

FILED

SEP 21 2017

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 96653-2

STATE OF WASHINGTON)

Respondent,)

v.)

MATTHEW SEAN MCCARTHY)
(your name))

Appellant)

No. 348598

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, MATTHEW MCCARTHY, 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

SEE ATTACHED.

Additional Ground 2

SEE ATTACHED.

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

Date: 09/15/17

Signature: [Handwritten Signature]

ADDITIONAL GROUND ONE:

FABRICATED EVIDENCE / DUE PROCESS VIOLATION;

THE 911 CALL LOG FROM SEPTEMBER 21, 2014,

STATES THAT AT ABOUT 9:29 AM

MS. GONZALES NO LONGER HAS THE SUSPECT

(MR. MCCARTHY) IN SIGHT, AND THE LOG

SHOWS NO ACCURATE OR VERIFIED

SIGHTING OF MR. MCCARTHY AGAIN IN

ITS ACCOUNT. LAW ENFORCEMENT

ARRIVED ON SCENE AT ABOUT 9:34 AM.

POLICE CONTACTED ONE JAMES MARTIN

DRIVING AN OLDER MODEL GREEN

FORD SUV.

THE 911 CALL RECORDING FROM
SEPTEMBER 21, 2014 LASTS APPROXIMATELY
FIVE MINUTES. MS. GONZALES REPORTS
TO BE STAYING OUT OF SIGHT IN
THE HALLWAY WHILE USING ANOTHER
PHONE TO CONTACT THEN FIANCE' CORY
HIERHOLZER. I BELIEVE THE 911
CALL RECORDING HAS MR. HIERHOLZER
RETURNING HOME WHILE MS. GONZALES
WAS STILL ON THE PHONE WITH THE
911 OPERATOR.

OFFICER TODD BELITZ AUTHORED THE
AFFIDAVIT OF FACTS AND SPOKANE

POLICE REPORT NUMBER 14-319146.

IN THESE DOCUMENTS OFFICER BELITZ
REPORTS MANY EVENTS THAT HE
ATTRIBUTES TO MS. GONZALES STATING
AT THE SCENE OF MR. MCCARTHY'S
ARREST ON SEPTEMBER 23, 2014. MOST
NOTABLY, OFFICER BELITZ REPORTS THAT
MS. GONZALES SAW MR. MCCARTHY
"FLEE THE SCENE" IN A GREEN VEHICLE
OR "SITTING ON THE HOOD OF A
GREEN SUV" DEPENDING ON THE
DOCUMENT. THIS IS CLEARLY A
FABRICATED REPORT AS THE RECORD

REFUTES THESE STATEMENTS WITH
THE INFORMATION EACH INDIVIDUAL
DOCUMENT OFFERS.

ANOTHER CLEAR FABRICATION IN
OFFICER BELITZ REPORT IS THE
STATED ATTEMPT MS. BONZALES MADE
TO LEAVE HER RESIDENCE WHERE SHE
ENCOUNTERED MR. MCCARTHY SITTING
ON THE HOOD OF A GREEN SUV. OFFICER
BELITZ REPORTS A MONOLOGUE SPOKEN
BY MS. BONZALES TO MR. MCCARTHY,
BUT THE RECORD UNDOUBTEDLY REFLECTS
THE REPORTED EVENT NEVER HAPPENED.

LASTLY, OFFICER BELITZ REPORTS
MS. GONZALES SHOWED HIM AN
INJURY IN THE FORM OF A
SCRATCH ON HER WRIST THAT WAS
A RESULT OF THE SEPTEMBER 21, 2014,
BURGLARY. OFFICER BELITZ REPORTS
ONE CORPORAL KAKUDA REPORTED TO
THE SCENE TO PHOTOGRAPH THE
INJURY. THIS PHOTOGRAPH DOES NOT
EXIST. IT IS NOT A PART OF
THE DISCOVERY, NEVER OFFERED AT
TRIAL, AND CORPORAL KAKUDA DID NOT
TESTIFY TO SAID EVIDENCE NEITHER.

ADDITIONAL GROUND TWO:

PROSECUTORIAL MISCONDUCT;

THE STATE DID NOT PERFORM THE

REQUIRED DUE DILIGENCE WHERE

EVIDENCE OF POLICE MISCONDUCT

WAS READILY AVAILABLE AND PRESENT.

THE STATE HAS THE OBLIGATION TO

INVESTIGATE THE VERACITY OF ANY

CHARGING DOCUMENT. THE AFFIDAVIT

OF FACTS, AND POLICE REPORT HAVE

SUFFICIENT CONTRADICTIONS IN

THE REPORTED FACTS TO WARRANT

CLOSER INSPECTION.

THE STATE HAS AN OBLIGATION NOT TO
PERSUE ANY CHARGE THAT IS NOT
SUPPORTED BY FACT.

ADDITIONAL GROUND THREE:

INEFFECTIVE ASSISTANCE OF COUNSEL /
APPELLATE COUNSEL

THE COURT RESPONDED TO AN INQUIRY BY

MR. MCCARTHY ON JULY 18TH, 2017 THAT STATED

COUNSEL HAD FAILED TO RESPOND TO ALL

CORRESPONDENCE, AND STATED AT THAT

TIME THAT MR. MCCARTHY WAS

REQUESTING A COPY OF THE VERBATIM

REPORT OF PROCEEDINGS. THAT WAS

NOT THE FIRST SUCH REQUEST.

ATTACHED IS A COPY OF THE LETTER

MS. CANZATER SENT WITH THE

APPELLANT'S BRIEF ALONG WITH ANY

CORRESPONDENCE SENT TO MS. CANZATER

THAT I HAD THE GOOD SENSE TO

COPY. THE CORRESPONDENCE SHOWS I

HAD BEEN IN CONTACT WITH COUNSEL

SINCE HER APPOINTMENT WITH ALL

RELEVANT INFORMATION AND MORE

THAN EAGER TO BE OF ANY ASSISTANCE.

MS. CANZATER FAILED TO RESPOND TO

ANY WRITTEN RESPONSE.

MS. CANZATERS ASSIGNMENTS OF ERROR

FAIL BECAUSE FOLLOWING WASHINGTON

STATE LAW A JURY DECIDED THE

ISSUE OF COMPETENCY AND

MR. MCCARTHY WAS FOUND COMPETENT

TO STAND TRIAL ON JANUARY 28th,

2016.

THE COURT RECORD MS. CANZATER BASES

HER ARGUMENT ON WAS WHEN

MR. MCCARTHY WAS ACTING PRO SE,

AND TRIAL JUDGE COONEY WAS

CORRECT IN HIS RULING ON MAY

18th, 2016, THAT A DEFENDANT HAD

THE RIGHT TO PUT FORTH ANY VALID
DEFENSE, THEORY, OR STRATEGY NO
MATTER HOW BIZARRE. STATE AND
FEDERAL COURTS HAVE HELD THAT A
DEFENDANTS RIGHT TO COUNSEL DOES
NOT PROMISE PERFECT OR NECESSARILY
EVEN GOOD REPRESENTATION. IT SHOULD
HOLD THAT A DEFENDANTS FOLLY WHILE
ACTING PRO SE IS AS MUCH
CONSTITUTIONALLY PROTECTED AS THE WAIVER
OF COUNSEL IS LEGAL WHEN THE DECISION
IS MADE KNOWINGLY AND INTELLIGENTLY.
THE CITED CONTENTION IS SUPERFICIAL

AND SHOULD NOT BE GIVEN ANY GREAT WEIGHT.
THE RECORD REFLECTS THAT DEFENSE COUNSEL
WAS REAPPOINTED DESPITE THE PRESENCE
OF REAL CONFLICT ON JULY 15TH, 2016 AND
COUNSEL STATED HE WOULD USE HIS OWN
STRATEGY. AT NO TIME DOES COUNSEL
QUESTION MR. MCCARTHY'S COMPETENCY, HIS
ABILITY TO ASSIST IN HIS OWN DEFENSE,
OR IS THERE ANY INSTANCE IN THE
COURT RECORD WHERE THE STATE TOOK
EXCEPTION TO MR. MCCARTHY'S CONDUCT IN
THE COURTROOM AND THE ONLY PRE-TRIAL
OBJECTION WAS OF THE OPINION THAT

MR MCCARTHY SHOULD BE REPRESENTED BY
COUNSEL.

ADDITIONAL GROUND FOUR:

INEFFECTIVE ASSISTANCE OF COUNSEL /
TRIAL COUNSEL;

MR DRESSLERS OVER-ALL PERFORMANCE, HIS

FAILURE TO INVESTIGATE, FAILURE TO USE

THE POLICE REPORTS TO EFFECTIVELY

CROSS-EXAMINE THE STATES WITNESSES, HIS

FAILURE TO USE POLICE REPORTS AND

AVAILABLE WITNESSES TO IMPEACH THE

OFFICERS TESTIMONY, HIS FAILURE TO CALL

AN INVESTIGATOR AND PREVIOUS COUNSEL WHO

HAD PREVIOUSLY OBTAINED A DIFFERENT

STORY FROM THE VICTIM, HIS FAILURE
TO CONSULT WITH MR. MCCARTHY ON THE
DECISION TO EMPLOY AN "ALL OR NOTHING"
APPROACH BY NOT ATTACHING THE LESSER
INCLUDED CHARGE OF FOURTH DEGREE ASSAULT.

ADDITIONAL GROUND FIVE:

DUE PROCESS VIOLATION;

STATE CONSTITUTION: ARTICLE I, SECTION
14 AND 22; FEDERAL CONSTITUTION: 6th
AND 8th AMENDMENT.

MR. MCCARTHY WHILE IN PRE-TRIAL
CONFINEMENT AND ACTING PRO SE WAS
SUBJECTED TO CRUEL AND UNUSUAL
PUNISHMENT AT THE HANDS OF CORRECTIONAL

OFFICERS. MR. MCCARTHY MADE THE ABUSE
KNOWN TO THE COURT AS EARLY AS MAY 16th,
2016 AND ON THE RECORD JUNE 24th, JULY 1,
AND JULY 15, 2016. THE STATE HAD AN
OBLIGATION TO INVESTIGATE ANY
ALLEGATIONS OF ABUSE AS THE JAIL, ITS
CONDITIONS, ANY ACTS OF AN ILLEGAL
NATURE ARE THE STATES RESPONSIBILITY.
WHETHER THE ALLEGATIONS WERE INDEED
VALID OR UNFOUNDED ARE OF NO
CONSEQUENCE - THE STATE FAILED TO
INVESTIGATE. MR MCCARTHY'S RIGHT TO
SELF-REPRESENTATION WAS MADE IMPOSSIBLE

BY THESE ACTS OF ABUSE AND THE
RESULTS WERE A VIOLATION OF
CONSTITUTIONALLY PROTECTED RIGHTS.

THE CURSORY INVESTIGATION THAT DID TAKE
PLACE WAS DONE BY AN OFFICER WHO
FAILED TO INITIATE AN INTERNAL
INVESTIGATION PROPERLY SUBMITTED MONTHS
EARLIER.

ADDITIONAL GROUND SIX:

HABEAS CORPUS: STATE CONSTITUTION
ARTICLE I, SECTION 13; FEDERAL
CONSTITUTION ARTICLE I, SECTION 9,
CLAUSE 2.

THE RECORD HOLDS THAT A WRIT OF

HABEAS CORPUS WAS PROPERLY BEFORE
THE TRIAL COURT AND DUE TO A
GRANTED CONTINUENCE REMAINS UNRULED
UPON. THIS HAPPENED JULY 15, 2016, THE
DAY COUNSEL WAS REAPPOINTED. THE WRIT
OF HABEAS CORPUS WAS NEVER REVISITED,
AND SHOULD SURVIVE NO MATTER WHO IS
THE COUNSEL OF RECORD.

APPELLATE COUNSELS SOLE ARGUMENT IS
ON THE ISSUE OF COMPETENCY. STATE
LAW PRESERVES THE RIGHT TO HABEAS
CORPUS UNDER RCW 10.77.240 NO
MATTER THE FINDINGS OF A DEFENDANTS

COMPETENCE AND SPECIFICALLY IF A
DEFENDANT IS INCOMPETENT. AT THE
VERY LEAST THE COURT SHOULD VACATE
MR. MCCARTHY'S CONVICTION AND REMAND
FOR FURTHER PROCEEDINGS ON THE SUBJECT
OF HABEAS CORPUS.

INCOMPETENCE IS NOT THE REAL ISSUE
HERE. GOVERNMENTAL MISCONDUCT AND
SUB-STANDARD LEGAL REPRESENTATION SHOULD
NOT BE ALLOWED TO PREVAIL AS THE
DENIAL OF DUE PROCESS FURTHER AIDS THE
CRIMINAL CONDUCT OF THE STATE AND STATE ACTORS.

RESPECTFULLY,
Mott McCarthy

CORRESPONDENCE
TO AND FROM
APPELLATE COUNSEL

LAW OFFICES OF TANESHA L. CANZATER
Post Office Box 29737
Bellingham, Washington 98228-1737
(877) 710-1333 (office) 131314 (facility authorization code)
Canz2@aol.com

September 12, 2017

Matthew Sean McCarthy, DOC# 779521
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, Washington 99362

Re: **State of Washington v. Matthew Sean McCarthy**
Court of Appeals No. 348598

Dear **Mr. McCarthy**:

Enclosed is a copy of the opening brief I filed today, with Division Three Court of Appeals (Division Three). I was really looking forward to discussing with you the logistics of your case, before I filed. But, I had your court transcripts, your court file, and your letters to consider, as I researched potential issues.

I focused the sole issue I raised on your constitutional right to a fair trial. As you know, our law requires courts to order competency evaluations, whenever there are reasons to doubt a defendant's competency. I argued the trial court violated your right to a fair trial, when it neglected to order another competency evaluation, after it was presented with reasons to doubt your competency to stand trial.

As a criminal defendant, you may raise any issues you want the court to consider, via a document called a statement of additional grounds. Division Three will give you more information about that option. But, generally, you have 30 days from the date (9/12/17) I filed your opening brief, to file the statement of additional grounds. You are not required to file one. However, if you choose to do so, please let me know, if you need the court transcripts. Do not write to me via post mail to let me know. I am traveling between states and I may not receive your letter for some time. Instead, either call me at (877) 710-1333, or send me a message via Jpay. Remember the toll-free telephone number requires the following authorization code: 131314.

Best,


Tanesha L. Canzater, Esq.

Encl.

tlc

You have received a *Jpay* letter, the fastest way to get mail

From : MATTHEW MCCARTHY, ID: 779521
To : tanesha canzater, CustomerID: 4348636
Date : 3/1/2017 12:06:38 PM EST, Letter ID: 273394038
Location : E01
Housing : UNEEW1132

how are we doing? i would think you have put in for the verbatim reports, and if you remember the letter that i wrote you a couple months ago, i would asked you to request the transcripts from a couple additional hearings that would be useful to our cause. i would like a copy of the transcripts when you get them.

i filed for a shortening of time in the court of appeals through an 18.8(b) motion, but i have also filed a writ of mandamus in the supreme court to compel judgement on a writ of habeas corpus previously filed in the superior court that the judge refused to rule on. hopefully i can speed up what already doesnt move swiftly and get to the bottom of this before you have to do too much work. its not like i havent been trying, but there have been many unforeseen obstacles in my way. where is a conservative judge when you need one?! or a crook wearing black and white lateral pinstripes, cause the ones i have had to contend with talk funny, like "comes now", and "stand for search". i always been one to call it like i see it, and the "good guys" havent been all that good... not even good at it. anyways, i hope you will and plan to make your deadlines without to many motions for time extensions. i see that you was late on your first filing deadline. hope it wasnt because you thought you wasnt gonna have to make it. take care. later.

PB. 21

***Jpay* Tell your friends and family to visit www.jpay.com to write letters and send money!**

*You have received a **jpay** letter, the fastest way to get mail*

From : MATTHEW MCCARTHY, ID: 779521
To : tanesha canzater, CustomerID: 4348636
Date : 3/1/2017 6:18:05 PM EST, Letter ID: 273541690
Location : E01
Housing : UNEEW1132

just so you know, our communication on jpay is not priviledged. i was actually gonna write you next week to touch bases with you, but after i check the information i have for you i will contact you. since we have not talked up to this point and you have not responded to any of my letters i will wait to hear of any upcoming change of status in my case before contacting you again. have a nice day.

PG. 22

jpay Tell your friends and family to visit www.jpayers.com to write letters and send money!

AFFIDAVIT

STATE OF WASHINGTON)

) ss:

COUNTY OF WALLA WALLA

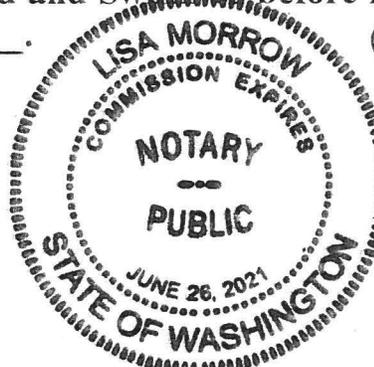
I, MATTHEW MCCARTHY, declare under penalty of perjury that the following statements within this affidavit are true and correct to the best of my knowledge and has been executed on this 8th day of AUGUST, 2017,
AT 1313 N. 13th AVE, WALLA WALLA, WA

in the County of Walla Walla, Washington:

THAT BETWEEN NOVEMBER 23rd, 2016 AND AUGUST 8th, 2017, I DID CONTACT MS. TANESHA LA TRELLE CANZATER ON ATLEAST FOUR SEPERATE OCCASIONS BY MAIL TO REQUEST ADDITIONAL HEARINGS TO BE INCLUDED IN THE VERBATIM REPORT, PRESENT FACTS OF "GOVERNMENTAL MISCONDUCT" AND INEFFECTIVE ASSISTANCE OF COUNSEL, AND OTHER GENERAL INFORMATION CONCERNING THIS DIRECT APPEAL.

Matthew McCarthy
(Affiant's Name)

Subscribed and Sworn to before me this 8th day of August, 2017.



[Signature]
Notary Public in and for the State of Washington.
Residing in Walla Walla, WA
My commission expires 6/26/21

AUGUST 2ND, 2017

- COPY -

MATTHEW MCCARTHY #779521

WSP/EW 113

1313 N. 13th AVE.

WACCA WACCA, WA 99362

RE: APPELLANT'S BRIEF

MS. CANZATER,

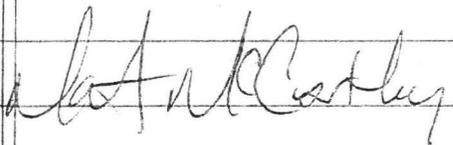
PLEASE UNDERSTAND MY POSITION -
UNDER NORMAL CIRCUMSTANCES I WOULD
NOT BE SO PRESUMPTUOUS AS TO
TELL YOU YOUR JOB, BUT YOU ARE THE
THIRD ATTORNEY TO BE ATTACHED TO THIS
CASE; IF YOU DID A THOROUGHLY
COMPETENT, HONEST JOB - YOU WOULD
BE THE FIRST.

THE FACT THAT TIMELINES HAVE HAD
TO BE EXTENDED TWICE IN THIS PROCESS
COULD BE EASILY EXPLAINED, BUT FOR
MY SITUATION I FIGURE I'D STATE
THE OBVIOUS - YOUR BONNA HAVE TO
SEE THIS ALL THE WAY THROUGH BECAUSE
I WOULD NOT HAVE IT ANY OTHER WAY.

- COPY -

I WOULD LIKE YOU TO FOCUS ON THE FABRICATED STATEMENTS IN THE OFFICERS REPORTS. NOTABLY, THE 911 CALL LOG FROM SEPTEMBER 21, 2014 STATES THAT MS. GONZALES "NO LONGER HAS ME IN SIGHT", AND FROM THAT LOG DOES NOT SEE ME AGAIN, BUT OFFICER BELITZ REPORTS THAT MS. GONZALES SEEN ME "FLEE" THE SCENE, WAS STOPPED BY ME LEAVING THE RESIDENCE WHERE A DIALOGUE ENSUED, AND A PHOTOGRAPH OF AN INJURY WAS TAKEN WHERE NO PHOTOGRAPH EXISTED. I WOULD LIKE THE FOCUS TO BE ON THE "GOVERNMENTAL MISCONDUCT" AND NOT SO MUCH THE INTENTIONAL INEFFECTIVE ASSISTANCE OF COUNSEL. I AM LOOKING FORWARD TO YOUR BREEF

RESPECTFULLY,



PS 25

DECLARATION

I, MATTHEW MCCARTHY, declare that, on 08/02/2017, I

deposited the foregoing document(s),

THE ATTACHED LETTER

or a copy thereof, in the internal mail system of Washington State Penitentiary and made arrangements for postage, addressed to:

TANESHA LA TRELLE CANZATER

ATTORNEY - AT - LAW

PO BOX 29737

BELLINGHAM, WA 98228-1737

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Walla Walla, Washington on AUGUST 7th, 2017,

Signature and number: Matthew McCarthy #779521

- COPY -

AUGUST 24th, 2017

MATTHEW MCCARTHY #779521

WSP / EW 113

1313th N. 13th AVE.

WALLA WALLA, WA 99362

MS. CANZATER,

JUST WANT TO CLARIFY A FEW THINGS -

I WANT TO THINK THAT YOU WILL BE

THOROUGH IN STATING YOUR ISSUES IN

MY APPEAL BRIEF, AND I ASKED YOU TO

FOCUS ON THE FALSIFIED REPORTS, BUT

INEFFECTIVE ASSISTANCE IS AS PREVALENT

IN THIS CASE AS THE "GOVERNMENTAL

MISCONDUCT"

- COPY -

THE OUTCOME I AM WANTING

IS DISMISSAL - NOT A RETRIAL.

YOU DID NOT RESPOND TO MY INQUIRY;

DID YOU SEND ME THE E-MAILS THAT I

SENT YOU COPIES OF RECENTLY? OBVIOUSLY

YOUR RESPONSE WAS NOT IN ANY SORT

OF REASONABLE TIME, SINCE YOU

FAILED TO RESPOND, BUT I WOULD

STILL LIKE AN ANSWER TO THAT

QUESTION.

ANYWAYS, I AM LOOKING FORWARD TO

THAT BREEF OF YOURS.

RESPECTFULLY,

Walt M. Kelly

PAGE 2 OF 2

pg 28

- COPY -

MS. CANZATOL

AUGUST 27th, 2017

I HAVE MENTIONED IT BEFORE, BUT I
WILL STATE AGAIN NOW BECAUSE WE ARE
AT THAT POINT THAT I WOULD LIKE A
COPY OF THE VERBATIM REPORTS OF
PROCEEDINGS. INITIALLY, I HAD ASKED
YOU TO REQUEST COURT RECORDS OF
HEARINGS THAT MR. DRESSLER DID NOT IN
THE NOTICE OF APPEAL BECAUSE THEY
PRESENTED APPEALABLE ISSUES. YOU NEVER
RESPONDED TO ANY OF THOSE LETTERS. I
AM HOPING THAT YOU DID REQUEST THE
ADDITIONAL COURT RECORDS.

RESPECTFULLY,

Walt McCarty

MATTHEW MCCARTHY 779521 E01 Building: UNSection: DDWCell:230 ID:273150372 [P
1/1]

*You have received a **JPAY** letter, the fastest way to get mail*

From : tanesha canzater, CustomerID: 4348636
To : MATTHEW MCCARTHY, ID: 779521
Date : 2/28/2017 1:12:58 PM EST, Letter ID: 273150372
Location : E01
Housing : UNDDW230

Greetings Mr. McCarthy,
Please feel free to call me at 877-710-1333 authorization code: 131314. This toll-free number works at your facility.
Please feel free to leave a message if I can't answer when you call and then try me back later.

Thank you.

PS. 30

JPAY Tell your friends and family to visit www.jpay.com to write letters and send money!

