF INCRIMINATE. THE STATE ERRED AND ABUSED ITS DISCRETION WHEN IT INTERROGATED THE APPELLANT WITHOUT READING HIM HIS RIGHTS IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL RIGHTS AFFORDED HIM.

The state violated the appellants Fifth and Fourteenth Amendment Rights to self incrimination by not reading him his Miranda Rights as required by law prior to interrogation.

In the instant brief, the appellant was stopped by the police without cause, and when he to the officer that he had no reason to stop him, he walked back toward his car. The officer went in front of him and threatened to pepper spray

him. Upon his compliance, the officer began to interrogate him, but did not read him his Miranda rights, nor did he ask him does he want to talk, without a attorney present?

By violating his right against self incrimination, any statement that he may have made would need to be suppressed for "Fruit of the poisonous tree". See Wong Sun v. U.S.

PURSUANT TO THE HOLDINGS OF STRICKLAND V. WASHINGTON 466 U.S. 668, 685, 104 S.CT. 2052, 80 L.ED.2D 674 (1984), THE UNITED STATES SUPREME COURT HELD THAT "THE PROPER STANDARD FOR AN ATTORNEYS PERFORMANCE IS THAT OF REASONABLY EFFECTIVE ASSISTANCE. THE STATE ERRED AND ABUSED ITS DISCRETION WHEN IT REFUSED TO GIVE THE APPELLANT ANOTHER ATTORNEY WHEN THE ATTORNEY STATED SHE WOULD NOT REPRESENT HIM, IN VIOLATION OF STATE AND FEDERAL CONSTITUTIOANL RIGHTS AFFORDED HIM.

The court violated the appellants Sixth and Fourteenth Amendment rights to the Constitution when his counsel fell below the standard of what is required.

To sustain a claim of ineffective assistance of counsel, the defendant must show 1) that counsel's performance was deficient, and 2) that the dificient performance prejudiced the defense. Id. See also State v. Thomas, 109 Wn.2d 222 743 P.2d 816 (1987).

The Sixth Amendment provides: "in all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense." "[C]ompliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty." Johnson v. Zerbst, 304 U.S. 458, 467, 58 S.Ct. 1019, 82 L.Ed.1461 (1938). the right applies with equal force in state courts. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

In the instant brief, the defendants attorney said in

open court, "I will not represent him in trial, in which the Judge stated, he didn't see a problem. When the State rested its case, the attorney did put up a defense, and this was not a trial tactic.

#### 1. Egregious Errors by Counsel Mandate Reversal

Some errors by counsel are so egregious, however, that the Strickland standard is replaced by a second standard. Under this second standard, the appellant need not demonstrate that the error affected the reliability of the trial's outcome. *United States v. Cronin* 466 U.S. 648, 658-59, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). Instead, a per se presumption of prejudice arises. The presumption applies when the error involves actual or constructive denial of counsel during critical stages of proceedings or where counsel fails to subject the government's case to adversarial testing. *Cronin* 466 U.S. at 659; *Strickland*, 466 U.S. at 702; *Toomey v. Bunnell*, 898 F.2d 741, 744 n.2 (9th Cir. 1990). A lawyer fails to subject the government's case to adversarial testing when, for example, he or she "adopts and acts upon the belief that his/her client should be convicted. *Osborne v. Shillinger*, 861 F.2d 612, 625 (10th Cir. 1988). This is what happened in this case. The lawyer felt his client should be convicted so her assistance fell far below the standard to which the appellant filed with the WSBA on her. A lawyer who adopts such a belief fail[s] to function in any meaningful sense as the state's adversary. *Id.* (quoting *Cronin* at 666); See e.g. *Swanson* 943 F.2d at 1074; *Tucker v. Day*, 969 F.2d 155, 159 (5th Cir. 1992).

#### Conclusion

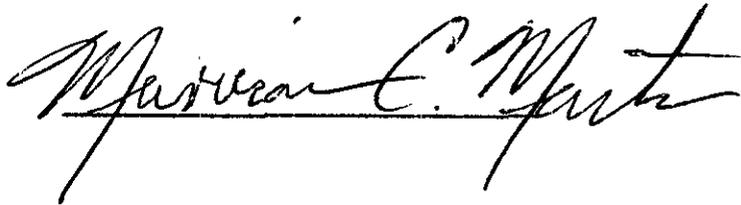
In the first ground, being that the defendant was not read his Miranda rights as required by law, that charges against

him should be dismissed, and the conviction reversed.

As to the second ground, being that counsel was egregiously ineffective, the appellant should be remanded back to the Superior Court for a New Trial.

DATED this 5 day of JANUARY, 2016.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marvin C. Muth". The signature is written in black ink and is positioned below the text "Respectfully submitted,".