IN THE

SUPREME COURT OF THE STATE OF

WASHINGTON

No. 89037-4

STATE OF WASHINGTON,
RESPONDENT

V

GEOFFREY R. LAWSON,
PETITIONER

FILED
COURT OF APPEALS
DIVISION II
2013 OCT 25 AM 11:43
STATE OF WASHINGTON
BY
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PETITION FOR REVIEW PRESENTED TO

THE DIVISION II COURT OF APPEALS FOR

THE STATE OF WASHINGTON

PRESENTED BY GEOFFREY R. LAWSON, PRO SE

No. 89037-4

SUPREME COURT OF THE STATE

OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

V

GEOFFREY R. LAWSON, PETITIONER

PETITION FOR REVIEW

GEOFFREY R. LAWSON,
AS PROSE PETITIONER

D.O.C. - 334928
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A. Identity of Petitioner

Geoffrey R. Lawson, (hereinafter Petitioner), asks this Honorable Court to accept Review of the Division II Court of Appeals decision terminating Review of his appeal from conviction in the Superior Court of Washington and affirming his conviction.

B. Court of Appeals Decision

The judgment of the Division II Court of Appeals Commissioner's Ruling Granting States Motion on the Merits to Affirm was entered on (March [32], 2013). Petitioner filed a timely Motion to Modify Commissionr's ruling on April 29, 2013.

The Division II Court of Appeals entered an order Denying Motion to Modify on May 29, 2013. Petitioner filed a Motion and Affidavit for Reconsideration, received and filed by the court on July 11, 2013. It was then placed in the Court of Appeals file without further action. Pet. App. A1

PETITIONER ASKS THIS COURT TO REVIEW THE DIVISION II COURT OF APPEALS ORDER(S). A COPY OF THE DECISION(S) IS IN THE APPENDIX AT PAGES A2-A5.

IN ADDITION TO THE CONSTITUTIONAL ISSUE RAISED AND DISMISSED BY VIRTUE OF THE APPEAL'S TERMINATION, PETITIONER ASKS THIS COURT TO REVIEW ADDITIONAL ISSUES OF CONSTITUTIONAL MAGNITUDE DESIGNATED IN PART D OF THIS PETITION AND RAISED FOR THE FIRST TIME ON APPEAL.

C. INTRODUCTION

PETITIONER, GEOFFREY R. LAWSON'S PLEA, AMONG OTHER THINGS, WAS NOT KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY MADE. THE GOVERNMENT, TO INCLUDE THE KITSAP COUNTY SUPERIOR COURT, KITSAP COUNTY PROSECUTOR AND KITSAP COUNTY JAIL RESPECTIVELY, ENGAGED IN INTER ALIA THE OVERWHELMINGLY OPPRESSIVE INTENTIONAL INTERFERENCE AND DEPRIVATION OF PETITIONER LAWSON'S "ACCESS TO THE COURTS" BY INTERFERRING WITH AND DENYING ACCESS TO INTERVIEW OF WITNESSES, DENYING PAPER, PENS AND OTHER TOOLS NEEDED TO

RESEARCH AND PREPARE HIS DEFENSE, DENYING ACCESS TO CRITICAL EVIDENCE, ETC... IN ADDITION THE STATE IMPERMISSABLY UPPED THE ANTE CHARGING PETITIONER LAWSON WITH ADDITIONAL UNCONSTITUTIONALLY VAGUE CHARGES OF BURGLARY IN THE SECOND DEGREE AND THE TRIAL COURT IMPERMISSABLY ENGAGED IN PLEA NEGOTIATIONS ALL SEEMINGLY EMPLOYED TO COERCE MR. LAWSON INTO ACCEPTING A PLEA.

ON APPEAL THE DIVISION II COURT OF APPEALS, FIRST, MISCHARACTERIZED THE NATURE OF THE OFFERED PLEA OMITTING OR OVERLOOKING ANY REFERENCE TO THE CHARGES OF BURGLARY IN THE SECOND DEGREE AS CHARGED IN THE FIRST AMENDED INFORMATION; AND SECOND, ACKNOWLEDGED PETITIONER LAWSON'S MOTION TO WITHDRAW HIS GUILTY PLEA AND FINDING IT NOTEWORTHY THAT THE TRIAL COURT RECORD WAS SILENT AS TO THE DISPOSITION OF THE MOTION.

NEVERTHELESS, THE COURT OF APPEALS TERMINATED REVIEW OF PETITIONER LAWSON'S APPEAL ON THE BASIS THAT HIS APPEAL WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTERED. AND UNDER THOSE CIRCUMSTANCES PETITIONER WAIVED HIS RIGHT TO APPELLATE

REVIEW, REGARDLESS OF WHETHER OR NOT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED PRIOR TO ENTERING HIS PLEA.

FINALLY, PETITIONER LAWSON'S APPELLATE COUNSEL RAISED ONLY ONE ISSUE ON APPEAL DESPITE KNOWLEDGE OF MORE. COUNSEL FAILED TO EXCERCISE EVEN THE SMALLEST MODECUM OF DUE DILLIGENCE TO LOCATE AND COMMUNICATE WITH PETITIONER, OPPERATED IN A VACUUM; FAILED OR REFUSED TO RAISE CRITICALLY MATERIAL CONSTITUTIONAL ISSUES ON APPEAL; AND VIOLATED RULES OF APPELLATE PROCEDURE THAT DEPRIVED PETITIONER HIS OPPORTUNITY TO FILE A STATEMENT OF ADDITIONAL GROUNDS THAT MAY VERY WELL HAVE CHANGED THE OUTCOME IN THE COURT OF APPEALS. (EMPHASIS ADDED)

D. ISSUES PRESENTED FOR REVIEW

ISSUE NO. 1

WHERE APPELLATE REVIEW OF PETITIONER'S DIRECT APPEAL WAS TERMINATED AND HIS CONVICTION, PURSUANT TO AN ALFORD PLEA AFFIRMED, DOES IT VIOLATE PETITIONER'S RIGHTS UNDER THE FIRST, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, ARTICLE 1

SECTIONS 3, 4 AND 22 OF THE WASHINGTON STATE CONSTITUTION RESPECTIVELY, AND WHERE THE STATE CONSTITUTION IS MORE PROTECTIVE THAN THE FEDERAL CONSTITUTION:

A) WHEN A PROSE INMATE, CONFINED AS A PRETRIAL DETAINEE IS SUBJECTED TO OVERWHELMINGLY OPPRESSIVE INTERFERENCE, DEPRIVATION AND DENIAL OF "ACCESS TO THE COURTS" THAT ON THE WHOLE AMOUNT TO [BARRIERS] ERECTED BY THE GOVERNMENT TO INHIBIT AND PREVENT HIM FROM DEFENDING HIMSELF?

B) IF IT IS VIOLATIVE, CAN SUCH VIOLATION(S) BE CONSTRUED AS COERCION SUCH THAT A GUILTY PLEA SEEMINGLY VOLUNTARY ON ITS FACE RENDER THE PLEA INVOLUNTARY?

C) DOES A DEFENDANT, ON PLEA OF GUILTY, WAIVE AND FORECLOSE APPELLATE REVIEW OF THOSE SAME CONSTITUTIONAL VIOLATIONS IF THE VIOLATIONS OCCURED: 1) BEFORE; 2) DURING; AND/OR 3) AFTER THE PLEA WAS ENTERED? AND WHICH, IF ANY, SCENARIO WOULD <u>NOT</u> FORECLOSE APPELLATE REVIEW AFTER ENTRY OF A GUILTY PLEA?

D) ARE THE PROVISIONS UNDER EACH OF THE AMENDMENTS AND SECTIONS OF THIER RESPECTIVE CONSTITUTIONS (1) MUTUALLY EXCLUSIVE YET COROLLARY AND COEXTENSIVE TO EACH OTHER AS THEY PERTAIN TO "ACCESS TO THE COURTS" VIOLATIONS? - STATED ANOTHER WAY, FOR EXAMPLE, WHEN ALLEGING "ACCESS TO THE COURTS" VIOLATIONS, CAN THE VIOLATOR(S) VIOLATE THE SIXTH AMENDMENT WITHOUT VIOLATING THE FIRST AMENDMENT OR VICE VERSA?; AND (2) IS THE WASHINGTON STATE CONSTITUTION MORE PROTECTIVE THAN THE FEDERAL CONSTITUTION PURSUANT TO A STATE V GUNWALL, 106 WN2d 54 (1986) FACTORS?

ISSUE NO. 2

NOTWITHSTANDING ISSUE NUMBER 1, WAS PETITIONER'S PLEA KNOWING, INTELLIGENT AND VOLUNTARY WHEN:

A) THE PLEA AGREEMENT WAS DEFECTIVE ON ITS FACE

B) THE TRIAL JUDGE IMPERMISSABLY INVOLVED HIMSELF IN PLEA NEGOTIATIONS

C) THE INDIVISIBLE PLEA WAS DIVIDED AND ELEMENTS TREATED INDIVIDUALLY AND SEPARATE.

D) THE JUDGMENT AND SENTENCE EXCEEDED STATUTORY LIMITS, INCLUDED UNCONSTITUTIONAL CONDITIONS OF COMMUNITY CUSTODY AND CONDITIONS NOT CRIME

RELATED AS A DIRECT CONSEQUENCE AND ON THE WHOLE DID NOT COMPLY WITH THE PLEA AGREEMENT.

ISSUE NO. 3

DID PETITIONER RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE:

A) APPELLATE COUNSEL FAILED TO EXCERCISE EVEN THE TINIEST MODECUM OF DUE DILLIGENCE TO LOCATE, COMMUNICATE, CONFER AND INFORM HIM DURING THE APPELLATE PROCESS.

B) APPELLATE COUNSEL FAILED OR REFUSED TO RAISE MATERIAL CONSTITUTIONAL ISSUES, INTER ALIA VOLUNTARINESS OF THE PLEA DESPITE KNOWLEDGE OF PETITIONER'S DESIRE.

C) APPELLATE COUNSEL VIOLATED RULES OF APPELLATE PROCEDURE DIRECTLY CAUSING THE COURT OF APPEALS FAILURE OF PROPER NOTIFICATION AND THE DEPRIVATION OF PETITIONER'S OPPORTUNITY TO FILE A STATEMENT OF ADDITIONAL GROUNDS.

ISSUE NO. 4

WHERE THE COURT OF APPEALS MISCHARACTERIZED THE NATURE OF THE PLEA AGREEMENT BY OMITTING ANY REFERENCE TO THE

WITHDRAWAL OF THE STATE'S ENHANCED CHARGES OF BURGLARY IN THE SECOND DEGREE, AND WHERE, SHOULD THIS CASE PROCEED TO TRIAL AND THE STATE RE-INSTATES THOSE CHARGES; (1) DOES IT CONSTITUTE BURGLARY IN ANY DEGREE IF A PERSON, WHO WAS NEVER TRESPASSED, ENTERS OR REMAINS IN ROOMS OR SPACES OPEN TO THE PUBLIC WITHIN A BUILDING OPEN TO THE PUBLIC IRRESPECTIVE OF PUBLIC LABELING SUCH AS GENDER (SEX), RACE, RELIGION, ACCESSIBILITY, SEXUAL ORIENTATION, ETC... EVEN IF [NEFARIOUS] ACTIVITY IS ALLEGED TO HAVE OCCURED ON, AROUND OR WITHIN THOSE PUBLIC SPACES? AND WHERE THE ALLEGED NEFARIOUS ACTIVITY IS PURELY SPECULATIVE; AND (2) DOES IT RENDER THE BURGLARY STATUTE UNCONSTITUTIONALLY VAGUE AS APPLIED TO THIS CASE? (3) WAS ADDING IT VINDICTIVE?

E. STATEMENT OF THE CASE

PETITIONER GEOFFREY R. LAWSON, WAS INITIALLY CHARGED ON 9-13-2011 WITH 1 COUNT OF VOYEURISM AND 1 COUNT OF ATTEMPTED VOYEURISM CP-1. HE WAS CONFINED AS A PRETRIAL DETAINEE PENDING TRIAL. MR. LAWSON ELECTED TO PROCEED PRO SE AT THE EARLY STAGES OF OF THE TRIAL PROCESS. WITHOUT DUPLICATING AND INCORPORATING BY REFERENCE THE ENTIRE CONTENT OF PETITIONER'S APPELLATE BRIEF, ATTACHED HERETO,

PETITIONER MOVED THE COURT REQUESTING THE CONTENTS OF A DETAILED LIST OF TOOLS AND RESOURCES HE BELIEVED ESSENTIAL TO DEFEND AGAINST THE CHARGES, INCLUDING BUT NOT LIMITED TO HIS PERSONAL LAPTOP CONTAINING AMONG OTHER THINGS, EVIDENCE CRITICAL TO HIS DEFENSE, DIRECT DIAL PHONE, AN INVESTIGATOR, VARIOUS OFFICE SUPPLIES AND ACCESS TO THE STATE'S WITNESSES. PETITIONER MADE SEVERAL AND CONTINUAL REQUESTS TO OBTAIN THESE RESOURCES THROUGHOUT THE TRIAL PROCESS. EXCEPT FOR PAPER, PEN AND INVESTIGATOR PLUS STANDBY COUNSEL AT A SIGNIFICANTLY LATER STAGE IN THE PROCEEDINGS, ALL REQUESTS WERE DENIED. MOREOVER, PETITIONER LAWSON'S USE OF THOSE LIMITED AND SUBSTANDARD RESOURCES THAT WERE PROVIDED, WAS SEVERELY INHIBITED. PET. BRIEF OF APPELLANT - PET. APP. A12-A31

ON THE DATE OF TRIAL 11-8-2011, THE STATE UPPED THE ANTE AND AMENDED THE INFORMATION ADDING TO AND ELEVATING THE CHARGES TO INCLUDE BURGLARY IN THE SECOND DEGREE FOR THE SAME ALLEGED CONDUCT. CP 20-26. AT A SUBSEQUENT HEARING ON 11-10-2011, PETITIONER LAWSON REQUESTED STANDBY COUNSEL. THE TRIAL COURT, AFTER AN IN-CAMERA HEARING GRANTED THE REQUEST. RP (11-10-2011) 9.

PETITIONER LAWSON MOVED TO DISMISS THE MATTER ON A NUMBER OF GROUNDS, INCLUDING IN SUM, THE OVERWHELMINGLY OPPRESSIVE INTERFERENCE, DENIAL

AND DEPRIVATION OF "ACCESS TO THE COURTS" TO INCLUDE INTER ALIA COPIES OF LEGAL RESEARCH AND ACCESS TO INTERVIEW WITNESSES RP(1-12-2012) 4-65. PETITIONER'S MOTION TO DISMISS WAS DENIED AS WAS HIS REQUEST TO ALLOW THE TIME NECESSARY TO LET THIS HONORABLE SUPREME COURT DECIDE INTER ALIA THE ISSUE OF WITNESS INTERVIEWS IN EFFECT CAUSING PETITIONER LAWSON TO "GIVE UP", REQUEST AND ACCEPT THE STATE'S PLEA OFFER. RP(2-1-2012) 13.

ON FEBRUARY 1, 2012 MR. LAWSON ENTERED AN ALFORD PLEA.(1) THE COURT ENGAGED IN A COLLOQUY WITH MR. LAWSON TO ENSURE THAT HIS PLEA WAS VOLUNTARY RP(2-1-2012) 16-28. WITHIN THAT COLLOQUY THE COURT CONFIRMED TWICE THAT THE PLEA WAS INDIVISIBLE (ALL CHARGES TO RUN CONCURRENT) AND THE 36 MONTHS OF COMMUNITY CUSTODY WAS THE STATUTORY MANDATE RP(2-1-2012) 23 AT 20-25 AND 27 AT 12-19.

THEREAFTER, FOLLOWING ENTRY AND ACCEPTANCE OF THE PLEA, PETITIONER LAWSON DISCOVERED THAT THE PLEA AGREEMENT WAS DEFECTIVE ON ITS FACE. THE PLEA AGREEMENT, AMONG OTHER THINGS, CONTAINED A STATUTORILY FAULTY CONDITION OF COMMUNITY CUSTODY CP 31-36; RP(2-27-2012) 5-8.

(1) NORTH CAROLINA V ALFORD, 400 U.S. 25 (1970)

PETITIONER LAWSON MOVED TO WITHDRAW HIS PLEA CP 54-64. THE TRIAL COURT HEARD THE MOTION TO WITHDRAW ON 2-27-2012, THE SAME DATE AS SENTENCING.

DURING THE HEARING THE TRIAL COURT ENGAGED IN EXTENSIVE DIALOGUE WITH RESPECT TO THE DEFECTS OF THE PLEA AGREEMENT ASSERTED BY PETITIONER RP (2-27-2012) 11-27. ALSO, DURING THAT HEARING, PETITIONER PRESERVED HIS ABILITY TO CHALLENGE HIS CONVICTION ON APPEAL IF HE PROCEEDED TO SENTENCING WITHOUT WITHDRAWING HIS GUILTY PLEA RP (2-27-2012) 22-23. AT THE CONCLUSION OF THAT DISCUSSION, RP (2-27-2012) 27, THE FOLLOWING EXCHANGE TOOK PLACE:

THE COURT: IS IT YOUR WISH TO PROCEED MR. LAWSON, WITH YOUR MOTION TO WITHDRAW?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: WELL, MR. LAWSON, AS YOU HAVE SO OFTEN IN THIS CASE AS YOU PURSUE SELF REPRESENTATION, I'M NOT SURE THAT YOU'RE MAKING A VERY GOOD CHOICE.

RP (2-27-2012) 27 AT 17-25

AFTER FURTHER DIALOGUE, AND WITH THE UNDERSTANDING THAT HIS RIGHT TO APPEAL HAD BEEN

PRESERVED AND WITH THE RECORD BEING [SILENT] AS TO WHY PETITIONER WOULD HAVE BEEN ALLOWED TO WITHDRAW HIS PLEA, MR. LAWSON WITHDREW HIS MOTION AND PROCEEDED TO SENTENCING. RP (2-27-2013) 30-31.

AT SENTENCING, THE COURT IMPOSED "12 MONTHS, HIGH END OF THE STANDARD RANGE, ON THE FELONY VOYEURISM COUNT [AND] [T]HE FULL 365 ON THE GROSS MISDEMEANOR, BUT SUSPEND 120 DAYS OF THAT. THE OTHE 245 DAYS WILL RUN PRESENTLY AND CONCURRENT WITH THE FELONY. 120 DAYS SUSPENDED FOR A PERIOD OF TWO YEARS OF SUPERVISED PROBATION. THERE WILL BE ONE YEAR OF COMMUNITY CUSTODY IN CONNECTION WITH THE FELONY EVENT THAT RUNS AT THE SAME TIME AS THE 24 MONTHS FOR THE GROSS MISDEMEANOR." RP (2-27-2012) 42.

THE COURT ALSO IMPOSED ALL OF THE CONDITIONS OF COMMUNITY CUSTODY AS SUBMITTED IN THE PSI, OBJECTED TO IN WRITING CP 93-97 AND AT SENTENCING. RP (2-27-2012) 47.

PETITIONER LAWSON FILED A NOTICE OF APPEAL IN THE SUPREME COURT OF WASHINGTON ON MARCH 27, 2012 INDICATING THE PLEA WAS NOT KNOWINGLY INTELLIGENTLY OR VOLUNTARILY ENTERED AND WHICH FURTHER OUTLINED THE ISSUES TO BE ARGUED ON APPEAL. CP 113; PET. APP. A6-A11.

APPELLATE COUNSEL REQUESTED REMOVAL TO THE DIVISION II COURT OF APPEALS, WHICH WAS GRANTED. DESPITE HAVING FULL KNOWLEDGE IN WRITING OF THE ISSUES PETITIONER DESIRED TO HAVE RAISED ON APPEAL BY WAY OF PETITIONER'S NOTICE OF APPEAL, APPELLATE COUNSEL FILED APPELLANT'S BRIEF RAISING ONLY A SINGLE ISSUE WHICH REFERENCE TO THE RECORD ENDED WITH THE ENTRY AND ACCEPTANCE OF MR. LAWSON'S PLEA ON 2-21-2012 AND DOING SO WITHOUT NOTICE OR COMMUNICATION WITH MR. LAWSON. SEE APPELLANT'S MOTION AND AFFIDAVIT FOR RECONSIDERATION. PET. APP. A32-A60.

DIVISION II COURT OF APPEALS MISCHARACTERIZED THE NATURE OF THE PLEA AGREEMENT BY OMITTING ANY REFERENCE TO THE ENHANCED BURGLARY CHARGES. THE COURT OF APPEALS DID HOWEVER ACKNOWLEDGE THAT MR. LAWSON FILED A MOTION TO WITHDRAW HIS PLEA AND CONSIDERED IT NOTEWORTHY THAT THE RECORD WAS "SILENT AS TO THE DISPOSITION OF THAT MOTION" (COMMISSIONER'S ORDER, PAGE 3 NOTE 2) PET. APP. A3-A5.

NEVERTHELESS, THE COURT OF APPEALS TERMINATED REVIEW ON THE BASIS THAT PETITIONER'S PLEA WAS VOLUNTARY THEREBY WAIVING APPELLATE REVIEW.

MR. LAWSON FILES THIS PETITION IN RESPONSE.

F. Summary Of The Argument

Petitioner Lawson was coerced into requesting and accepting an Alford plea due to the Government's overwhelmingly oppressive interference, denial and deprivation of Petitioner's "access to the courts" in violation of Amendments I, VI and XIV of the U.S. Constitution and Article 1 sections 3, 4 and 22 of the Washington Constitution respectively.

Petitioner's plea was involuntary in violation of Due Process. The plea was defective on its face. The court impermissably engaged in plea negotiations. The indivisible plea was rendered divisible and Petitioner's Judgment and sentence was unconstitutional on its face.

On appeal, unconstitutional burglary charges were overlooked. Petitioner received ineffective assistance of appellate counsel. Counsel failed or refused to excercise due diligence amounting to negligence, failed or refused to raise material constitutional issues, including voluntariness of the plea, violated Rules of Appellate Procedure and directly caused the deprivation of Petitioner's opportunity to file a statement of additional grounds all resulting in termination of appellate review. Appellate counsel's failures prejudiced

PETITIONER. BUT FOR APPELLATE COUNSEL'S FAILURES, THE OUTCOME OF PETITIONER'S APPEAL LIKELY WOULD HAVE BEEN DIFFERENT.

G. ARGUMENT

I. THE GOVERNMENT VIOLATED U.S. CONST. AMEND. I, VI, XIV AND WASH. STATE CONST. ART. 1 SECTIONS 3, 4 AND 22 BY ITS OVERWHELMINGLY OPPRESSIVE DEPRIVATION OF MR. LAWSON'S RIGHT OF ACCESS TO THE COURTS THAT DIRECTLY RESULTED IN HIS INVOLUNTARY PLEA. THUS HIS CONVICTION MUST BE VACATED, HIS PLEA BE ALLOWED TO BE WITHDRAWN AND THE CASE DISMISSED.

A. STANDARD OF REVIEW

CONSTITUTIONAL VIOLATIONS ARE REVIEWED DE NOVO. STATE V LYNCH, 87882-0, 2013 WL 5310164 --- WN2d ---- (2013)

B. THE U.S. CONSTITUTION AMENDMENTS I, VI, XIV AND THE WASHINGTON STATE CONSTITUTION ART. 1 SEC'S 3, 4 AND 22 GUARANTEE A CITIZEN AND SPECIFICALLY PRO SE INMATES THE RIGHT OF ACCESS TO THE COURTS.

"INMATES HAVE A FUNDAMENTAL CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS AND PRISON OFFICIALS MAY NOT ACTIVELY INTERFERE WITH PLAINTIFF'S RIGHT TO LITIGATE." LEWIS V CASEY, 518 U.S. 343, 346 (1996)

"UNDER THE FIRST AMENDMENT, A PRISONER HAS

BOTH A RIGHT TO MEANINGFUL ACCESS TO THE COURTS AND A BROADER RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF HIS GRIEVANCES." SILVA V DIVITTORIO, 658 F. 3d 1090 (9TH CIR. 2011). PRISONERS ALSO HAVE THE RIGHT TO PURSUE CLAIMS WITHOUT ACTIVE INTERFERENCE. Id AT 1103-4. THIS RIGHT FORBIDS STATE ACTORS FROM ERECTING BARRIERS THAT IMPEDE THE RIGHT OF ACCESS TO THE COURTS OF INCARCERATED PERSONS. SILVA, 658 F. 3d AT 1102. "WE HOLD THAT PRISONERS HAVE A RIGHT UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO LITIGATE CLAIMS CHALLENGING THIER SENTENCES OR THE CONDITIONS OF THIER CONFINEMENT TO CONCLUSION WITHOUT ACTIVE INTERFERENCE BY PRISON OFFICIALS." SILVA, 658 F. 3d AT 1103.

ADDITIONALLY, THE SIXTH AMENDMENT AND ARTICLE 1 SECTION 22 PROVIDE A CRIMINAL DEFENDANT THE RIGHT TO SELF-REPRESENTATION AND THE TOOLS NECESSARY TO FACILITATE THAT SELF-REPRESENTATION. WHILE THE UNITED STATES SUPREME COURT HAS NOT RULED ON WHAT MUST BE PROVIDED TO ONE REPRESENTING ONESELF, KANE V GARCIA ESPITIA, 546 U.S. 9, 10 (2005) '[A]N INCARCERATED DEFENDANT MAY NOT MEANINGFULLY EXCERCISE HIS RIGHT TO REPRESENT HIMSELF WITHOUT ACCESS TO LAW BOOKS, WITNESSES, OR OTHER TOOLS TO PREPARE A DEFENSE' MILTON V MORRIS, 767 F. 2d 1443, 1446 (9TH CIR. 1985). ARTICLE 1 SECTION 22 PROVIDES PRETRIAL DETAINEES A GREATER RIGHT OF

—ACCESS TO THE COURTS THAN THE FEDERAL CONSTITUTION PROVIDES. ART. 1 SEC. 22; STATE V SILVA, 107 WASH. APP. 605, 609 (2001)

MR. LAWSON WAS PROVIDED WITH SOME LIMITED RESOURCES BUT THE GOVERNMENT INHIBITED THIER USE AND IN SOME CASES, SUCH AS WITNESS INTERVIEWS AND CRITICALLY IMPORTANT EVIDENCE, WAS DENIED ALTOGETHER. PROVIDING CERTAIN [CONSTITUTIONALLY] SIC ADEQUATE RESOURCES TO A PRO SE PRETRIAL DETAINEE THEN ERECTING [BARRIERS] SIC TO INHIBIT AND PREVENT THIER USE IS TANTAMOUNT TO NOT PROVIDING THEM AT ALL.

THIS WAS THE DRIVING FORCE THAT INDUCED OR COERCED MR. LAWSON TO REQUEST AND ACCEPT THE PLEA RENDERING THE PLEA INVOLUNTARY. MOREOVER, THE DEPRIVATIONS CONTINUED AFTER THE PLEA WAS ACCEPTED BY THE COURT AND DURING POST-CONVICTION INCLUDING THE INEXTRICABLY INTERTWINED SUBSEQUENT PROSECUTION.

II. MR. LAWSON'S GUILTY PLEA WAS INVOLUNTARY IN VIOLATION OF DUE PROCESS UNDER U.S. CONST. AMEND. XIV AND ART. 1 SECTION 3 OF THE STATE CONSTITUTION.

A. STANDARD OF REVIEW

CONSTITUTIONAL VIOLATIONS ARE REVIEWED DE NOVO, LYNCH, 87882-0, 2013 WL 5310164 ---WN 2d---(2013)

- A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT MAY BE RAISED FOR THE FIRST TIME ON REVIEW. RAP 2.5(a)(3); STATE v KERWIN, 165 WN 2d 818, 823 (2009).

B. MR. LAWSON'S PLEA AGREEMENT AND JUDGMENT AND SENTENCE WERE DEFECTIVE ON THIER FACE RENDERING THE PLEA INVOLUNTARY.

"[D]UE PROCESS REQUIRES THAT A GUILTY PLEA BE KNOWING, VOLUNTARY AND INTELLIGENT." STATE v ROBINSON, 263 P.3d 1233 (2011) CITING IN RE PERS. RESTRAINT OF ISADORE, 151 WN 2d 294, 297 (2004) (CITING BOYKIN, 395 U.S. 238, 242 (1969). THE TWO [CONTRACTS] SIC THAT MR. LAWSON SIGNED DID NOT MATCH EACH OTHER NOR WERE THE TERMS OF EITHER CORRECT, VALID OR UNDERSTOOD BY MR. LAWSON.

"WE TYPICALLY REGARD VALID PLEA AGREEMENTS AS BINDING CONTRACTS." ROBINSON, 263 P.3d 1233 (2011) CITING IN RE. PERS. RESTRAINT OF BREED LOVE, 138 WN 2d 298, 309 (1999) CITING STATE v TALLEY, 134 WN 2d 176, 182 (1998).

WHILE THE COURT ENGAGED IN A COLLOQUY WITH RESPECT TO THE INITIAL PLEA AGREEMENT CONTAINING FERRONEOUS TERMS OF COMMUNITY CUSTODY, NO SUCH COLLOQUY OCCURED AFTER THE STATE ALTERED THE AGREEMENT. NOR WERE THE CONSEQUENCES OF THE MODIFIED PLEA AGREEMENT EXPLAINED TO MR. LAWSON'S S SATISFACTION OR ACCEPTANCE (NOT RATIFIED BY MR. LAWSON). ALTHOUGH MR. LAWSON'S SIGNATURE

APPEARS ON THE JUDGMENT AND SENTENCE, THE RECORD CLEARLY INDICATES THAT MR. LAWSON DID NOT UNDERSTAND THE MODIFICATIONS. "AT ALL TIMES, THE DEFENDANT MUST UNDERSTAND THE CONSEQUENCES OF PLEADING GUILTY." STATE V WAKEFIELD, 130 WN2d 464, 471 (1996)

THE PLEA AGREEMENT MR. LAWSON SIGNED AND AGREED TO ON FEBRUARY 1, 2012 IS SIMPLY NOT THE SAME DOCUMENT SIGNED ON FEBRUARY 27, 2012 AND THEREFORE INVOLUNTARY.

C. THE TRIAL COURT IMPERMISSABLY ENGAGED IN PLEA NEGOTIATIONS, CONSTRUING THE PROCESS AS FURTHER COERCIVE AND THUS RENDERING MR. LAWSON'S PLEA INVOLUNTARY.

"'[T]HE COURT SHALL NOT PARTICIPATE IN ANY DISCUSSIONS REGARDING PLEA NEGOTIATIONS.'" STATE V WAKEFIELD, 130 WN 2d 464, 471 CITING FORMER RCW 9.94A.080 "THE JUDGE SHOULD NEVER THROUGH WORD OR DEMEANOR, EITHER DIRECTLY OR INDIRECTLY, COMMUNICATE TO THE DEFENDANT OR DEFENSE COUNSEL THAT A PLEA AGREEMENT SHOULD BE ACCEPTED OR THAT A GUILTY PLEA SHOULD BE ENTERED." WAKEFIELD, 130 WN2d AT 473 CITING STATE V POUNCEY, 29 WASH. APP. AT 635.

THE COURT'S COMMENT AFTER MR. LAWSON AFFIRMATIVELY REQUESTED TO WITHDRAW HIS PLEA INDUCED MR. LAWSON'S INQUIRY AND FURTHER

- COMMENT BY THE COURT CHANGED MR. LAWSON'S MIND AND WAS INAPPROPRIATE. SEE ALSO U.S. v BRUCE, 976 F.2d 552 (9TH CIR. 1992) (JUDGES IMPROPER PARTICIPATION IN PLEA NEGOTIATIONS VIOLATED FEDERAL RULES OF CRIMINAL PROCEDURE 11(e)(1) AND RAISED QUESTIONS OF IMPARTIALITY AND COERCIVENESS); U.S. v GARFIELD, 987 F.2d 1424 (9TH CIR 1993) (HOLDING DISTRICT COURT VIOLATED RULE PROHIBITING TRIAL JUDGE FROM PARTICIPATING IN PLEA NEGOTIATIONS PROCESS BY ADVISING DEFENDANT ON MERITS OF PLEADING GUILTY, EVEN THOUGH COURT MAY HAVE INTENDED ONLY TO ENSURE THAT DEFENDANT THOUGHT THROUGH THE CONSEQUENCES OF HIS ACTIONS.)

AS A DIRECT RESULT OF THE TRIAL COURTS PARTICIPATION IN PLEA NEGOTIATIONS, MR. LAWSON'S PLEA WAS INVOLUNTARY AND HIS CONVICTION MUST BE VACATED AND DISMISSED.

D. MR. LAWSON'S POST-CONVICTION, SELF-IMPOSED SYSTEMATIC PRACTICAL (OR IMPRACTICAL DEPENDING ON ONES PERSPECTIVE) CHALLENGES TO THE UNCONSTITUTIONAL CONDITIONS OF COMMUNITY CUSTODY DIRECTLY RESULTED IN SANCTIONS IMPOSED BY THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS (D.O.C.) AND A SUBSEQUENT INEXTRICABLY INTERTWINED CRIMINAL PROSECUTION RENDERING COMMUNITY CUSTODY RELATED TO HIS INVOLUNTARY PLEA "RIPE" FOR REVIEW.

— THE CONDITIONS OF COMMUNITY CUSTODY CONTAINED IN THE PRE-SENTENCE REPORT AND WHOLLY IMPLEMENTED BY THE COURT RELATED TO THE INVOLUNTARY PLEA, WERE UNCONSTITUTIONAL AND NOT CRIME RELATED. YET THE COURT IMPOSED THEM OVER MR. LAWSON'S ORAL AND WRITTEN OBJECTIONS.

(IT SHOULD BE NOTED THAT THIS PART OF THE RECORD HAS NOT YET BEEN MADE AVAILABLE TO THE PETITIONER.)

E. THE BURGLARY STATUTE, RCW 9A.52.030, WITHDRAWN BY THE STATE AS A CONDITION OF MR. LAWSON'S INVOLUNTARY PLEA, IS OVERBROAD AND UNCONSTITUTIONALLY VAGUE AS APPLIED AND MUST BE DISMISSED.

"CHOICE, INTERPRETATION, OR APPLICATION OF A STATUTE TO A SET OF FACTS IS A MATTER OF LAW REVIEWED DE NOVO." STATE V LAW, 110 WASH. APP. 36, 38 P.3d 374, 377 (2002) THE STATE VINDICTIVELY UPPED THE ANTE TO INCLUDE BURGLARY CHARGES BECAUSE MR. LAWSON EXCERCISED HIS SIXTH AMENDMENT RIGHT TO PROCEED PRO SE AND AS A COERCIVE TACTIC TO ENTER INTO A PLEA, WHERE MR. LAWSON'S ALLEGED ACTS IN NO WAY CONSTITUTED BURGLARY.

ABSENT BEING TRESPASSED OR VENTURING INTO AREAS NOT OPEN TO THE PUBLIC, A PERSON CANNOT COMMIT BURGLARY IN BUILDINGS OR SPACES OPEN

– TO THE PUBLIC REGARDLESS OF [NEFARIOUS] SIC ACTIVITY OR INTENT. SEE STATE V SNEDDEN, 149 WN 2d 914 (2003); STATE V BERGERON, 105 WN 2d 1 (1985); STATE V ALLEN, 127 WASH APP. 125 (2005); STATE V MILLER, 90 WASH. APP. 720 (1998) OTHERWISE "EVERY SHOPLIFTING WOULD BE ELEVATED TO BURGLARY IN THE SECOND DEGREE."

III. MR. LAWSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL'S FAILURE TO RAISE MERITORIOUS CONSTITUTIONAL ISSUES AND VIOLATED RULES OF APPELLATE PROCEDURE ON DIRECT APPEAL VIOLATED MR LAWSON'S RIGHTS UNDER U.S. CONST., VI, XIV AND ART. 1 SEC.'S 3 AND 22 RIGHT TO COUNSEL AND DUE PROCESS. THUS MR. LAWSON'S CONVICTION MUST BE VACATED AND DISMISSED.

A. STANDARD OF REVIEW

CONSTITUTIONAL VIOLATIONS ARE REVIEWED DE NOVO. LYNCH, 87882-0, 2013 WL 5310164 ___ WN 2d ___ (2013) A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT MAY BE RAISED FOR THE FIRST TIME ON REVIEW. RAP 2.5 (a)(3); STATE V KERWIN, 165 WN 2d 818, 823 (2009)

B. WITHOUT DUPLICATING AND INCORPORATING BY REFERENCE APPELLANT'S MOTION FOR RECONSIDERATION OF APPELLANT'S MOTION TO MODIFY (WITH AFFIDAVIT), ON DIRECT APPEAL APPELLATE COUNSEL FAILED OR

REFUSED TO RAISE, AMONG OTHER THINGS, VOLUNTARINESS OF MR. LAWSON'S PLEA AND VIOLATED RULES OF APPELLATE PROCEDURE, (SEE PETITIONER'S APPELLANT'S MOTION FOR RECONSIDERATION) DESPITE HAVING FULL KNOWLEDGE OF THE ISSUES.

"THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT GUARANTEES A CRIMINAL DEFENDANT THE EFFECTIVE ASSISTANCE OF COUNSEL ON FIRST APPEAL AS A MATTER OF RIGHT." EVITTS V LUCY, 469 U.S. 387 (1985) IN THIS CASE APPELLATE COUNSEL'S PERFORMANCE FAILED THE TEST UNDER STRICKLAND V WASHINGTON, 466 U.S. 668 (1984). THUS COUNSEL'S PERFORMANCE FELL BELOW A REASONABLE STANDARD AND PREJUDICED MR. LAWSON.

H. CONCLUSION

FOR ALL THE FOREGOING REASONS MR. LAWSON RESPECTFULLY REQUESTS THIS HONORABLE COURT ACCEPT REVIEW OF THIS PETITION AND GRANT PETITIONER'S REQUEST TO VACATE THE CONVICTION, ALLOW WITHDRAWAL OF THE PLEA AND DISMISS WITH PREJUDICE. ALTERNATIVELY, VACATE THE CONVICTION, ALLOW WITHDRAWAL OF THE PLEA, DISMISS THE BURGLARY CHARGES WITH PREJUDICE AND ALLOW PETITIONER TO PROCEED TO TRIAL AND DISMISS PURSUANT TO DOUBLE JEOPARDY.

RESPECTFULLY SUBMITTED THIS 21ST DAY OF OCTOBER, 2013

GEOFFREY R. LAWSON, PRO SE

APPENDIX

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

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July 12, 2013

LETTER SENT BY E-MAIL

Geoffrey Robert Lawson **(sent by U.S. mail)**
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Hon. David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
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Tacoma, WA 98402-4454

Jeremy Aaron Morris
Kitsap County Prosecutor's Office
614 Division Street
Port Orchard, WA 98366-4614

Re: Supreme Court No. 89037-4 - State of Washington, v Geoffrey R. Lawson
Court of Appeals No. 43827-5-II

Clerk, Counsel and Mr. Lawson:

On July 11, 2013, this office received Petitioner's "APPELLANT'S MOTION FOR RECONSIDERATION OF APPELLANT'S MOTION TO MODIFY"(with affidavit) addressed to the Clerk of the Court of Appeals. The pleadings have been placed in the Court of Appeals file without further action; see the last sentence of RAP 12.4(a). A copy of both pleadings is enclosed for the Respondent.

The Petitioner is reminded that by Clerk's ruling dated July 10, 2013, the due date for filing his petition for review is August 27, 2013.

Sincerely,

Ronald R. Carpenter
Supreme Court Clerk

RRC:lm
Enclosures as stated

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
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DIVISION II
2013 MAY 29 PM 2:52
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON, Respondent, v. GEOFFREY R. LAWSON, Appellant.	No. 43827-5-II ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated April 1, 2013, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 29th day of May, 2013.

PANEL: Jj. Van Deren, Hunt, Worswick

FOR THE COURT:

Worswick, cj
CHIEF JUDGE

Thomas Michael Kummerow
Washington Appellate Project
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
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DIVISION II
2013 MAR 32 AM 10: 22
STATE OF WASHINGTON
BY _____
DEPUTY

STATE OF WASHINGTON, Respondent, v. GEOFFREY ROBERT LAWSON, Appellant.	No. 43827-5-II RULING GRANTING MOTION ON THE MERITS TO AFFIRM

Geoffrey Lawson appeals from the judgment and sentence imposed following his *Newton*[1] plea of guilty to one count of voyeurism and one count of attempted voyeurism. The State filed a motion on the merits to affirm under RAP 18.14(e)(1). Concluding that Lawson waived his right to appeal his convictions as part of his guilty plea, this court grants the motion on the merits to affirm and affirms his judgment and sentence.

The State initially charged Lawson with two counts of voyeurism. The trial court granted Lawson's motion to represent himself. The trial court conducted a number of hearings regarding Lawson's access to resources with which to

[1] *State v. Newton*, 87 Wn.2d 363, 373, 552 P.2d 682 (1976). See also *North Carolina v. Alford*, 400 U.S. 25, 37, 96 S. Ct. 2253, 27 L. Ed. 2d 162 (1970).

defend himself. On January 12, 2012, Lawson moved to dismiss the charges against him on the grounds that he had not been given sufficient access to defense resources. The trial court denied his motion. On January 27, 2012, Lawson moved for additional access to resources to prepare for his February 7, 2012 trial date. The trial court denied his motion.

On February 1, 2012, the State and Lawson elected to enter into a plea agreement. The State agreed to amend its information to charge one count of voyeurism and one count of attempted voyeurism. Lawson agreed to enter a *Newton* plea of guilty to those reduced charges. In his Statement on Plea of Guilty, Lawson acknowledged that among the rights he was giving up by pleading guilty was "[t]he right to appeal a finding of guilt after a trial." Clerk's Papers (CP) at 37. In his plea colloquy, Lawson acknowledged that he had had the opportunity to review the Statement on Plea of Guilty and to discuss it with his standby counsel. The trial judge found Lawson's plea of guilty to be knowingly, intelligently and voluntarily made, accepted his plea and found him guilty of the amended charges.

Lawson appeals from his convictions, arguing that he was denied his right under article I, section 22 of the Washington State Constitution to "reasonable access to state provided resources" sufficient for him to represent himself in defense against the State's charges. *State v. Silva*, 107 Wn. App. 605, 622, 27 P.3d 663 (2001). The State responds that as part of his plea of guilty, Lawson waived his right to appeal his convictions and therefore waived the opportunity to claim any constitutional violations that occurred before the guilty plea. *In re*

Personal Restraint of Bybee, 142 Wn. App. 260, 268, 175 P.3d 589 (2007). Lawson has not replied to the State's contention with any authority that would allow him to challenge his right to access to self-representation resources after electing to enter a plea of guilty. This court concludes that Lawson waived his opportunity to raise his constitutional claim, making his appeal clearly without merit.[2] Accordingly, it is hereby

ORDERED that the State's motion on the merits is granted and Lawson's judgment and sentence are affirmed. He is hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

DATED this 1st day of April, 2013.

Eric B. Schmidt
Court Commissioner

cc: Thomas M. Kummerow
Jeremy A. Morris
Hon. Russell W. Hartman
Geoffrey R. Lawson

[2] The clerk's papers contain a motion to withdraw guilty plea that Lawson filed and a response to that motion that the State filed. But the record is silent as to the disposition of that motion. Lawson does not argue in his brief that his plea of guilty was not knowingly, intelligently and voluntarily made.