COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

07 JUN 14 PM 1:29

STATE OF WASHINGTON
BY _____ DEPUTY

STATE OF WASHINGTON Respondent, v. PATRICK R. DRUM (your name) Appellant.	)	No. 35947-2-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW 81498-8

I, Patrick Drum, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The Drug Court Proceedings are contrary To Due Process OF The Law Because There Is No Record For A Higher Court To Review.

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Additional Ground 2

The Bench Trial That Lead To My Conviction was Clearly Biased And Because OF This Violation OF Due Process It Is Clear That Judges That Oversee Drug Court Proceedings Should Not Be Permitted To Hear and Decide Facts In A subsequent Bench Trial stemming From Those Proceedings.

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If there are additional grounds, a brief summary is attached to this statement.

Date: 06-12-07 Signature: Patrick D

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Additional Ground 3

Sufficiency of Guilt Based on The Stipulations In The Drug Court Contract Implies That The Stipulation of Guilt Is A Guilty Plea And Therefore Is In violation of Due Process Per CrR 4.2.

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Additional Ground 4

Ineffective Assistance of Counsel Is Clearly Shown At Bench Trial.

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Additional Ground 1

The Drug Court Proceedings are contrary To Due Process of The Law Because There Is No Record For A Higher Court To Review.

Purport:

In Barrie v. Kitsap Cy, 84 Wn. 2d 579, 527 P.2d 1377 (1974), the Washington Supreme Court held that any quasi-judicial decision for which a verbatim record of proceedings was not available must be reversed and remanded for new proceedings. Barrie is still concurred with today as good law. See: Util. Dist. v. For. Trade Zone Indus., 159 Wn.2d 555, at 580 (Feb. 2007).

I refuse to be re-admitted into Drug Court[1], therefor I believe the only remedy is to quash and declare void the Drug Court contract making it non-binding for purposes of this appeal. The proceedings can not be renewed.

"[t]he very purpose for requiring a record is to provide an adequate Factual accounting which will enable a reviewing court to resolve the issues before it in a given case." Barrie, at 587. (Emphasis Added).

Judicial review is not possible "'unless all essential evidentiary material... is in the record.'" Loveless v. Yantis, 82 Wn. 2d 754, 763, 513 P.2d 1023 (1973) (Emphasis Added).

The prejudice of this is I can not attack arbitrary acts in this appeal. Nor could I at the time

NOTE 1. After knowledge of the nature of the Drug Court contract.

I was in Drug Court. There is simply no record to review, nor was there. The Abuse of Discretion I am [and was] entitled to argue in a Direct Appeal or Motion For Discretionary Review [Then], but is [and was] unreviewable because there is no record is as Follows:

< I received a Drug and Alcohol Evaluation from Safe Harbor, a treatment center and Drug Court team participant. When the written evaluation was submitted to the Drug Court, and a copy to myself, I Found it was not in line with the Facts I had given the evaluator. In this report the Facts (including my age) were contrary to what I stated at the evaluation. <u>I asked at several Drug Court hearings</u> For another evaluation with a tape recorder. The tape recorder would eliminate any doubts on the subsequent evaluation. <u>Drug Court continuously refused</u> and I intern chose to opt out of what I perceived as an arbitrary proceeding with no checks and balances. Review was not an option because there was no record to review. There was no recouse but an opt out.

When I stated the evaluation report was erroneous I believed it to be Abuse of Discretion For the Drug Court panel to ignore my assertion and not require a second evaluation.> This valid argument was and is unreviewable and therefore to my prejudice. See: <u>Administrative Law And Procedure @ 657.1</u>.

The United States Supreme Court has held that a Criminal defendant is constitutionally entitled to a

record of sufficient completeness to permit effective appellate review of his claims. Coppedge v. United States, 369 U.S. 438, 446, 8L. ed. 2d. 21, 82 S. Ct. 917. Washington Courts have also held this position: State v. Young, 70 Wn. App. 528, 529, 856 P.2d 399.

This ground is reviewable under RAP 2.5

I request that all Drug Court Proceedings and presentments be rendered null and void, and that the Drug Court Contract be declared void and unbinding for purposes of this appeal.

Additional Ground 2

The Bench Trial That Lead To My Conviction Was Clearly Biased And Because of This Violation of Due Process It Is Clear That Judges That Oversee Drug Court Proceedings Should Not Be Permitted To Hear And Decide Facts In Subsequent Criminal Hearings Stemming From Those Proceedings.

During the Bench Trial leading to my conviction the trial Judge (and Drug Court Team Member) stated "[W]e believe..."; RP at 69.

Whether it be:

1) "We": Judge/Prosecuter;
2) "We": Judge/Defence; or
3) "We": Judge/anybody;

this is clearly a biased statement in the rendering of the courts decision.

With that statement alone, I believe there is clear evidence that the Judge, as <u>sole</u> Fact Finder, was not impartial in the Bench Trial. This is contrary to the common principles of Due Process.

This ground is reviewable under <u>RAP 2.5</u>

Drug Court Team Judges Should Not Be Allowed To hear subsequent proceedings because they were on a Drug Court "Team" with the prosecutor. Under Double Jeopardy principles I think this calls for Vacation of the Residential Burgulary Charge at Bar.

Additional Ground 3

Sufficiency of Guilt Based On The Stipulations In The Drug Court Contract Implies That the Stipulation of Guilt Is A Guilty Plea And Therefore Is In Violation of Due Process Per CrR 4.2.

Purport:

"It is apparently not rare for parties to deliberately mix critical documents with others in the hope of obscuring significance." Report of the special committee for the Study of Discovery Abuse, Section of Litigation of the American Bar Association (1977).

If it can be determined that there is sufficiency of guilt based solely on the stipulation of sufficiency of guilt in the Drug Court Contract (Clause 19), then that fact inescapabely determines the stipulation to be an admission of guilt.

Whether it be construed as an admission of guilt with concession (Guilty Plea) or it be construed as a consent for the benefit of a Plea Bargain while maintaining innocence (Alford Plea), it CAN NOT be entered outside of the provisions of CrR 4.2 without violating the common principles of Due Process. In the case at Bar a Guilty stipulation was entered outside of CrR 4.2 at Clause 19 of the Drug Court contract. CP Supp. My entry into the Drug Court contract with the guilty stipulation (RP 31-33) is on point with U.S. vs. McCARTHY, 394 U.S. 459, 22 L. Ed.

2d 418, 89 S.Ct. 1166 (1969), where the Judge Failed to personally address the defendant to determine that the plea was made voluntarily, with an understanding of the charges and with a Factual basis to the charges.

This ground is reviewable per RAP 2.5.

Appellant wishes to preserve this argument For the Washington State Supreme Court if a Petition For Review becomes necessary.

The Drug Court Contract should be declared void and the "Sufficiency of guilt clause" should not be binding For purposes of this appeal.

Additional Ground 4

Ineffective Assistance of Counsel Is clearly Shown At Bench Trial.

At Bench Trial my trial counsel stated to the court:

"[t]he most he could be convicted of is Criminal Trespass in the First Degree."

RP 68, lines 19 and 20.

This is obviously contrary to the paragraph of the Drug court Contract preceding my signature:

"My attorney has explained to me, and we have fully discussed all of the above paragraphs."

Supp CP.

One of these paragraphs reads:

"The defendant Further agrees and stipulates that the Facts presented... are sufficient for the Court to Find the defendant guilty of the pending charge(s)."

id.

If counsel felt I could only be charged with criminal trespass, in light of my pro se oral motions that there was insufficient evidence for the charge of Residential Burgulary (RP 15 and RP 46), then there is no logical reason for trial counsel to enter me into a contract in which I stipulate sufficiency of guilt for Residential Burgulary.

If counsel would have properly advised me that I was stipulating sufficiency of guilt then I would have undoubtably rejected the Drug Court

Contract. This prejudiced me in that I agreed to "sufficiency of evidence" for a charge I felt I was not guilty of.

"In general, performance is deficient when it falls below an objective standard of reasonableness (citation omitted), but not when it is undertaken for legitimate reasons of trial strategy or tactics. (i.e., for the defendant's ultimate benefit)." State v. Horton, 116 Wn. App. 909, 912, 68 P. 3d 1145 (2003).

Trial counsel binding me to a guilty clause for Residential Burgulary, when he and I both contended it was a mere criminal trespass, can not be said to be legitimate trial strategy or tactics, nor can it be said to be for my ultimate benefit.

This ground is reviewable under RAP 2.5.

The Drug Court Contract should be declared void and I should not be bound by the Sufficiency of Guilt clause for purposes of this appeal.

Dated: 06-12-07 Signed: [signature]

Certificate Of Service

I hereby swear under the penalties of perjury that I have served the following documents:

1) Statement Of Additional Grounds For Review
[Case 35947-2-II]

2) Motion/Grounds For Personal Restraint Petition
[case 34377-1-II]

[CONSOLIDATED CASES]

Upon:

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STATE OF WASHINGTON
BY _____
DEPUTY

on: 06-12-07

Sworn as true and correct: Patrick Drum
Patrick Drum #784289