42441-0

State v. Sherri Boseski

Statement of Additional Grounds

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of SAG
to C. Parker
& C. Lotterer
6/15/12
Date / Signed

It is a fundamental value in our society that it is far worse to convict an innocent man than to let a guilty man go free.' In re Winship, 397 U.S. 358, 372, 90 S.Ct. 1068, 1077, 25 L.Ed.2d 368 (1970) (Harlan, J., concurring). I am addressing the Court of Appeals in Washington State Division II, regarding my Case No.42441-0-II. My name is Sherri Boseski, former Army Captain; I served on Fort Lewis in Tacoma, Washington. I am innocent and have been wrongly convicted. My conviction is a glaring example of our broken judicial system, corruption within our military and many of institutions we hold dear as Americans. If the court looks at the totality of circumstances surrounding my conviction, it should be immediately vacated.

These are the following issues I will address;

1. Violations of the 4th,5th,6th, 8th, and 14th Amendment of the US Constitution
2. Violations of Washington State Constitution Article I section 2,3,7,14,18,22
3. Violations of RCW 4.72.010 (3)(4)(5) 2005
4. Washington Revised Code RCW 38.38.492:[Art.58] Execution of confinement
5. Violation of Rule CrRLJ 3.1
6. Violation of RAP 16.4 ; Unlawful restraint
7. Violations of Substantive Due Process of United States Criminal Civilian Law Court Proceedings and of Military Law.
8. The US Military has misdiagnosed women service members as "crazy" after reporting rape. Not until 2011 was I properly diagnosed with PTSD due to military sexual trauma.
9. Collusion between the military and the civilian court; i.e. Fraud
10. Erroneous application of state law makes the case cognizable in federal court.

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11. The court denied me my right to liberty, privacy, and due process of law by ordering me to take antipsychotic medications without requiring the State to prove the necessity of forced medications by clear, cogent, and convincing evidence.
12. Marginalization has become epidemic in our country for women who suffer from PTSD due to sexual trauma(oral Slide Presentation Anne Koci RN, MSN, PhD, Byrdine F. Lewis, Georgia State University, Atlanta, Georgia)

Washington State Cases

1. **State v Tatum 61 Wn.2nd 576,579,379 P. 2d 372(1963).;** Court reversed the conviction because defendant was not arraigned on amended charge. I was never arraigned on the amended charges despite the fact that court documents state I appeared in court. If I was in court I should have spoken to the judge and went over the nature of the charges. I was not even at the second arraignment court proceeding, this is just one example of fraud by the Washington State Court System and its accomplices. See **Exhibit "J"** CP 191, lines 22-24.
2. **United States v. Pena, 314 F.3d 1152,1157** (9th Cir.2003) merely asking the defendant whether he read the plea agreement and asking the attorney if the defendant understood and agreed with the elements of the offense is insufficient. Proper plea colloquies are required by law. When my plea was taken the charges were not explained and my lawyer was questioned as to whether I understood the consequences of the plea. My lawyer never explained the charges against me. He merely threatened me with a forty year jail sentence, if I did not sign. I signed the plea agreement under distress in his office.

State of Washington vs. Sherri Boseski June 22, 2009

The Court: I intentionally assaulted a person and inflicted reckless substantial bodily harm. I also intentionally assaulted a police officer who was performing his official duties at the time of the assault. Now, have you gone over with Mr. Trombold what it means to plead guilty?

The Defendant: Yes, Your Honor.

The Court: Have you gone over with her do you think this plea is knowing, intelligent and voluntarily made?

Mr. Trombold: Yes, Your Honor.

The Court: Then we'll accept it find it to be so.

A guilty plea cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts. The judge must determine that the conduct which the defendant admits constitutes the offense charged in the indictment or information. Requiring this examination protects a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge. Under Fed. R. Crim. P. 11, the judge must develop, on the record, the factual basis for the plea, as, for example, by having the accused describe the conduct that gave rise to the charge.

Supreme Court Cases

3. **Hicks v. Oklahoma, 447 U.S. 343, 346,100 S.Ct. 2227, 2229, 65 L.E.d.2d 175(1980),** in this case the state deprived the petitioner of due process of law guaranteed by the Fourteenth Amendment. Similarly I was deprived due process because I was not arraigned on the amended charge. I did not get the benefit of a psychiatric hearing to evaluate if I was competent, and the judge did not ensure that my 6th Amendment rights were upheld.
4. **Brown vs Mississippi the Supreme Court**, My Constitutional Rights were violated, I was illegally tased and tackled, after I was illegally imprisoned and refused medical care. Then I was labeled "crazy". This excessive use of force by police officers and the condoning nature of the Washington State Court and military authorities violated the 5th and 14th Amendment of the Constitution.

Military sexual violence and the military's attempt to cover it up has recently received much media attention. CNN, BBC, Seattle Times, and ABC are a few of the media corporations who have reported on the epidemic of military sexual violence. Service Women's Action Network or SWAN is an organization that is suing the Department of Defense to end the wide spread cover up of rapes by the military according to http://servicewomen.org/. The military labels soldiers who report rape as "crazy". I was labeled as "crazy" in 2009 by forensic psychologists' in on Fort Lewis. It was not until 2011 that I received the proper diagnosis of PTSD due to military sexual trauma. I have attached in this email, CNN's report that many soldiers are labeled "crazy" after reporting rape, hushed up and pushed out of the military as expediently as possible. This is exactly what happened to me in 2009, intimidating me from going to trial.

Fort Lewis, Washington has been labeled the worst base in the entire military, especially when dealing with PTSD. I have included an articles that state soldiers are either miss diagnosed

or given the diagnosis of PTSD in an effort to avoid costing the government millions of dollars to support soldiers' with this diagnosis. If I had been properly diagnosed with PTSD and the appropriate treatment rendered, I would have most certainly went to trial. Due to the inappropriate diagnosis and treatment I lacked the capacity to understand the gravity of the legal proceedings. I did not even know what substantial bodily harm entailed. This is a violation of the 6th Amendment.

I have also included emails from JAG officer Colonel Saunders misstating that I was not illegally held on base prior to my coerced plea. Sergeant Finsness who was in charge of my confinement signed a statement stating he enforced this confinement at the request of his superiors prior to me pleading guilty. This confinement is illegal according to military judicial code without a proper hearing.(see exhibit ;Military Justice 101) . This is also a violation of Washington Revised Code RCW 38.38.492:[Art.58] Execution of confinement

This confinement to base further exacerbated the symptoms of my PTSD and made it more likely for me to plea because I was avoiding triggers. This violates Article 1 section 3 of the Washington State Constitution and the 14th Amendment.

A guilty plea is akin to a confession of guilt. It has been long standing that a confession derived from torture is inadmissible. The framers of the United States Constitution included this in the 5th Amendment due to the atrocities they had seen including torture to derive confessions. In Brown vs. Mississippi the Supreme Court found that confession's obtained through brutality or torture are violation of the Fifth and Fourteenth Amendment. I plead guilty after being illegally tased and tackled by police officers and illegally confined to a military instillation.

Persons suffering from PTSD often have extreme avoidance behaviors from triggers of their PTSD. The Three Major symptoms of Post-Traumatic Stress-Disorder include; re-experiencing the traumatic event, avoiding reminders of the trauma, increased anxiety and emotional arousal and feeling numb according to PTSD home page for the United States Army. http://www.behavioralhealth.army.mil/ptsd/index.html. My plea was an attempt to avoid further triggering my PTSD, symptoms. My symptoms are so severe that I endure being imprisoned to avoid further exacerbation of my symptoms and further reprisal. This was a violation of the 8th Amendment. I also included Mike Gordon's description of PTSD, he is a prominent psychologist from Chicago's Law School. My PTSD is due to sexual trauma that I endured at the hands of a military intelligence First Sergeant. This included psychological torture, Mr. Gordon consciously describes the effect of this type of torture in the enclosed video, citing studies from the Department of Defense.

RCW 4.72.010

Causes for enumerated.

The superior court in which a judgment or final order has been rendered, or made, shall have power to vacate or modify such judgment or order:

(1) By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the rules of court relating to new trials.

(2) By a new trial granted in proceedings against defendant served by publication only as

prescribed in RCW 4.28.200.

(3) For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

(4) For fraud practiced by the successful party in obtaining the judgment or order.

(5) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) For the death of one of the parties before the judgment in the action.

(7) For unavoidable casualty, or misfortune preventing the party from prosecuting or defending.

(8) For error in a judgment shown by a minor, within twelve months after arriving at full age.

[1957 c 9 § 4; Code 1881 § 436; 1877 p 96 § 438; 1875 p 20 § 1; RRS § 464.]

The judgment and sentence does not match the plea agreement, this is an irregularity in obtaining the judgment or order. This is also fraud. This fraudulent act was committed by my attorney Kevin Trombold, the Prosecuting Attorney David Bruneau, and the Washington Court System. I signed the plea agreement in Kevin Trombold's office, days before the plea was taken on June 22, 2009. At Kevin Trombold's office I continued to proclaim my innocence. Kevin

Trombold in an effort to get me to sign the false statement placed the wrong subsection of the statute for Assault 2. He did so because I was adamant about not signing anything that stated I pointed a weapon at a police officer. He stated he would call Prosecuting Attorney David Brunea to see if this was alright. This act of fraud was acceptable by the prosecutor because the wrong statue was read at the plea hearing on January 22, 2009. In addition I believe that the court colluded with the state and performed the inadequate plea colloquy, to expedite the process. This act of reading the wrong subsection of the statute all in an effort to evade the likelihood of me protesting the plea proceeding is a criminal act. I was innocent. I was mentally unfit and not properly diagnosed, so my treatment was inadequate. Years of my life are gone because of this and I will never get them back.

On January 8th, 2009 Tumwater Police violated my 4th Amendment Rights, by attempting to gain entry into my home without a search warrant. Being scared for my life and unsure of whom exactly was attempting to gain access to my residence, I opened the door to de-escalate the situation and thwart off the illegal entry into my home. This violated Article 1 section 2, 3 and 7 of the Washington State Constitution. What ensued was a plethora of lies and justifications for the poor performance by the policeman and their bullying tactics. This phenomenon has been well documented by Allan Dershowitz in testimony given to the House of Representatives in 1998. Judicial cover up of these crimes by police officers is well documented in several studies including Myron W. Orfield, Jr's ., study in 1992, concluding that judges and prosecutors enable this illegal behavior. Although these studies cite the rational for these acts, as an effort of the system to prevent the guilty from going free, this is not my experience.

It has been my experience that it is par for the course of corruption endemic to our judicial system. Innocent or guilty, the judicial system pushes people through the system, if you lack

power or the political clout to fight injustice. In a book written by Norm Stamper, former Seattle police chief in his memoir, Breaking Ranks, he writes, "Cops lie. Most of them lie a couple of times per shift, at least."

After my arrest in Washington State, my legal proceedings became a struggle of political favors being exchanged. I was illegally held on base. My Nursing Commander Col Kondrat who was in contact with Judge Tabor ensured my illegal confinement. I was held on base without the proper military proceedings. (Rev.Code Wash. (ARCW) 38.38.492(2011).

This abuse of power ensnared me in complex legal proceedings and procedures that I did not understand. This is a violation of Washington State Constitution Article 1 section 2,3,18 and 22. (See exhibit F submitted by attorney Corey Even Parker, January 14, 2009) (See Exhibit, Military Justice 101)

The JAG office, this is the Army's legal branch, refused to see me in any regards about my arrest and confinement on base. I went to the JAG office after speaking to Sergeant Finsness and others about my situation. I was in contact with Jag Officer Eric Husby at the time and I was told JAG would not get involved.

. The military justice system follows the civilian requirement that a review of the decision to confine the person be conducted within 48 hours. Within 72 hours, the military member is entitled to have his commanding officer review whether his continued confinement is appropriate. (However, if someone other than the commanding officer confined the member and the commanding officer review was actually conducted within 48 hours, then this commanding officer review can serve to satisfy both review requirements.) Thereafter, a military magistrate who is independent of the command must conduct another review within 7 days. Finally, a

military member may request the military judge assigned to the case review the appropriateness of the pretrial confinement.

Throughout the confinement review process, a service member is provided a military lawyer, at no expense, to assist him or her. The "commander review" must confirm, in writing:

- that there is probable cause to believe that the service member committed an offense triable by courts-martial;
- there is probable cause to believe that confinement is necessary to prevent the service member from fleeing or engaging in serious criminal misconduct;
- and there is probable cause to believe that lesser forms of restraint would be inadequate.

The "magistrate review" must find, in writing:

- that there is probable cause to believe that the service member committed an offense triable by courts-martial;
- based on the preponderance of the evidence (51%), there is reason to believe that confinement is necessary to prevent the service member from fleeing or engaging in serious criminal misconduct;
- based on the preponderance of the evidence (51%), there is reason to believe that lesser forms of restraint would be inadequate.

These review requirements may be suspended by the Secretary of Defense when operational necessities make them impractical. For the same reason, these requirements are not applicable to ships at sea.

When his charges are "referred" or presented to a court-martial, the confined service member may ask the military judge presiding over the court to review his pretrial confinement again. If rules were violated, the military judge can release the service member, and he can reduce any subsequent sentence, giving additional credit for inappropriate confinement.

In most cases, imposing pretrial confinement "starts the clock." After imposing pretrial confinement, the command must usually bring the case to trial within 120 days, or risk having the case overturned on appeal.

In the civilian community, persons accused of crimes who might flee or commit other crimes may also be confined prior to their trial. A civilian magistrate must review this confinement within 48 hours. In many cases, the magistrate will require confinees to post bail to ensure their return for trial. While awaiting trial, a civilian confinee usually does not receive pay and may actually lose his or her job. Service members do not have to post bail, receive their regular military pay, and do not lose their jobs while awaiting trial.

2005 Washington Revised Code RCW 38.38.492:[Art.58] Execution of confinement

> (1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision

thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as the governor may authorize to act under RCW 38.38.080, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

[1989 c 48 § 53; 1963 c 220 § 60.]

2005 Washington Revised Code RCW 38.38.080:[Art. 10a] Confinement in jails

Persons confined other than in a guard house, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or by such person as the governor may authorize to act.

[1989 c 48 § 11; 1963 c 220 § 11.]

RULE 16.4

PERSONAL RESTRAINT PETITION—GROUNDS FOR REMEDY

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b) and the petitioner's restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons:

(1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090, .100, and .130. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

January 14, 2009, Superior Court Transcripts;

Pg. 3, line 20; Mr. Wheeler: I'd like to offer some insight into that, Your Honor. My proposal would be at least that the front end that you restrict her to base at Fort Lewis. She is a Captain in the Army. Her commanding officer is present, Lieutenant Colonel Paul Goymerac. In my discussions with them they are in a position where they will confine her to base pending the outcome....

Pg. 6, line 10; Mr. Pilon: Certainly, but that's restricting her movements, and he's asking that this court order her to reside there. That is not address that was verified by Pretrial Services.

Pg. 6, line 15; Mr. Pilon; I'm opposed to the idea of having an outside organization giving her a mental health evaluation.

Pg. 9, line 1; The Court; All right. I've heard all the argument I need to hear and I recognize there's strong feelings. Here's the way I see this.

Pg. 9, line 4; Safe- to- be-at- large evaluation accomplished by Peg Cain suggested that Ms. Boseski voluntarily enter into an inpatient treatment at Madigan to do her MH assessments and other work-ups that may be asked of her. It was also recommended that when she leaves inpatient treatment at Madigan that she returns to court prior to returning to the community.

Now, I set bail and I did not anticipate all of the issues that have been argued here today, but I have a responsibility to make sure that society is protected and that Miss Boseski also is in a situation in which her needs are addressed. Quite frankly, I think that defense counsel in arguing that I should order particular things does not recognize the fact that the military can certainly order whatever they think is appropriate in this case. And so I have some comfort in that.

I'm not going to order that she reside on base, but the military certainly can if they choose to do that. ....

Pg. 9, line 12 I am also going to order that she undergo a 72 hour evaluation, but it's my understanding that the military wants that, and again I'm not going to speak to what they can certainly order that if they want. I am ordering that she not possess or consume any alcohol or any controlled substances without a valid prescription, I'm going to direct that she follow their directions as to any needed prescriptions. I've already ordered no contact order in this case if I recall correctly looking back.

I was confined to a psychiatric floor at Madigan Army Hospital, on a military base and then restricted to base without the privileges given to the other soldier's within the Warrior Transition Battalion to which I was assigned, while awaiting my trial. This violated RAP 16.4, 2005 Washington Revised Code RCW 38.38.492:[Art.58] Execution of confinement, and military law. There was no military hearings and also no Washington Superior Court Hearings that violated my legal right to due process.

I was ordered to submit to forced Antipsychotic Medications Without Clear and Convincing Evidence That Specific Medications were necessary. I forced to take Respiradol 4mg every day, which is a antipsychotic. The necessity of forced antipsychotic drugs must be proven by clear, cogent, and convincing evidence. All persons accused of a crime possess " a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs. "Washington v. Harper, 494 U.S. 210, 221-22, 110 S. Ct 1028, 108 L.Ed.2d 178 (1990); U.S. Constitution Amendment 14 Wash. Const. art. 1 SS 3,7. Involuntary medications interfere with the individuals' rights to privacy, liberty, and to a fair trial free of undesired side effects caused by antipsychotic medications. Riggins v. Nevada, 504 U.S. 127, 137, 112 S. Ct. 810, 118 L.Ed. 2d 479 (1992);

State v. Adams, 77 Wn. App. 50, 55, 888 P.2d 1207, rev. denied, 126 Wn.2d 1016, (1995); U.S. Constitution amends. 5,6,14; Wash. Cons. Art 1 SS 3,7,22.

In the Riggins Case the court concluded that testimony on direct and cross examination, his ability to follow proceedings, or the substance of his communication with counsel, could be effected by antipsychotic administration. If the court did not determine that use of antipsychotics was necessary according to the applicable case law it interfered with due process and the judgment and sentence is invalid because it was obtained by an irregular means according to RCW 4.72.010.

I was also denied a public defender by Judge Pomeroy and was forced to have family member's fund my defense. This was unfair, the state was unlawfully entering my apartment and the state should pay to defend me from these false accusations levied by Tumwater Police Officers. Involving my family added another layer of melodrama to my life, and more chaos. My family was told I had no chance at trial and if we did go it would cost them an additional $30,000 on top of the $20,000 already paid to Kevin Trombold,Esq. I knew I was innocent but could not afford to hire my own attorney and my family would not allocate any more money to a lost cause. This is a clear violation of Rule CrRLJ 3.1. (Also See Kevin Trombold's Contract signed by my mother. Submitted by my attorney as an exhibit)

My previous Global Functioning Scale was determined at 50 on Fort Lewis. It is clear that my Global Functioning Scale was a 38 or less during 2009 prior to my plea. I have been functioning at this level or less for years prior to proper treatment and diagnosis which occurred on September 2011.This clearly demonstrates that I was unable to participate in the legal

proceedings in 2009. I was not properly diagnosed and a functional score of 38 until September 2011, This Global Functioning score includes impaired reality testing which was documented in 2009 and impaired work performance which was also document in 2009. (see safe-to be-at large documentation) (see Attached Global Functioning Scale)

The factors a trial judge may consider in determining whether or not to order a formal inquiry into the competence of an accused include the 'defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel." *Fleming*, 142 Wn.2d at 863.

In this case, the court discussed the fact of defendant's mental illness with defense counsel and the deputy prosecutor. At the initial arraignment, the deputy prosecutor asked the court to order a "safe-to-be-at large" evaluation, because "the State has got mental health concerns here... I have had previous psychiatric admissions prior to entering the Army, my recruiter was aware of this and I told my attorney Kevin Trombold as well, this should have been considered.

Marginalization of women who have been sexually assaulted and suffer from PTSD due it's effects has been well document. I have included Dr Koci's slide presentation regarding her research into the marginalization of women survivor's of sexual assault. The court by not giving me my right to trial is marginalizing a disabled women who is also a United States Army veteran. This is not the precedent I feel an American Court should set. If you're a women and you get raped in the military you have no rights.

In conclusion, an Army Officer takes an oath to uphold the Constitution of the United States against all enemies, foreign and domestic, that bear true faith and allegiance to the same. If I am not protected by the Constitution that I swore to uphold, why should I be responsible to defend it?
