

No. 83219-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT PETITION OF

RAYMOND MARTINEZ

Petitioner.

PETITIONER'S REPLY BRIEF

Respectfully submitted:
Pro Se Raymond Martinez

Raymond Martinez #795914-LB58
Airway Heights Correction Center
P.O. Box 2049
Airway Heights, WA 99001-2019

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2009 OCT 26 AM 7:46
BY RONALD R. CARPENTER
CLERK

TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION.....	1
II. ISSUES.....	1-2
III. ARGUMENT TO RESPONDENT'S BRIEF.....	2-4
A. USE OF FIRST DEGREE THEFT CHARGE PREJUDICIAL	
B. MR. MARTINEZ DID NOT RECIEVE, NOR DOES HE HAVE COPIES OF COURT TRANSCRIPTS, JURY TRANSCRIPTS, ETC.	
IV. CONCLUSION.....	4-5

TABLE OF AUTHORITIES

Cases

Page No.

(PLEASE REFER TO PRP)

State v. Gotcher, 52 Wn. App. 350, 354, 356, 715, P.2d 761 (1986)..... 3
State v. Sabala, 44, Wn. App. 444, 723 P.2d 5 (1980)..... 3-4
Sate v. Befford, 148. 508-10, 715 P.2d 761(1986)..... 3

Statutes and Other Authorities

RCW 9A.04.110(6)..... 3

I. INTRODUCTION

This reply incorporates by reference and renews the arguments and issues raised in petitioners previous motion.

The petitioner is acting as a Pro Se litigant, requesting the court to deny the response of the state, and grant the petition for descretionary review.

II. ISSUES

A. USE OF FIRST DEGREE THEFT CHARGE PREJUDICIAL

In respondents brief pg. 1, 5, 8 the respondent mentions an alleged stolen pickup truck that police claim was found one quarter mile from the scene. There was absolutely zero evidence connecting the petitioner to that vehicle. (Shoes, and prints were taken from the petitioner to compare in the area of the truck.) Mr. Martinez was acquitted of all charges concerning the truck. However, the prosecution used the truck as a tool to convict Mr. Martinez by using it to persuade the jury that he was a car thief who broke into the shop to steal gas (See pg. 5 of respondent's brief.) and cut a hose to obtain gas for this truck. Although Mr. Martinez was acquitted of the truck, hose, and gas can they proved to be detriment and extremely prejudicial to Mr. Martinez's case.

This was detrimental not only in his jury trial but in his appeal, and now in the Supreme Court motion for discretionary review. Mr. Martinez was acquitted of the 1st degree theft charge therefor the petitioner objects to the respondents use of charges that Mr. Martinez has been acquitted of and furthermore the petitioner would respectfully ask this Court to strike all statements concerning these charges from all records before these statements cause further prejudice to Mr. Martinez's case.

B. MR. MARTINEZ DID NOT RECIEVE, NOR DOES HE HAVE COPIES OF COURT TRANSCRIPTS, JURY INSTRUCTIONS, ETC.

Petitioner was never sent proper documentation of the case in question^{is} is he in possession of any such documentation, including but not limited to copies of court transcripts and jury instructions.

III. ARGUMENT

On pg. 6, 7, of respondent's brief the State mischaracterizes Mr. Martinez's argument and issues, which are issues regarding the law and elements of the crime, not credibility determination and on pg. 14, of respondent's brief, once again the State speculates that Mr. Martinez would "probably" have made use of the knife.

That is pure speculation. Mr. Martinez did not use, attempt to use, or even threaten to use as described in RCW 9A.04.110(6). As Mr. Martinez was running, the petitioner would refer the court to section VI. of his PRP "ARGUMENT".

In Gotcher, courts held: We reject the states position, that possession of a switchblade knife alone is a sufficient circumstance of use to render the knife a deadly weapon, because it makes a nullity of the "**used attempted to be used, or threatened to be used**" language of RCW 9A.04.110(6) a knife falls within the second hall classification and is therefore not per se a deadly weapon. Hence, there must be some manifestation of willingness to use the knife before it can be found to be a deadly weapon under RCW 9A.04.110(6).

We cannot know whether the jury applied the proper law in finding Gotcher guilty of first degree burglary. Hence, we cannot be confident that Gotcher recieved a fair trial. We conclude that the error was prejudicial. Likewise in Martinez's case.

State v. Gotcher, 52 Wn. App. 350, 354, 356, 759 P.2d 1216(1988)

Also see in PRP

State v. Belford, 148. 508-10, 715 P.2d 761(1986)

State v. Sabala, 44, Wn. App. 444, 723 P.2d 5(1986)

In SABALA courts held:

"A person is "ARMED" if a weapon is "easily accessible and readily available for use by defendant for either offensive or defensive purposes" SABALA, Id. at 444.

On pg. 3 of respondents brief the state mention officer Greg Navares "who arrived soon after arrest." This is also confirmed by deputy Hutchinson's police report and on pg. 1 of respondent's brief. Yet officer Greg Navarez took the stand under oath in trial and claimed that he was on the scene to witness Mr. Martinez running from the building, and the foot pursuit. (Please refer to transcripts) Either officer Navarez was in two places at once or he committed perjury.

This is only a small bit of the scandals involved in convicting Mr. Martinez.

IV. CONCLUSION

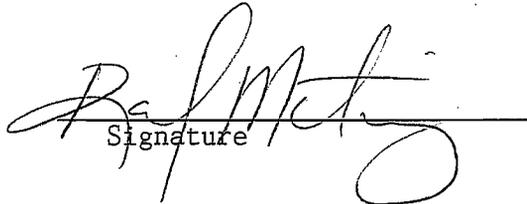
For the reasons put forth in his PRP and reasons mentioned in this brief the petitioner respectfully request that this court grant his motion for discretionary review, and award any and all relief possible.

Respectfully submitted,


Raymond Martinez, Petitioner

I, RAYMOND MARTINEZ, hereby swear under the penalty purjury
of the laws of the state of Washington, that I have read
the contents of the above motion, and it is true and correct
to the best of my knowledge.

Signed this 22 day of October, 2009.


Signature