

WASHINGTON SUPREME COURT

STATE OF WASHINGTON,)
Respondent,)
vs.)
Gary D. McCabe,)
Petitioner.)

NO. 89125-7

PETITIONER'S MOTION FOR AN
ORDER APPOINTING INDEPENDENT
COUNSEL TO ARGUE ISSUE OF
INEFFECTIVE ASSISTANCE OF
COUNSEL ON APPEAL

1. Identity of Moving Party

COMES NOW Gary D. McCabe, the petitioner, *In Propria Perso-*
na, and asks for the relief designated in Part 2.

2. Statement of Relief Sought

Petitioner, pursuant to the crystal clear "conflict of inte-
rest" in the present case, by petitioner's counsel acknowledging
that he provided ineffective assistance of counsel on appeal,
the petitioner, in the interest of justice and fairness.

3. Statement of the Case

On the direct appeal in the Court of Appeals, Division
III, the Court, *sua sponte*, cited State v. Brown, 50 Wn.App.
873 (1988). A case overlooked by petitioner's counsel in
the direct appeal, and attempted to correct his ineffectiveness
in a motion for reconsideration.

Court of Appeals, Division III, affirmed petitioner's con-
viction.

4. Argument Why Relief Should Be Granted

It is well established that an accused is entitled to an
effective assistance of counsel, free of any conflict of

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2013 OCT 17 A 8:27
BY FACILITATOR
CLERK III

interest, during trial, and appeal process. 6th Amendment of the United States Constitution (other citations omitted) RPC 1.1 states: "A lawyer shall provide competent representation to a client. COMPETENT representation requires the legal knowledge, skill, thoroughness and preparation REASONABLY necessary for the representation."

In the present case, petitioner's counsel first presented the issue of his ineffectiveness to the appellate court on a motion for reconsideration, and is currently presenting the issue to this Honorable court on the petition for review. And asks this Honorable Court: "The court therefore should appoint new counsel to argue that McCabe was denied effective assistance of appellate counsel." See Petition at 12

Further, petitioner counsel informs this Honorable court that counsel has a conflict of interest: Current counsel has a conflict of interest that precludes counsel from arguing his own ineffectiveness. Petition at 12; United States v. Del Muro, 87 F.3d 1078, 1080-81 (9th Cir. 1996)

In Del Muro, our Nine Circuit Court of Appeal held that: "Counsel should not be forced to argue counsel's own ineffectiveness." Therefore, in the interest of justice and fairness, this Honorable Court must appoint a independent counsel to argue petitioner's counsel own acknowledged ineffectiveness.

RPC 1.7(a) states in pertinent part: ". . . a lawyer shall

not represent a client if the representation involves a concurrent conflict of interest.

In the present case, by counsel's own admission, it is crystal clear that the petitioner is being represented by counsel with a conflict of interest and is asking this court to appoint new counsel, therefore, this Honorable Court, in the interest of justice and fairness ust appoint new counsel.

Current petitioner's counsel has admitted that he made a mistake, by relying in the incorrect definition of "building" which included "fenced areas." And is telling the court that as a result of that deficient performance, petitioner is being prejudiced and prevented from raising a meritorious claim that would result in the reversal of his burglary conviction.

It is well established that no conviction can stand if the defendant suffered ineffective assistance of counsel, including during the appeal process, therefore, by current counsel's own admission of his crystal clear ineffectiveness in relying in the incorrect definition of "building" which would have guaranteed the reversal of his burglary conviction, this Honorable Court would have no choice bu to reverse said conviction. However, independent counsel should be appointed to properly argue the ineffectiveness of appeal counsel, to glorify our precious 6th Amendment of the United States Constitution. And therefore, petitioner prays to this Honorable Court to grant petitioner's

motion for an order appointing independent counsel to argue issue of ineffective assistance of counsel on appeal.

5. Conclusion

Based on the foregoing petitioner asks this Honorable Court to grant his motion and appoint new counsel.

DATED THIS 10th day of October, 2013.

Respectfully submitted,



Gary D. McCabe, petitioner
In Propria Persona

Case no. 89125-7

DECLARATION OF SERVICE BY MAIL

IN ACCORDANCE WITH 28 USC § 1746, I declare that on this date, I mailed the following documents:

- A. Petitioner's Motion for an order appointing independent counsel to argue issue of ineffective assistance of counsel on appeal;
- B. Declaration of service by mail; and
- C. Cover letter

directed to:

Ronald R. Carpenter
Supreme Court Clerk
P.O. Box 40929
Olympia, WA. 98504

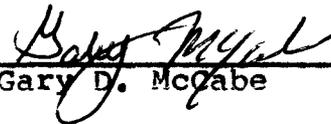
and served a copy to:

Eric Broman
Attorney at Law
1908 E. Madison Street
Seattle, WA. 98122

Mark E. Lindsey
Spokane County Prosecutor
1100 W. Mallon Avenue
Spokane, WA. 99260

Suzanne Elliot
with a request for an Amicus Curiae brief in support of petitioner's motion for independent counsel

DATED THIS 10th day of October, 2013.



Gary D. McCabe

CLERK

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2013 OCT 17 A 8:27
BY RONALD R. CARPENTER